RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 126]

Pennsylvania Clean Vehicles Program

The Environmental Quality Board (Board) amends Chapters 121 and 126 (relating to general provisions; and motor vehicle and fuels programs). The final-form rulemaking postpones the compliance date from model year (MY) 2006 to MY 2008 and updates definitions in § 121.1 (relating to definitions) for terms that are used in the substantive provisions in Chapter 126, Subchapter D (relating to Pennsylvania Clean Vehicles Program). The final-form rulemaking also clarifies the Pennsylvania Clean Vehicles Program (Program) in Subchapter D and specifies in that subchapter a transition mechanism for compliance with the Program.

This order was adopted by the Board at its meeting on September 19, 2006.

A. *Effective Date*

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Arleen Shulman, Chief, Mobile Sources Section, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3926; or Kristen M. Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) website at www.depweb.state.pa.us (Quick Access: Public Participation).

C. *Statutory Authority*

The final-form rulemaking is being made under section 5 of the Air Pollution Control Act (act) (35 P. S. § 4005), which in subsection (a)(1) grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution, in subsection (a)(7) grants the Board the authority to adopt regulations designed to reduce emissions from motor vehicles and in subsection (a)(8) grants the Board the authority to adopt regulations to implement the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7642).

D. *Purpose and Background*

The purposes of this final-form rulemaking are to postpone the compliance date from MY 2006 to MY 2008 and specify a 3-year early-credit earning period within which vehicle manufacturers must come into compliance with the nonmethane organic gases (NMOG) fleet average of the Program. Specifying an early-credit earning period is intended to provide a transition mechanism from the National Low Emission Vehicle (NLEV) program and to help ensure "identicality" with the California program. The purpose of this final-form rulemaking is also to clarify the Program to reflect post-1998 amendments of the California provisions incorporated by reference and to reflect the end of the NLEV compliance option.

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

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

In addition, the Program does not incorporate the California zero emissions vehicle (ZEV) provisions. Section 177 of the CAA does not require adoption of all of the California standards; it only requires that if a state adopts motor vehicle standards, those standards be identical to the California standards. The United States Environmental Protection Agency (EPA) concludes that states adopting a Section 177 program need not adopt California's ZEV requirements to comply with the CAA requirements for identical standards under section 177 of the CAA. See 60 FR 4712 (January 24, 1995).

Retaining and clarifying the California low emission vehicle (LEV) program requirements in this Commonwealth are consistent with the actions of other northeastern states. Maine, Massachusetts, New York and Vermont adopted the California LEV program in the first instance, as did the Commonwealth, but they did not provide the NLEV compliance option like the Commonwealth did. Those states have revised their regulations to incorporate the California Low Emission Vehicle II (CA LEV II or California LEV II) provisions. Other northeastern states adopted the California LEV program and the NLEV compliance option in the first instance, like the Commonwealth did. Those states, namely Rhode Island, Connecticut and New Jersey, have adopted regulations to implement the CA LEV II program. Oregon and Washington have also adopted the CA LEV II program. The Commonwealth's original incorporation of the California LEV program in 1998 automatically incorporates the current California LEV program, CA LEV II, and will continue automatically to include California's future amendments and supplements to its LEV program.

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The EPA has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Further, although children, the elderly and those with respiratory problems are most at risk,

even healthy individuals may experience increased respiratory ailments and other symptoms when exposed to ambient ozone while engaged in activities that involve physical exertion. Though the symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

Gasoline-powered motor vehicles primarily emit three pollutants: carbon monoxide, volatile organic compounds (VOCs) and oxides of nitrogen (NO_x). Ozone is not directly emitted by motor vehicles, but is created as a result of the chemical reaction of NO_x and VOCs, in the presence of light and heat, to form ozone in air masses traveling over long distances. The formation of ozone is greater in the summer months because of the higher temperatures. About 1/3 of this Commonwealth's ozone-forming pollution comes from motor vehicles.

In early 2007, the EPA is expected to finalize the $PM_{2.5}$ implementation rule, which will also identify NO_x emissions as one of the precursors to the formation of $PM_{2.5}$. Therefore, this final-form rulemaking should also enable the Department to make progress in attaining and maintaining the $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) in nonattainment areas, including 17 counties and 4 partial counties.

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 states adopt the standards at least 2 years before the beginning of the model year. California's standards must also have been granted a waiver from the CAA's prohibition against state emission standards. See section 177 of the CAA. A Federal court of appeals has ruled that states may adopt, but not enforce, California emissions standards before the EPA has acted on California's waiver request. *Motor Vehicle Manufacturers Association of the United States v. New York State Department of Environmental Conservation*, 17 F.3d 521, 534 (2d Cir. 1994). If a state does not adopt California's standards, vehicle manufacturers and others are subject to the Federal emissions standards established by the EPA.

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

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

Shortly after establishment of the OTC, member states began negotiating with vehicle manufacturers for cleaner cars to address regional air quality needs. In 1998, the EPA adopted regulations for a voluntary alternative LEV program, called the NLEV program, reflecting these negotiations. Under this alternative LEV program, vehicle manufacturers agreed to manufacture LEVs for 49 states as an alternative to the California LEV program. The Commonwealth and 8 other northeastern states, as well as 23 vehicle manufacturers, opted into the NLEV program, effective in the OTC for MY 1999 and outside the OTC for MY 2001.

In the final-form rulemaking published at 28 Pa.B. 5873 (December 5, 1998), the Commonwealth adopted the Pennsylvania Clean Vehicles Program under section 177 of the CAA. In the same final-form rulemaking, the Commonwealth adopted the NLEV program as a compliance alternative to the Pennsylvania Clean Vehicles Program. The Pennsylvania Clean Vehicles Program incorporated by reference the LEV program of California as a "backstop" to the NLEV program in the event a vehicle manufacturer opted out of the NLEV program and at the conclusion of the NLEV program. The Pennsylvania Clean Vehicles Program incorporated by reference the California emission standards for passenger cars and light-duty trucks, except that it does not incorporate by reference the California ZEV or emissions control warranty systems statement provisions. The Pennsylvania Clean Vehicles Program did not restrict the incorporation-by-reference of the California program to the California regulations as in force on the date of adoption in 1998 of the Pennsylvania Clean Vehicles Program. Rather, the 1998 incorporation-by-reference included the California regulations with all amendments and supplements to them over time, as in force at the time of application of the Pennsylvania Clean Vehicles Program.

The Commonwealth's participation in the NLEV program extended only until MY 2006, at which time vehicle manufacturers were no longer able to use NLEV as a compliance alternative to the Program. In practical terms, the NLEV program was replaced for MY 2004 and later by the more stringent Federal Tier II vehicle emissions regulations. Vehicle manufacturers operating under the NLEV program became temporarily subject to the Tier II requirements. See 65 FR 6698 (February 10, 2000).

California adopted its original LEV regulations, known as CA LEV I, in 1991. The CA LEV I requirements were generally applicable in California in MY 1994. The EPA granted a waiver of Federal preemption for California's LEV I program at 58 FR 4166 (January 13, 1993). California adopted revised LEV regulations, known as CA LEV II, in 1996 for MYs 2004 and later. The EPA granted a waiver of Federal preemption for the CA LEV II program at 68 FR 19811 (April 22, 2003).

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

The assessment was completed prior to publication of the proposed rulemaking. It shows that this Commonwealth will experience more air pollution reduction benefits from regulating light-duty cars and trucks under the California LEV II requirements than under the Federal Tier II requirements.

With the California LEV II program, this Commonwealth will achieve additional emission reductions of about 2,850 to 6,170 tons per year of VOCs, 3,540 tons per year of NO_x and 5% to 11% total reduction of six toxic

air pollutants (including benzene with 7% to 15% more benefit) by 2025, when full fleet turnover is expected.

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

Consequently, today about 2/3 of the citizens in this Commonwealth live in counties that do not attain the revised ozone standard. Without additional reductions in highway vehicle emissions, reductions will have to be obtained from industrial, commercial or other consumer sources; these controls may not be as cost-effective as the Program. Therefore, failure to implement the Program would increase the likelihood that this Commonwealth would not achieve and maintain the health-based 8-hour NAAQS for ground level ozone. Furthermore, if the standards are not attained and maintained in nonattainment areas, these areas would be subject to additional requirements that could affect their industrial/commercial facilities. Postponement of the Program from MY 2006 to MY 2008 does not significantly affect long-term air quality and economic benefits.

The existing Program in Chapter 126, Subchapter D applies to vehicle manufacturers, new vehicle dealers, leasing and rental agencies and other registrants. Under the Program, a person may not sell, import, deliver, purchase, lease, rent, acquire, receive, title or register a new passenger car or light-duty truck (with some exceptions) in this Commonwealth that has not received certification from the California Air Resources Board (CARB) for compliance with the California LEV program that is current at the time of sale, importation, delivery, purchase, lease, rental, acquisition, receipt, titling or registration. To receive CARB certification for a vehicle make and model, a manufacturer must demonstrate to CARB that the vehicle test group associated with the specific make and model meets specified criteria pollutant standards and that the manufacturer's low emission fleet as a whole meets the NMOG fleet average standard.

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

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

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

A recent report by the National Academy of Sciences' National Research Council (NRC) found that California's role in setting emission standards has been scientifically valid and necessary to achieve clean air goals in parts of the country struggling to clean up the air. The report also found that the California standards have helped speed up technological air pollution control innovations. The report found that the California LEV program has been beneficial overall for air quality by improving mobile-source emissions control and confirmed that California has usually led the EPA in establishing standards for light-duty vehicles and small nonroad gasoline engines.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on the final-form rulemaking on June 8, 2006. At that meeting, the AQTAC recommended that the Department present the final-form rulemaking to the Board for adoption. The Department has consulted with the Department of Transportation (DOT) during development of the final-form rulemaking in accordance with section 5(a)(7) of the act. The Department also consulted with the Citizens' Advisory Council.

This final-form rulemaking is necessary to achieve and maintain the NAAQS. The final-form rulemaking will be submitted to the EPA as a revision to the State Implementation Plan (SIP).

E. *Summary of Regulatory Requirements and Major Changes to the Proposed Rulemaking*

This final-form rulemaking deletes the definitions of "debit" and "ZEV—Zero-Emission Vehicle" from § 121.1 because the terms are already defined in the California regulations incorporated by reference in Chapter 126. The final-form rulemaking deletes the definitions of "NLEV" and "NLEV Program" because they are no longer relevant. The final-form rulemaking makes typographical corrections to the definitions of "fleet average" and "LDV—light-duty vehicle" and amends the definition of "offset vehicle." The definition "LDT—light-duty truck" is amended to incorporate a separate definition of "light duty truck" used in § 129.52 (relating to surface coating processes) and, for purposes of this final-form rulemaking, to be consistent with the California program. The separate definition of "light duty truck" is deleted as it is incorporated into the definition of "LDT—light-duty truck."

The final-form rulemaking amends the title of Chapter 126, Subchapter D to reflect the cessation of the NLEV program. The final-form rulemaking deletes the NLEV provisions in § 126.401(b) (relating to purpose) and rescinds § 126.402.

Throughout Chapter 126, Subchapter D, cross-references to the California regulations are updated to reflect the 1999 restructuring of California's regulations. This final-form rulemaking makes Subchapter D clearer and easier to understand. Since the 1998 adoption of the California program automatically incorporated California's regulatory restructuring, these amendments are not necessary but are made for the purposes of clarity now and in the event California restructures its regulations again. Amendments of this nature are not individually addressed in this preamble. Throughout Subchapter D, the phrase "Division 3" is added to the references to Title 13 of the California Code of Regulations (CCR) to provide a more complete citation. Division 3 refers to California's motor vehicle regulations adopted by CARB.

At the September 19, 2006, meeting, the Board approved an amendment to § 126.401 of the final-form rulemaking to add subsection (d). Subsection (d) states that the Department may not implement or enforce a vehicle emission standard that is not legally permitted to be regulated under the CAA or other applicable Federal or State law or regulation.

The amendments to § 126.411(a) (relating to general requirements) postpone the model year to which the Program will first apply from the model year beginning after December 5, 2000, to MY 2008.

Section 126.411(a) (relating to general requirements) is amended in the final-form rulemaking to include "titled." Now the Program will apply not only 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, but also those "titled" in this Commonwealth. In this Commonwealth, refusing titling for a non-CARB certified vehicle offers the most equitable and effective way to enforce the vehicle registration requirement, since a vehicle must be titled in this Commonwealth to be registered in this Commonwealth. Prohibiting titling of vehicles not certified by CARB will protect individuals from purchasing a vehicle, whether in-State or out-of-State, that cannot be registered in this Commonwealth. Corresponding changes are made to §§ 126.412(a), 126.413(a)(11) and (b) and 126.431(a), (c) and (d) (relating to emission requirements; exemptions; and warranty and recall). These amendments to the final-form rulemaking work in tandem with the deletion of the proposed exemption from the Program in § 126.413(a)(14) for vehicles purchased out-of-State, which is described as follows.

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

The amendments to § 126.412(a) postpone the first model year for which a person is prohibited from selling, importing, delivering, purchasing, leasing, renting, acquiring, receiving or registering a vehicle subject to the Program if the vehicle has not received CARB certification from the model year beginning after December 5, 2000, to MY 2008. "Title" is added to the list, as previously described.

The amendments to § 126.412(b) change the first model year for which compliance with the NMOG fleetwide average is required from the model year beginning after December 5, 2000, to MY 2008. Language regarding California's ZEV program is deleted from subsection (b) because CARB moved the ZEV provisions out of the cross-referenced section. As previously discussed, the final-form rulemaking retains the Commonwealth's specific exclusion of California's ZEV program in § 126.411(b)(1).

Section 126.412(d) specifies the 3-year early-credit earning period within which vehicle manufacturers must come into compliance with the NMOG fleet average. The final-form rulemaking clarifies that manufacturers may carry forward NMOG credits fully without diminution during the 3-year period (MYs 2008—2010), and the credits may be used in any or all of the 3 years without any loss of the credits.

Amendments to § 126.413(a)(2) clarify the original intent of the section, which is to allow a vehicle dealer to transfer a non-CARB certified new vehicle as long as the vehicle will not ultimately be sold in this Commonwealth as a new vehicle.

An amendment to § 126.413(a)(6) clarifies the intent of the Commonwealth with respect to enforcement of the rules regarding daily lease and rental companies under the Program. The final-form rulemaking includes an explanation in § 126.413(a)(6) that a light-duty vehicle is deemed to be principally operated outside of this Commonwealth if it is registered outside of this Commonwealth in accordance with the rules of the International Registration Plan or a successor plan for registering vehicles internationally. Under the International Registration Plan, rental car companies cannot avoid registering a certain number of vehicles in this Commonwealth to avoid compliance with the Program.

The amendment to § 126.413(a)(11) conforms the model year registration cut-off for vehicle exemption with the MY 2008 start date of CARB certification and NMOG fleet average requirements. "Titled" is added to this paragraph, as previously described.

New § 126.413(a)(13) exempts vehicles transferred for the purpose of salvage. This paragraph is added to ensure that salvage and metal scrap operations in this Commonwealth may accept salvaged new motor vehicles that may not have CARB certification.

The final-form regulation deletes § 126.413(a)(14), which was included by the Board in the proposed rulemaking. This amendment would have exempted vehicles purchased or leased from an out-of-State dealer by a resident of this Commonwealth for the personal use of the resident and not for immediate resale. The amendment was designed to reflect the intention of the Commonwealth not to deny registration of a non-CARB certified vehicle in this situation. However, that is no longer the Commonwealth's intention. The Commonwealth will deny title and registration of non-CARB certified vehicles, regardless of whether the vehicles are purchased in-State or out-of-State, thus ensuring equitable treatment of in-State and out-of-State purchasers without the need for the proposed exemption. Additionally, the proposed exemption would have complicated enforcement and increased the possibility of reduced emissions credit. Finally, the proposed exemption was rejected by industry commentators. Hence, the final-form rulemaking deletes proposed § 126.413(a)(14).

Section 126.413(b) requires a person seeking to register an exempted vehicle to provide satisfactory evidence demonstrating that the exemption is applicable. The final-form rulemaking requires this to obtain title to an exempted vehicle for the reasons pertaining to titling previously described.

Amendments to the new motor vehicle testing provisions require vehicle manufacturers to provide CARB testing determinations and findings to the Department upon request. The final-form rulemaking requires that the Department's request be in writing. The revised sections are §§ 126.421(b), 126.422(b), 126.423(b), 126.424(b) and 126.425(b).

Section 126.431(b) requires each vehicle manufacturer to submit to the Department failure of emission-related components reports. The amendments allow a vehicle manufacturer to submit to the Department copies of the reports the manufacturer submitted to CARB for purposes of compliance with this subsection. The final-form rulemaking specifies that these reports must only be submitted when requested in writing.

The amendments to § 126.431(c) clarify that any voluntary or influenced emission-related recall campaign initiated by any motor vehicle manufacturer under the California program shall extend to all motor vehicles sold, leased, offered for sale or lease or registered in this Commonwealth that would be subject to the recall campaign if sold, leased, offered for sale or lease or registered as a new motor vehicle in California. The purpose of § 126.431(c) is to ensure full protection to consumers in this Commonwealth. For the sake of clarity, the final-form rulemaking exempts motor vehicles from this requirement if, within 30 days of CARB's approval of the campaign, the manufacturer demonstrates in writing to the Department's satisfaction that the campaign is not applicable to vehicles sold, leased, offered for sale or lease, titled or registered in this Commonwealth. An example of when a recall campaign would not be applicable to vehicles in this Commonwealth would be if a manufacturer demonstrated that the noncompliance was corrected for or did not occur in the first place in the vehicles sold, leased, offered for sale or lease or registered in this Commonwealth.

New § 126.431(d) provides that an order issued by CARB or enforcement action taken by CARB to correct noncompliance with any provision of Title 13 CCR, which results in the recall of any vehicle under Title 13 CCR, Chapter 2, shall be deemed to apply to all motor vehicles sold, leased, offered for sale or lease or registered in this Commonwealth that would be subject to the order or enforcement action if sold, leased, offered for sale or lease or registered as a new motor vehicle in California. The purpose of § 126.431(d) is to ensure full protection to consumers in this Commonwealth. For the sake of clarity, the final-form rulemaking exempts motor vehicles from this requirement if, within 30 days of the CARB action, the manufacturer demonstrates in writing to the Department's satisfaction that the action is not applicable to vehicles sold, leased, offered for sale or lease, titled or registered in this Commonwealth. An example of when a recall action would not be applicable to vehicles in this Commonwealth would be if a manufacturer demonstrated that the noncompliance was corrected for or did not occur in the first place in the vehicles sold, leased, offered for sale or lease or registered in this Commonwealth.

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

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

This final-form rulemaking adds § 126.451 (relating to responsibilities of the Department), which requires the Department to monitor and advise the Board in specific ways of any proposed or final-form rulemakings under consideration by CARB that amend or modify the California LEV program. This amendment also requires the Department to submit comments to CARB on proposed or final CARB rulemakings. This amendment is designed to ensure that the Board and other residents of this Commonwealth are informed about changes that might occur in the California program and able fully to appreciate the impact of a CARB rulemaking on residents of this Commonwealth. The final-form rulemaking clarifies that the Department's responsibilities under this section apply only to the provisions of the California LEV program incorporated by reference in the Program.

At the September 19, 2006, meeting, the Board approved an amendment to § 126.451 of the final-form rulemaking to add paragraph (3). Paragraph (3) requires the Department, in conjunction with the DOT, to study and evaluate the feasibility of modifying the Pennsylvania vehicle emission inspection program (I/M program). The I/M program is different from the Program and is mandated by the CAA in 25 counties in this Commonwealth. Section 126.451(3) requires that, in performing the study and evaluation, the Department, in conjunction with the DOT, will consider the additional reductions in NO_x, VOCs and other pollutants to be achieved through implementation of Title 13 CCR, Division 3, Chapter 1 and 2 requirements and to submit the findings and recommendations to the Board within 9 months of the effective date of this final-form rulemaking.

At the same meeting, the Board approved another amendment to § 126.451 which requires the Department to notify the Board as soon as possible, but no later than 6 months after the effective date of this final-form rulemaking, of the specific reductions in NO_x, VOCs, carbon monoxide and other reductions approved by the EPA as a result of the incorporation of the Program in the Commonwealth's SIP. The report is to include a comparison of the incremental benefit reductions derived using EPA-approved methodology versus reductions that would have been achieved under the Tier II standards.

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

The Board approved publication of the proposed rulemaking at its meeting on October 18, 2005. The proposed rulemaking was published at 36 Pa.B. 715 (February 11, 2006). Public hearings were held on March 14 in Pittsburgh, March 20 in Harrisburg and March 28 in Broomall (Philadelphia area). Comments were accepted from February 11, 2006, to May 8, 2006.

The Board received a record number of comments—about 4,810 letters, postcards and e-mails—from approximately 4,400 commentators. The vast majority of commentators supported the Program and the regulatory changes. Industry representatives generally opposed the Program and some of the regulatory changes. Generally supportive commentators included the Sierra Club, the American Lung Association, Citizens for Pennsylvania's Future, PennEnvironment, Group Against Smog and Pollution, the League of Conservation Voters, numerous faith-based organizations, several thousand individuals, Senators Joseph Conti, Jim Ferlo, Vincent Fumo and Constance Williams, and Representatives Michael Gerber, Babette Josephs, Charles McIlhenney, Phyllis Mundy, Scott Petri and Josh Shapiro. Commentators who generally opposed the Program or proposed rulemaking, or some aspect thereof, included the Alliance of Automobile Manufacturers (Alliance), the Pennsylvania AAA Federa-

tion, the Pennsylvania Automotive Association (an automobile dealers association), the Pennsylvania Chamber of Business and Industry, the Association of International Automobile Manufacturers, General Motors, DaimlerChrysler, Sierra Research, Inc. (Sierra Research) and Senators Mary Jo White and Roger Madigan. The Independent Regulatory Review Commission (IRRC) and the Hertz Corporation also submitted comments in regard to the proposed rulemaking.

General Motors and DaimlerChrysler supported and incorporated by reference the comments of the Alliance. DaimlerChrysler supported and incorporated by reference the comments of Sierra Research. Only the primary commentator (specifically, Alliance or Sierra Research) is identified as the commentator for comments which General Motors or DaimlerChrysler did not expressly state independently of the Alliance or Sierra Research comment.

The Department has prepared a Comment and Response document in which the Department responds to comments received during the public comment period. The Comment and Response document is available on the Department's website at www.depweb.state.pa.us (Quick Access: Public Participation) The Comment and Response document provides detailed responses to these comments and explains the Department's position.

The following is a discussion of the comments received during the public comment period organized according to subject matter. Comments regarding the regulatory language are addressed and a summary of comments that address the Program as a whole are also provided.

Comments on the Proposed Regulatory Language in Annex A

The Pennsylvania Automotive Association and the Alliance commented that the proposed amendment to § 126.413(a) exempting new vehicles purchased out-of-State by residents of this Commonwealth would create an uneven marketplace. They noted that while there is little or no price differential today, in the future after implementation of the GHG standards, price could become an issue. They expressed concern that permitting residents to bring noncompliant new vehicles into this Commonwealth could affect dealer sales in this Commonwealth and sales tax revenues to State and local government. They suggested that there should be the same level of emissions standards for new vehicles brought into this Commonwealth by residents as for new vehicles sold by dealers in this Commonwealth. They stated that the exemption would make it difficult to enforce the Program. These commentators said that the emissions benefit could be reduced if this exemption were adopted. The Alliance suggested that the exemption be removed and Program implementation should be consistent with the EPA's "Policy of Cross-Border Sales of California Certified Vehicles for 2004 and Later Model Years," which allows in-State and out-of-State dealers to sell a California vehicle to any customer. The Alliance also commented that the Commonwealth should establish a registration enforcement process.

The Department agrees that the proposed exemption should be deleted and is therefore deleting proposed § 126.413(a)(14). The proposed amendment, which was added to the proposed rulemaking by the Board on October 18, 2005, was offered to ensure equitable vehicle registration requirements in this Commonwealth under the assumption that this would reflect the anticipated DOT approach to registration. The Department agrees that purchasers need to be treated similarly. Additionally, the exemption would have complicated enforcement and increased the possibility of reduced emissions credit. Using the titling process offers the most equitable and effective way to enforce the vehicle registration requirement, since a vehicle must be titled in this Commonwealth to be registered in this Commonwealth. Prohibiting titling of vehicles not certified by CARB will protect individuals from purchasing a vehicle out-of-State that cannot be registered in this Commonwealth. In addition, individuals who purchase vehicles from out-of-State dealers work with a issuing agent in this Commonwealth to title a new vehicle in this Commonwealth. To title a vehicle, the issuing agent must have access to a Manufacturer's Certificate of Origin (MCO), a document that includes a statement about the emission standards (for example, that the vehicle is certified by CARB or by the EPA, or is a 50-state vehicle that can be sold in Tier 2 or CA LEV II jurisdictions). Registration does not require access to an MCO. The Commonwealth will require issuing agents to certify that the vehicle complies based on the MCO. The Commonwealth will make a specific outreach effort to advise dealers in the contiguous states about the Pennsylvania requirements. As long as out-of-State dealers offer California LEV vehicles, residents of this Commonwealth will be able to purchase vehicles from neighboring states.

Hertz commented on existing § 126.413(a)(6), which exempts from the Program a light-duty vehicle held for daily lease or rental to the general public that is registered and principally operated outside of this Commonwealth. Hertz commented that because of the uncertainty created in determining when a vehicle is "principally operated outside the Commonwealth," meeting this requirement would impose extreme burdens on the way Hertz manages its vehicle fleet and severely restrict the vehicle choices available to the renting public. Hertz requested a clarification regarding vehicles registered outside this Commonwealth. Hertz suggested that rental vehicles engaged in interstate commerce should be deemed to be principally operated outside of this Commonwealth and thus not subject to the Program. Under the International Registration Plan formula, rental car companies register a certain minimum number of vehicles in each state based on gross revenue in the preceding year. The International Registration Plan is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of registration fees on the basis of total distance operated in all jurisdictions. Additional information about the International Registration Plan can be found at www.irponline.org. The International Registration Plan is effective in the 48 contiguous states and 10 Canadian provinces.

On this issue, IRRC asked whether the Board intended to require rental car companies to ensure that any car that could possibly be used in this Commonwealth comply with CARB standards or whether rental car companies would merely be required to have all vehicles registered in this Commonwealth comply with the standards. IRRC asked that the Board clearly delineate the requirements in the final-form rulemaking.

The Department agrees with Hertz' suggested interpretation of the existing regulation. The final-form rulemaking includes an amendment to § 126.413(a)(6) to clarify the intent of the Commonwealth with respect to enforcement of the regulations regarding daily lease and rental companies under the Program. The Department does not intend to require rental car companies to ensure

that any car that could possibly be used in this Commonwealth complies with CARB standards. The Department does not intend to interfere with the normal business practices of National rental car companies. The International Registration Plan ensures that rental car companies cannot avoid registering a certain number of vehicles in this Commonwealth to avoid compliance with the Program. MY 2008 and later rental vehicles registered in this Commonwealth must be certified by CARB. The final-form rulemaking includes an explanation in § 126.413(a)(6) that a light-duty vehicle is deemed to be principally operated outside of this Commonwealth if it is registered outside of this Commonwealth in accordance with the International Registration Plan or a successor plan for apportioning vehicles registration fees internationally.

The Alliance commented that the Commonwealth should establish a registration enforcement process to get full SIP credit. The Alliance noted that a registration enforcement process based on the MCO showing that a vehicle is certified for sale to California standards has been successfully implemented in New York, Massachusetts and Vermont, but that Maine has not implemented a registration enforcement process and did not receive full SIP credit. The Department agrees. The existing regulatory language requires new subject vehicles registered in this Commonwealth to be those certified by CARB. The Commonwealth has consulted with the DOT on the registration enforcement process. The DOT has recommended adding titling to the Department regulation because to title a vehicle, the issuing agent must have access to the MCO. A vehicle must be titled in this Commonwealth to be registered in this Commonwealth.

The Alliance questioned the legality of the delegation to CARB that § 126.431(d) represents (pertaining to enforcement actions taken by CARB applying to Pennsylvania) and suggested that it unlawfully strips manufacturers of their ability in a Pennsylvania court to contest the validity at law of any CARB enforcement action as to vehicles in this Commonwealth. The Alliance suggested that one way the Department could reduce the practical concerns that the commentator suggested are associated with this issue would be to adopt language similar to Rhode Island's approach by adding the following clause to proposed § 126.431(c) and (d): "except where the manufacturer demonstrates to the Department's satisfaction that said action is not applicable to said vehicle." The Department does not agree that there is a legal issue as described by the commentator. The purpose of § 126.431(c) and (d) is to ensure full protection to consumers in this Commonwealth pertaining to recall efforts taken by CARB or initiated by manufacturers for vehicles that are sold, leased, offered for sale or lease, registered or titled in this Commonwealth. For the sake of clarity, the final-form rulemaking adds language similar to that suggested by the commentator to allow a manufacturer the opportunity to demonstrate that an order issued or enforcement action taken by CARB or a voluntary or influenced recall campaign to correct noncompliance with a provision of Title 13 CCR is not applicable to vehicles sold, leased, offered for sale or lease or registered in this Commonwealth. An example might be if a manufacturer demonstrated that the noncompliance was corrected for or did not occur in the first place in the vehicles sold, leased, offered for sale or lease or registered in this Commonwealth.

IRRC noted that the Board indicates that § 126.412(d) is intended to allow manufacturers to carry forward NMOG credits fully for a 3-year period without a loss of those credits each year. IRRC commented, however, that this is not clearly stated in this section. IRRC suggested that this provision should be amended to clarify the Board's intentions. The Department agrees that § 126.412(d) allows manufacturers to carry forward NMOG credits fully for a 3-year period without a loss of those credits each year. The final-form rulemaking clarifies in § 126.412(d) that these credits may be carried forward without diminution during the 3-year period (MYs 2008 through 2010).

The Alliance commented that the NMOG fleet average transition mechanism in the proposed rulemaking was not adequate. The Alliance stated that other states, for example Massachusetts, Vermont and New York, included a transition mechanism that allowed credits/debits to be earned during the transition period, which is the period required for credits that were earned in California to completely expire (3 years). The Alliance recommended that if an NMOG fleet average requirement is maintained, the Commonwealth should adopt these provisions. The Department agrees that the appropriate credit-earning period is 3 years. The commentator's reference to the approach adopted by Massachusetts, Vermont and New York, however, is inapposite since those states transitioned in practical terms directly from CA LEV I to CA LEV II, without having adopted NLEV as a compliance alternative. In this Commonwealth, credits could not be fairly determined for a model year before MY 2006 because most vehicles sold in this Commonwealth would have been Tier 2 vehicles, whereas credits (and debits) are calculated by comparing the actual fleet average of CARB-certified vehicles with the required fleet average. Consequently, credits could be earned for only a small number of vehicles. The Commonwealth is adopting a mechanism that allows credits to be earned during the transition period of MYs 2008 through 2010. While California discounts these credits after the first year, the Commonwealth will allow full credit over MYs 2008 through 2010. Language clarifying this full credit has been added to the final-form rulemaking. This approach does not present identicality issues.

The Alliance also commented that by adopting and attempting to enforce the California Fleet NMOG average, the Commonwealth will violate the CAA. The Alliance said that California's fleet average scheme includes the opportunity for manufacturers to earn credits in 1 year by having a lower fleet NMOG average than required and spend credits in a later year by having a fleet NMOG average higher than otherwise required. The Alliance argued that a manufacturer could have earned a substantial amount of credits in California during 2005 through 2007 and then use those credits in 2008 through 2010 to offset a higher than otherwise required fleet NMOG, but that because the Commonwealth's regulation did not take effect until 2008, the manufacturer would not have earned any credits in this Commonwealth in 2005 through 2007 and therefore accumulated significant debits in this Commonwealth in 2008 through 2010 by selling the very same mix of vehicles as it sold in California those years. The Alliance concluded that this would lead to a lack of identicality in 2011 as there would be two different standards as a result of the differences in credit counting, violating section 177 of the CAA on its own and by requiring manufacturers to limit the sales of California certified vehicles or to create a third vehicle. The Department disagrees that the adoption or enforcement of the NMOG fleet average in this Commonwealth

will lead to a lack of identicality or otherwise violate the CAA. The reasons are set forth in the preceding paragraph.

General Motors and the Alliance suggested requiring only NMOG fleet average reporting, as opposed to compliance. They wrote that fleet average NMOG is determined by sales mix and that the sales mix in this Commonwealth is different than the sales mix in California because of differences in consumer demand. These commentators said that to comply with the fleet NMOG average, manufacturers may need to restrict sales of certain models in this Commonwealth that are not restricted in California and that consumers would then keep their older, higher emitting vehicles longer since they would be unable to purchase the new vehicles they wanted. The Department responds that it is unlikely that the sales mix in California differs significantly overall from the sales mix in this Commonwealth. (This is further described under Comments Regarding Economic Issues.) These commentators have provided no evidence that certain models have been restricted in other states adopting the California low emission program on any parameter of concern to purchasers. In many cases, manufacturers make both a California and a Federal version of a specific engine family. Many factors will influence purchase of new vehicles. These commentators have not presented any evidence that consumers would keep older vehicles longer based on differences due to NMOG fleet averages. Therefore, the requested change is not made in the final-form rulemaking.

General Motors also claimed that by requiring reporting, the Board could evaluate the differences between the California and Pennsylvania sales mix for each manufacturer and assess the problems that would be caused by requiring fleet NMOG compliance. If the industry-wide levels were below the fleet average standard, there would not be any need to require compliance. The Department disagrees that the existing or final amendments to the Program will present a compliance difficulty for automakers to a degree that the Department must "assess" the existing Pennsylvania-specific NMOG fleet average requirement before implementation. The Department believes, given automakers' current collective ability to comply with the NMOG fleet average in other states, that automakers collectively can meet the requirement in this Commonwealth. Furthermore, based on CARB's analysis of its GHG provisions, the Department is confident automakers will be able to comply with the Pennsylvania-specific NMOG fleet average requirement in the future. The commentator provided no specific information on why it believes it cannot comply with the NMOG fleet average in this Commonwealth. The Department adds that requiring only reporting without enforcement would likely present problems for earning emission reduction SIP credits from the EPA.

The Alliance stated that section 177 of the CAA problems (of identicality) do not arise if a state only requires manufacturers to report fleet NMOG average. For the reasons previously described, the Department disagrees that the Program or the final-form rulemaking raises identicality problems.

IRRC commented that subsection (b) in §§ 126.421—126.425 (relating to applicable new motor vehicle testing) requires a manufacturer to provide certain types of information to the Department "upon request." IRRC asked under what circumstances the Department would make the request. IRRC stated that the Board should clearly identify the type of request it will make to the manufacturers and that the request should be in writing. The Department responds by explaining that these sections assure that documents regarding the compliance of vehicles throughout the entire production process (including documents ensuring that vehicles are manufactured to meet the applicable certification standards throughout their useful life) are available to the Commonwealth. The Department anticipates that these requests will be infrequent. They could be triggered by reports from dealers, vehicle owners or other states implementing the California program regarding specific makes or models. Some of these documents are not directly obtainable from CARB because of confidentiality agreements. The Department has the authority to enter into similar confidentiality agreements with manufacturers, if necessary, to receive reports. The requests would be to provide to the Commonwealth the specific kinds of documents already in existence relative to a specific test group in California: for example, "new vehicle certification testing determinations and findings made by CARB" under § 126.421(b). The Department added language to each of these sections stating that these requests to the manufacturer will be made in writing. The Department also added parallel "upon request" language to § 126.431(b) because of comment during the proposed rulemaking.

The Alliance commented that the Commonwealth would not find reports of failures of emission-related components required in § 126.431(b) of much value because the Department has already proposed to extend emission-related actions such as recalls applicable in California to this Commonwealth. To save resources, the Alliance suggested that these reports should be available only upon request and noted that this language has been included in other states. The Department agrees to reduce the reporting requirements by adding language that reports in the section can be made available upon a written request from the Department rather than provided routinely.

General Comment Regarding Proposed Rulemaking

IRRC commented that Senators Madigan and White submitted a letter on March 27, 2006, expressing support for Tier II as an alternative to the California program. IRRC noted that, in addition, the Senate passed SB 1025 by a vote of 27 to 20, which would revive the regulatory framework initiated in 1998 and give the automobile industry the option of complying with either the CARB regulations or Tier II. IRRC continued that commentators for the automobile industry also recommended that the Board adopt the Tier II program. IRRC said the industry commentators claim it is a comparable, or an even better, program for reducing air pollution and that the economic impacts on the automobile industry and consumers will not be as great as those imposed by CARB regulations. IRRC stated that in its response to these concerns, the Board needs to explain why and how the CARB regulations address the issues of environmental protection and cost-effectiveness, and that the Department should demonstrate how its regulation will generate greater benefits for public health and this Commonwealth's natural resources at a cost that is affordable, reasonable and competitive with alternative regulatory approaches.

The Department disagrees with the characterization that SB 1025 would have revived the regulatory framework initiated in 1998. The voluntary NLEV program was adopted as an opt-in program, that is, if a sufficient number of states and automakers opted in, compliance with that program would be in place in the Ozone Transport Region beginning in MY 1999. The NLEV

program provided a complex system of adverse consequences for failing to fulfill commitments. SB 1025, on the other hand, offers the auto industry the option of complying with California standards or the less stringent Federal Tier II standards, with no consequence to industry for choosing the less stringent standards. SB 1025 would also have abrogated the existing Program and prohibited the Board from adopting vehicle emission standards established by CARB.

The Department adds that it is important to note that this final-form rulemaking does not adopt the Program but makes changes to the already existing regulations to postpone the Program compliance date from MY 2006 to MY 2008, specify the early credit earning period for automobile manufacturers and update definitions and cross-references. In the preamble to the 1998 rulemaking that incorporated the California standards by reference, the Board stated its intention to reassess the air quality needs and emission reduction potential of both programs.

Achieving and maintaining the health-based NAAQS for ground-level ozone remain challenges for this Commonwealth, particularly in the Southeast. The EPA concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Children, the elderly and those with respiratory problems are most at risk, but healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activities that involve physical exertion.

Ozone is not directly emitted, but is created in the atmosphere as a result of the chemical reaction of NO_x and VOCs, in the presence of light and heat. The formation of ozone is greater in the summer months because of the higher temperatures. Ground-level ozone and its precursors, VOC and NO_x, adversely affect not only public health but also the environment, such as agricultural crops and forest vegetation. Passenger cars and light-duty trucks are significant sources of VOCs and NO_x. About 1/3 of this Commonwealth's ozone-forming pollution comes from motor vehicles. Further reducing ozone precursors and other air pollutants from motor vehicles will thus help protect public health and the environment.

During the development of the final-form rulemaking to revise the 1998 regulation, the Department engaged the services of a National transportation consultant, Michael Baker Corporation (Baker), to estimate the emission-reducing benefits of retaining the California standards in this Commonwealth compared to participating in the Federal Tier II program. This study ("Pennsylvania LEV II Air Quality Impacts," November 2004) showed that by 2025, when full fleet turnover is expected, the California LEV II program will provide an additional reduction of 2,850 to 6,170 tons per year of VOCs, 3,540 tons per year reduction of NO_x and 5% to 11% more reduction of six toxic air pollutants, including a 7% to 15% additional benefit for benzene, a known carcinogen, when compared to the Federal Tier II program. (A range is shown because the Commonwealth prepared analyses using assumptions from the EPA as well as assumptions from the Northeast States Coordinated Air Use Management (NESCAUM) study. The lower number uses the more conservative EPA assumptions.) The Baker analysis used Pennsylvania-specific vehicle, travel, fuel and other information.

CA LEV II and EPA's Tier II use similar approaches in regulating emissions affecting ozone and other criteria pollutants from new passenger cars and light-duty trucks, which include vehicle-specific standards and manufacturer fleet averages. In both programs, manufacturers may choose the technologies they use to meet the vehicle-specific emission limits and may choose the mix of vehicles they offer for sale to meet the fleet averages.

A manufacturer may certify any particular type of vehicle to a category that limits emissions of a number of pollutants. For CA LEV, the major categories include LEV, Ultra Low Emission Vehicle and Super Ultra Low Emission Vehicle. For the Federal program, there are eight "bins." Bin 5 is considered equivalent to the least stringent California standard. These vehicle-specific emission limitations affect both tailpipe and evaporative emissions. Overall, the California program is more stringent. In addition, each manufacturer must meet a fleet average for emissions of nonmethane organic compounds (equivalent of VOCs) for California and a fleet average for emissions of NO_x for the Federal program. Overall, these fleet averages make the California program more stringent.

California has recently promulgated amendments to its regulations establishing its California LEV II standards in Title 13 CCR, Division 3, Chapter 1 to include GHG requirements. These GHG regulations are already incorporated by reference by the Department's regulations and are part of the Program. Under these regulations, California has added a GHG fleet average requirement to its LEV II program for vehicles offered for sale in California. This final-form rulemaking does not include a Pennsylvania GHG fleet average requirement. A vehicle offered for sale in this Commonwealth must simply be CARB-certified. For a vehicle to be CARB-certified, the vehicle manufacturer must meet California's GHG fleet average requirements based on sales of vehicles in California. The Department does not believe that it needs to establish a GHG fleet average requirement for vehicles offered for sale in this Commonwealth to realize the GHG emission reductions in this Commonwealth anticipated under the California LEV II program. Overall, the vehicle fleet mix in this Commonwealth is similar to California's, and the Commonwealth anticipates it will realize similar GHG emissions reductions in this Commonwealth because the fleet vehicle mix in this Commonwealth is similar to California's.

To assess costs and cost differentials, the Department evaluated the CARB initial and final Statements of Reasons for the adoption of CA LEV II and the GHG provisions and the costs contained in the EPA's impact analysis for promulgation of Tier II. Before adoption, CARB predicted that implementing LEV II could increase retail vehicle prices from $68 to $276 depending on the weight of the vehicle. Similarly, the EPA predicted that implementing Tier II could increase vehicle retail prices from $78 to $245 depending on the weight of the vehicle. Today, with both programs having been in place since MY 2004, there appears to be little to no difference in vehicle retail price between CARB-certified and Federal-certified vehicles.

In September 2004, CARB estimated that by MY 2016 the operational efficiency savings of vehicles meeting GHG requirements would provide vehicle owners an overall cost savings of $3.50 to $7 per month, assuming $1.74 per gallon of gasoline. These savings are probably understated, since the price of gasoline is likely to remain higher than that used in CARB's analysis. CARB estimated the GHG-related initial investment costs, possibly reflected in sticker prices, would start under $50 per vehicle for the first year of the requirement, MY 2009,

and be approximately $350 in 2012 and $1,000 in MY 2016. Vehicle manufacturers disagree with CARB's GHG estimate, citing initial costs of about $3,000 per vehicle. Vehicle manufacturers also believe that the cost savings will not be as great as CARB predicts.

In summary, there is a continuing need for additional reductions in ozone precursors because of the challenge in achieving and maintaining the ground-level ozone standard; there are additional benefits to health and the environment from obtaining reductions of VOC, NO_x and GHG emissions that Federal new motor vehicle programs do not provide. CARB standards cost consumers little or nothing in the short term and overall save consumers money in the long term.

Summary of Comments Supporting Implementation of the Program

Over 4,000 commentators voiced their support for the Program and for the final-form rulemaking. Their reasons were many, including health and environmental benefits, economic issues and technology advances. Some commentators urged the Department to implement the Program as quickly as possible. Other commentators saw value in the postponement of the Program. The Department appreciates the support of these commentators.

Summary of Comments Opposing the Program

Comments were received from roughly ten commentators opposing the LEV program itself, which is already adopted in the current regulations, as opposed to this final-form rulemaking, which postpones the Program compliance date from MY 2006 to MY 2008, specifies the early credit earning period for automobile manufacturers and updates definitions and cross-references. Although comments received on the LEV program are not pertinent to this final-form rulemaking, the Department nonetheless addresses them here and in more detail in the Comment and Response document.

Federal Standards

Several industry commentators and Senators Madigan and White oppose continued Pennsylvania adoption of the California standards and commented that the Department should follow the Federal standards. Some of these commentators believed the Department had already been following the Federal Tier II program. The two senators commented that they would continue to advocate for legislation which calls for a comprehensive strategy of assessing, improving and maintaining this Commonwealth's air quality in a manner compliant with the CAA. The Department responds that, although manufacturers needed to sell cars complying with Tier II rather than NLEV for MYs 2004 and 2006 due to the language adopted as a condition of participation in NLEV, the California standards are currently incorporated by reference in the Commonwealth's regulations. In a December 2, 2005, letter to Representative Richard Geist, EPA Region 3 Administrator Donald Welsh stated that it is the EPA's opinion that the CA LEV standards are "the legally effective program for Pennsylvania" and underscored that the CA LEV standards are a "federally enforceable part of the SIP." The final-form rulemaking amends the existing regulations as previously described.

Several industry commentators, the Pennsylvania AAA Federation and the two senators commented that the California LEV standards will produce no air quality benefit relative to the Tier II program. They wrote that the EPA has stated: "We estimated that LEV II will provide about 1 percent additional reduction in mobile source VOC, and about 2 percent reduction in air toxics, over Tier II in 2020 with the program starting in the 2004 model year and lower with a later program start date." They wrote that the EPA has cautioned states against taking too much credit for the CA LEV program. The Department disagrees with the characterization of the benefits of implementing the Program. The letter from the EPA to NESCAUM regarding NESCAUM's analysis of benefits was not a statement pertaining to the benefits estimated by the Department. In fact, the EPA stated in a December 2005 response to Representative Richard Geist regarding the issue of EPA quantification of the emissions benefits from the implementation of the Program that "at present, EPA has not performed such an analysis, although PADEP has done so. Section 177 of the [Clean Air] Act does not require a state to do such analysis prior to adoption of CA LEV standards. However, such benefits would need to be quantified in order to rely on associated emission reductions in a SIP [State Implementation Plan] submitted for EPA approval." The Department will submit its analysis to the EPA as part of a revision to its SIP. With regard to the 2004 letter from the EPA to NESCAUM, the EPA also stated in the same December 2005 letter to Representative Geist, "EPA commented in a March 26, 2004 letter to NESCAUM on a White Paper NESCAUM prepared on methods quantifying differences between federal Tier II and CA LEV II standards. EPA was concerned that states use the proper methods in modeling both programs to ensure that incremental benefit from LEV II is properly quantified, although EPA also provided a typical estimate for incremental emissions benefits to be expected between the two programs. Pennsylvania should follow EPA's guidelines when calculating incremental emissions benefits available to Pennsylvania for CA LEV II versus Tier II." The Department used EPA guidelines in estimating the emissions benefits of implementing the amended Program regulations in additional to using the NESCAUM method to establish range of potential benefits. The Department intends to use the EPA methodology as part of its SIP submittal for the revised Program.

Senators Madigan and White commented that a January 31, 2006, letter from the Department dismissed as irrelevant arguments that the EPA has stated there is only a 1% to 2% emission reduction difference between Federal vehicle emission standards and the California program. The senators stated that the Department wrote that the EPA was comparing CA LEV II to the NLEV program, but that the EPA's March 26, 2004, letter stated that the comparison was to Tier II. The Department responds that the EPA's 2004 letter to NESCAUM stated that NESCAUM's estimated benefits of LEV II "are expressed in terms of relative benefit over Tier II; when characterized in terms of the absolute benefits relative to a (non-Tier II) baseline, the differences between the programs are more realistically characterized." The EPA then goes on to say that the 1% to 2% additional reduction benefit estimate is in addition to Tier II. The EPA did not show what data they used to estimate these percentage reductions but by their statement about NESCAUM's analysis and that a realistic characterization would be an absolute comparison to a non-Tier II baseline, the Department concluded the EPA made that comparison for estimating their reductions, that is, by using the NLEV program as a baseline. The Department disagrees that the NLEV program should be used as a baseline comparison for the purpose of estimating the benefits of implementing the Program. NLEV is no longer an option for automakers, as automakers were required to comply with the more stringent Tier II standards beginning with MY 2004. The Department's comparisons

were to the only legal alternative to CA LEV II standard—the Federal Tier II program.

The two senators commented that the Department stated that it has relied upon the additional benefits of adopting CA LEV II as a means of achieving attainment. They said that the Department failed to acknowledge that 31 counties are expected to come into compliance with the 8-hour standard by 2009, and that none of the remaining counties' attainment strategy calls for utilizing projected benefits from CA LEV II. The senators stated that no documents provided to the General Assembly or the public by the Department actually show where the Department calculated and anticipated benefits. They stated that, to the contrary, several documents, including the Department's August 2003 recommendations to the EPA for 8-hour ozone attainment/nonattainment areas (which makes no mention of achieving future credit under CA LEV II), reflect the Department's confidence that, realizing the benefits of cleaner cars under Tier II, the Commonwealth can meet and maintain Federal air quality standards. The Department responds that modeling prepared by the EPA for the Clean Air Interstate Rule indicated that many of the current nonattainment counties in this Commonwealth were expected to come into compliance with the 8-hour ozone standard. However, based on studies subsequent to 2003, the Department does not agree with all of the assumptions or conclusions in this modeling. The Commonwealth is, therefore, working with other states in the Northeast, Mid-Atlantic and Midwest to consider additional measures to meet the 8-hour standard. Public meetings were held in May 2006 to discuss possible measures in addition to measures like the California LEV program that have already been adopted by other states. The Department agrees that SIP revisions in nonattainment areas submitted to the EPA to date have not assumed implementation of the California program; these SIP revisions are primarily for attainment of the 1-hour ozone standard. They were prepared before the designation of areas for the 8-hour standard became final and the assessment of both benefits of and need for retaining the California program was performed. After an area originally designated as nonattainment attains the standard based on actual monitoring of air quality, the Commonwealth must demonstrate that the area will maintain the standard for at least ten years by submitting a maintenance plan as an SIP revision. Eight years after that, the Commonwealth will need to submit a second 10-year maintenance plan as an SIP revision. In addition, as comments from the American Lung Association emphasized, if the EPA revises the ozone standard again as the result of the required 5-year review of health evidence, states will be required to prepare SIPs to attain that standard. The EPA is in the process of that review at present, with some indications that a further tightening of the standard is possible.

Cross-Border Purchases

The Pennsylvania Automotive Association commented that dealers could have problems supplying specific vehicles to meet customer needs. They stated that since no dealer can keep all vehicles in stock, dealers work together to trade inventory to satisfy particular needs, even across state lines. The association expressed concern that bordering states are in different phases of dealing with the California car issue and that dealers in non-California states would carry non-California cars primarily or exclusively. The Department responds that one reason the Commonwealth proposed to postpone its enforcement of the California program until MY 2008 was to better ensure vehicle availability. The EPA's cross border policy allows dealers in adjacent states to sell California vehicles. If there is enough demand for these interdealer trades, the postponement will give the market time to adjust to the requirement.

The Pennsylvania Automotive Association commented that few if any consumers who are not required to purchase a California vehicle will choose to pay the price premium for a vehicle that meets the California standards and that, to the extent that residents of other states near this Commonwealth are not subject to the California rule, dealers in this Commonwealth can expect to lose all or nearly all so-called "cross-border sales" once the California rule comes into effect. They stated that those out-of-State consumers who want vehicles with higher fuel economy will be able to purchase them from dealers located outside this Commonwealth who currently, and in the future, will have an ample supply of higher-mileage vehicles for sale. The Department disagrees. This final-form rulemaking does not adopt the California LEV program or require compliance with the California GHG fleet average based on sales in this Commonwealth, but makes changes to the existing regulations to postpone the Program compliance date from MY 2006 to MY 2008, specify the early credit earning period for automobile manufacturers and update definitions and cross-references. There is presently no price differential in states surrounding this Commonwealth for California and non-California vehicles. Once the GHG provisions become effective, CARB predicted that the cost differentials would start at less than $100 in MY 2009 and rise to about $1,000 in 2016 when the most stringent GHG limit is imposed. The Department disagrees with the implication that dealers in this Commonwealth will necessarily lose sales from residents in states that have not adopted the California regulation. The Program does not require automakers to meet the GHG fleet average based on sales in this Commonwealth. Since there is no per-vehicle GHG requirement, it is expected that any differential costs for a specific make or model will be a minor concern in the choice of noncitizens of this Commonwealth to purchase from a dealership in this Commonwealth.

Vehicles Types

Several commentators, including IRRC, expressed concern with the impact of the proposed rulemaking on vehicles that operate on different types of fuels. They stated that light-duty vehicles that operate on diesel are very popular. IRRC asked whether consumers will still be able to purchase and operate these vehicles in this Commonwealth under CARB regulations. The Department responds that diesel vehicles presently comprise a very small percentage (0.09%) of passenger and light-duty vehicles in this Commonwealth. Based on the Department's analysis, it appears that automakers have not as yet been enthusiastic about offering diesel light-duty vehicles in the United States and citizens in this Commonwealth have not been choosing to buy very many of the small number of models available. Gasoline versions of these vehicles are certified and available in California LEV states. The heavier diesel pick-up trucks such as those typically used by farmers are not regulated by the Program because of their weight—the only light-duty trucks subject to the program are those 8,500 pounds gross vehicle weight or less. In light of rapid advancement in developing exhaust clean-up technologies for diesel cars and light-duty trucks, automakers are expected to be better able to certify diesel vehicles to the CARB standard if they so desire. With the coming of ultra-low sulfur diesel (ULSD) fuel across the United States beginning in fall of 2006, the Department believes

automakers will be able to certify diesel vehicles to the CARB standard and make them available in this Commonwealth. Many large automakers have already publicly indicated they will be able to certify their light duty diesel vehicles to the California standards once ULSD is widespread. The industry has complied with CARB standards every time CARB has revised them since 1961 when California established the first auto emissions standards 2 years before the Federal government. The Department believes that the automakers will seize the opportunity to develop compliant vehicles if they are in demand by consumers in this Commonwealth and the other states implementing the LEV program. At least one automaker, DaimlerChrysler, has already announced the availability of a MY 2007 light-duty diesel vehicle capable of complying with LEV standards. (The company's January 8, 2006, press release "NAIAS 2006 Detroit: DaimlerChrysler to Feature Technology for the Cleanest Diesel in the World" is available at www.daimlerchrysler.com.)

Several industry commentators and the Pennsylvania AAA Federation called for following the Federal Tier II program because they claim it can better accommodate diesels by adding flexibility without sacrificing emissions benefits. The Department responds that CARB, the EPA and the manufacturers share similar goals—to ensure that clean light-duty diesels can be part of the vehicle mix in the United States. Postponement of the implementation of the CA LEV program in this Commonwealth from MY 2006 until MY 2008 as provided for in this final-form rulemaking provides time for manufacturers to meet the standards for vehicles anticipated to be sold in CA LEV states. The EPA's recent Tier II rule changes, published at 71 FR 16053 (March 30, 2006) direct final rule effective June 28, 2006, affect MYs 2007—2009 only. After that time, the EPA expects that manufacturers will be able to meet the "remaining narrow challenges" facing diesel technology (71 FR at 16056).

IRRC commented that industry, Federal and State leaders have recently expressed support for flexible fueled vehicles (FFV) that operate on fuels with a greater percentage of ethanol. IRRC asked what the impact of this final-form rulemaking on the use of ethanol will be. The Department responds that ethanol can either be added to gasoline in amounts up to 10%, which can be accommodated in conventional vehicles, or in a blend called E85, which is 85%—ethanol. A specially designed vehicle, known as an FFV, which can run on conventional gasoline or E85, is needed to accommodate E85 fuel. There will be no effect on the use of ethanol in conventional vehicles from the Program. For E85 and new FFVs, the postponement in compliance date in this final-form rulemaking will give the industry time to respond to market situations. The decision by two manufacturers not to certify FFVs in California for the coming model year (MY 2007) was a business decision, reportedly based on the lack of E85 refueling stations. At least one other manufacturer, General Motors, is continuing to certify FFVs in California for MY 2007. There are few E85 stations outside the Midwest. California has only one and, therefore, there is a small market. As E85 stations become more common, it is anticipated that the demand for the vehicles will increase and these manufacturers will again certify FFVs for use in CA LEV programs. Also, E85 can be used in all of the FFVs already in use in this Commonwealth. The Commonwealth has an interest in encouraging renewable fuels, such as ethanol. The first public E85 station in this Commonwealth opened in spring 2006.

California LEV Adoption

Senators Madigan and White asserted that the Department adopted a more stringent (compared to Tier I) Federal option available at the time of the 1998 rulemaking, called NLEV. The Department responds that Chapter 126, Subchapter D adopted in 1998, previously titled New Motor Vehicle Emissions Control Program, contained both NLEV and Program provisions to enable the Commonwealth to participate in NLEV as well as the Program, which incorporates the California LEV program.

Senators Madigan and White and several other commentators commented that the current Department administration reversed course from its 1998 statements and now claims that the California vehicle emission standard is effective in this Commonwealth for MY 2006. They stated that if the Department's current interpretation is to be believed, then the Department has offered no reason to substantiate why it is proposing to postpone implementing the California standard when, per its own argument, the automobile industry and consumers have had advance notice of its effective date for nearly 8 years. They stated their belief that the CA LEV program was intended solely as a "backstop" to NLEV/Tier II. They cited various statements attributed to the Department to support their belief. They also stated that their belief is that the Department has failed to revisit the current regulation in a timely fashion to incorporate the Federal Tier II standards and that this rulemaking is actually a conscious decision to codify the California standard in the Commonwealth's regulations. They stated the Department intentionally omitted in a January 31, 2006, letter to the General Assembly the context of the 1998 rulemaking as well as the Department's own stated intention to revise the regulation to incorporate Tier II when it was finalized. Several industry commentators commented that the Program included adoption of the LEV standards as a temporary measure or "backstop" in case the EPA's NLEV program was not implemented or if Federal standards cleaner than NLEV were not adopted. The Department responds that the California standards were adopted in this Commonwealth to require compliance if the auto manufacturers opted not to participate in the voluntary NLEV program or after the end of the commitment to NLEV after MY 2005. This was stated clearly in the preambles to the 1998 proposed and final-form rulemakings: "This program will only be implemented if an auto manufacturer opts out of the NLEV program or *at the conclusion of the NLEV program*." (Emphasis added.) See the final-form rulemaking at 28 Pa. B. 5873, 5874. See also the proposed rulemaking at 27 Pa. B. 6303, 6305 (November 29, 1997). The preamble specified that NLEV was only a temporary measure: "The Commonwealth's NLEV program participation ends with model year 2006." See 28 Pa. B. 5783, 5875. The 1998 regulation itself was and is clear. It expressly adopts and incorporates by reference certain provisions of the California LEV program, Title 13, CCR in § 126.411, requires CARB certification for vehicles sold, imported, delivered, purchased, leased, rented, acquired, received or registered in this Commonwealth in § 126.412(a) and requires compliance with the California NMOG fleet average in this Commonwealth in § 126.412(b). The 1998 regulation expressly adopts NLEV as only a temporary measure and a compliance alternative to the California program: § 126.402(b)) stated "The Commonwealth's participation in the NLEV program extends until model year 2006 . . ." and § 126.401(b) stated "This subchapter allows motor vehicle manufacturers to comply with the voluntary NLEV program . . . as a compliance alternative to the Pennsylva-

nia Clean Vehicles Program. . . ." Hence, the Department was clear that the California program was offered as more than just a backstop in the event a manufacturer did not comply with NLEV or the Federal standards were not finalized. The 1998 regulations provided in § 126.402 (c)that "[f]or 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. . . ." In 2004, the EPA established more stringent Federal standards called Tier II. Hence, manufacturers were required to comply with Tier II, as part of the NLEV program, for MYs 2004 and 2005. Beginning with MY 2006, when the Commonwealth's participation in the NLEV program ended, the California program took effect. "Except as provided in subsections (a) and (c) [describing NLEV participation], 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*." (Emphasis added.) See § 126.402(d). Hence, the current rulemaking is not an adoption or codification of the California program. The California program was adopted, or codified, in the Commonwealth in 1998. The Department proposed postponing implementation of the Program in this final-form rulemaking to minimize any potential vehicle availability issues and to put in place a specific transition mechanism for compliance.

Incorporation by Reference

The Alliance submitted several comments regarding the existing regulations' incorporation by reference of the California program. It claimed that the Board and Department have been ambiguous about whether they believe that the CA LEV II program is already the law of the Commonwealth and that there needs to be a legal basis for a conclusion that an incorporation by reference has already occurred. The Alliance claimed it is highly unusual for the Board to claim it has the authority to adopt regulations that automatically incorporate any amendments that are made to the California program. The Department disagrees that the Board and Department have been ambiguous. The purpose of this final-form rulemaking is not to adopt CA LEV II because by virtue of the 1998 rulemaking, CA LEV II is already the legally effective program in this Commonwealth. Situations in which cross-referenced statutory or regulatory provisions are later revised or replaced are addressed in 1 Pa.C.S. Part V (relating to Statutory Construction Act of 1972). Pennsylvania courts have held that the act applies to regulations as well as to statutes. (See, for example, *Highway New, Inc. v. Pennsylvania Department of Transportation*, 789 A.2d 802, 808 (Pa. Cmwlth. 2002).) Section 1937(a) of the Statutory Construction Act of 1972 (relating to references to statutes and regulations) states that "A reference in a statute to a statute or to a regulation issued by a public body or public officer includes the statute or regulation *with all amendments and supplements thereto and any new statute or regulation substituted for such statute or regulation*, as in force at the time of application of the provision of the statute in which such reference is made, unless the specific language or the context of the reference in the provision clearly includes only the statute or regulation as in force on the effective date of the statute in which such reference is made." (Emphasis added.) In a December 2, 2005, letter to Representative Richard Geist, EPA Region 3 Administrator Donald Welsh stated that it is the EPA's opinion that the CA LEV standards are "the legally effective program for Pennsylvania" and underscored that the CA LEV standards are a "federally enforceable part of the SIP." Hence, California's post-1998 amendments and supplements to, and any new statute and regulation substituted for, the portions of the California LEV program that were adopted in the Commonwealth's 1998 rulemaking are automatically included in the Commonwealth's regulations.

The Alliance commented that authority to adopt regulations that automatically incorporate amendments made to the California program delegates statutory implementation authority in section 2(a) of the Regulatory Review Act (71 P. S. § 745.2(a)) to another state's regulatory authority in violation of Pa.Const. Art. II, § 1. The Department responds that the current regulations and the final-form rulemaking are authorized under the act. The Commonwealth, along with the other states that have adopted the California LEV program, has the same ability to comment on changes to the California program as it has in commenting on changes to the Federal new motor vehicle control program. Elected representatives are part of the rulemaking process in the Commonwealth established by the Regulatory Review Act (71 P. S. §§ 745.1—745.15). Additionally, the final-form rulemaking requires the Department to monitor and advise the Board of proposed or final CA LEV rulemaking under consideration by CARB, prepare a cost/benefit analysis to be submitted to the Board and Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees) for each proposed or final CARB rulemaking, evaluate and submit to the Board and the Chairpersons of the Committees the estimated incremental cost to manufacture vehicles that comply with the CA LEV program compared to the Federal program and submit comments on proposed or final CARB rulemakings on behalf of the residents of this Commonwealth. Section 1937(a) of the Statutory Construction Act of 1972 explicitly provides that "A reference in a statute [or regulation] to a statute or to a regulation issued by a public body or public officer includes the statute or regulation with all amendments and supplements thereto and any new statute or regulation substituted for such statute or regulation, as in force at the time of application of the provision of the statute [or regulation] in which such reference is made. . . ." Thus, the automatic inclusion in the Commonwealth's regulations of amendments and supplements to, and of any new statute or regulation substituted for a portion of, the California program are statutorily sanctioned.

The Pennsylvania AAA Federation commented that the nature, severity and geography of California's air pollution problem drive California's pollution reduction strategies. The commentator stated that California regions are in "extreme" nonattainment while regions in this Commonwealth are defined as "moderate" or "marginal" and that California's pollution reduction strategies may not be appropriate for this Commonwealth. The Department agrees that California's ozone air pollution problem is worse than this Commonwealth's. The nature of California's problem has resulted in a dedication of technical resources to air quality problems unequalled in the world, including at the EPA. The Department agrees that some of California's pollution reduction strategies may not be appropriate for this Commonwealth. However, as motor vehicles will continue to contribute a significant amount

of pollution in this Commonwealth, the Program is a cost-effective strategy to further reduce vehicle emissions.

Several commentators commented that adopting the CA LEV program ties the Commonwealth to any and all changes made to the program by CARB, on which the Commonwealth (like other states) has no representation. The Department responds that this final-form rulemaking is not an attempt to adopt the California program. That program was adopted in the 1998 rulemaking. The final-form rulemaking, like the proposed rulemaking, requires the Department to monitor and advise the Board of proposed or final LEV rulemakings under consideration by CARB, prepare a cost/benefit analysis to be submitted to the Board and Chairpersons of the Committees for each proposed or final CARB rulemaking, evaluate and submit to the Board and the Chairpersons of the Committees the estimated incremental cost to manufacture vehicles that comply with the CA LEV program compared to the Federal program and submit comments on proposed or final CARB rulemakings on behalf of the residents of this Commonwealth. The Commonwealth, along with the other states that have adopted the California LEV standards, has the same ability to comment on changes to the California program as it has in commenting on changes to the Federal new motor vehicle control program. Elected representatives are part of the rulemaking process in the Commonwealth established by the Regulatory Review Act.

The Pennsylvania AAA Federation noted that California revises its standards more frequently than the EPA. The Department agrees that California has revised its standards more often than the EPA, which has amended its light-duty vehicle standards only when explicitly directed by statute. The NRC recently found that the process by which California revises its standards is scientifically and technically valid and is a benefit to the country. Compared to the Federal government, the ability of California to respond better to changing conditions, including technological advances, was viewed by the NRC as an advantage. Most of the revisions to the California program were revisions to California's ZEV program, which is excluded from adoption in the Program.

Stringency Requirement

The Alliance commented that the proposed rulemaking failed to satisfy the "stringency" limitation in section 4.2 of the act (35 P. S. § 4004.2(b)), which requires rules to be no more stringent than those required by the CAA unless authorized or required by the act or specifically required by the CAA. Section 4.2(b) of the act goes on to list certain exceptions to this stringency limitation. The commentator asserts that none is applicable here. The Department disagrees. The existing regulation automatically incorporates the current California program, which at this time is CA LEV II, not CA LEV I. Section 4.2(b) of the act is inapposite because this final-form rulemaking is not a rulemaking that adopts the California standards, since they are already adopted. This final-form rulemaking postpones the compliance date of the Program by 2 years. In this way, the final-form rulemaking is not more stringent than the existing regulations. Furthermore, the Department disagrees with the commentator's characterization of the stringency provision of the act. Section 4.2 of the act authorizes adoption of regulations that are more stringent than Federal requirements if they are reasonably necessary to achieve or maintain the ambient air quality standards. Adoption of the California program under section 177 of the CAA was reasonably necessary to achieve and maintain the health-based 1-hour ozone ambient standard in this Commonwealth and the successor 8-hour ozone ambient standard.

Stakeholder Process

Senators Madigan and White commented that the proposed rulemaking should not proceed at this time. They stated that a stakeholder process (as included in SB 1025) should be instituted to help analyze state options for meeting air quality standards. They stated that SB 1025 also requires the Department to report back to the General Assembly by June 30, 2010. The Department does not agree. Neither a stakeholder process, nor the schedule in SB 1025, accounts for the timetables of the CAA or the Commonwealth's regulatory process. Specifically, the Department must submit SIP revisions for meeting the 8-hour ozone standard by June 2007 and for meeting the fine particulate standard by April 2008. The stakeholder processes which took place in 1996 and 1997 took more than a year; it took a minimum of 1 additional year subsequent to those groups submitting recommendations to the Department to finalize recommendations in regulation. Furthermore, this final-form rulemaking is not designed to adopt the California program, since adoption occurred in 1998; rather, this final-form rulemaking makes changes to the already existing regulations to postpone the program compliance date from MY 2006 to MY 2008, specify the early credit earning period for automobile manufacturers and update definitions and cross-references.

Abrogation of Program

Senators Madigan and White commented that an October 28, 2005, letter from the Department to members of the House of Representatives stated that passage of HB 2141, a bill to abrogate the Program, and repeal of the Clean Vehicles Program "puts us in violation of federal law." They state that subsequently, the Department changed its argument, conceding that the Commonwealth can in fact maintain the Federal Tier II standards but in the Department's view would need additional reductions from stationary sources to meet air quality standards. The Department responds that the statement that repealing the Program would violate Federal law and the statement that the Commonwealth has the option to return to the Federal new motor vehicles program are not contradictory. The Commonwealth adopted the Program in 1998 and submitted the regulation to the EPA as an SIP revision. That SIP revision was effective February 28, 2000. Approval of an SIP by the EPA makes the SIP Federally enforceable. In a December 2, 2005, letter to Representative Richard Geist, EPA Region 3 Administrator Donald Welsh stated that it is the EPA's opinion that the CA LEV standards are "the legally effective program for Pennsylvania" and underscored that the CA LEV standards are a "federally enforceable part of the SIP." This means that Federal law needs to be followed if this part of the Commonwealth's SIP is to be changed. The Commonwealth's adoption of California emission standards could not be revoked without holding public hearings on a proposed SIP revision to do so, responding to comments received and submitting the proposed SIP revision to the EPA for approval. Just as the Department had the authority in 1998 to choose to adopt the California standards, the Department has the authority to choose to participate in the Federal program, but only if these steps are followed. The Commonwealth is required by the CAA to achieve and maintain the NAAQS in all areas of this Commonwealth designated as nonattainment. The available emission reduction options are "a shrinking slate," as characterized by Mr. Welsh in the December 2005 letter. Since states do not have many

strategies regarding motor vehicles available to them, most of the strategies are indeed reductions from stationary sources.

The two senators commented that a November 1, 2005, e-mail from the Secretary of DOT to the members of the General Assembly insinuates that passage of HB 2141 would jeopardize $1.6 billion in Federal transportation funding. The senators stated that the e-mail failed to include a detailed discussion of the implications of HB 2141, the likelihood of whether the Commonwealth in fact would lose Federal funding, or whether the Commonwealth actually relied upon the California vehicle emission standards as part of its SIP compliance strategy. The senators stated that a December 2005 letter from the EPA Region 3 Administrator stated that he believed passage of the bill would not result in application of Federal sanctions against the Commonwealth because at present, the Commonwealth's SIP does not rely upon emission reductions. The Department responds that the interpretation that revocation of the Program might trigger Federal sanctions was based upon the fact that the Program is a Federally-enforceable portion of the Commonwealth's SIP. The December letter referenced by the commentators provided a different interpretation of the application of mandatory sanctions under the CAA and also indicated that it is unlikely that the EPA would impose discretionary sanctions because the Department had not relied upon the benefits of the CA LEV program in its SIP revisions for the 1-hour ozone standard. The Department agrees that the emission reduction benefits of the California LEV program in 1-hour ozone SIPs were not relied upon in SIP submissions to date, but the Department has included the benefits in its development of SIP revisions to attain and maintain the 8-hour standard. The Commonwealth will begin submitting these SIP revisions in the fall of this year.

NMOG Fleet Average

One commentator stated that by adopting and attempting to enforce the California fleet NMOG average, the Commonwealth will violate the CAA. The commentator asserted that since it is highly unlikely that a manufacturer will sell exactly the same products in exactly the same proportions in this Commonwealth as it will in California, and consumers in this Commonwealth determine that a particular manufacturer's sales mix in Pennsylvania results in a higher fleet NMOG average, the manufacturer may be required to artificially limit sales of certain CARB-certified cars to comply with this Commonwealth's fleet average requirement. The commentator concluded that this would be an indirect limit on the sale of a motor vehicle certified to California standards and thus would violate section 177 of the CAA. The Department disagrees. This final-form rulemaking does not establish the Program or adopt the NMOG fleet average, but makes changes to the already existing regulations which already incorporate by reference the NMOG fleet average. This final-form rulemaking postpones the Program compliance date from MY 2006 to MY 2008, specifies the early credit earning period for automobile manufacturers and updates definitions and cross-references. Even if this final-form rulemaking were adopting the California NMOG fleet average, adopting the fleet average would not violate section 177 of the CAA. Section 177 of the CAA specifically authorizes states like the Commonwealth to "adopt and enforce standards relating to control of emissions from new motor vehicles or new motor vehicle engines" if the "standards are identical to the California standards for which a waiver has been granted for such model year. . . ." Courts accept California's NMOG fleet average as a "standard relating to control of emissions." See, for example, *Motor Vehicle Manufacturers Assoc. v. New York State Department of Environmental Conservation*, 17 F.3d 521, 537 (2d Cir. 1994) ("It would be inappropriate to view the 1990 [CAA] amendments in a manner that would effectively prohibit any state from opting into the California program since Congress so obviously planned for the several states to have that option."); *American Automobile Manufacturers Assoc. v. Cahill*, 152 F.3d 196, 200 (2d Cir. 1998) ("For example, the LEV Program is clearly a 'standard'. . ."). The EPA also accepts California's NMOG fleet average as a "standard relating to control of emissions," as the EPA has approved the SIP revisions of at least three states that have adopted it, namely Maine, Massachusetts and New York. (70 FR 21959 (April 28, 2005) (Maine); 67 FR 78179 (December 23, 2002) (Massachusetts); and 70 FR 4773 (Jan. 31, 2005) (New York).) Moreover, the Second Circuit Court of Appeals has stated that the purpose of the sales limitation prohibition in section 177 of the CAA is to prohibit section 177 of the CAA opt-in states from attempting to regulate against the sale of a particular type, not number, of California-certified cars. *Motor Vehicle Manufacturers Assoc.*, supra, 17 F.3d at 536. The CAA does not require automakers to "sell exactly the same products in exactly the same proportions" in a state that adopts or implements a program requiring CARB standards. As sales hinge on marketing factors, the ultimate decision on what type of vehicle to introduce for sale in an implementing state to meet the fleet average is a marketing decision. The Commonwealth's final-form rulemaking does not limit any type of highway vehicle from being introduced for sale in this Commonwealth. The Program only requires that any vehicle such as this have CARB certification and that in the aggregate the automaker's mix of vehicles introduced for sale in this Commonwealth complies with the NMOG fleet average specified by CARB.

GHG Provision of California's Program

Numerous comments from industry commentators and the two senators addressed California's GHG provisions.

Several of these commentators asserted that the smog-producing pollutants would be increased because of the GHG regulations, since people would retain older vehicles with higher emissions as the result of asserted increased price of new vehicles and people would drive more miles if fuel efficiency were increased. To the contrary, the Department agrees with CARB that the GHG provisions will provide an additional net decrease of the emissions of NO_x and reactive organic gases (an analog to VOC). The Department's analysis did not account for these additional benefits as neither the Commonwealth's existing regulations nor the final-form rulemaking requires the California GHG fleet average requirement to be met based on sales in this Commonwealth. One commentator, Sierra Research, whose analysis of the Program is relied upon by several others, focused its analysis almost entirely on the GHG provisions and on the incorrect assumption that the Commonwealth is proposing adoption of a GHG fleet average requirement based on sales in this Commonwealth, resulting in erroneous conclusions that are not relevant. In addition, the analysis provided no relevant information, analysis or data to specifically refute the Department's analysis of the emissions impact of postponing the compliance date of the Commonwealth's existing Program. The Department's analysis is based on current EPA guidance.

Furthermore, emission reductions that are to be achieved in California, this Commonwealth or elsewhere

from CARB's GHG provisions are dependent upon the EPA granting a waiver of preemption to CARB for the GHG emission standards. Under section 209(b) of the CAA (42 U.S.C.A. § 7543(b)), California must first find that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. California has already made this determination. The EPA will then review California's "protectiveness" finding and must deny a waiver if it determines that California's finding was arbitrary and capricious, among other things. The commentator will have the opportunity to present its analyses of CARB's GHG emission standards to the EPA during the EPA's waiver decision making process, which includes Federal publication of a proposed decision and a public comment period. If the EPA (the agency that promulgated the Tier II standards) grants CARB a waiver of preemption for the GHG standards, there should be no question of whether CARB's standards are as protective as Tier II.

Sierra Research and DaimlerChrysler asserted that adoption of CA LEV II with the GHG provisions in this Commonwealth will result in increased VOC, NO_x, CO and $PM_{2.5}$ emissions relative to a baseline where the Federal Tier II emissions standards apply. The Department disagrees with the commentators' analysis of the purported emissions increase. The analysis incorrectly assumes that automakers will be required to comply with the California GHG fleet average based on vehicles introduced for sale in this Commonwealth. Because this fundamental assumption is incorrect, the commentators' analysis has little practical value with regard to this final-form rulemaking. In addition, the analysis provided little, if any, additional information, analysis or data to specifically refute the Department's analysis of the emissions impact of postponing the compliance date of the Commonwealth's existing Program. The Department's analysis is based on current EPA guidance.

The Department agrees that emissions, in general, may be influenced in part by three secondary effects of the GHG regulation described by the commentators, but the commentators' evaluation of the magnitude of these effects in this Commonwealth is flawed given the commentators' erroneous assumption regarding the GHG fleet average. In addition, the commentators' underlying assumptions with regard to the resultant impact of these effects in California were successfully refuted by CARB in its Final Statement of Reasons. The commentators provided little supporting data to allow the Department to replicate and quantitatively evaluate the commentators' claims. The Department disagrees that the relative baseline for comparison of emissions, for the purpose of the commentator's analysis to evaluate the impacts of the California GHG provisions, is the Federal Tier II program. The California standards are currently incorporated by reference in the Commonwealth's regulations. The purpose of this final-form rulemaking is to postpone the compliance date of the Program from MY 2006 to MY 2008 and specify a 3-year early-credit earning period within which vehicle manufacturers must come into compliance with the NMOG fleet average of the Program. The relative baseline, therefore, should be the CA LEV II standards and not the Federal Tier II standards. The commentator did not provide any comparison of the GHG provision impact to the existing regulations or the amendments to the Program. The Department's analysis estimates a reduction of 7.8 to 16.9 tons per day of VOCs and 9.7 tons per day of NO_x in 2025 by implementing the Program as set forth in the preambles to the proposed and final-form rulemakings. The Department continues to agree with CARB that there would be a slight decrease in NO_x and VOC emissions as a result of the GHG provisions, but given that the Program does not require compliance with a GHG fleet average based on sales in this Commonwealth and that automakers will still be required to meet the NMOG fleet average based on sales in this Commonwealth (thus ensuring reductions over Tier II), these benefits would be secondary and are not included in the Department's analysis.

Three industry commentators claimed that the proposed rulemaking would have no measurable impact on the global climate or the climate of this Commonwealth and that the means for controlling GHG are being debated internationally and can only be addressed effectively on a global basis. The Department responds that the Commonwealth expects that the existing regulations will make a contribution to the reduction of GHGs, which will help mitigate global warming and its public health and environmental effects. A measurable effect on temperatures or on ozone reduction based on effects on temperatures is not the intent of this final-form rulemaking.

The Alliance commented that the California GHG regulations will not improve air quality because the regulations focus predominantly on controlling CO_2, an inert gas that is not toxic to humans or animals. The commentator argues that control of GHG emissions is not a pollution issue but is an energy issue. Whether GHGs, including CO_2, are a pollutant is an issue currently in litigation. On November 29, 2006, the Supreme Court of the United States heard oral agrument on whether the EPA has authority under the CAA to regulate GHG emissions from automobiles. *Massachusetts v. EPA*, U.S., No. 05-1120.

Three industry commentators stated that states have no statutory authority and are expressly prohibited from passing or enforcing any statute or regulation that attempts to reduce carbon dioxide through the regulation of vehicle fuel economy. These commentators note that the National Highway Traffic Safety Administration made these statements in both its proposed and final rule for average fuel economy standards for light trucks. The Department responds that the issue of whether California's GHG regulation attempts to regulate vehicle fuel economy is currently being litigated in Federal court in California in *Central Valley Chrysler-Jeep, Inc. v. Catherine E. Witherspoon*, 1:04-cv-06663-AWI-LJO. If the California regulation is overturned in court, the Commonwealth will not realize GHG benefits from California's GHG provisions. The statements made by the National Highway Traffic Safety Administration were made in a preamble, not a regulation, and do not carry the authority of law.

Senators Madigan and White commented that the Department's preamble touts the California standard as a means of controlling carbon dioxide (GHG) emissions. They stated that the Department fails to acknowledge that reduction of CO_2 emissions is not a requirement of the SIP or the CAA. They said that the Department ignores a September 2003 EPA General Counsel determination that the EPA does not have the authority under Federal law to regulate motor vehicle emissions of CO_2 or other GHGs. The Department responds that the preamble to the proposed rulemaking stated that California recently added a GHG fleet average requirement to its LEV II program beginning with MY 2009, which will have to be met in California to obtain CARB certification. The Department is not requiring auto manufacturers to meet

a fleet average for GHGs based on sales in this Commonwealth, but, as stated in the preamble, the Department expects that the Commonwealth will realize the benefits of California's GHG certified vehicles through the Commonwealth's existing requirement that new vehicles have CARB certification. The preamble explained that California estimates that the program, when fully phased-in, will provide about a 30% reduction in GHG emissions from new vehicles required to comply compared to the 2002 fleet. The Department anticipates that this Commonwealth will achieve similar results. The Department did not state or imply that reducing CO_2 emissions in the Program is a requirement of the SIP or the CAA. The Department does not ignore the September 2003 EPA General Counsel opinion regarding GHGs; to the contrary, the preamble expressly acknowledged that California is currently defending its GHG regulations against legal challenges filed by the auto industry. The EPA's position on regulation of GHGs from motor vehicles is currently under review by the Supreme Court of the United States in the case of *Massachusetts v. EPA*, U.S., No. 05-1120.

The Pennsylvania AAA Federation and several industry commentators objected to the costs of complying with the California GHG requirements. CARB has estimated the additional price of the GHG provisions at over $1,000 per vehicle while the auto industry believes the price of all new vehicles would increase about $3,000 on average per vehicle. In MY 2009 and beyond, once the California GHG provisions take effect, the Department agrees with CARB's per vehicle cost estimate of approximately $1,000 by 2016 and with CARB's estimate that this cost increase will be offset by savings to the consumer due to increased operational efficiency of these vehicles. While CARB predicted that by 2016 the operational efficiency of vehicles meeting GHG requirements might actually afford owners an overall cost savings of $3.50 to $7 per month (assuming $1.74 per gallon of gasoline), information on initial cost (which could be related to sticker price) was also estimated. Based on separate CARB estimates for passenger cars/small trucks and large trucks/SUVs and the similar composition of the fleet in this Commonwealth, consumers could see an increase in per vehicle costs of $21 for MY 2009, $63 for MY 2010 and $219 for MY 2011 to about $1,000 in MY 2016. CARB estimates that by 2016 the operational efficiencies realized by GHG technology will result in an overall savings of $3.50 to $7 per month ($42 to $84 dollars per year) based on a MY 2016 vehicle costing an additional $1,029 to $1,064 per vehicle. These savings are probably understated, since the price of gasoline is likely to remain higher than that used in CARB's analysis. Several commentators pointed out that historically, cost projections made by both industry and government (EPA and California) tend to overstate actual costs.

The Alliance and the Pennsylvania AAA Federation commented that to meet what they referred to as the proposed "fuel efficiency" and emissions requirements of CA LEV II, vehicle weight and size would be reduced, which would reduce consumer utility and contribute to higher traffic fatalities. The Department responds as follows. As indicated by CARB in its Final Statement of Reasons, California law specifically prohibits CARB from using weight reduction or vehicle class elimination as a mechanism to achieve compliance with the GHG provisions of the CARB standard. The Department believes that CARB's analysis of the available technology options is sound and agrees that many of the proposed technologies are either in current production or are in late stage development by automakers. In addition, the GHG provisions provide sufficient lead-time for automakers to cost-effectively integrate these existing technologies into production. The Department agrees with CARB's analysis of the GHG provisions that weight reduction strategies are not necessary. Weight reduction strategies that may be employed by automakers are business decisions by individual automakers and not the result of requirements of either the CA LEV II standards or the Program. The Department agrees that Federal motor vehicle safety standards will continue to apply to any vehicle introduced for sale into this Commonwealth.

G. *Benefits, Costs and Compliance*

Benefits

The final-form rulemaking will save manufacturers, dealers and purchasers of light-duty vehicles and trucks from incurring additional costs for CARB-certified vehicles for 2 model years. Implementation of the Program in accordance with the final-form rulemaking will contribute to the attainment and maintenance of the health-based ozone NAAQS in this Commonwealth due to emission reductions from the operation of low emission passenger cars and light-duty trucks. The Commonwealth's analyses indicate that, by implementing the California LEV II program under the final-form rulemaking, the Commonwealth will experience emission benefits when compared to the Federal program. By 2025, when full fleet turnover is expected, the California LEV II program will provide an additional reduction of 2,850 to 6,170 tons per year of VOCs, 3,540 tons per year reduction of NO_x and 5% to 11% more reduction of six toxic air pollutants, including a 7% to 15% additional benefit for benzene, a known carcinogen. The Commonwealth will also realize the benefits of California's GHG certified vehicles. CARB estimates that the program, when fully phased-in, will provide about a 30% reduction in GHG emissions from new vehicles required to comply compared to the 2002 fleet.

In addition, CARB predicted that by MY 2016 the operational efficiency savings of vehicles meeting the GHG requirements, which start in MY 2009, will afford owners an overall cost savings of $3.50 to $7 per month, assuming a price of $1.74 per gallon of gasoline. These savings are probably understated, since the price of gasoline is likely to remain higher than that used in CARB's analysis.

Compliance Costs

The final-form rulemaking will defer any costs associated with CARB-certified vehicles for 2 model years, from MY 2006 to MY 2008. In fact, as stated, cost savings will be realized. The final-form rulemaking will apply to vehicle manufacturers, new vehicle dealers, leasing and rental agencies and other registrants who sell, import, deliver, purchase, lease, rent, acquire, receive, title or register light-duty automobiles or trucks in this Commonwealth. No new costs will be incurred as a result of the final-form rulemaking compared to the costs that would be experienced without the final-form rulemaking, since the Program is already incorporated by reference in the Commonwealth's regulations.

In September 2004, CARB estimated that by MY 2016 the operational efficiency savings of vehicles meeting GHG requirements will provide vehicle owners an overall cost savings of $3.50 to $7 per month, assuming $1.74 per gallon of gasoline. These savings are probably understated, since the price of gasoline is likely to remain higher than that used in CARB's analysis. CARB estimated the GHG-related initial investment costs, possibly

reflected in sticker prices, will start under $50 per vehicle for MY 2009, be approximately $350 in 2012 and $1,000 per vehicle in MY 2016. Vehicle manufacturers disagree with CARB's GHG estimate, citing initial costs of as much as $3,000 per vehicle.

The Commonwealth periodically offers rebates to consumers for the initial purchase of hybrid electric vehicles. These rebates could offset additional initial costs that might be passed on to consumers under the existing or amended Program.

Compliance Assistance Plan

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

The Commonwealth offers rebates to consumers for the initial purchase of hybrid electric vehicles. These incentives may help vehicle manufacturers meet their obligations under the Program.

Paperwork Requirements

No additional paperwork requirements will be imposed by the final-form rulemaking; the Program already contains paperwork requirements. When the Program is implemented, vehicle manufacturers will be required to submit paperwork demonstrating compliance with the emission standards and other requirements of the Program. Motor vehicle dealers, leasing and rental agencies and other registrants and persons seeking title of new motor vehicles must demonstrate to the DOT's Bureau of Motor Vehicles that new vehicles subject to the Program are those certified by California.

H. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials or the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking incorporated the following pollution prevention provisions and incentives.

The existing regulations and the final-form rulemaking give vehicle manufacturers the freedom to select technologies that prevent pollution. Similarly, vehicle manufacturers are given the freedom to select exhaust treatment technologies to meet the requirements. Air pollution will be reduced by requiring vehicle manufacturers to produce vehicles that lower emissions at their source.

I. *Sunset Review*

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

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 21, 2006, the Department submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 715, to IRRC and the Chairpersons of the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 1, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 2, 2006, and approved the final-form rulemaking.

K. *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, 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 regulations do not enlarge the purpose of the proposed rulemaking published at 36 Pa.B. 715.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

(5) These regulations are necessary for the Commonwealth to achieve and maintain ambient air quality standards and to satisfy related CAA requirements.

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 126, are amended by amending §§ 121.1, 126.401, 126.411—126.413, 126.421—126.425, 126.431, 126.432 and 126.441; by deleting § 126.402; and by adding § 126.451 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

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

KATHLEEN A. MCGINTY,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa. B. 7082 (November 18, 2006).)

Fiscal Note: Fiscal Note 7-398 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:

* * * * *

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(4)).

De minimis emission increase—An increase in actual or potential emissions which is below the threshold limits specified in § 127.203 (relating to facilities subject to special permit requirements).

* * * * *

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.

* * * * *

LDT—light-duty truck–

(i) For purposes of § 129.52 (relating to surface coating processes), a light-duty truck is 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.

(ii) For purposes of Chapter 126, Subchapter D (relating to the Pennsylvania Clean Vehicles Program), a light-duty truck is a motor vehicle rated at 8,500 pounds gross vehicle weight or less which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

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

* * * * *

Lease custody transfer—The transfer of produced crude oil or condensate, after processing or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or other forms of transportation.

Limited access space—Internal surfaces or passages of an aerospace vehicle or component to which coatings cannot be applied without the aid of an airbrush or a spray gun extension for the application of coatings.

* * * * *

NETS-NO_x Emissions Tracking System—The computerized system used to track NO_x emissions from NO_x affected sources.

NMOG—Nonmethane organic gases.

* * * * *

Offset vehicle—A light-duty vehicle which has been certified by California as set forth in Title 13 CCR, Division 3, Chapter 1.

* * * * *

York air basin—The political subdivisions in York County of Manchester Township, North York Borough, Spring Garden Township, Springettsbury Township, West Manchester Township, West York Borough and City of York.

CHAPTER 126. MOTOR VEHICLE AND FUELS PROGRAMS

Subchapter D. PENNSYLVANIA CLEAN VEHICLES PROGRAM

GENERAL PROVISIONS

§ 126.401. Purpose.

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

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

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

(d) The Department may not implement or enforce any vehicle emission standard which is not legally permitted to be regulated under the Clean Air Act or other applicable Federal or State law or regulation.

§ 126.402. (Reserved).

LOW EMISSION VEHICLES

§ 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, titled or registered in this Commonwealth starting with the 2008 model year and each model year thereafter.

(b) The provisions of the California Low Emission Vehicle Program, Title 13 CCR, Division 3, Chapters 1 and 2, are adopted and incorporated herein by reference, and apply except for the following:

(1) The zero emissions vehicle percentage requirement in Title 13 CCR, Division 3, Chapter 1, § 1962.

(2) The emissions control system warranty statement in Title 13 CCR, Division 3, Chapter 1, § 2039.

§ 126.412. Emission requirements.

(a) Starting with the model year 2008, a person may not sell, import, deliver, purchase, lease, rent, acquire, receive, title 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 2008, compliance with the NMOG fleetwide average in Title 13 CCR, Division 3, Chapter 1, § 1961 shall be demonstrated for each motor vehicle manufacturer based on the number of new light-duty vehicles delivered for sale in this Commonwealth.

(c) Credits and debits for calculating the NMOG fleet average shall be based on the number of light-duty vehicles delivered for sale in this Commonwealth and may be accrued and utilized by each manufacturer according to procedures in Title 13 CCR, Division 3, Chapter 1.

(d) NMOG fleet average credits generated during the 2008, 2009 and 2010 model years may be applied toward any of the model years 2008 through 2010 for the purpose of demonstrating compliance with subsections (b) and (c). The credits generated during this period may be applied at full value for any of the Model Years 2008—2010.

(e) New motor vehicles subject to this subchapter must possess a valid emissions control label which meets the requirements of Title 13 CCR, Division 3, Chapter 1.

§ 126.413. Exemptions.

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

(1) Emergency vehicles.

(2) A light-duty vehicle transferred by a dealer to another dealer for ultimate sale outside of this Commonwealth.

(3) A light-duty vehicle transferred for use exclusively off-highway.

(4) A light-duty vehicle transferred for registration out-of-State.

(5) A light-duty vehicle granted a National security or testing exemption under section 203(b)(1) of the Clean Air Act (42 U.S.C.A. § 7522(b)(1)).

(6) A light-duty vehicle held for daily lease or rental to the general public which is registered and principally operated outside of this Commonwealth. For purposes of this paragraph, a light-duty vehicle is deemed to be principally operated outside of this Commonwealth if it is registered outside of this Commonwealth in accordance with the Inter-Jurisdictional Agreement on Apportioning Vehicle Registration Fees developed under the Intermodal Surface Transportation and Efficiency Act of 1991 (Pub. L. 102-240, 105 Stat. 1914), and known as the International Registration Plan, or a successor plan for apportioning vehicle registration fees internationally.

(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 titled or registered in this Commonwealth before December 9, 2006.

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

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

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

APPLICABLE NEW 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 must be certified as meeting the motor vehicle requirements of Title 13 CCR, Division 3, Chapter 1, § 1961, as determined by testing in accordance with Title 13 CCR, Division 3, Chapter 2.

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

§ 126.422. New motor vehicle compliance testing.

(a) Prior to being offered for sale or lease in this Commonwealth, new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements of this subchapter must be certified as meeting the motor vehicle requirements of Title 13 CCR, Division 3, Chapter 1, § 1961, as determined by New Vehicle Compliance Testing, conducted in accordance with Title 13 CCR, Division 3, Chapter 2.

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

§ 126.423. Assembly line testing.

(a) Each manufacturer of new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements of this subchapter, certified by CARB and sold or leased in this Commonwealth, shall conduct inspection testing and quality audit testing in accordance with Title 13 CCR, Division 3, Chapter 2.

(b) For purposes of complying with subsection (a), inspection testing and quality audit testing determinations and findings made by CARB are applicable and

shall be provided by motor vehicle manufacturers to the Department upon a written request.

(c) If a motor vehicle manufacturing facility which manufactures vehicles for sale in this Commonwealth certified by CARB is not subject to the inspection testing and quality audit testing requirements of CARB, the Department may, after consultation with CARB, require testing in accordance with Title 13 CCR, Division 3, Chapter 2. Upon a manufacturer's written request and demonstration of need, functional testing under the procedures incorporated in Title 13 CCR, Division 3, Chapter 2, of a statistically significant sample, may substitute for the 100% testing rate required in Title 13 CCR, Division 3, Chapter 2, 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, Division 3, Chapter 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, Division 3, Chapter 2.

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

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

§ 126.425. In-use surveillance testing.

(a) For purposes of testing and monitoring the overall effectiveness of the Pennsylvania Clean Vehicles Program in controlling emissions, the Department may conduct in-use surveillance testing after consultation with CARB.

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

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

MOTOR VEHICLE MANUFACTURERS' OBLIGATIONS

§ 126.431. Warranty and recall.

(a) A manufacturer of new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements of this subchapter which are sold, leased, offered for sale or lease, titled or registered in this Commonwealth, shall warrant to the owner that each vehicle must comply over its period of warranty coverage with the requirements of Title 13 CCR, Division 3, Chapter 1, §§ 2035—2038, 2040 and 2041.

(b) Each motor vehicle manufacturer shall, upon a written request, submit to the Department failure of emission-related components reports, as defined in Title 13 CCR, Division 3, Chapter 2, for motor vehicles subject to the Pennsylvania Clean Vehicles Program in compliance with the procedures in Title 13 CCR, Division 3, Chapter 2. For purposes of compliance with this subsection, a manufacturer may submit copies of the reports submitted to CARB.

(c) For motor vehicles subject to the Pennsylvania Clean Vehicles Program, any voluntary or influenced emission-related recall campaign initiated by any motor vehicle manufacturer under Title 13 CCR, Division 3, Chapter 2, shall extend to all motor vehicles sold, leased, offered for sale or lease, titled or registered in this Commonwealth that would be subject to the recall campaign if sold, leased, offered for sale or lease or registered as a new motor vehicle in California, unless within 30 days of CARB approval of the recall campaign, the manufacturer demonstrates, in writing, to the Department's satisfaction that the recall campaign is not applicable to vehicles sold, leased, offered for sale or lease, titled or registered in this Commonwealth.

(d) For motor vehicles subject to the Pennsylvania Clean Vehicles Program, any order issued by or enforcement action taken by CARB to correct noncompliance with any provision of Title 13 CCR, which results in the recall of any vehicle pursuant to Title 13 CCR, Division 3, Chapter 2, shall be deemed to apply to all motor vehicles sold, leased, offered for sale or lease, titled or registered in this Commonwealth that would be subject to the order or enforcement action if sold, leased, offered for sale or lease or registered as a new motor vehicle in California, unless within 30 days of issuance of the CARB action, the manufacturer demonstrates, in writing, to the Department's satisfaction that the action is not applicable to vehicles sold, leased, offered for sale or lease, titled 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 2008 model year, 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 test group over that model year in this Commonwealth.

(b) For purposes of determining compliance with the Pennsylvania Clean Vehicles Program, each motor vehicle manufacturer shall submit annually to the Department, by March 1 of the calendar year following the close of the completed model year, a report of the fleet average NMOG emissions of its total deliveries for sale of LDVs in each test group for Pennsylvania for that particular model year. The fleet average report, calculating compliance with the fleetwide NMOG exhaust emission average, shall be prepared according to the procedures in Title 13 CCR, Division 3, Chapter 1.

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

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

MOTOR VEHICLE DEALER RESPONSIBILITIES

§ 126.441. Responsibilities of motor vehicle dealers.

A dealer may not sell, offer for sale or lease, or deliver a new motor vehicle subject to this subchapter unless the vehicle has received the certification described in

§§ 126.421 and 126.422 (relating to new motor vehicle certification testing; and new motor vehicle compliance testing), and conforms to the following standards and requirements contained in Title 13 CCR, Division 3, Chapter 2, § 2151:

(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.

DEPARTMENT RESPONSIBILITIES

§ 126.451. Responsibilities of the Department.

The Department will do the following:

(1) Monitor and advise the EQB of any proposed or final-form rulemakings under consideration by CARB or its successor that amend in Title 13 CCR, Division 3, Chapters 1 and 2, incorporated by reference in this subchapter.

(2) The Department will:

(i) Prepare a Regulatory Analysis Form to be submitted to the EQB and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for each proposed or final CARB rulemaking amending in Title 13 CCR, Division 3, Chapters 1 and 2 incorporated by reference in this subchapter. The Department will complete the relevant provisions of the Regulatory Analysis Form as practical, including a cost/benefit analysis of the proposed or final CARB rulemaking.

(ii) Evaluate the estimated incremental cost to manufacture vehicles that comply with the California Low Emission Vehicle Program compared to the cost to manufacture vehicles that comply with the Federal Tier II vehicle emissions regulations, or its successor, promulgated under section 177 of the Clean Air Act (42 U.S.C.A. § 7507) to the extent data is available. This evaluation will be conducted on any proposed or final-form rulemakings under consideration by CARB or its successor amending in Title 13 CCR, Division 3, Chapters 1 and 2 incorporated by reference in this subchapter and will be distributed to the EQB and the Chairpersons of the House and Senate Environmental Resources and Energy Committees.

(iii) Submit comments on proposed or final-form rulemakings amending in Title 13 CCR, Division 3, Chapters 1 and 2 incorporated by reference in this subchapter to CARB on behalf of the residents of this Commonwealth.

(3) The Department, in conjunction with the Department of Transportation, will study and evaluate the feasibility of modifying the Pennsylvania vehicle emission inspection program. In performing the study and evaluation, the Department, in conjunction with the Department of Transportation, will consider the additional reductions in NO_x, VOCs and other pollutants to be achieved through implementation of the requirements in Title 13 CCR, Division 3, Chapters 1 and 2. The Department will submit the findings and recommendations to the EQB no later then September 10, 2007.

(4) As soon as possible, but no later June 11, 2007, the Department will notify the EQB of the specific reductions in NO_x, VOCs, CO_2 and any other reductions approved by the EPA as a result of the incorporation of the Pennsylvania Clean Vehicles Program in the Commonwealth's SIP. The report must include a comparison of the incremental benefit reductions derived using EPA-approved methodology versus reductions which would have been achieved under the Federal Tier II vehicle emission standards.

[Pa.B. Doc. No. 06-2406. Filed for public inspection December 8, 2006, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Pennsylvania Automated Licensing Service

The Fish and Boat Commission (Commission) amends Chapter 51 (relating to administrative provisions). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking pertains to issuing agents providing licenses and permits through a point-of-sale system, the Pennsylvania Automated Licensing Service (PALS), that is currently under development.

A. *Effective Date*

The final-form rulemaking will go into effect upon publication of this order in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The amendments to §§ 51.32 and 51.36 (relating to resident and nonresident licenses; and lost license certificates) and the addition of §§ 51.37 and 51.38 (relating to application and prerequisites for becoming an issuing agent for the Pennsylvania Automated Licensing Service (PALS); and operation of the issuing agent for the Pennsylvania Automated Licensing Service (PALS)) are published under the statutory authority of section 2711 of the code (relating to issuing agents).

D. *Purpose and Background*

The final-form rulemaking is designed to improve, clarify and update the Commission's issuing agent regulations and to accommodate the implementation of PALS. The specific purpose of the regulations and amendments is described in more detail under the summary of changes.

E. *Summary of Changes*

The Commission currently relies on approximately 1,200 issuing agents throughout this Commonwealth to sell and issue approximately 850,000 fishing licenses and 600,000 permits through a paper-based system. In the near future, the Commission will automate the distribution and sale of its licenses and permits through the use

of point-of-sale methodologies. To date, over 30 states have automated, or are in the process of automating, their licensing systems. The primary goals of automation are to make delivery of fishing license services more convenient for the license buyers and to provide improved control over the flow of revenues from the issuing agents and to facilitate more effective communications among the license buyer, issuing agent and the Commission.

Upon review of the current regulations regarding the establishment and operations of fishing license issuing agents, the Commission identified the need to make a series of changes and additions that will allow for a more effective and efficient means of establishing issuing agent policies and guidelines for the automated distribution of licenses and permits. Although the Commission will retain the current issuing agent regulations applicable to the issuance of paper licenses and permits, the Commission proposed the addition of §§ 51.37 and 51.38 to govern the issuance of licenses and permits through PALS. The Commission anticipates that paper licenses will remain available as a backup during the transition to PALS.

In addition, the Commission proposed to amend § 51.32 to allow for additional methods to prove residency when purchasing a license. The Commission also proposed to amend § 51.36 to provide a procedure for issuing lost license certificates through PALS.

On final-form rulemaking, the Commission amended § 51.32 so that a Pennsylvania resident hunting license will no longer be accepted as a means of establishing Pennsylvania residency when purchasing a resident fishing license. This change is consistent with the Game Commission's practice of not accepting a Pennsylvania resident fishing license as a means of establishing Pennsylvania residency when purchasing a resident hunting license.

The Commission, on final-form rulemaking, also added language to § 51.38 pertaining to Social Security numbers. Under 23 Pa.C.S. § 4304.1(a)(2) (relating to cooperation of government and nongovernment agencies), government agencies must require the Social Security number of an individual who has one on an application for a recreational license. Therefore, the point-of-sale system will require the collection of an individual's Social Security number at the time of license purchase. The Commission recognizes, however, that there are certain individuals, such as the Amish and non-United States citizens, who may not have one. The new language allows an applicant who claims to not have a Social Security number to complete an affidavit on the form required by the Commission certifying under penalty of law that the applicant does not have a Social Security number and the reason for not having one. If the applicant fails to provide a Social Security number or to sign an affidavit, the issuing agent will not issue the applicant a license.

The Commission added language to § 51.38 that requires issuing agents to ask applicants who indicate that they have no means of establishing that they are residents of this Commonwealth other than by signing an affidavit of Pennsylvania residency to complete the form prescribed by the Commission. If the applicant fails to establish residency by signing the affidavit or as otherwise required in the Commission's regulations, the issuing agent will not issue the applicant a resident license.

In addition, the Commission added language to § 51.38 making it clear that issuing agents may not provide a customer with more than one copy of a license certificate. The Commission also changed the term "gift vouchers" to "vouchers." This change is needed to reflect the fact that vouchers may be sold that are not necessarily gifts.

With regard to the remainder of the proposed rulemaking, the Commission adopted the proposed amendment to § 51.36 and the proposed addition of § 51.37 to read as set forth in the proposed rulemaking.

F. *Paperwork*

The final-form rulemaking creates a new paperwork requirement in that issuing agents will be required to enter into a standard Fishing License Issuing Agent Agreement that governs the point-of-sale system and associated equipment. Current paperwork requirements pertaining to applications for new issuing agents and bonding have not changed.

The final-form rulemaking also creates a new paperwork requirement in that an applicant who claims to not have a Social Security number will be asked to complete an affidavit on the form required by the Commission certifying under penalty of law that the applicant does not have a Social Security number and the reason for not having one. In addition, the final-form rulemaking creates a new paperwork requirement in that applicants who indicate that they have no means of establishing that they are residents of this Commonwealth other than by signing an affidavit of Pennsylvania residency will be asked to complete the form prescribed by the Commission.

G. *Fiscal Impact*

The final-form rulemaking has no adverse fiscal impact on the Commonwealth or its political subdivisions. However, the Commission will incur costs associated with processing agent applications and with the standard Fishing License Issuing Agent Agreement that PALS agents will be required to sign. For new agents, these costs will be offset by the application fee.

The Commission also will incur costs associated with increased banking fees to the Commission for weekly electronic funds transfers from its issuing agents. These costs will be offset by increased interest earned due to the more timely remittance of license revenues.

Last, the Commission will incur nominal costs associated with developing and printing the affidavit of Pennsylvania residency and the affidavit pertaining to Social Security numbers.

The final-form rulemaking imposes a $150 application fee for new issuing agents under PALS. This fee will only be assessed on new applications for issuing agents and will not be applied to issuing agents that are agents with the Commission at the time that this final-form rulemaking goes into effect. The fee represents an increase in the application fee that new issuing agents are currently charged from $100 to $150. The Commission increased the fee due to inflation and to accommodate the cost of additional staff review of applications for issuing agents under PALS.

H. *Public Involvement*

Notice of proposed rulemaking was published at 36 Pa.B. 4729 (August 26, 2006). The Commission did not receive any public comments regarding the proposed rulemaking.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments 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 no comments were received.

(3) The adoption of the amendments 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 51, are amended by amending § 51.36 and adding § 51.37 to read as set forth in 36 Pa.B. 4729 and amending § 51.32 and adding § 51.38 to read as set forth in Annex A.

(b) The Executive Director will submit this order, Annex A and 36 Pa.B. 4729 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, Annex A and 36 Pa.B. 4729 and deposit them with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-186 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter D. ISSUING AGENTS

§ 51.32. Resident and nonresident licenses.

(a) Only bona fide residents of this Commonwealth who establish their resident status by producing a Pennsylvania motor vehicle driver's license or other positive means of identification are entitled to one of the various forms of a resident fishing license.

(1) Other positive means of identification for establishing bona fide residence in this Commonwealth include proof of payment of Pennsylvania Personal Income Tax as a resident of this Commonwealth; proof of payment of earned income, personal income tax or per capita taxes showing residence in a Pennsylvania municipality; current Pennsylvania firearms permit; Pennsylvania voter registration card; Pennsylvania nondriver identification card; or a signed affidavit of Pennsylvania residency on the form prescribed by the Commission.

(2) For purposes of this subsection, a bona fide resident of this Commonwealth is a permanent resident who has a fixed intent to return to this Commonwealth when he leaves it and maintains a permanent place of abode here. A person may not be a bona fide resident of this Commonwealth for this purpose while claiming residence in another state for any purpose.

(b) Military personnel who are stationed in this Commonwealth under permanent change of station orders (PCS) for a duration of 6 months or more may qualify as bona fide residents for the purpose of obtaining resident fishing licenses regardless of the fact they may maintain a legal domicile in another state as authorized by the Servicemembers Civil Relief Act (50 U.S.C.A. App. §§ 501—596). Military personnel who are domiciled in this Commonwealth but who are stationed in another state or country qualify as bona fide residents of this Commonwealth for fishing license purposes so long as they do not become domiciles of another state.

(c) A person who does not qualify as a bona fide resident of this Commonwealth under subsection (a) or (b) is considered a nonresident for purposes of obtaining a fishing license.

(d) A Senior Resident Lifetime Fishing License is valid only so long as the holder is a bona fide resident of this Commonwealth. A holder of a Senior Resident Lifetime Fishing License who establishes residence in another state and continues to fish in this Commonwealth without purchasing a Nonresident Fishing License may be charged with violating sections 923(c) and 2703 of the code (relating to additional penalty for fishing without license; and possession and display of licenses).

§ 51.38. Operation of the issuing agent for the Pennsylvania Automated Licensing Service (PALS).

(a) *Sale of licenses.*

(1) Issuing agents shall collect the required customer information, including Social Security numbers, at the time of purchase and ensure that the fishing license is accurate, correct and fully completed. The applicant shall verify the information provided to the issuing agent and entered into the PALS is accurate and correct and sign his own name or place his mark in the place indicated on the face of the license certificate. A license is not valid unless it is signed by the applicant. If an applicant indicates to the issuing agent that he does not have a Social Security number, the issuing agent shall ask the applicant to complete an affidavit on the form prescribed by the Commission certifying under penalty of law that the applicant does not have a Social Security number and the reason therefor. Upon completion and execution of the form by the applicant, the issuing agent may issue the license to the applicant. Issuing agents shall deny the issuance of a license to an applicant who fails to provide his Social Security number or who fails to sign an affidavit as required by this paragraph. Issuing agents shall retain the affidavits and submit them to the Commission at least once a month or in another manner prescribed by the Commission.

(2) Issuing agents shall verify the eligibility of the applicant for the class of license indicated on the license in accordance with § 51.32 (relating to resident and nonresident licenses). If an applicant for a resident license indicates that he is unable to establish that he is a resident of this Commonwealth by any of the means identified in § 51.32 other than by signing an affidavit of Pennsylvania residency, the issuing agent shall ask the applicant to complete the form prescribed by the Commission certifying under penalty of law that the applicant is a bona fide resident of this Commonwealth. Issuing agents shall deny the issuance of a resident license to an applicant who fails to establish his residency by signing

the form or as otherwise provided in § 51.32. Issuing agents shall retain the affidavits of Pennsylvania residency and submit them to the Commission at least once a month or in another manner prescribed by the Commission.

(3) Issuing agents shall transfer the information provided by the applicant to the PALS and ensure that the PALS is otherwise operational and prints the license certificate legibly. Issuing agents may not provide a customer with more than one copy of a license certificate issued under PALS.

(4) Issuing agents shall provide a *Summary of Fishing Regulations and Laws* with each license issued. Issuing agents also shall provide a copy of the summary book to any holder of a Senior Resident Lifetime Fishing License who requests one. Issuing agents are encouraged to provide a copy of the summary book, if adequate numbers are available, to other individuals who request one.

(5) Issuing agents shall make available licenses and permits for sale to the public in strict accordance with all policies, instructions, rules and regulations of the Commission.

(6) Issuing agents and their employees may not provide false or misleading information on a license. The date reported on a license sold shall be the date of the actual sale.

(7) Issuing agents shall keep customer information confidential and not use, release or permit the use of this information for any purpose not specifically authorized by the Commission or applicable law.

(8) Issuing agents shall return all original voided licenses to the Commission within 15 days of their issuance. Issuing agents shall pay the license fees for voided licenses that are not returned to the Commission within 15 days of issuance.

(9) Issuing agents shall return all documents designated by the Commission within the time frame specified by the Commission.

(10) Issuing agents shall maintain, as instructed by the Commission, displays, notices or other informational materials relating to licenses and permits provided by the Commission, distribute to customers and fishing guides other compliance or educational materials provided by the Commission and promote and market new products or privileges as required by the Commission.

(11) Issuing agents shall sell licenses and permits only at the business location specified in their application or approved by the Commission and at a place on the premises accessible to the public.

(12) Issuing agents may not offer or provide licenses or permits free of charge or for any fee not authorized by section 2715 of the code (relating to license, permit and issuing agent fees).

(13) Issuing agents shall redeem a license or permit voucher regardless of where the voucher was purchased.

(b) *PALS equipment.*

(1) Issuing agents shall ensure proper use of the PALS equipment and follow the PALS operating manual and subsequent amendments and revisions thereto.

(2) An issuing agent may not borrow, lend or otherwise transfer PALS equipment or supplies to another agent without the prior written consent of the Commission.

(3) Issuing agents shall safeguard PALS equipment and supplies from unauthorized, wasteful, inappropriate or fraudulent use. Issuing agents shall place the equipment and supplies in a secure location. Issuing agents shall use license paper stock only for purposes of printing licenses, permits, reports and receipts. Issuing agents shall promptly notify the Commission or its designee of equipment malfunction. PALS equipment and supplies are not transferable to other locations without the prior written consent of the Commission. Issuing agents shall return the defective equipment immediately to the repair center identified by the Commission.

(4) Issuing agents shall notify the Commission by telephone within 48 hours and submit a written report within 10 days after any fire, theft or natural disaster affecting PALS equipment and supplies or records.

(5) Issuing agents shall be responsible for the PALS equipment and the supplies relating to the issuance of licenses and permits, except for events beyond their control, and they shall assume financial responsibility for any damage to the PALS equipment resulting from negligence, malicious activity, abandonment, failure to return upon request of the Commission or improper electrical service to the equipment.

(6) Issuing agents shall carry appropriate insurance covering PALS equipment and supplies in an amount determined by the Commission. Issuing agents shall provide proof of insurance coverage upon the request of the Commission.

(c) *Access and auditing.*

(1) Issuing agents, their employees and subcontractors shall allow the Commission or other authorized representatives access to periodically inspect, review or audit PALS associated records, reports, canceled checks and similar material pertaining to PALS. Issuing agents shall maintain these records for 5 years.

(2) Issuing agents shall allow the Commission access to all materials and equipment related to the PALS operations. Issuing agents shall allow access to the Commission to make inspections during reasonable business hours, with or without notice to the issuing agent, to determine whether the issuing agent is in compliance with this section.

(d) *Financial provisions.*

(1) Issuing agents shall deposit the money received from the sale of licenses and permits in a designated bank account less the amount retained as an issuing agent fee under section 2715 of the code.

(2) Issuing agents shall have sufficient funds available in the designated bank account at the time of the electronic funds transfers. Upon notification of insufficient funds for payment to the Commission, the Commission may immediately and without notice suspend an issuing agent's authority to issue licenses and permits, may assess an administrative fee in accordance with section 502 of the code (relating to collection fee for uncollectible checks) and may require the issuing agent to increase the amount of the bond or other security or to provide adequate bank account overdraft protection.

(3) Issuing agents shall provide written notification on the form prescribed by the Commission at least 15 days prior to changing banks, account numbers, ownership status, business status or other information used by the Commission or its designee for the purpose of collecting moneys owed by the issuing agent.

(e) *Suspension or recall of agency.*

(1) The Commission may suspend the issuing agency of any agent that no longer meets the Commission's criteria for acceptance for participation in PALS until the agent becomes compliant.

(2) The Commission may recall the issuing agency of any agent that violates the requirements of this section.

[Pa.B. Doc. No. 06-2407. Filed for public inspection December 8, 2006, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CH. 65]
Fishing

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2007.

B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

Sections 65.17 and 65.18 (relating to Catch and Release Lakes Program; and Brood Stock Lakes Program) are added under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendments to § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

The final-form rulemaking is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes.

E. *Summary of Changes*

(1) *Sections 65.17 and 65.24.* Over the years, the Commission has regulated a number of ponds and lakes with no-kill regulations for all species under § 65.24. These lakes and ponds include Pine Township Park Pond, Allegheny County; Raccoon Creek State Park Upper Pond, Beaver County; Bear Gap Reservoir, McWilliams Reservoir and Klines Reservoir, Columbia and Northumberland Counties; and Lower Burrell Pond Park, Westmoreland County. In an effort to simplify and consolidate the Commission's regulations, the Commission proposed the establishment of a new special regulations program called the Catch and Release Lakes Program into which these six lakes and ponds and other impoundments may be designated. Waters in this program will be regulated as catch and release for all species on a year-round basis. On final-form rulemaking, the Commission adopted the new section to read as set forth in Annex A.

The Commission also designated the six waters previously named, as well as Owl Creek Reservoir, Schuylkill County, as waters to regulated and managed under the new program. Therefore, the miscellaneous regulations for the six lakes in § 65.24 are longer required. On final-form rulemaking, the Commission eliminated the miscellaneous special regulations for these six lakes as set forth in the proposed rulemaking.

(2) *Section 65.18.* Effective January 1, 2007, amendments to the Commission's regulations pertaining to muskellunge and muskellunge hybrids, northern pike and pickerel will go into effect. Among other things, the amendments provide for a year-round open season for these species on Commonwealth inland waters. Although the new year-round open season will provide additional angling opportunities, the Commission also must take into account the United States Federal Drug Administration mandated withdrawal period of 21 days that is associated with use of fish anesthetics during esocid culture operations. It is important that harvest and consumption of muskellunge and muskellunge hybrids, northern pike and pickerel in brood stock lakes are restricted during the withdrawal period. Therefore, the Commission proposed to restrict harvest of these species from April 1 through May 31 by creating a new program called the Brood Stock Lakes Program into which the brood stock lakes may be designated. On final-form rulemaking, the Commission adopted the new section to read as set forth in Annex A. The Commission also designated the following lakes into the new program: Canadhota Lake, Edinboro Lake, Sugar Lake, Conneaut Lake, Union City Reservoir, Woodcock Lake, Tamarack Lake, Lake Wallenpaupack, Lower Woods Pond, Belmont Lake, Prompton Dam, Duck Harbor Pond, Miller Pond and Howard Eaton Reservoir.

As part of the proposed rulemaking, the Commission also proposed an amendment to § 65.24 making it unlawful to take, kill or possess grass carp caught from Harris Pond, Luzerne County. The Commission has not yet considered this proposed change on final-form rulemaking.

F. *Paperwork*

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. However, the Commission will incur relatively nominal costs to print and post new signs for waters included in the Catch and Release Lakes Program and the Brood Stock Lakes Program. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. *Public Involvement*

Notice of proposed rulemaking was published at 36 Pa.B. 4727 (August 26, 2006). The Commission did not receive public comments regarding the proposed rulemaking during the formal comment period. Prior to the official comment period, the Commission received one public comment supporting the Catch and Release Lakes Program and the Commission's designation of the seven named waters into it. A copy of the public comment was provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments 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 the comment that was received was considered.

(3) The adoption of the amendments 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 65, are amended by adding §§ 65.17 and 65.18 to read as set forth at 36 Pa.B. 4727 (August 26, 2006); and amending § 65.24 to read as set forth in Annex A.

(*Editor's Note*: The Commission has withdrawn the proposal to amended the miscellaneous special regulation that applies to Harris Pond, Luzerne County, which was published in the proposed rulemaking at 36 Pa.B. 4727.)

(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 on January 1, 2007.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-187 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

County	*Name of Water*	*Special Regulations*
Beaver	Hopewell Township Park Lake	Bass—15-inch minimum size limit and a 2 bass daily creel limit. Panfish (combined species): 10 fish daily creel limit. Use of live fish for bait is prohibited.
Blair, Huntingdon, Juniata, Mifflin and Perry	Juniata River and its tributaries	Rock bass—Daily creel limit is 10; open year-round; no minimum size limit.
Chester	Elk Creek (Big Elk Creek)	The maximum size limit for alewife and blueback herring is 8 inches. It is unlawful to take, catch, kill or possess, while in the act of fishing, blueback herring or alewife 8 inches or more in length.
Clarion	Beaver Creek Ponds	Closed to fishing from 12:01 a.m. January 1 to 12:01 a.m. the first Saturday after June 11 of each year. Bass—15-inch minimum size limit and a 2 bass daily creel limit for the total project area. Panfish (combined species) 10 fish daily creel limit for the total project area. Other species—inland regulations apply.
Columbia and Northumberland	South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42	This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught must be immediately returned unharmed.
Crawford and Erie	Conneaut Creek E. Branch Conneaut Creek M. Branch Conneaut Creek W. Branch Conneaut Creek Mud Run Stone Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.

County	*Name of Water*	*Special Regulations*
Crawford	Crazy Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
Crawford	Pymatuning Reservoir	Only carp and suckers may be taken by means of spearing or archery in compliance otherwise with § 63.8 (relating to long bow, spears and gigs). Minnow seines and dip nets are restricted to no more than 4 feet in size, and the mesh of the nets shall measure no less than 1/8 nor more than 1/2-inch on a side. Float line fishing is prohibited.
Crawford	Sugar Lake	Muskellunge—36-inch minimum size limit and a 1 muskellunge daily creel limit. Other species—inland regulations apply.
Elk	West Branch, Clarion River	The following additional restrictions apply to the "Delayed-Harvest, Fly-Fishing Only" area located on a 1/2-mile stream section from the intersection of S. R. 219 and S. R. 4003, upstream to the Texas Gulf Sulphur Property: Wading prohibited. Fishing permitted from east shore only.
Erie	E. Branch Conneaut Creek Marsh Run Temple Run Turkey Creek	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River).	Trout (all species)−no closed season. Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Size limits: Inland rules apply. Smelt may be taken from shore or by wading by means of dip nets not to exceed 20 inches in diameter or 20 inches square. The daily limit per person is the greater of 1 gallon of smelt by volume or 200 smelt by number.

County	*Name of Water*	*Special Regulations*
Lackawanna	Lake Scranton	It is unlawful for a person to fish from the fishing pier designated for use by persons with disabilities unless the person is: totally blind; or so severely disabled that the person is unable to cast or retrieve a line or bait hooks or remove fish without assistance; or deprived of the use of both legs; or participating in a special fishing event for persons with disabilities under conditions approved by the owner of the lake. The person may fish with only one legal device and shall be within 10 feet of the device being used. A person authorized to fish from the fishing pier under this section may be attended by another individual who may assist the person with the disability in using the fishing device.
Luzerne	Harveys Lake	During the period from the first Saturday after April 11 through midnight March 31, the daily creel limit for trout (combined species) is 3, only one of which may exceed 18 inches in length. Fishing is prohibited from April 1 through 8 a.m. of the first Saturday after April 11. Warmwater/coolwater species, except as provided in this section-Inland regulations apply.
Mercer	Shenango River from the dam downstream to SR 3025, a distance of 1.5 miles.	Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—First Saturday after April 11 until Labor Day: 5 trout per day; day after Labor Day to midnight, March 31 of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species.
Monroe and Pike	Delaware Water Gap National Recreation Area	The use of eel chutes, eelpots and fyke nets is prohibited. The taking of the following fishbait is prohibited: crayfish or crabs, mussels, clams and the nymphs, larva and pupae of all insects spending any part of their life cycle in the water. The taking, catching, killing and possession of any species of amphibians or reptiles within the boundaries of the Delaware Water Gap National Recreation Area is prohibited.
Somerset, Fayette, Westmoreland and Allegheny	Youghiogheny River from confluence with Casselman River downstream to the confluence with Ramcat Run Youghiogheny River from the pipeline crossing at the confluence with Lick Run downstream to the mouth of the river.	Trout (all species)—no closed season. Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species.
	Youghiogheny River from Reservoir downstream to confluence with Casselman River.	Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—First Saturday after April 11 until Labor Day—5 trout per day; day after Labor day to midnight, March 31 of following year: 3 trout per day. Inland regulations apply to warmwater/coolwater species.

County	*Name of Water*	*Special Regulations*
Warren	Allegheny River—8.75 miles downstream from the outflow of the Allegheny Reservoir to the confluence with Conewago Creek	Trout—minimum size limit—14 inches; daily creel limit—2 trout per day (combined species) from 8 a.m. on the first Saturday after April 11 through midnight Labor Day, except during the period from the day after Labor Day to the first Saturday after April 11 of the following year, when no trout may be killed or had in possession. Other inland seasons, sizes and creel limits apply.
Washington	Little Chartiers Creek from Canonsburg Lake Dam approximately 1/2 mile downstream to mouth of Chartiers Creek	Fishing is prohibited from 12:01 a.m. March 1 to 8 a.m. the first Saturday after April 11.
Wayne	West Branch Delaware River	Trout: From the Pennsylvania/New York border downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October 16 until midnight of the Friday before the first Saturday after April 11. During the no-harvest artificial lures only season: 1. Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood, or flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. 2. The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited. 3. The daily creel limit for trout is 0.
Westmoreland	Indian Lake	The following size and creel limits apply: Bass—15 inch minimum size limit; 2 bass per day creel limit (combined species). Panfish: 10 fish per day creel limit (combined species). Other species—Inland regulations apply.
Wyoming	Lake Winola	Bass—It is unlawful to take, catch, kill or possess bass that are 12 to 18 inches in length. The daily creel limit for bass less than 12 inches in length and greater than 18 inches in length is 6, only one of which may exceed 18 inches in length. Closed to all fishing from 12:01 a.m. March 1 to 8 a.m. the first Saturday after April 11.

[Pa.B. Doc. No. 06-2408. Filed for public inspection December 8, 2006, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Protected Specimen

The Game Commission (Commission) published a final-form rulemaking at 36 Pa.B. 2979 (June 17, 2006) that appears to be the Commission's rulemaking regarding taking lawful possession of certain furbearers accidentally killed on the roadway. The language published at 36 Pa.B. 2979 happened to be the prior, proposed version of the same rulemaking. This language was not representative of the rulemaking finally adopted by the Commission at its January 24, 2006, meeting since it did not include a

number of amendments made by the Commission. In an effort to correct this inadvertent error, the Commission has resubmitted the final rulemaking materials for republication. Under these circumstances, republication in this manner, a final-omitted rulemaking, is authorized by section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL).

To effectively manage the wildlife resources of this Commonwealth, the Commission, at its January 24, 2006, meeting, adopted amendments to § 147.142 (relating to possession of wildlife accidentally killed by a motor vehicle).

The final-omitted rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-omitted rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

A notice of proposed rulemaking was published at 36 Pa.B. 27 (January 7, 2006).

1. *Purpose and Authority*

The skins from the various furbearers found in the wilds of this Commonwealth are a valuable Pennsylvania resource. Each year many of these furbearers are accidentally struck and killed on highways in this Commonwealth by automobiles, which typically results in the unfortunate waste of many of the skins from these animals. Former regulations prohibited anyone, including licensed furtakers, from utilizing road-killed furbearers without first purchasing them from the Commission, because these animals were not lawfully taken or harvested with a firearm or trap. Unfortunately, it is not always economical for someone to purchase a road-killed furbearer for utilization. In an effort to reduce the waste of this Commonwealth's valuable resources and provide additional opportunity to licensed furtakers, the Commission amends § 147.142 to permit persons possessing a valid furtaking license to take possession and make use of certain furbearers (excepting river otters, bobcats and fishers) accidentally killed on highways in this Commonwealth.

Section 103(a) of the code (relating to ownership, jurisdiction and control of game and wildlife) states that "The ownership, jurisdiction over and control of game or wildlife is vested in the commission as an independent agency of the Commonwealth in its sovereign capacity to be controlled regulated and disposed of in accordance with this chapter." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 147.142 was adopted under this authority.

2. *Regulatory Requirements*

The final-omitted rulemaking amends § 147.142 to permit the lawful possession of certain furbearers (excepting river otters, bobcats and fishers) accidentally killed on the highway by persons possessing a valid furtaking license.

3. *Persons Affected*

Persons wishing to take possession of certain furbearers accidentally killed on the highway will be affected by the final-omitted rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding this final-omitted rulemaking.

5. *Cost and Paperwork Requirements*

This final rulemaking may result in some additional costs to the Commission by creating increased demand on regional dispatcher resources relating to receiving calls from persons taking possession of furbearers accidentally killed on the highway during the closed season of that furbearer. However, to the extent there are any additional expenses, the Commission has determined they would not be substantial and would be absorbed by the current budget.

6. *Effective Date*

The final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-omitted rulemaking, contact Richard A. Palmer, Acting Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.142 to read as set forth in Annex A.

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

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-243 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter H. PROTECTED SPECIMEN

§ 147.142. Possession of wildlife accidentally killed by a motor vehicle.

(a) A resident of this Commonwealth may immediately take possession of a deer accidentally killed on the

highway and transport it to a place of safekeeping within this Commonwealth. The person taking possession shall contact a regional office or a local Commission officer, for a permit number within 24 hours after having taken possession of the deer. The permit number shall be considered a valid permit for the purposes of the act and this part and shall be valid for a period not to exceed 120 days from the date of issuance. The whole or any part of the deer may not be given to any person nor may any edible part be removed from the recipient's place of residence. The recipient may not sell or transfer the hide to another party except the hide may be given to the deer processor. Unused parts of the deer must be disposed of lawfully.

(b) Holders of a valid furtakers license may take possession of a furbearer, except river otters, bobcats and fishers, accidentally killed on the highway. Persons taking possession of any furbearer under this section during the closed season for taking that furbearer shall within 24 hours contact any Commission regional office to make notification of said possession.

(c) It is unlawful:

(1) To possess a deer accidentally killed on the highway for more than 24 hours without applying for a permit number.

(2) To give the whole or an edible part of a deer to a person.

(3) To fail to comply with one or more conditions of the permit.

(4) For a nonresident to possess a deer accidentally killed on the highway.

(5) To possess a furbearer accidentally killed on the highway during the closed season for more than 24 hours without notifying the Commission.

(6) To possess a river otter, bobcat or fisher accidentally killed on the highway, unless otherwise permitted by the Commission.

(d) This section is not applicable under circumstances when a person is charged with violating another statute or regulation involving deer or furbearers. This section may not be used nor will it be accepted as a defense in a legal proceeding involving these cases.

(e) This section may not be construed in any manner to limit lawful possession of furbearers under § 147.141 (relating to sale of wildlife and wildlife parts).

[Pa.B. Doc. No. 06-2409. Filed for public inspection December 8, 2006, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD [58 PA. CODE CHS. 401, 403 AND 492]

Preliminary Provisions; Hearings and Appeals

Under the Pennsylvania Gaming Control Board's (Board) Resolution Nos. 2005-3 REG and 2006-4 REG, the Board has the authority to amend the temporary regulations adopted on June 16, 2005 and March 16, 2006 as it deems necessary in accordance with the purpose of 4 Pa.C.S. Part II (relating to gaming) and to further the intent of Act 71. To respond to statutory changes in the act of November 1, 2006 (P. L. 1243, No. 135) (Act 135), the Board has decided to make editorial changes to the temporary regulations, dated June 16, 2005, and March 16, 2006, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 16, 2005) and 36 Pa.B. 1578 (April 1, 2006).

Therefore, the Board amends §§ 401.4 and 492.2 (relating to definitions) and adds § 403.7 (relating to licensed entity representative meetings). The amendments are effective as of November 21, 2006.

The temporary regulations of the Board in Chapters 401 and 492 are amended by amending §§ 401.4 and 492.2 and adding § 403.7 to read as set forth in Annex A.

Order

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

(a) The Board, acting under the authority of the Act 71, adopts the amendments to the temporary regulations adopted by resolution at the November 21, 2006, public meeting. The amendments to the temporary regulations pertain to definitions and hearings and appeals.

(b) The temporary regulations of the Board, 58 Pa. Code, Chapters 401, 403 and 492, are amended by amending §§ 401.1 and 492.2 and by adding § 403.7 to read as set forth in Annex A, with ellipses referring to the existing text of the temporary regulations.

(c) The amendments are effective November 21, 2006.

(d) The amendments to the temporary regulations shall be posted in their entirety on the Board's website and published in the *Pennsylvania Bulletin*.

(e) The Chairperson of the Board shall certify this order and deposit the amendments to the temporary regulations with the Legislative Reference Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-51. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.4. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Ex parte communication—

(i) Any off-the-record communications regarding a pending matter before the Board or which may reasonably be expected to come before the Board in a contested on-the-record proceeding.

(ii) The term does not include off-the-record communications by and between members, staff and employees of the Board, Department of Revenue, Pennsylvania State Police, Attorney General or other law enforcement official necessary for their official duties under this part.

* * * * *

Pending matter or contested on-the-record proceeding—

(i) A matter including the discretionary issuance, approval, renewal, conditioning, revocation, suspension or

denial of any license or permit or any petitions or motions that would require Board consideration.

(ii) The term does not include a policy or administrative matter.

* * * * *

Staff—An employee or an independent expert, including, but not limited to, attorneys, accountants, investment bankers, architects, engineers, scientific and technical consultants and licensed financial brokers retained by the Board.

* * * * *

CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION

§ 403.7. Licensed entity representative meetings.

(a) If a Board member conducts a meeting with a licensed entity representative under section 1201.1(c)(7) of the act (relating to code of conduct), the Board member will record the following in the log:

(1) The names of individuals with whom the Board member met.

(2) The date and time of the meeting.

(b) The Board member will include a memorandum of the content of the discussion in the log.

(c) The log will be available for public inspection.

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 492. HEARINGS AND APPEALS

§ 492.2. Definitions.

The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Documentary hearing—A proceeding limited to a review of documentary evidence submitted by the parties, including documents, depositions, affidavits, interrogatories and transcripts.

Exceptions—A formal objection to a report or recommendation of a presiding officer.

* * * * *

[Pa.B. Doc. No. 06-2410. Filed for public inspection December 8, 2006, 9:00 a.m.]

Title 64—SECURITIES

SECURITIES COMMISSION

[64 PA. CODE CHS. 203, 205, 207, 209, 210, 303, 504, 602, 603, 604, 609 AND 1001]

Rescission of Forms and Other Technical Amendments

The Securities Commission (Commission), under sections 203(d), (o) and (p), 205, 206, 301, 303, 504, 603(a) and 609 of the Pennsylvania Securities Act of 1972 (act) (70 P. S. §§ 1-203(d), (o) and (p), 1-205, 1-206, 1-301, 1-303, 1-504, 1-603(a) and 1-609) and section 4 of the Takeover Disclosure Law (70 P. S. § 74), amends the regulations concerning the subject matter of the act and the Takeover Disclosure Law.

Publication of Proposed Rulemaking

Notice of proposed rulemaking was published at 36 Pa.B. 3542 (July 8, 2006).

Public Comments

No public comments were received with respect to the proposed rulemaking.

Comments of the Independent Regulatory Review Commission

By letter dated September 6, 2006, the Independent Regulatory Review Commission (IRRC) advised that it had no objections, comments or suggestions with respect to the proposed rulemaking.

Summary and Purpose of Final-Form Rulemaking

The Commission amends § 203.041 (relating to limited offerings) by rescinding Form E and adding language to refer to Form E.

The Commission amends § 203.151 (relating to proxy materials) by rescinding Form 203-O and adding language to refer to Form 203-O.

The Commission amends § 203.161 (relating to debt securities of nonprofit organizations) by rescinding Form 203-P and adding language to refer to Form 203-P.

The Commission amends § 205.021 (relating to registration by coordination) by rescinding Form R and adding language to refer to Form R.

The Commission amends § 207.101 (relating to effective period of registration statement) by rescinding Form 207-J and adding language to refer to Form 207-J.

The Commission amends § 209.010 (relating to required records; report on sales of securities and use of proceeds) by rescinding Form 209 and adding language to refer to Form 209.

The Commission amends § 210.010 (relating to retroactive registration of certain investment company securities) by rescinding Form 210 and adding language to refer to Form 210.

The Commission amends § 303.051 (relating to surety bonds) by rescinding Form U-SB.

The Commission amends § 504.060 (relating to rescission offers) by rescinding Form RO and adding language to refer to Form RO.

The Commission amends § 602.022 (relating to denial for abandonment) by adding "investment adviser representative" to the list the Commission may order denied for abandonment.

The Commission amends § 603.011 (relating to filing requirements) by adding language to state that forms are available on the Commission's website at www.psc.state.pa.us.

The Commission rescinds § 604.013, as it was an interim guideline for the registration of associated persons.

The Commission rescinds § 604.014, as it was an interim guideline for the qualification and examination of associated persons.

The Commission rescinds § 604.015, as it was an interim guideline for the effectiveness of registration of associated persons.

The Commission amends § 604.016 (relating to guidelines for waivers of Uniform Securities Agent State Law Examination (Series 63), Uniform Investment Adviser

Law Examination (Series 65) and General Securities Representative Non-Member Examination (Series 2)—statement of policy) by changing "associated persons" to "investment adviser representatives" and updating delegated authority.

The Commission amends § 604.020 (relating to broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives using the Internet for general dissemination of information on products and services—statement of policy) by changing "associated persons" to "investment adviser representatives."

The Commission amends § 609.010 (relating to use of prospective financial statements) by updating the citation referencing accredited investors to conform to the Federal act.

The Commission amends § 1001.010 (relating to take-over offeror report regarding participating broker-dealers) by rescinding Form TDL-1 and adding language to refer to Form TDL-1.

Persons Affected by this Final-Form Rulemaking

No groups will be adversely affected by this final-form rulemaking. These regulatory actions will streamline the regulatory process and clarify the regulations.

Fiscal Impact

The final-form rulemaking is cost neutral.

Paperwork

No additional paperwork will be required.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 20, 2006, the Commission submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 3542, to IRRC and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 1, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective November 1, 2006.

Availability in Alternative Formats

This final-form rulemaking may be made available in alternative formats upon request. To make arrangements for alternative formats, contact Simon J. Dengel, ADA Coordinator, (717) 787-6828. TDD users should use the AT&T Relay Center (800) 854-5984.

Contact Person

The contact person for an explanation of the final-form rulemaking is Michael J. Byrne, Chief Counsel, Securities Commission, Eastgate Office Building, 1010 North Seventh Street, Harrisburg, PA 17102-1410, (717) 783-5130.

Order

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

(a) The regulations of the Commission, 64 Pa. Code Chapters 203, 205, 207, 209, 210, 303, 504, 602, 603, 604, 609 and 1001, are amended by amending §§ 203.041, 203.151, 203.161, 205.021, 207.101, 209.010, 210.010, 303.051, 504.060, 602.022, 603.011, 604.016, 604.020, 609.010 and 1001.010 and deleting §§ 604.013—604.015 to read as set forth at 36 Pa.B. 3542.

(b) The Secretary of the Commission shall submit this order and 36 Pa.B. 3542 to the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Commission shall certify this order and 36 Pa.B. 3542 and deposit them with the Legislative Reference Bureau as required by law.

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

JEANNE S. PARSONS,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7082 (November 18, 2006).)

Fiscal Note: Fiscal Note 50-120 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 06-2411. Filed for public inspection December 8, 2006, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 94]

Alcohol Highway Safety Schools and Driving Under the Influence Program Coordinators

The Department of Transportation (Department), Bureau of Highway Safety and Traffic Engineering, under 75 Pa.C.S. §§ 1549 and 6103 (relating to establishment of schools; and promulgation of rules and regulations), adds Chapter 94 (relating to alcohol highway safety schools and driving under the influence program coordinators) to read as set forth in Annex A.

Purpose of this Chapter

The purpose of Chapter 94 is to implement 75 Pa.C.S. § 1549(b), which requires each county, multicounty judicial district or group of counties combined under a single driving under the influence (DUI) program to establish and maintain a course of instruction regarding the problems associated with alcohol or controlled substance use, or both, and driving.

Purpose of this Final-Form Rulemaking

The purpose of this final-form rulemaking is to provide rules and procedures for the establishment and ongoing operation of Alcohol Highway Safety Schools (AHSS) in each county, multicounty judicial district or group of counties combined under a single DUI program within this Commonwealth. Chapter 94 establishes uniform curriculum standards for AHSS as well as rules governing the selection, training, certification and recertification of AHSS instructors. Additionally, this final-form rulemaking establishes procedures governing the appointment of DUI program coordinators for each county, multicounty judicial district or group of counties combined under a single DUI program within this Commonwealth.

This final-form rulemaking has been developed with the cooperation of the Pennsylvania DUI Association. DUI program coordinators, court reporting network evaluators, AHSS instructors, adult and juvenile probation officers, single county authorities, drug and alcohol program administrators, district magistrates, common pleas court judges and police officers have aided in the development of this final-form rulemaking. The knowledge gleaned from the experiences of such a diverse group has also helped to create a standardized curriculum for the AHSS, thereby further assuring that the goals of the AHSS can better be realized with some uniformity. This final-form rulemaking also serves to codify informally adopted existing rules and procedures, which have been implemented since the beginning of the Commonwealth's Alcohol Highway Safety Countermeasure System (AHSCS) in 1978.

Each AHSS has been established to educate participants concerning the effects of alcohol or controlled substance use on an individual's ability to safely operate a motor vehicle on highways in this Commonwealth. Moreover, each AHSS endeavors to provide participants with insights into the overall effects of alcohol-related behavior, as those effects apply to the participant's home and work environment. The goal of the AHSS is to encourage positive behavioral outcomes, which will contribute to a decreased likelihood of the participants operating a motor vehicle while under the influence of alcohol or a controlled substance. This final-form rulemaking also outlines provisions for administering both oral and written notification of possible fine and imprisonment to every AHSS participant regarding the consequences of driving a motor vehicle while the operating privilege is suspended or revoked.

Summary of Comments and Changes this Final-Form Rulemaking

Public comment was received from the Erie County D.W.I Program, Inc. (Erie) with respect to three sections of the proposed rulemaking.

First, with regard to § 94.7(b) (relating to conduct of courses), Erie suggested that a provision be added requiring payment in full and providing that failure to pay the fee in full would result in the refusal to expunge the record of the DUI conviction. The Department recognizes the importance of fee collection to the continuing operation of an AHSS, but believes the suggested addition is duplicative of clear provisions already in the law. As the Erie comment noted, 75 Pa.C.S. § 3807(b)(1)(viii) (relating to accelerated rehabilitative disposition) requires the student to pay all costs and 75 Pa.C.S. § 3807(e)(1) provides that a defendant who fails to comply with any of the conditions of participation will not have his criminal record expunged.

Second, with regard to § 94.6(c) (relating to AHSS approval; revocation and refusal of approval), Erie suggested that the regulation delineate what records must be maintained and for what period of time. The final-form rulemaking has been amended to provide that attendance rolls, student test records and instructor qualification records be retained for 5 years. The commentator also recommended an inspection checklist for the conduct of Department inspections of AHSS records. The Department has determined that a checklist would be too limiting of the Department evaluation of the compliance and effectiveness of the AHSS.

Third, the Erie comment asked whether § 94.12 (relating to DUI program coordinators) represented a change in the current recertification credits under the DUI program. The commentator noted that currently, a DUI coordinator is required to earn 18 credits to maintain certification as both a coordinator and an instructor. Section 94.12 requires that 6 of the credits required of the coordinator shall be earned by attending an annual DUI Program Coordinators' Conference designed and hosted by the Department or its designee specifically for DUI program coordinators. These 6 credits would be specifically directed to the coordinator function and therefore not related to credits required for certification as an instructor.

The Independent Regulatory Review Commission (IRRC) also submitted formal comment on the proposed rulemaking.

With regard to § 94.5 (relating to curriculum), IRRC recommended that for clarity, a cross reference to § 94.9 (relating to notification of possible fine and imprisonment), which requires that notice of 75 Pa.C.S. § 1543(b) (relating to driving while operating privileges are suspended or revoked) be given in the first component of the AHSS, should be included among the elements of the first curriculum component in § 94.5(a)(1). The cross reference has been added. IRRC also noted that the introductory paragraphs of subsection (a)(3)—(5), regarding curriculum components 3, 4 and 5, respectively, contained language duplicative of the component elements specifically delineated thereafter. The duplicative language in the introductory paragraphs has been deleted.

With regard to § 94.6, IRRC recommended, as did the Erie comments previously discussed, that the Department more specifically delineate what records must be retained by the AHSS and for what period of time. As previously noted, the final-form rulemaking has been amended to provide that attendance rolls, student test records and instructor qualification records be retained for 5 years. The IRRC comments also recommended that the final-form rulemaking include specific references to applicable confidentiality laws or regulations. The intent of § 94.6(c) was not to delineate specific confidentiality provisions of law or regulation to which the Department would agree to be bound in the examination of AHSS and student records. Rather, the intent of § 94.6(c) is to make clear that the authority of the Department to inspect AHSS and student records would be limited by any laws rendering records or parts of records confidential. Section 94.6(c) has been amended to clarify that the Department may inspect any records of the AHSS, including student records, provided that disclosure of those records to the Department is not precluded by order of court or applicable laws, such as those providing for the confidentiality of medical information.

With regard to § 94.6(d), IRRC recommended that the final-form rulemaking specify how the Department would provide appropriate notification of the revocation or refusal to issue a letter of approval to operate an AHSS. The subsection has been amended to specify that revocation or refusal to issue approval is made by written notification to the AHSS.

The IRRC comments regarding § 94.10(c)(6) (relating to AHSS instructor qualification, selection, certification and recertification) object to the reference to "any additional reporting requirements established by the Department" and recommended that additional requirements be delineated. Section 94.10(c)(6) was intended to provide the Department with discretion to establish reporting requirements as the need may arise, but in deference to the IRRC concern, the provision had been deleted in the final-form rulemaking.

Finally, with regard to § 94.11 (relating to suspension or revocation of certification), the IRRC comments recommend that "the final form regulation should provide a time period for providing the notice of the right to an administrative hearing" upon the suspension or revocation of an AHSS instructor certification. The section has been clarified to require that the written notice of suspension or revocation itself also provide notice of the right to an administrative hearing.

Statutory Authority

This final-form rulemaking is adopted under the authority in 75 Pa.C.S. §§ 1549 and 6103.

Persons and Entities Affected

This final-form rulemaking affects persons who are convicted of violating 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) and former 75 Pa.C.S. § 3731 and required to attend an AHSS under 75 Pa.C.S. § 1548(b) (relating to requirements for driving under influence offenders). This final-form rulemaking also affects court of common pleas judges, county adult and juvenile probation officers, district attorneys, DUI program coordinators, AHSS instructors, candidates for certification as AHSS instructors and every county, multicounty judicial district or group of counties combined under a single DUI program within this Commonwealth. Any other private, for-profit or nonprofit business entity that is contracted by a county, multicounty judicial district or group of counties combined under a single DUI program for the purpose of operating an AHSS is also affected by this final-form rulemaking.

Fiscal Impact

This final-form rulemaking will not require the expenditure of additional funds by the Commonwealth since the AHSCS has been operational since 1978. The Federal Department of Transportation, National Highway Traffic Safety Administration administers the State and Community Highway Safety Program that is funded in accordance with 23 U.S.C.A. § 402. The purpose of these funds is to provide Federal financial assistance to state agencies and local political subdivisions' highway safety programs, which are designed to reduce incidences of driving after drinking, alcohol or controlled substance related crashes and the fatalities, injuries and property damage resulting from these crashes. These Federal funds also support Department program managers who monitor and provide technical assistance to the local AHSCS. Further, although the final-form rulemaking requires every county, multicounty judicial district or group of counties combined under a single DUI program to establish and maintain a local AHSCS, each system is designed to be self-supporting. Each AHSCS includes a DUI program coordinator and an AHSS. Every county, multicounty judicial district or group of counties combined under a single DUI program currently has an operational AHSS that is self-supporting. DUI offenders who are court ordered to attend an AHSS are responsible under 75 Pa.C.S. § 1548(e) to pay the cost of attending an AHSS. Each AHSS program's board of directors or county commissioners independently sets the fee for attending the AHSS. Fees are also approved by the president judge of the court of common pleas in the county where the AHSS is located. AHSS fees completely offset any costs incurred in the operation of a local AHSCS, thereby rendering the AHSCS self-supporting.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 17, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4705, to IRRC and the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 1, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 2, 2006, and approved the final-form rulemaking.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

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

Contact Person

The contact person for this final-form rulemaking is Troy Love, Manager, Pennsylvania Alcohol Highway Safety Program, Bureau of Highway Safety and Traffic Engineering, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120-0064, (717) 783-1902.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code, are amended by adding §§ 94.1—94.14 to read as set forth in Annex A.

(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 legality and form as required by law.

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

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

ALLEN D. BIEHLER, P.E.,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7082 (November 18, 2006).)

Fiscal Note: Fiscal Note 18-377 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 94. ALCOHOL HIGHWAY SAFETY SCHOOLS AND DRIVING UNDER THE INFLUENCE PROGRAM COORDINATORS

Sec.

§ 94.1. Purpose.

The purpose of this chapter is to implement 75 Pa.C.S. § 1549(b) (relating to establishment of schools), which requires every county, multicounty judicial district, or group of counties combined under a single DUI program to establish and maintain a course of instruction regarding the problems associated with alcohol or controlled substance use and driving.

§ 94.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

AHSCS—Alcohol Highway Safety Countermeasure System—A system of deterrence, prevention and intervention strategies used in combination with drug and alcohol treatment programs and legal sanctions to combat DUI.

AHSS—Alcohol Highway Safety School—A structured educational program with a standardized curriculum to teach DUI offenders about the problems of alcohol and drug use and driving, attendance at which is mandatory for all convicted DUI first and second offenders and for every person placed on ARD or other preliminary disposition as a result of an arrest for violation of 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance).

ARD—Accelerated Rehabilitative Disposition—A pretrial diversion program which offers a person arrested for DUI the opportunity to earn dismissal of the charges, provided the person agrees to certain conditions.

Alcohol—Ethanol or ethyl alcohol.

CRN—Court Reporting Network—A uniform prescreening evaluation procedure for all DUI offenders to aid and support clinical treatment recommendations offered to the judiciary, prior to sentencing.

Controlled substance—Any substance so defined or classified under:

(i) The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143).

(ii) Section 102(6) of the Controlled Substance Act (21 U.S.C.A. § 802(6)).

(iii) 21 CFR Part 1308.11—1308.15 (relating to schedules of controlled substances).

(iv) Any revisions to subparagraph (ii) or (iii) which are published by the Department of Health as notices in the *Pennsylvania Bulletin.*

DUI–Driving under the influence—Driving, operating or being in actual physical control of the movement of any vehicle while under the influence of alcohol or any controlled substance to a degree which renders the person incapable of safe driving as prohibited and punishable under 75 Pa.C.S. §§ 3802, 3803 and 3804 (relating to driving under influence of alcohol or controlled substance; grading; and penalties).

DUI program coordinator—An individual who serves as the liaison between a county, multicounty judicial district, or group of counties combined under a single DUI program and the Department of Transportation or its designee.

Department—The Department of Transportation of the Commonwealth.

§ 94.3. General requirements and objectives.

(a) *General requirements.* Each county, multicounty judicial district, or group of counties combined under a single DUI program shall establish and maintain an AHSS which provides a course of instruction regarding problems associated with the use of alcohol and controlled substances, and driving. The school program must include the following:

(1) A uniform curriculum as further prescribed by § 94.5 (relating to curriculum), which has an objective to educate students concerning the following:

(i) The relationship of the use of alcohol or controlled substances, or both, to highway safety.

(ii) The effects of the use of alcohol or controlled substances, or both, on social relationships and the family.

(iii) The effects of the use of alcohol or controlled substances, or both, on economic functioning.

(iv) The availability of alcohol and substance abuse programs and counseling.

(2) AHSS instructors who are trained, certified and recertified as prescribed in § 94.10 (relating to AHSS instructor qualification, selection, certification and recertification).

(3) A means of notifying all AHSS students, both orally and in writing, of the provisions of 75 Pa.C.S. § 1543(b) (relating to driving while operating privileges are suspended or revoked).

(4) A DUI program coordinator as specified in § 94.12 (relating to DUI program coordinators).

(5) Classroom space that is conducive to learning, and which is of adequate size to accommodate a maximum of 50 people. The maximum number of students per class may not exceed 25. A building that houses an AHSS classroom must have all of the appropriate local certificate of occupancy permits.

(b) *Objectives.* The AHSS shall provide students with a basic knowledge and understanding of alcohol and controlled substances and their effects on metabolism and judgment, alcoholism and drug addiction, as well as highway safety, to encourage a positive change in the students' attitude concerning driving under the influence of alcohol or a controlled substance.

§ 94.4. Mandatory attendance.

A person convicted of a first or second offense violation of 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance), or placed on ARD or other preliminary disposition as a result of an alleged violation of 75 Pa.C.S. § 3802, shall be required to attend, pay all costs and successfully complete an approved AHSS program whether it be as a part of sentencing, as a condition of parole or probation or as a part of ARD, in accordance with 75 Pa.C.S. § 3807 (relating to accelerated rehabilitative disposition).

§ 94.5. Curriculum.

(a) The AHSS curriculum must consist of a minimum of 12 1/2 hours of instruction and include the following core components:

(1) *Component one.* Component one must introduce the course content, rules, regulations and requirements for successful completion. Administration of the knowledge inventory and an overview of the Commonwealth's health/legal approach to implementation of an AHSCS shall be presented. The instructional objectives must include:

(i) Providing an understanding of the purpose of the AHSS.

(ii) Explaining the rules, regulations and expectations to the participants for successful completion of the program, as well as the consequences of failure to comply with the rules.

(iii) Creating a classroom environment that fosters active participation and appropriate structure.

(iv) Providing an understanding of the Pennsylvania AHSCS.

(v) Explaining the role of AHSS as a part of the AHSCS.

(vi) Examining Pennsylvania laws regarding DUI.

(vii) Establishing the relationship between driving after drinking alcohol or using drugs, and automobile crashes.

(viii) Providing, in accordance with § 94.9 (relating to notification of possible fine and imprisonment), oral and written notice of the provisions of 75 Pa.C.S. § 1543(b) (relating to driving while operating privilege is suspended or revoked)

(2) *Component two.* Component two must address basic drug and alcohol information. How drugs and alcohol affect the human body should be presented in an uncomplicated manner. Information about alcohol and drugs that are more frequently combined with driving shall be emphasized during this component. The instructional objectives must include:

(i) Understanding the physiological process of drug and alcohol absorption, metabolism and elimination.

(ii) Examination of the effects of drugs and alcohol on the central nervous system, judgment, muscular control and vision.

(iii) Explanation of behavioral changes associated with the consumption of alcohol and various drugs.

(iv) Description of tests for determining the presence of alcohol and drugs in the human body.

(3) *Component three.* The instructional objectives for this component must include:

(i) Examination of how alcohol and drug use affects driving skills.

(ii) Recognition that a DUI arrest may be a warning sign of a substance abuse problem.

(iii) Understanding the characteristics of alcohol and drug abuse and addiction.

(4) *Component four.* The instructional objectives for this component must include:

(i) Recognition of the impact of a DUI arrest on family, employment and friends.

(ii) Understanding the disruption that alcohol and drug abuse has on one's lifestyle.

(iii) Recognition of the value of family as a support system.

(iv) Identification of local drug and alcohol counseling and treatment services.

(v) Recognition of the importance of alcohol and drug abstinence for some individuals.

(5) *Component five.* The instructional objectives for this component must include:

(i) Identification of realistic steps to prevent a future DUI.

(ii) Measurement of any knowledge gained or attitudinal changes among participants since the inception of the class.

(iii) Reinforcement of the purpose, availability and locale of treatment and counseling services.

(iv) Provision of an opportunity to evaluate the AHSS and the instructor.

§ 94.6. AHSS approval; revocation and refusal of approval.

(a) *General requirement.* Prior to the operation of an AHSS, the DUI program coordinator or the coordinator's designee shall apply to the Department or its designee, for a letter of approval for each AHSS in the county, multicounty judicial district, or group of counties combined under a single DUI program.

(1) An AHSS which is fully operational on December 9, 2006, shall be permitted 12 months from that date to obtain a letter of approval.

(2) An AHSS must comply with all of the requirements of this chapter to receive a letter of approval. Failure to comply will result in notification to the appropriate court officials, including the president judge and the court administrator, of the failure to comply.

(3) Application for a letter of approval shall be made using forms and procedures prescribed by the Department or its designee.

(b) *Expiration of approval.* The approval of an AHSS will expire 24 months from the date of issuance of the approval letter, unless a request to renew a letter of approval is filed by the DUI program coordinator or the coordinator's designee 6 months prior to the lapse.

(c) *Entry and inspection.* The Department or its designee, will have the right to enter upon the premises and inspect an AHSS at any time for the purpose of determining compliance with this chapter.

(1) The AHSS shall retain attendance rolls, student test records and instructor qualification records for 5 years.

(2) The Department will have access to all records of the AHSS, including other student records provided that disclosure of those records to the Department is not

precluded by order of court or applicable laws such as those providing for the confidentiality of medical information.

(d) *Revocation or refusal.* The Department or its designee may, by written notification to the AHSS, revoke or refuse to issue a letter of approval to operate an AHSS for any of the following:

(1) Failure to comply with any provision of this chapter.

(2) Failure to comply with a directive issued by the Department or its designee following an onsite inspection of an AHSS.

(3) Failure to comply with a directive issued by the Department or its designee as a condition of approval or renewal of a letter of approval.

(e) *Corrective measures.* Each county, multicounty judicial district, or group of counties combined under a single DUI program shall have 6 months to satisfy directives or conditions issued by the Department or its designee to meet approval to operate an AHSS.

(f) *No operation without approval.* An AHSS may not operate without a currently valid letter of approval from the Department, except as specified in this section or as otherwise directed, in writing, by the Department.

§ 94.7. Conduct of courses.

(a) *Attendance.* AHSS students shall complete the AHSS classroom instruction, as described in § 94.5 (relating to curriculum).

(b) *Repeating AHSS courses.* AHSS students shall repeat the entire AHSS curriculum if they do not satisfy the requirements of subsection (a), except that, with approval of the AHSS instructor, a student may be excused for one component, but not the first component. A student excused from attendance at a component will be required to attend that component during the next available AHSS. If the student fails to attend that component at the subsequent AHSS, the student will be required to repeat the entire curriculum.

(c) *Scheduling.* Whenever possible, AHSS classes will be scheduled at times that do not conflict with the work schedules of the majority of the students, with classes scheduled for evenings and weekends, if appropriate.

(d) *Break periods.* Each component of AHSS classroom instruction will have a 15-minute break period or recess, which may not be counted toward the 12 1/2 hour requirement.

§ 94.8. Student records.

The DUI program coordinator or the coordinator's designee shall keep a complete student record on file for every student attending an AHSS.

(1) *Content of student records.* A student record must include:

(i) A summary of fees remitted or payments made in conjunction with the AHSS.

(ii) A record of the student's attendance.

(iii) Court referral documentation or referral recommendations, or both.

(iv) Any correspondence related to the student.

(v) A copy of the 75 Pa.C.S. § 1543(b)(1) (relating to driving while operating privilege is suspended or revoked) notification that is signed and dated by the student.

(2) *Custody of AHSS student records.* The DUI program coordinator or the coordinator's designee shall maintain all AHSS student records.

§ 94.9. Notification of possible fine and imprisonment.

AHSS instructors shall provide oral and written notice of the provisions of 75 Pa.C.S. 1543(b) (relating to driving while operating privilege is suspended or revoked) to all AHSS students during the first component of AHSS, in the following manner:

(1) Two copies of a written notice as provided in paragraph (6) shall be distributed to every student during the first component.

(2) The notice shall be read aloud by the AHSS instructor in the presence of all the AHSS students in attendance.

(3) All AHSS students shall sign and date both copies of the notice.

(4) The AHSS instructor shall collect one copy of the signed and dated notice from each AHSS student.

(5) The AHSS instructor shall file the signed and dated copy of the notice in each AHSS student's record.

(6) The written notice must state the following:

You are hereby notified that, either as a result of your conviction for DUI, or as a condition of acceptance of ARD, Section 1543(b) of the Pennsylvania Consolidated Statutes, Title 75, Vehicles (Vehicle Code) now applies to you.

Section 1543(b) provides that any person who drives a motor vehicle on any highway or trafficway of this Commonwealth at a time when their operating privilege is suspended or revoked either—

(1) as a condition of acceptance of Accelerated Rehabilitative Disposition,

(2) for a violation of Section 3802 or the former section 3731 (relating to driving under the influence of alcohol or controlled substance),

(3) because of a violation of section 1547(b)(1) (relating to suspension for refusal) or

(4) suspended under section 1581 (relating to Driver's License Compact) for an offense substantially similar to a violation of section 3802 or former section 3731—

shall, upon conviction, be guilty of a summary offense, and shall be sentenced to pay a fine of $500 and be imprisoned for a period of not less than 60 days nor more than 90 days.

In addition to the penalty above, any person who drives a motor vehicle on any highway or trafficway of the Commonwealth when their operating privilege is suspended or revoked for any of the reasons noted above, AND whose blood alcohol by weight is equal to or greater than 0.02% at the time of testing OR whose blood has any amount of a Schedule I or nonprescribed Schedule II or III controlled substance or its metabolite at the time of testing—

(1) for the first conviction shall be guilty of a summary offense and shall be sentenced to pay a fine of $1,000 and be imprisoned for a period of not less than 90 days.

(2) for a second conviction shall be guilty of a misdemeanor of the third degree and shall be sen-

tenced to pay a fine of $2,500 and be imprisoned for a period of not less than six months.

(3) for a third or subsequent conviction shall be guilty of a misdemeanor of the first degree and shall be sentenced to pay a fine of $5,000 and be imprisoned for a period of not less than two years.

These provisions shall apply whether the person is currently serving a suspension, whether the effective date of the suspension or revocation has been deferred, or otherwise until the person has had his/her operating privilege restored. They shall also apply to a revocation under the habitual offenders provisions of section 1542 if any of the enumerated offenses was for a violation of section 3802 or former section 3731 or a substantially similar out of state offense under section 1581.

This signature verifies that I have read and understood the above and have been notified verbally of the consequences of violating Section 1543(b) of the Vehicle Code (75 Pa.C.S. § 1543(b)).

_____ _____

(Signature) (Date)

§ 94.10. AHSS instructor qualification, selection, certification and recertification.

(a) *Qualifications.* Candidates for AHSS instructor certification shall meet the following qualifications and requirements. The candidate shall:

(1) Be at least 21 years of age.

(2) Possess a bachelor's degree from an accredited college or university.

(3) Possess a valid driver's license.

(4) Attend and observe the teaching of a complete 12 1/2 hour AHSS course cycle by a certified AHSS instructor.

(5) Be sponsored by the DUI program coordinator or the coordinator's designee of the county, multicounty, judicial district, or group of counties combined under a single DUI program, in which the candidate will be instructing.

(b) *Submission of the names of qualified candidates.* The sponsoring DUI program coordinator or the coordinator's designee shall submit a list of the names of qualified candidates to the Department or its designee utilizing forms and procedures prescribed by the Department or its designee.

(c) *AHSS instructor certification.* Candidates who are accepted into the AHSS instructor certification process shall complete the following requirements before certification. A candidate shall:

(1) Participate in an approved 2-day AHSS Instructor Certification Training Workshop sponsored by the Department.

(2) Teach a full AHSS curriculum, as prescribed in § 94.5 (relating to curriculum), while under the direct supervision of the DUI program coordinator or the coordinator's designee. The DUI program coordinator or the coordinator's designee shall administer pretests and posttests to the AHSS students. The instructor candidate shall document the results of these tests by using standardized reporting forms issued by the Department or its designee.

(3) Document compliance with the uniform AHSS curriculum by the submission of a course outline meeting the minimum core components described in § 94.5 or on standardized forms as deemed appropriate by the Department or its designee.

(4) Send the completed standardized reporting forms to the Commonwealth's Alcohol Highway Safety Program office of the Department, or to its designee.

(5) Participate in the 1-day AHSS Performance Analysis Workshop when all candidates shall demonstrate their knowledge of alcohol highway safety by scoring 85% or better on tests developed by the Department or its designee.

(d) *DUI program coordinator verification.* The sponsoring DUI program coordinator or the coordinator's designee shall verify the AHSS instructor candidate's satisfactory completion of all requirements on reporting forms issued by the Department or its designee prior to the candidate's participation in the 1-day AHSS Performance Analysis Workshop.

(e) *Recertification.*

(1) AHSS instructors shall be recertified every 2 years, in accordance with the following:

(i) Prior to recertification, every AHSS instructor shall have completed 12 credit hours of instruction at Department-approved workshops during the previous 24 months.

(ii) During the second 12 months of an instructor's existing certification period, the DUI program coordinator or the coordinator's designee shall observe the instructor teach one complete 12 1/2 hour AHSS course cycle.

(iii) The DUI program coordinator or the coordinator's designee shall verify that the instructor is adhering to the uniform AHSS curriculum, as prescribed by § 94.5.

(iv) The AHSS instructor shall administer an approved pretest and posttest to the AHSS class during the class cycle which is being observed by the DUI program coordinator or the coordinator's designee. The results of both tests must be submitted to the DUI program coordinator or the coordinator's designee.

(v) The DUI program coordinator or the coordinator's designee shall submit to the Department or its designee, on standardized reporting forms issued by the Department or its designee, verification of the instructor's satisfaction of, or the failure to satisfy, all of the requirements for recertification, together with a recommendation to grant or deny recertification of the AHSS instructor.

(2) The Department or its designee may waive, substitute or give credit toward any of the requirements for AHSS instructor recertification as specified in this section by offering suitable preannounced programs and workshops for AHSS instructors who qualify for recertification.

§ 94.11. Suspension or revocation of certification.

The Department may, upon good cause shown, suspend or revoke the certification of an AHSS instructor and restrict or prohibit an instructor from participating in a DUI program. The written notice of suspension or revocation will include notice and an opportunity for administrative hearing under Chapter 491 (relating to administrative practice and procedure). This provision does not prevent any county, multicounty judicial district, or group of counties combined under a single DUI program from also taking appropriate action in response to claim of instructor disqualification or misconduct.

§ 94.12. DUI program coordinators.

(a) *Requirement.* Each county, multicounty judicial district or group of counties combined under a single DUI program shall designate a person to function as a DUI program coordinator.

(b) *Appointment.* Designation of a DUI program coordinator shall be made by the president judge of the county or multicounty judicial district, or by a consensus of the president judges within a single DUI program area.

(c) *Qualifications.* DUI program coordinators shall either possess a bachelor's degree with a major in business administration, business management, chemical addictions, criminal justice, public administration, psychology, social sciences, social work, sociology, education, or a closely related field, or be able to demonstrate at least 2 years of related management or administrative experience, or be able to demonstrate a suitable combination of education and relevant experience to the Department or its designee.

(d) *Responsibility for administration of AHSS.* The DUI program coordinator shall be responsible for administration of the AHSS, including the following:

(1) The DUI program coordinator shall serve as a liaison between the AHSS and the Department, its designee, or both, for the purposes of planning, implementing and monitoring all DUI related activities which are occurring within the coordinator's county, multicounty judicial district, or group of counties combined under a single DUI program which are related to the operation of an AHSS.

(2) The DUI program coordinator shall insure that all of the DUI services which are required by 75 Pa.C.S. (relating to Vehicle Code) in conjunction with the operation of the AHSS are made available and are provided in their respective DUI program areas, and that those services are in compliance with all applicable State and local regulations.

(3) The DUI program coordinator shall recommend candidates for certification as AHSS instructors.

(4) The DUI program coordinator shall supervise AHSS instructor candidates during the certification process.

(5) The DUI program coordinator shall ensure that all AHSS instructors are currently certified and administering the AHSS curriculum in compliance with this chapter.

(6) The DUI program coordinator shall maintain documentation relating to the certification of all AHSS instructors within the coordinator's jurisdiction.

(7) The DUI program coordinator shall submit any AHSS information and data requested by the Department or its designee using forms and procedures specified by the Department.

(8) The DUI program coordinator, within 1 year of appointment to the position as described in subsection (b), shall participate in an approved 2-day AHSS Instructor Certification Training Workshop sponsored by the Department.

(9) The DUI program coordinator shall earn 12 credits every 2 years through the Department's Alcohol Highway Safety Program sponsored workshops. Six of these credits shall be earned by attending an annual DUI Program Coordinators' Conference designed and hosted by the Department or its designee specifically for the DUI program coordinators. One hour of class time shall equal one credit. An all-day workshop will provide six credits and a 1/2 day workshop will provide three credits.

(e) *DUI program coordinator misconduct.* The Department may, upon good cause shown, recommend to the president judge of the court overseeing a DUI program that any DUI program coordinator should be removed, restricted, or otherwise prohibited from participating in any activity under this chapter. This provision does not prevent any county, multicounty judicial district, or group of counties combined under a single DUI program from taking appropriate action in response to claim of DUI program coordinator misconduct.

§ 94.13. Confidentiality.

The AHSS shall keep all student records confidential and may not disclose them to any person other than the student and the Department. This section does not apply to any notification to the sentencing court, county probation department or State Parole Board. An individual AHSS student may waive these rights by a written explicit and knowing waiver signed by the student in the presence of the DUI program coordinator or the coordinator's designee.

§ 94.14. Cost.

Cost of attendance at an AHSS shall be in addition to any other penalty required or allowed by law and shall be the responsibility of the attendee. The fee charged for attendance at an AHSS shall be determined independently by each county, multicounty judicial district, or group of counties combined under a single DUI program. A Statewide listing of the fee charged for AHSS in jurisdictions throughout this Commonwealth is available from the Department upon request at no charge. Prospective students of an AHSS may verify the fee for attendance by contacting the particular school for its fee schedule.

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