

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 126]

### Pennsylvania Clean Vehicles Program

The Environmental Quality Board (Board) proposes to amend Chapter 126, Subchapter D (relating to new motor vehicle emissions control program). The proposed 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 Subchapter D. The amendments also propose to clarify the Pennsylvania Clean Vehicles Program (Program) in Subchapter D and to specify in that subchapter a transition mechanism for compliance with the Program.

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

#### A. Effective Date

This proposed rulemaking will go into effect upon final-form 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. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) website ([www.depweb.state.pa.us](http://www.depweb.state.pa.us)).

#### C. Statutory Authority

The proposed 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 purpose of this proposed rulemaking is 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 Emissions Vehicle (NLEV) program and to help ensure "identity" with the California program. The purpose of this proposed 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 Commonwealth intends to suspend its enforcement of the Program during the rulemaking process. The existing Program will remain part of the Commonwealth's State Implementation Plan (SIP) until this proposed rulemaking is adopted and approved as a revision to the SIP.

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 California standards, but 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 updating the California low emission vehicle (LEV) program in this Commonwealth is 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 Emissions Vehicle II (LEV II) provisions. Other northeastern states adopted the California LEV program and the NLEV compliance option in the first instance, like the Commonwealth did. Of those states, Rhode Island and Connecticut both have adopted regulations to implement the California LEV II program and New Jersey, with statutory authority, is proceeding with a rulemaking to incorporate California LEV II.

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The 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 respi-

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

Gasoline-powered motor vehicles primarily emit three pollutants: carbon monoxide, volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>). Ozone is not directly emitted by motor vehicles, but is created as a result of the chemical reaction of NO<sub>x</sub> 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.

The CAA was amended in 1977 to allow States to adopt emission standards for motor vehicles. Section 177 of the CAA authorizes states to adopt and enforce new motor vehicle emission standards for any model year if the standards are identical to the California standards and the state adopts the standards at least 2 years before the 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 any action that would have the effect of creating a motor vehicle or motor vehicle engine different from a motor vehicle or motor vehicle engine certified in California under California standards or otherwise create a "third vehicle." Shortly thereafter, many states began to consider clean vehicle or LEV programs as a control strategy to achieve and maintain the National Ambient Air Quality Standard (NAAQS) for ozone.

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

Shortly after establishment of the OTC, the member states began negotiating with the vehicle manufacturers for cleaner cars to address regional air quality needs. In 1998, 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 eight other northeastern states, as well as 23 vehicle manufacturers, opted into the NLEV program, effective in the OTC for MY 1999 and outside the OTC for MY 2001.

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

The Commonwealth's participation in the NLEV program extended only until MY 2006, at which time vehicle manufacturers 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 and vehicle manufacturers operating under the NLEV program became subject to the Tier II requirements. See 65 F.R. 6698 (February 10, 2000).

California adopted its LEV regulations, known as LEV I, in 1991. California's 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 F.R. 4166 (January 13, 1993). California adopted revised LEV regulations in 1996, for MYs 2004 and later, known as LEV II. The EPA granted a waiver of Federal preemption for California's LEV II program at 68 F.R. 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 is now complete. 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 VOC and NO<sub>x</sub> emission reductions of about 2,850 to 6,170 tons per year of VOCs, 3,540 tons per year of NO<sub>x</sub> 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.

Copies of the Commonwealth's mobile source modeling consultant's analyses are available from the contact persons in Section B of this preamble.

The 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 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 LEV II program. To receive CARB certification for a vehicle make and model, a manufacturer must demonstrate to CARB that the vehicle test group associated with the specific make and model meets specified criteria pollutant standards and that the manufacturer's low emission fleet as a whole meets the 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 fleet average requirement to its LEV II program beginning with MY 2009. California's program addresses emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride from LEVs offered for sale in California. California adopted a greenhouse gas fleet average on the basis that greenhouse gases trap atmospheric heat and contribute to global warming. The greenhouse gas fleet average will have to be met in California to obtain CARB certification.

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

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

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

#### E. Summary of Regulatory Requirements

This proposed rulemaking deletes the definitions of "debit" and "ZEV—zero-emission vehicle" from Chapter 121 (relating to definitions) because the terms are already defined in the California regulations incorporated by reference in Chapter 126. The proposed rulemaking deletes the definitions of "NLEV" and "NLEV Program" because they are no longer relevant. The proposed rulemaking makes typographical corrections to the definitions of "fleet average" and "LDV—light-duty vehicles" and 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 proposed rulemaking, to be consistent with the California program. The separate definition of "light duty truck" is deleted as it is proposed to be incorporated into the definition of "LDT—light-duty truck."

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

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

The proposed 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.

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

The proposed 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.

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

Proposed amendments to § 126.413(a)(2) (relating to exemptions) 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.

The proposed 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.

New § 126.413(a)(13) is proposed to exempt 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 Board approved an amendment to the proposed rulemaking at the Board's October 18, 2005, meeting, which appears as new § 126.413(a)(14). This amendment exempts 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 is designed to reflect the intention of the Commonwealth not to deny registration of a non-CARB certified vehicle in this situation. The Board specifically seeks comments on the scope of the exemption, namely, whether the exemption should cover the registration requirement or a broader range of requirements.

Proposed amendments to the motor vehicle testing provisions require vehicle manufacturers to provide CARB testing determinations and findings to the Department upon request. The revised sections are §§ 126.421(b), 126.422(b), 126.423(b), 126.424(b) and 126.425(b).

Section 126.431(b) (relating to warranty and recall) requires each vehicle manufacturer to submit to the Department failure of emission-related components reports. The proposed 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 proposed 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.

New § 126.431(d) provides that any order issued by CARB or enforcement action taken by CARB to correct noncompliance with any provision of Title 13 CCR, which results in the recall of any vehicle 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.

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 proposed amendments

change the first model year to which this requirement applies from the model year beginning after December 5, 2000, to MY 2008. The proposed amendments to § 126.432 change the term "engine family" to "test group" to conform to California's change in terminology. Proposed subsection (d) requires that compliance with the NMOG fleet average for MYs 2008–2010 be demonstrated following the completion of MY 2010.

New vehicle dealer responsibilities are clarified in the proposed 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.

The Board approved an amendment to the proposed rulemaking at the Board's October 18, 2005, meeting, which appears as new § 126.451 (relating to responsibilities of the Department). This amendment would require the Department to monitor and advise the Board in specific ways of any proposed or final rulemakings under consideration by CARB that amend or modify the California LEV program. This amendment would also require the Department to submit comments to CARB on proposed or final CARB rulemakings. This amendment is designed to ensure that the Board and other residents of 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 Board is specifically seeking comment on this proposed amendment.

#### F. *Benefits, Costs and Compliance*

##### *Benefits*

The proposed rulemaking will save the manufacturers, dealers and purchasers of light-duty vehicles and trucks from incurring any additional costs for CARB-certified vehicles for 2 model years. Implementation of the Program in accordance with the proposed 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 proposed 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 2,850 to 6,170 tons per year of VOCs, 3,540 tons per year of NOx 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 greenhouse gas certified vehicles. CARB estimates that the program, when fully phased-in, will provide about a 30% reduction in greenhouse gas emissions from new vehicles required to comply compared to the 2002 fleet.

In addition, CARB predicted that by MY 2016 the operational efficiency savings of vehicles meeting the greenhouse gas 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.

### *Compliance Costs*

The proposed 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 existing regulations and the proposed 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 or register light-duty automobiles or trucks in this Commonwealth. No new costs will be incurred as a result of the proposed rulemaking compared to the costs that would be experienced without the proposed rulemaking.

In September 2004, CARB estimated that by MY 2016 the operational efficiency savings of vehicles meeting greenhouse gas requirements will provide vehicle owners an overall cost savings of \$3.50 to \$7 per month, assuming \$1.74 per gallon of gasoline. CARB estimated the greenhouse gas-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 greenhouse gas estimate, citing initial costs of as much as \$3,000 per vehicle.

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

### *Compliance Assistance Plan*

Compliance assistance with the 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 and offers grants to alternative fuel vehicle buyers. These incentives may help vehicle manufacturers meet their obligations under the Program.

### *Paperwork Requirements*

No additional paperwork requirements will be imposed by the proposed rulemaking. 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 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.

### *G. Pollution Prevention*

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. 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 and the incorporation of energy efficiency

strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

The existing regulations and proposed amendments 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. Because California warranties are longer, they also provide incentives for longer-lived vehicles, and thus a potentially lower rate of vehicle scrappage.

### *H. Sunset Review*

These regulations will continue to 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.

### *I. Regulatory Review*

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

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

### *J. Public Comments*

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

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

K. Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on this proposed rule-making. The hearings will be held as follows:

March 14, 2006 Department of Environmental Protection  
1 p.m. Southwest Regional Office  
Waterfront A and B Conference Room  
400 Waterfront Drive  
Pittsburgh, PA 15222.

March 20, 2006 Department of Environmental Protection  
7 p.m. Rachel Carson State Office Building,  
Room 105  
400 Market Street  
Harrisburg, PA 17105

March 28, 2006 Marple Township Municipal Building  
10 a.m. 227 South Sproul Road  
Springfield and Sproul Roads  
Broomall, PA 19008

Individuals who would like to present testimony at the hearings must contact Natalie Shepherd, Environmental Quality Board, P. O. Box 8477, Harrisburg, PA, 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness. Witnesses are requested to use this time to summarize their written testimony. Witnesses are requested to submit three written copies of their statement to the hearing chairperson at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

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

KATHLEEN A. MCGINTY,  
Chairperson

**Fiscal Note:** 7-398. No fiscal impact; (8) recommends adoption.

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:

\* \* \* \* \*

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

\* \* \* \* \*

*Fleet average*—For the purposes of motor vehicles subject to Pennsylvania's Clean Vehicles Program requirements, a motor vehicle manufacturer's average vehicle [ **omissions** ] **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—[ **A** ]

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

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

\* \* \* \* \*

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

\* \* \* \* \*

[ *NLEV*—National Low Emission Vehicle.

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

\* \* \* \* \*

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

\* \* \* \* \*

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

**CHAPTER 126. MOTOR VEHICLE AND FUELS PROGRAMS**

**Subchapter D. [ NEW MOTOR VEHICLE EMISSIONS CONTROL ] PENNSYLVANIA CLEAN VEHICLES PROGRAM**

**GENERAL PROVISIONS**

**§ 126.401. Purpose.**

\* \* \* \* \*

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

(c) ] \* \* \*

[ (d) ] (c) \* \* \*

**§ 126.402. [ NLEV scope and applicability ] (Reserved).**

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

(b) The Commonwealth's participation in the NLEV Program extends until model year 2006, except as provided in 40 CFR 86.1707. If no later than December 15, 2000, the EPA does not adopt standards at least as stringent as the NLEV standards provided in 40 CFR Part 86, Subpart R that apply to new motor vehicles in Model Year 2004, 2005 or 2006, the Commonwealth's participation in the NLEV program extends only until Model Year 2004, except as provided in 40 CFR 86.1707.

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

(d) Except as provided in subsections (a) and (c), the Pennsylvania Clean Vehicles Program applies to all new-passenger cars, and light-duty trucks (if

designed to operate on gasoline) sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received or registered in this Commonwealth starting with the model year beginning after December 5, 2000, and each model year thereafter.

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

**PENNSYLVANIA CLEAN VEHICLES PROGRAM**

**§ 126.411. General requirements.**

(a) The Pennsylvania Clean Vehicles Program requirements apply to all new passenger cars and light-duty trucks sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received or registered in this Commonwealth starting with the 2008 model year [ beginning after December 5, 2000, ] and each model year thereafter.

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

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

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

**§ 126.412. Emission requirements.**

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

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

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

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

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

**§ 126.413. Exemptions.**

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

**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 [ **shall** ] **must** be certified as meeting the motor vehicle requirements of Title 13 CCR Chapter 1, § [ **1960.1** ] **1961** as determined by testing in accordance with Title 13 CCR Chapter 2[, §§ **2101—2110, 2150 and 2151, incorporated herein by reference** ].

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

**§ 126.422. New motor vehicle compliance testing.**

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

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

**§ 126.423. Assembly line testing.**

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

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

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

**§ 126.424. In-use motor vehicle enforcement testing.**

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

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

\* \* \* \* \*

**§ 126.425. In-use surveillance testing.**

\* \* \* \* \*

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

\* \* \* \* \*

**MOTOR VEHICLE MANUFACTURERS' OBLIGATIONS**

**§ 126.431. Warranty and recall.**

(a) A manufacturer of new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements of this subchapter which are sold, leased, offered for sale or



lease or registered in this Commonwealth, shall warrant to the owner that each vehicle [ shall ] must comply over its period of warranty coverage with [ the requirements of ] Title 13 CCR Chapter [ 2 ] 1, §§ 2035–2038, 2040 and 2041[ , incorporated herein by reference ].

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

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

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

**§ 126.432. Reporting requirements.**

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

(b) For purposes of determining compliance with the Pennsylvania Clean Vehicles Program, each motor vehicle manufacturer shall submit annually to the Department, by March 1 of the calendar year following the close of the completed model year, a report of the fleet average NMOG emissions of its total deliveries for sale of LDVs in each [ engine family ] test group for Pennsylvania for that particular model year. The fleet average report, calculating compliance with the fleetwide NMOG exhaust emission average, shall be prepared according to the procedures in Title 13 CCR Chapter 1[ , § 1960.1(g)(2) ].

(c) Fleet average reports shall, at a minimum, identify the total number of vehicles, including offset vehicles,

sold in each [ engine family ] test group delivered for sale in this Commonwealth, the specific vehicle models comprising the sales in each state and the corresponding certification standards, and the percentage of each model sold in this Commonwealth in relation to total fleet sales.

(d) Compliance with the NMOG fleet average for the 2008, 2009 and 2010 model years 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 Chapter 2, § 2151 [ and incorporated herein by reference ]:

\* \* \* \* \*

**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 rulemakings under consideration by CARB or its successor that amend or modify the California Low Emission Vehicle Program.

(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. The Department will complete all 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 rulemakings under consideration by CARB or its successor and shall 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 rulemakings to CARB on behalf of the residents of this Commonwealth.

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