

RULES AND REGULATIONS

Title 25--ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 126]

Pennsylvania Clean Vehicles Program

[36 Pa.B. 7424]

[Saturday, December 9, 2006]

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

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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 "identity" 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 Federation, 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 an 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 identity 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 identity 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 identity 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 identity) 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 identity 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 addition 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.

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