

RULES AND REGULATIONS

Title 22—EDUCATION

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

[22 PA. CODE CH. 213]

Contributions and Benefits

The Public School Employees' Retirement Board (Board) has adopted this final-form rulemaking amending Chapter 213 (relating to contributions and benefits). The final-form amendments delete the restrictions for purchasing retirement credit thereby allowing the costs of purchase to be deducted from the actuarial value of the retirement account.

These final-form amendments are being made to conform the Board's regulations with the policy adopted by the Board at its December 2, 1998, meeting allowing actuarial debt reduction for purchases of service.

A. *Effective Date*

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

B. *Contact Person*

For further information, contact Frank Ryder, Director of Government Relations, Public School Employees' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108, (717) 720-4733; or Charles K. Serine, Deputy Chief Counsel, Public School Employees' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108, (717) 720-4679.

C. *Statutory Authority*

These final-form amendments are authorized under the authority of the Public School Employees' Retirement Code, 24 Pa.C.S. §§ 8502(h) and 8507(d) (code).

D. *Background and Purpose*

The Board is responsible for implementing the purchase of service provisions of the code and a component of that purchase program is a method of paying for the purchase by eligible members, that is, their contributions. Although the code authorizes the contributions to be made in any manner agreed upon by the Board and member, the current regulations limit payment methods. Deletion of these provisions will restore the Board's statutory authority to authorize the actuarial debiting of the member's account as an agreed upon way to make these contributions.

The purpose of this rulemaking is to permit the member and Board to agree upon how member contributions for the purchase of service can be made. Members would still have the option of paying by lump sum or payroll deduction but also would have the option to authorize an actuarial reduction in the value of their account to pay for the requested purchase. This would substantially reduce or eliminate out-of-pocket costs for members to avail themselves of service purchases authorized by the code. As previously noted, by policy of the Board, the Public School Employees' Retirement System (PSERS) currently permits the actuarial reduction of school member accounts for service purchases. These regulatory actions will conform the regulations to the current administrative policy. The PSERS has promulgated a similar rescission of similar provisions published

at 31 Pa.B. 4170 (August 4, 2001) that allows purchases of service to be paid by actuarial debt of State employees' accounts. This final-form rulemaking will harmonize the regulations of the PSERS and the State Employees' Retirement System, especially with regard to multiple service members.

E. *Benefits, Costs and Compliance*

Executive Order 1996-1, "Regulatory Review and Promulgation" requires a cost/benefit analysis of the rulemaking.

Benefits

This final-form rulemaking will benefit school employees eligible for service purchases under the code. By reducing the potential out-of-pocket costs to members with an offsetting actuarial reduction in the value of their accounts, easier access to statutorily authorized service purchases would ensue without any loss in the fiscal integrity of the PSERS. Customer service will be improved together with a corresponding reduction in book-keeping and record keeping to the extent that payroll deductions are reduced.

Costs

There are nominal additional costs to the Commonwealth, its citizens or school employees associated with these final-form amendments. There will be additional cost savings for both school employers and the PSERS associated with these final-form amendments.

Compliance Costs

These final-form amendments are not expected to impose any additional compliance costs on school employees or employers.

F. *Sunset Review*

A sunset date has not been established by the Board for this final-form rulemaking.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 7, 2002, the Board submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 5711 (October 13, 2001), to IRRC and to the Chairpersons of the House Education Committee and the Senate Finance Committee for review and comment.

No comments were received from the IRRC, the Committees or the public for the Board to consider in preparing this final-form rulemaking.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on March 27, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved effective April 4, 2002, by IRRC.

H. *Public Comments*

There were no public comments.

I. *Findings*

The Board finds that:

(1) Public notice of intention to amend these regulations was given under 1 Pa. Code § 7.1 (relating to notice of proposed rulemaking required) by publication at 31 Pa.B. 5711.

(2) The final-form amendments are necessary and appropriate for the administration of the code.

J. Order

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

(a) The regulations of the Board, 22 Pa. Code Chapter 213, are amended by amending §§ 213.2 and 213.23—213.25 to read as set forth at 31 Pa.B. 5711.

(b) This order and 31 Pa.B. 5711 shall be submitted to the Office of Attorney General for approval as to legality as required by law.

(c) The Secretary of the Board shall certify this order and 31 Pa.B. 5711 and deposit them with the Legislative Reference Bureau as required by law.

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

DALE H. EVERHART,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 2041 (April 20, 2002).)

Fiscal Note: Fiscal Note 43-8 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 02-843. Filed for public inspection May 10, 2002, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CHS. 121 AND 126]

Heavy-Duty Diesel Emissions Control Program

The Environmental Quality Board (Board) amends Chapters 121 and 126 (relating to general provisions; and motor vehicle and fuels programs) to read as set forth in Annex A.

The final-form rulemaking establishes a new Heavy-Duty Diesel (HDD) Emissions Control Program (HDD Program) designed to primarily reduce emissions of carbon monoxide, oxides of nitrogen (NOx), volatile organic compounds (VOCs), particulate matter (PM) and air toxics from new HDD engines and vehicles. The final-form amendments adopt and incorporate by reference certain requirements of the California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Year Heavy-Duty Engines and Vehicles as authorized under section 177 of the Clean Air Act (42 U.S.C.A. § 7507) (CAA).

This order was adopted by the Board at its meeting of March 19, 2002.

A. Effective Date

These amendments will be effective immediately upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. Contact Persons

For further information, contact Arleen Shulman, Chief, Mobile Sources Section, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office

Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-9495; or Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. Statutory Authority

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

D. Background and Purpose

HDD engines and vehicles contribute greatly to a number of serious health and welfare problems. First, they emit pollutants like PM, sulfur oxides (SOx), toxic compounds, such as formaldehyde, and ozone precursors, such as NOx and VOCs, whose documented adverse health effects include premature mortality, aggravation of respiratory and cardiovascular disease, changes in lung function and increased respiratory symptoms, changes to lung tissues and structures, altered respiratory defense mechanisms, chronic bronchitis and decreased lung function. Second, ozone pollution causes crop and forestry losses, and PM causes damage to materials and soiling of commonly used building materials and culturally important items such as statues and works of art. Third, NOx, SOx and PM contribute to visibility impairment. Fourth, NOx emissions from HDD vehicles contribute to the acidification, nitrification and eutrophication of water bodies. Fifth, the United States Environmental Protection Agency (EPA) has concluded that diesel exhaust is likely to be carcinogenic to humans. Finally, while vehicles powered by HDD engines account for about only 1% of all motor vehicles and equipment, they are responsible for nearly 1/4 of NOx emissions.

Emissions from HDD engines and vehicles account for a substantial portion of ambient PM and ground-level ozone levels. These proportions are higher in some urban areas. Urban areas, which include many poorer neighborhoods, can be disproportionately impacted by HDD vehicle emissions because of heavy traffic in densely populated urban areas.

In addition, due to its location in the northeast, this Commonwealth is a conduit for a large amount of truck traffic. Without the benefits of this final-form rulemaking, this Commonwealth can expect an additional 12.5 tons of NOx emissions per average summer day in 2006 State-wide from the trucks manufactured in 2005 and 2006. In the five-county Philadelphia area alone, model year 2005 and 2006 trucks are expected to emit an additional 2 tons of NOx per average summer day in 2006 without these additional controls.

HDD engines and vehicles have not been subject to many environmental regulations since passage of the CAA in 1970. The EPA's regulation of HDD engines and vehicles did not begin until 1984, when the EPA adopted a 10.7 grams/brake horsepower-hour (g/bhp-hr) NOx standard. The EPA's NOx emissions standards for 1998 to 2003 model year HDD engines are 4 g/bhp-hr. The EPA currently requires testing of the engine (with emission control systems in place) rather than the entire vehicle. Thus the standards are expressed in units of g/bhp-hr (that is, grams of emission per unit of work the engine

performs over a period of time), rather than the grams per mile unit used for testing passenger cars and light-duty trucks.

Before being offered for sale, new engines must be certified to compliance with Federal emissions standards. Engines are tested for certification using an engine dynamometer. The performance test cycle or cycles for determining compliance with numerical standards plays an important part in determining the stringency of the existing standards. It is the performance test that serves as the basis for determining this compliance.

Currently, the EPA only tests engines with the Federal test procedure (FTP) to determine compliance with the HDD engine standards. The FTP, however, only represents a small portion of "real world" driving conditions. For example, the FTP does not include elevated high temperatures and highway cruise patterns. Therefore, it is inadequate in testing emissions under these conditions.

Several years ago, the United States Department of Justice, the EPA and the California Air Resources Board (CARB) brought major enforcement actions alleging that seven of the largest HDD engine and vehicle manufacturers (representing approximately 60% of HDD engine sales) violated Federal and California engine certification regulations by "defeating" or turning off diesel emission control devices during in-use highway driving. The manufacturers employed "defeat devices" in the HDD engines for model years 1988—1998. With these defeat devices, emission controls typically were turned off during cruising conditions to save fuel. This allowed NOx emissions as high as three times the emission standard. It is estimated that in 1998 alone, the "defeat devices" caused approximately 1.3 million tons of excess NOx emissions Nationally.

The Federal government and the seven HDD engine and vehicle manufacturers resolved the cases through settlement agreements. In 1998, they entered into judicial consent decrees (binding settlement orders) that imposed substantial penalties upon the seven manufacturers and required them to achieve additional emission reductions.

In the consent decrees, the settling manufacturers are required, among other things, to produce HDD engines and vehicles that comply with prescribed emission standards that are lower than those required in current California and Federal regulations, as measured by the FTP. Specifically, these engines must meet a 2.5 g/bhp-hr standard for nonmethane hydrocarbons plus NOx emissions by October 1, 2002. This will require production of new engines that are approximately 50% cleaner than current engines.

The majority of these settling engine manufacturers (Caterpillar, Cummins, Detroit Diesel, Mack Trucks, Renault (RVI) and Volvo Trucks) have also agreed to produce HDD engines by October 1, 2002, that meet supplemental certification test procedures. Together with the FTP test, the supplemental test procedures will require control of emissions during the majority of real world operating conditions, insuring that in the future "defeat devices" will no longer be employed. This will result in significant additional emission reductions of NOx and other pollutants during "real world" conditions. These supplemental test procedures are designed to make up for the deficiencies of the FTP.

The California rules require manufacturers to perform supplemental test procedures, in addition to the existing FTP. The two components of the supplemental test are known as the Not to Exceed (NTE) test and the EURO III

European Stationary Cycle (ESC) test. The ESC test also has associate requirements known as maximum achievable emission limits (MAEL).

The NTE test procedure can be run in a vehicle on the road or in an emissions testing laboratory using an appropriate dynamometer. The vehicle or engine is operated under conditions that may reasonably be expected in normal vehicle operation and use, including operation under steady-state or transient conditions and under varying ambient conditions. Emissions are averaged over a minimum time of 30 seconds and then compared to the applicable emission limits.

The ESC test simulates cruising conditions better than either the FTP or the NTE procedures. This can help prevent excess emissions increasing during highway driving. This test consists of 13 modes of speed and power, primarily covering the typical highway cruise operating range of HDD engines. During each mode of operation, the concentration of the gaseous pollutant is measured and weighted. The weighted average emissions for each pollutant, as calculated by this test, may not be greater than the applicable FTP emission standard.

The MAEL requirements can be considered an adjunct to the ESC test because they are utilized during the 12 nonidle test modes of that test. The MAEL specifications prevent manufacturers from complying with the ESC using computer programs that recognize when the engine is being tested at specific test points, and then recalibrating for better fuel economy (which results in higher emissions) between test points. The MAEL requirements ensure that emissions do not exceed a cap when operating within the nonidle ESC test modes.

Since certifying HDD engines using the NTE and ESC tests produces much higher reductions than the reductions achieved when only the FTP is used, the EPA issued a final rule to adopt these supplemental test procedures for 2004 and subsequent model year HDD engines and vehicles. See 65 FR 59895 (October 6, 2000). However, due to timing constraints that the CAA imposes on the EPA under section 202 of the CAA (42 U.S.C.A. § 7521), manufacturers will not be required to comply with the NTE and ESC test procedures until the 2007 model year. Therefore, there will be a 2-year gap between the expiration of these test procedures for the settling manufacturers following the 2004 model year and the commencement of the test procedures for model year 2007 under the EPA's final rule.

As a result, for 2 entire model years there may be serious backsliding, that is, diesel exhaust emissions could increase significantly above the previous levels mandated by the consent decrees. For this reason, California decided to fill the gap by requiring compliance with the NTE and ESC test procedures in addition to the FTP test procedure during the 2005 and 2006 model years. Moreover, this final-form rulemaking will apply to all manufacturers, not just those affected by the consent decrees, who may want to enter the United States HDD engine market to gain an unfair competitive advantage.

A number of other states have also recognized the benefits of adopting these test procedures to prevent any backsliding attempts by HDD engine and vehicle manufacturers and to maintain improved air quality. To date, Delaware, North Carolina, Maryland, Georgia, Massachusetts, Texas, New Jersey, New York, Maine, Rhode Island and the District of Columbia have adopted the California rules under section 177 of the CAA. Truck sales in these states account for 37% of National truck sales.

The Commonwealth also recognizes the benefits of adopting these test procedures. It is estimated that an additional 12.5 tons of NO_x emissions per average summer day Statewide from trucks manufactured in 2005 and 2006 will be reduced through the adoption of this final-form rulemaking.

Section 209 of the CAA (42 U.S.C.A. § 7543) allows only California to obtain a waiver of Federal preemption to continue to set its own motor vehicle standards. The CAA was amended in 1977 under section 177 of the CAA to allow states to adopt emission standards for motor vehicles if the standards are identical to the California standards and a state adopts the standard at least 2 years before commencement of the model year.

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 than a motor vehicle or engine certified in California under California standards or otherwise create a "third vehicle."

The final-form rulemaking establishes an HDD Program consistent with the requirements of section 177 of the CAA and will serve as the framework for the Commonwealth's program to control emissions from new HDD engines and vehicles.

The Commonwealth's proposed HDD Program does not mandate the sale or the use of special diesel fuel which complies with the specifications adopted by California. The courts have held that a state's failure to adopt California fuel requirements does not violate section 177 of the CAA requirement 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 (MVMA) v. New York State Department of Environmental Conservation (NYSDEC)*, 17 F. 3d 521 (2d Cir. 1994).

Since HDD engines are engine certified, currently there is no mechanism in California to ensure that either a replacement engine or rebuild complies with requirements at least as stringent as the original engine. However, nonregulatory common practice dictates that when an engine is replaced, it is typically replaced with a newer, lower-emitting engine due to hardware and electronics compatibility concerns. Additionally, modern electronically controlled engines typically operate for more than 500,000 miles (and in many cases more than 1 million miles) before requiring replacements/rebuilds. By the time a typical replacement/rebuild occurs, engines older than the original engines are generally too old to be used or are not available.

Following promulgation of the proposed new HDD Program regulations, amendments to Chapters 121 and 126 will be submitted to the EPA as a revision to the State Implementation Plan.

Under section 5(a)(7) of the act, the Department of Environmental Protection (Department) consulted with the Department of Transportation during the development of the proposed amendments. The Department also consulted with the Air Quality Technical Advisory Committee (AQTAC) on the final-form rulemaking. On January 17, 2002, the AQTAC recommended that the final-form rulemaking be submitted to the Board for consideration. AQTAC also suggested that the Department continue its aggressive efforts with other states to support uniform Federal standards for HDD vehicles to ensure progress in significantly reducing truck emissions during this decade.

This final-form rulemaking is consistent with the mandate under Executive Order 1996-1, "Regulatory Review and Procedure." The final-form rulemaking is necessary to achieve and maintain the ambient air quality standard for ozone and is justified as a compelling and articulable State interest as required under Executive Order 1996-1.

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

The Board received 198 sets of comments on the regulatory proposal. The following discussion summarizes the major issues and the Board's response.

Of the 198 commentators, 193 expressed general support for the rulemaking. Of the 193 commentators, 177 sent a form letter, which expressed general support for the rulemaking.

Two commentators expressed the view that adopting California's emission standards for HDD engines would provide states an opportunity to obtain substantial and cost effective emission reductions. The Board agrees. The cost for a ton of reductions is approximately \$400, which compares favorably with emission controls placed on industrial sources of several thousand dollars per ton.

A substantial number of commentators thought that a great opportunity exists for engine manufacturers to "backslide" to previous less stringent emission limits for model years 2005 and 2006. The Board agrees and believes that this is one of the main reasons why many states have decided to adopt the NTE standards. The economic and competitive incentives for engine manufacturers who sign the consent decrees could be too great not to backslide into the emissions standards developed prior to the signing of the consent decrees. The Board also believes that manufacturers would offer for sale engines that pollute excessively during the steady state portion of the engines' operations unless the NTE requirements are enforced in this Commonwealth.

One commentator believed that the NTE program is nothing more than a patchwork state-by-state program. The commentator further believed that the Commonwealth can expect significant negative economic impacts if these regulations are adopted because truck purchasers will take their business to other states. The Board does not agree with this comment for several reasons. First, there are a number of states that have already adopted this rulemaking including California, Delaware, North Carolina, Maryland, Georgia, Massachusetts, Texas, New Jersey, New York, Maine, Rhode Island and the District of Columbia. There are also a number of states that are working to adopt these regulations. Those states include the Commonwealth, Arizona and Minnesota. The Board believes that once these and other states adopt the requirements that nearly 50% of all new trucks will be required to comply with the supplemental test procedures. Moreover, the Board does not believe there will be a significant economic impact for several reasons. As previously stated, the NTE standards are becoming a de facto National program. The extra cost per truck required to comply with this rulemaking will be less than several hundred dollars. In addition, this rulemaking is only intended to cover a 2-year interim window between when the test procedures in the consent decrees expire and the new Federal regulations take place.

One commentator is concerned that the Commonwealth will not realize the expected emission reduction gains and that engines from outside the State will dominate the population of engines inside the State. As the Board has previously noted, this program is fast becoming a de facto

National program with over 37% of the National sales being covered by this rulemaking by the end of 2001. In addition, the Board believes that the Commonwealth will receive emission reduction benefits which will help the Commonwealth improve its air quality. Specifically, it is estimated that an additional 12.5 tons of NO_x per average summer day will be reduced with the adoption of this rulemaking.

A number of commentators believed that if enough states adopt the NTE supplemental testing requirements that a level regulatory playing field will be created for all engine manufacturers and states. The Board agrees. Nonconsent decree and consent decree manufacturers will be required to follow the same regulations, and all states will have the same low-emitting vehicles available for sale.

One commentator was concerned that the cost for the Commonwealth to adopt, implement and enforce the California requirements far outweigh the potential air quality benefits from their adoption. The Board disagrees. First, the cost to adopt, implement and enforce this rulemaking will be low for the Commonwealth since enforcement will be handled by a small number of inspectors. Second, initial reductions that will be achieved as a result of this rulemaking will cost \$400 per ton, which compares favorably to stationary source reductions that usually cost \$1,000 or more per ton. Third, NO_x emission reductions in this Commonwealth will approach 12 tons per day in 2006, which makes the adoption of the rulemaking worthwhile.

The CARB regulation has been challenged in the case *International Truck and Engine Corp v. California Air Resources Board et al.* (Case No. SIVS-01-1245GED GGH U.S. District Court, Eastern District of California). The commentator believed that the challenge will be successful and that the Board should not adopt the rulemaking. The Board notes that on October 24, 2001, the Court issued an order in the previously referenced case denying the Plaintiff's motion for summary judgment and granting the Defendant's motion to dismiss the case based on the grounds that the lawsuit is not "ripe" for adjudication.

Several commentators contended that California's adoption of the NTE standards are in violation of the statutory lead-time and stability requirements under section 202 of the CAA. Since there are no proposed changes to the emission standards that CARB adopted in 1999, the CAA requirements under section 202 of the CAA did not apply to that rulemaking. Moreover, since section 202(a)(3)(C) of the CAA is only applicable to standards promulgated under section 202(a) of the CAA and California promulgates its standards under section 209(b) of the CAA, the provision does not apply to California. However, as a practical matter, since the NTE standards were adopted in 2000 and do not apply until 2005, manufacturers have the 4-year lead-time they requested of California. As to stability, while the requirements of California certification testing changed between 2004 and 2005, the underlying standards are the 2004 standards as set forth in Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8(a). These standards are unchanged by the adoption of the supplemental test procedures as incorporated by reference in Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8(a). Furthermore, California has the authority to adopt a separate state program, including a certification program, for new motor vehicles and new motor vehicle engines under section 209(b) of the CAA. California has the authority to adopt test procedures that ensure that new motor vehicles and new motor vehicle engines meet California's state emission controls.

One commentator believed that the Commonwealth will need to ensure that the appropriate diesel fuel is available in this Commonwealth for HDD vehicles subject to the supplemental test procedures. The commentator went on to say that the California test fuel used to certify the engines must be the predominate fuel that in-use vehicles employ. The Board believes that these concerns are not valid. The provisions about certification of test fuel have been adopted to ensure that the fuel used during the certification is "not cleaner" than the fuel which is available in the California market, not this Commonwealth market. During certification, if a very clean fuel is used to meet the emission standards, the standards may not be met in reality because that particular clean fuel may not be available on the market. If the Commonwealth performs any type of compliance testing, the Department will obtain California fuel used in the certification process.

This commentator further stated that failure to adopt California fuels appears to be in violation of the identicality requirement under section 177 of the CAA. The Board disagrees. The courts have held that a state's failure to adopt California fuel requirements does not violate section 177 of the CAA requirements that state emission standards be identical to the California standards. *MVMA v. NYSDEC*, 17 F. 3d 521, 523 (2d Cir 1994).

Several commentators believe that this Commonwealth is constrained by section 177 of the CAA from adopting the California regulations before California has obtained a Federal waiver of exemption. The Board disagrees. CARB already has an existing EPA waiver for HDD engines and vehicles. 53 FR 7021 (March 4, 1998). On December 26, 2001, CARB submitted to the EPA a "scope of the waiver request" to confirm that the NTE tests are within the scope of the previously granted waiver of Federal preemption under section 209(b) of the CAA. Moreover, a Federal court has ruled that states may adopt, but not enforce, CARB regulations before the EPA has acted on the waiver request. *MVMA v. NYSDEC*, 17 F. 3d 521, 534 (2d Cir 1994). As a result, the Commonwealth believes that adopting the CARB standards at this time is not precluded under the CAA.

One commentator believed that the proposed rulemaking constitutes new emission standards and not test procedures. The Board disagrees. The supplemental test procedures constitute additional test procedures to the FTPs since the requirement only provides extended methods for testing HDD engines and vehicles. Emission results from the tests are compared to the existing emission standard rather than a new emission standard. The underlying standards are the 2004 standards as set forth in Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8(a). These standards are unchanged by the adoption of the supplemental test procedures as incorporated by reference in Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8(a).

One commentator was concerned that the CARB regulation goes well beyond the supplemental test procedure requirements contained in the CARB settlement agreement and was rushed to completion without adequate technical input and discussion with stakeholders. Under section 177 of the CAA, the Commonwealth can only adopt those standards that have been adopted by California. The Board believes that California's regulation, which incorporates the Federal standards with supplemental test procedures, represents the best way to reduce emissions from new on-highway HDD engines at this time.

Several commentators believed that California has not found that the supplemental test procedures are technologically feasible as required under the CAA. The Board disagrees. Six of the seven settling manufacturers will comply with the NTE test procedures beginning in 2002. From February to June of 2000 CARB participated in a series of meetings with engine manufacturers and with the EPA regarding the supplemental tests. The major concerns raised by the engine manufacturers were extreme operating conditions. If there are feasibility concerns, the deficiency provisions under the California rule may be used for additional lead-time for compliance. Moreover, the Board notes that CARB received over 80 public comments on their supplement test procedure rules. Most comments originated from engine manufacturers or the manufacturers' representatives. Out of that public comment process, manufacturers were granted additional flexibilities by CARB for meeting some of the technical challenges.

One commentator believed that the Board should cooperate with California to adopt standards to include stricter enforcement of standards for urban buses and emergency vehicles, which are exempt under this final-form rulemaking. The Board recognized that urban buses and emergency vehicles are a significant source of diesel exhaust in heavily populated areas, and the Board will work diligently to reduce their emissions. Nevertheless, the Board believes that emission reductions would be insignificant as a result of incorporating urban buses and emergency vehicles into this final-form rulemaking.

A number of commentators believed that effectively limiting excess emissions from HDD vehicles and engines needed to be addressed from a regional or National level. The Board agrees. States, particularly those in the northeast, share a heavy volume of diesel traffic along with persistent elevated summertime ozone levels. Consequently this is one of the main reasons why the Board and other states have promulgated this final-form rulemaking.

A number of commentators believed that diesel exhaust is a large contributor to adverse health effects among members of the population. The Board agrees. Diesel engines produce large amounts of NO_x, which is a precursor for the formation of ozone. Children, the elderly and individuals with preexisting respiratory problem are most at risk. This final-form regulation will greatly limit NO_x production from diesel engines.

A number of the commentators share the Commonwealth's concern about persistent air pollution problems like ground level ozone, fine PM, regional haze and acid deposition. The Board agrees. All of the pollutants previously listed contribute to adverse health effects or interfere with the quality of life in some of the most populated areas of this Commonwealth and neighboring states.

F. *Summary of Regulatory Requirements*

This final-form rulemaking establishes the requirements for the implementation of a new HDD Program. A summary of the final-form rulemaking follows.

Chapter 121

The final-form amendment to § 121.1 (relating to definitions) includes terms and phrases applicable to the HDD Program. The definitions include "heavy-duty diesel engine" and "heavy-duty diesel vehicle."

The final-form rulemaking also amends the definition of "new motor vehicle or new light-duty vehicle" to include vehicles subject to the requirements of the HDD Program.

Chapter 126

The title of Chapter 126 is changed from "standards for motor fuels" to "motor vehicle and fuels programs."

Subchapter E. Pennsylvania Heavy-Duty Diesel Emissions Control Program

Subchapter E contains provisions that establish a new HDD Program in this Commonwealth to reduce the emissions of NO_x, SO_x, PM and air toxics from HDD engines and vehicles under section 177 of the CAA.

Section 126.501 (relating to purpose) establishes an HDD Program consistent with section 177 of the CAA. It adopts and incorporates by reference certain provisions of the California exhaust emissions standards and test procedures for 1985 and subsequent model year HDD engines and vehicles. It also provides for certain exemptions from the HDD Program.

Section 126.502(a) (relating to general requirements) provides that the Commonwealth's HDD Emission Control Program applies to engines and vehicles with the model year beginning May 11, 2004, with a gross vehicle weight rating (GVWR) greater than 14,000 pounds that are sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired or received in this Commonwealth.

Section 126.502(b) adopts and incorporates by reference the California Exhaust Emissions Standards and Test Procedures for 1985 and Subsequent Heavy-Duty Engines and Vehicles to the extent that they pertain to the applicable model years for HDD engines and vehicles with a GVWR of greater than 14,000 pounds.

Section 126.502(c) adopts and incorporates by reference the California Enforcement of Vehicle Emission Standards and Surveillance Testing under Title 13 CCR, Division 3, Chapter 2, Article 1.5, § 2065.

Section 126.503 (relating to emission requirements) provides that a person may not sell, import, deliver, purchase, lease, rent, acquire or receive an HDD engine or vehicle starting with the applicable model year that is subject to the HDD Program that has not received a CARB Executive Order for all applicable requirements of Title 13 CCR.

Section 126.503(b) allows manufacturers the option to include any of the HDD engines or vehicles it sells in this Commonwealth to participate in the averaging, banking and trading programs as provided under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8.

Section 126.503(c) allows manufacturers the option to certify any of its HDD engines and vehicles delivered for sale in this Commonwealth to the optional emission standards as provided under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8.

Section 126.503(d) requires that all new heavy-duty engines and vehicles subject to the requirements of this subject chapter shall possess a valid emissions control label which meets the requirements of Title 13 CCR, Division 3, Chapter 1, § 1965.

Section 126.504 (relating to exemptions) provides that the following are exempt from the HDD Program in this Commonwealth: emergency vehicles; an HDD engine or vehicle transferred by a dealer to another dealer; an HDD vehicle transferred for use exclusively off highway; an HDD vehicle granted a National security or testing exemption under section 203(b)(1) of the CAA (42 U.S.C.A. § 7522(b)); an HDD vehicle defined as a military tactical vehicle or engine under Title 13 CCR, Division 3,

Chapter 1, Article 1, § 1905; an HDD vehicle sold after May 11, 2004, if it was registered in this Commonwealth before May 11, 2004; an HDD engine or vehicle for the model years 2005 and 2006 manufactured by an ultra-small volume manufacturer as defined under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1976(f)(2); an urban bus as defined under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.2(b)(4) for model years 2005 and 2006; and an HDD engine that following a technology review, CARB determines it to be inappropriate to require compliance with the emissions standards under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8 for that particular model year.

Section 126.511 (relating to new engine and vehicle certification testing) requires that prior to being offered for sale or lease in this Commonwealth, new HDD engines and vehicles shall be certified as meeting the motor vehicle requirements of Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8.

Section 126.512 (relating to new engine and vehicle compliance testing) requires that prior to being offered for sale or lease in this Commonwealth, new HDD engines and vehicles shall be certified as meeting the HDD engine and vehicle requirements of Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8 as determined by Title 13 CCR, Division 3, Chapter 2, Article 2, §§ 2101—2110. An additional subsection was added to clarify that all CARB testing determinations apply for compliance testing with subsection (a).

Section 126.513 (relating to assembly line testing) provides that each manufacturer of new HDD engines and vehicles subject to the Commonwealth's HDD Emission Control Program shall conduct assembly line testing in accordance with Title 13 CCR, Division 3, Chapter 2, Article 1. An additional subsection was added to clarify that all CARB testing determinations apply for compliance testing with subsection (a).

Section 126.514 (relating to in-use engine and vehicle enforcement testing) provides that for the purposes of detection and repair of engines and vehicles that fail to meet the emission requirements of the HDD Program, the Department may, after consultation with CARB, conduct in-use vehicle enforcement testing in accordance with the protocol and testing procedures under Title 13 CCR, Division 3, Chapter 2, Article 2.3, §§ 2136—2140.

Section 126.515 (relating to in-use surveillance testing) provides that the Department may conduct in-use surveillance testing after consultation with CARB.

Section 126.521 (relating to warranty and recall) provides that manufacturers of new HDD engines and vehicles shall warrant to the owner that each engine or vehicle complies over its period of warranty coverage with the requirements of Title 13 CCR, Division 3, Chapter 1, Article 6, §§ 2036 and 2039—2041.

Under § 126.521(b), each manufacturer shall submit to the Department failure of emission-related component reports for engines or vehicles subject to the HDD Program.

Under § 126.521(c), any voluntary or influenced emission related recall programs initiated by an HDD engine or vehicle manufacturer shall extend to all new HDD engines or vehicles in this Commonwealth.

Under § 126.521(d), any in-use vehicle ordered recalls under Title 13 CCR, Division 3, Chapter 2, Article 2.2, §§ 2122—2135 shall extend to all new HDD engines and vehicles sold, leased or offered for sale or lease in this Commonwealth.

Section 126.522 (relating to reporting requirements) provides that each manufacturer shall submit annually to the Department a report documenting the total deliveries for sale of HDD engines and vehicles for each engine family of that model year in this Commonwealth.

Under § 126.522(b), each HDD engine and vehicle manufacturer shall submit annually to the Department a report of all of its HDD engines or vehicles delivered for sale that were included in any of the emissions averaging, banking and trading programs for HDD vehicles within the requirements of Title 13 CCR, Division 3, Chapter 1, Article 2, § 1965.

Section 126.531 (relating to responsibilities of heavy-duty diesel highway vehicle dealers) provides that a dealer must convey to the owner of a new HDD engine or vehicle subject to the requirements of this subchapter a valid emission control label which meets the requirements of Title 13 CCR, Division 3, Chapter 1, Article 2, § 1965.

Under § 126.531(b), a dealer may not sell, offer for sale or lease or deliver a new HDD engine or vehicle subject of this subchapter unless the engine or vehicle conforms to the standards and requirements under Title 13 CCR, Division 3, Chapter 2, Article 3, § 2151.

Under § 126.531(c), a dealer who imports, sells, delivers, leases or rents any HDD engines or vehicles subject to this subchapter shall retain records concerning the transaction for at least 3 years following the transaction.

G. *Benefits and Costs*

Executive Order 1996-1 requires a cost benefit analysis of the final-form rulemaking.

Benefits. The new HDD Program will contribute to the attainment and maintenance of the ozone health-based standard in this Commonwealth due to emission reductions from the operation of lower-emitting HDD vehicles. Modeling data from the Philadelphia area indicates that daily emissions of NO_x will be reduced by 2 tons per average summer day and 12.5 tons per average summer day Statewide from trucks that are subject to the HDD Program. In addition, it is anticipated that the health of the citizens of this Commonwealth will benefit from these reductions as well as through reduced exposure of air toxics, NO_x and other air pollutants, which place people's health at risk.

Compliance Costs. The primary cost to the trucking industry will be incurred when purchasing a new truck or engine. For those model years affected in 2005, this final-form rulemaking could increase the average cost of an engine, which has a useful life of 15 to 20 years, by as much as \$800 and increase operating costs by up to \$9 per year. Because it is difficult to separate the incremental cost of the supplemental tests from other aspects of complying with Federal and California standards, the actual cost is anticipated to be much lower.

Compliance Assistance Plan. Compliance assistance will be provided to affected parties, primarily automobile dealers, by distributing pamphlets and conducting public meetings and workshops to explain the regulatory requirements. The Department will involve appropriate State trade organizations in the distribution of information to their membership. Information concerning the HDD Program will also be provided to affected consumers.

Paperwork Requirements. HDD engine and vehicle manufacturers will be required to submit paperwork demonstrating compliance with the emissions standards

and other requirements of the Commonwealth's HDD Program. HDD engine and vehicle dealers, leasing and rental agencies and purchasers of HDD engines and vehicles must demonstrate to the Department that new vehicles subject to the rulemaking meet the emissions standards.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 26, 2002, the Department submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 4958 (September 1, 2001), to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered the comments received from IRRC, the Committees and the public. These comments are addressed in the comment and response document and Section E of this Preamble.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on April 15, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2002, and approved the final-form rulemaking.

J. *Finding*

The Board finds that:

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

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

(3) This final-form rulemaking does not enlarge the purpose of the proposal published at 31 Pa.B. 4958.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble and is reasonably necessary to achieve and maintain the National ambient air quality standards for ozone.

K. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 126, are amended by amending §§ 121.1 and by adding §§ 126.501—126.504, 126.511—126.515, 126.521, 126.522 and 126.531 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and

the Office of Attorney General for review and approval as to legality and form, as required by law.

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

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

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

DAVID E. HESS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 2285 (May 4, 2002).)

Fiscal Note: 7-365. No fiscal impact; (8) recommends adoption. There will be some costs to departments to comply with this regulation. Total estimated cost to comply with the regulation for 2003-04 is \$90,431, for 2004-05 is \$185,941 and for 2005-06 is \$95,554. These costs will be shared by the Department of General Services, Department of Transportation, Turnpike Commission, Fish and Boat Commission and Game Commission.

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:

* * * * *

Heavy-duty diesel engine—A diesel engine that is used to propel a motor vehicle with a GVWR of greater than 14,000 pounds.

Heavy-duty diesel vehicle—A diesel-powered motor vehicle with a GVWR of greater than 14,000 pounds.

* * * * *

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

* * * * *

CHAPTER 126. MOTOR VEHICLE AND FUELS PROGRAMS

Subchapter E. PENNSYLVANIA HEAVY-DUTY DIESEL EMISSIONS CONTROL PROGRAM

GENERAL PROVISIONS

- Sec.
126.501. Purpose.
126.502. General requirements.
126.503. Emission requirements.
126.504. Exemptions.

APPLICABLE HEAVY-DUTY ENGINE AND VEHICLE TESTING

- 126.511. New engine and vehicle certification testing.
126.512. New engine and vehicle compliance testing.
126.513. Assembly line testing.
126.514. In-use engine and vehicle enforcement testing.
126.515. In-use surveillance testing.

ENGINE AND VEHICLE MANUFACTURERS' OBLIGATIONS

- 126.521. Warranty and recall.
126.522. Reporting requirements.

MOTOR VEHICLE DEALER RESPONSIBILITIES

- 126.531. Responsibilities of heavy-duty diesel highway vehicle dealers.

GENERAL PROVISIONS

§ 126.501. Purpose.

(a) This subchapter establishes a heavy-duty diesel emissions control program under section 177 of the Clean Air Act (42 U.S.C.A. § 7507) designed primarily to achieve emission reductions of the precursors of ozone, particulate matter, air toxics and other air pollutants from new heavy-duty diesel engines and vehicles.

(b) This subchapter adopts and incorporates by reference certain provisions of the California Exhaust Emission Standards and Test Procedures for Heavy-Duty Diesel Engines and Vehicles.

(c) This subchapter also exempts certain new heavy-duty diesel engines and vehicles from this new emissions control program.

§ 126.502. General requirements.

(a) The Pennsylvania Heavy-Duty Diesel Emissions Control Program requirements apply to new heavy-duty diesel engines and vehicles with a GVWR of greater than 14,000 pounds that are sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired or received in this Commonwealth starting with the model year beginning after May 11, 2004, and each model year thereafter.

(b) The California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Heavy-Duty Engines and Vehicles, Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8 are adopted and incorporated by reference to the extent that they pertain to the requirements for heavy-duty diesel engines and vehicles with a GVWR of greater than 14,000 pounds.

(c) The California Enforcement of Vehicle Emission Standards and Surveillance Testing, Title 13 CCR, Division 3, Chapter 2, Article 1.5, § 2065, are adopted and incorporated by reference.

§ 126.503. Emission requirements.

(a) Starting with the model year beginning after May 11, 2004, a person may not sell, import, deliver, purchase, lease, rent, acquire or receive a new heavy-duty diesel engine or vehicle, subject to the Pennsylvania Heavy-Duty Diesel Emissions Control Program requirements, in

this Commonwealth that has not received a CARB Executive Order for all applicable requirements of Title 13 CCR, adopted and incorporated by reference.

(b) Starting with the model year beginning after May 11, 2004, a manufacturer may elect to include its heavy-duty diesel engines or vehicles delivered for sale in this Commonwealth in the emissions averaging, banking and trading programs for heavy-duty diesel engines or vehicles as provided under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8, adopted and incorporated by reference.

(c) Starting with the model year beginning after May 11, 2004, a manufacturer may elect to certify any of its heavy-duty diesel engines or vehicles delivered for sale in this Commonwealth to the optional emission standards as provided under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8, adopted and incorporated by reference.

(d) New heavy-duty diesel engines and vehicles subject to this subchapter shall possess a valid emissions control label that meets the requirements of Title 13 CCR, Division 3, Chapter 1, § 1965, adopted and incorporated by reference.

§ 126.504. Exemptions.

The following new heavy duty diesel engines and vehicles are exempt from the Pennsylvania Heavy-Duty Diesel Emissions Control Program requirements of this subchapter:

- (1) Emergency vehicles.
- (2) A heavy-duty diesel vehicle transferred by a dealer to another dealer.
- (3) A heavy-duty diesel vehicle transferred for use exclusively off-highway.
- (4) A heavy-duty diesel vehicle granted a National security or testing exemption under section 203(b)(1) of the Clean Air Act (42 U.S.C.A. § 7522(b)(1)).
- (5) A heavy-duty diesel vehicle defined as a military tactical vehicle or engine under Title 13 CCR, Division 3, Chapter 1, Article 1, § 1905, adopted and incorporated by reference.
- (6) A heavy-duty diesel vehicle sold after May 11, 2004, if the vehicle was registered in this Commonwealth before May 11, 2004.
- (7) A heavy-duty diesel engine or vehicle for the model years 2005 and 2006 manufactured by an ultra-small volume manufacturer as defined under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1976(f)(2), adopted and incorporated by reference.
- (8) For model years 2005 and 2006, an urban bus as defined under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.2(b)(4), adopted and incorporated by reference.
- (9) A heavy-duty diesel engine or vehicle that, following a technology review, CARB determines is inappropriate to require compliance with the emission standards and other requirements under Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8 for a particular model year.

APPLICABLE HEAVY-DUTY ENGINE AND VEHICLE TESTING

§ 126.511. New engine and vehicle certification testing.

(a) Prior to being offered for sale or lease in this Commonwealth, new heavy-duty diesel engines and vehicles subject to the Pennsylvania Heavy-Duty Diesel

Emissions Control Program requirements of this subchapter shall be certified as meeting the heavy-duty diesel engine and vehicle requirements of Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8 as determined by Title 13 CCR, Division 3, Chapter 2, Article 2, §§ 2101—2110, adopted and incorporated by reference.

(b) For purposes of complying with subsection (a), new vehicle certification testing determinations and findings made by CARB apply.

§ 126.512. New engine and vehicle compliance testing.

(a) Prior to being offered for sale or lease in this Commonwealth, new heavy-duty diesel engines and vehicles subject to the Pennsylvania Heavy-Duty Diesel Emissions Control Program requirements of this subchapter shall be certified as meeting the heavy-duty diesel engine and vehicle requirements of Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8 as determined by Title 13 CCR, Division 3, Chapter 2, Article 2, §§ 2101—2110, adopted and incorporated by reference.

(b) For purposes of compliance with subsection (a), new engine and vehicle compliance testing determinations and findings made by CARB apply.

§ 126.513. Assembly line testing.

(a) Each manufacturer of new heavy-duty diesel engines and vehicles subject to the Pennsylvania Heavy-Duty Diesel Emission Control Program requirements of this subchapter, certified by CARB and sold or leased in this Commonwealth, shall conduct assembly line testing in accordance with Title 13 CCR, Division 3, Chapter 2, Article 1, adopted and incorporated by reference.

(b) For purposes of compliance with subsection (a), assembly line testing determinations and findings made by CARB apply.

§ 126.514. In-use engine and vehicle enforcement testing.

(a) For the purposes of detection and repair of engines and vehicles subject to the Pennsylvania Heavy-Duty Diesel Emissions Control Program requirements which fail to meet the emission requirements of Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8, the Department may, after consultation with CARB, conduct in-use vehicle enforcement testing in accordance with the protocol and testing procedures in Title 13 CCR, Division 3, Chapter 2, Article 2.3, §§ 2136—2140, adopted and incorporated by reference.

(b) For purposes of compliance with subsection (a), in-use engine and vehicle enforcement testing determinations and findings made by CARB apply.

§ 126.515. In-use surveillance testing.

(a) For the purposes of testing and monitoring, the overall effectiveness of the Pennsylvania Heavy-Duty Diesel Emissions Control Program in controlling emissions, the Department may conduct in-use surveillance testing after consultation with CARB, in accordance with Title 13 CCR, Division 3, Chapter 2, Article 3, §§ 2150—2153, adopted and incorporated by reference.

(b) For purposes of program planning, in-use surveillance testing determinations and findings made by CARB apply.

ENGINE AND VEHICLE MANUFACTURERS' OBLIGATIONS

§ 126.521. Warranty and recall.

(a) A manufacturer of new heavy-duty diesel engines or vehicles subject to the Pennsylvania Heavy-Duty Diesel

Emissions Control Program requirements of this subchapter which are sold, leased, or offered for sale or lease in this Commonwealth shall warrant to the owner that each engine or vehicle shall comply over its period of warranty coverage with the requirements of Title 13 CCR, Division 3, Chapter 1, Article 6, §§ 2036, 2039—2041 and 2046, adopted and incorporated by reference.

(b) Each manufacturer of new heavy-duty diesel engines or vehicles shall submit to the Department failure of emission-related components reports, as defined in Title 13 CCR, Division 3, Chapter 2, Article 2.4, § 2144, adopted and incorporated by reference, for engines and vehicles subject to the Pennsylvania Heavy-Duty Diesel Emissions Control Program in compliance with the procedures in Title 13 CCR, Division 3, Chapter 2, Article 2.4, §§ 2141—2149, adopted and incorporated by reference.

(c) For heavy-duty diesel engines and vehicles subject to the Pennsylvania Heavy-Duty Diesel Emissions Control Program, a voluntary or influenced emission-related recall campaign initiated by any heavy-duty diesel engine or vehicle manufacturer under Title 13 CCR, Division 3, Chapter 2, Article 2.1, §§ 2111—2121, adopted and incorporated by reference, shall extend to all new heavy-duty diesel engines or vehicles sold, leased or offered for sale or lease in this Commonwealth.

(d) For heavy-duty diesel engines and vehicles subject to the Pennsylvania Heavy-Duty Diesel Emission Control Program, an in-use vehicle ordered recall under Title 13 CCR, Division 3, Chapter 2, Article 2.2, §§ 2122—2135, adopted and incorporated by reference, shall extend to all new heavy-duty diesel engines or vehicles sold, leased or offered for sale or lease in this Commonwealth.

§ 126.522. Reporting requirements.

(a) For the purposes of determining compliance with the Pennsylvania Heavy-Duty Diesel Emissions Control Program, commencing with the model year beginning after May 11, 2004, 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 engines and vehicles for each engine family over that model year in this Commonwealth.

(b) For the purposes of determining compliance with the Pennsylvania Heavy-Duty Diesel Emissions Control Program, each heavy-duty diesel engine and vehicle manufacturer shall submit annually to the Department, by March 1 of the calendar year following the close of the completed calendar year, a report of its heavy-duty diesel engines and vehicles delivered for sale in this Commonwealth that were included in the emissions averaging, banking and trading programs for heavy-duty diesel engines and vehicles within the provisions of Title 13 CCR, Division 3, Chapter 1, Article 2, § 1956.8.

MOTOR VEHICLE DEALER RESPONSIBILITIES

§ 126.531. Responsibilities of heavy-duty diesel highway vehicle dealers.

(a) A dealer may not sell, offer for sale or lease, or deliver a new heavy-duty diesel engine or vehicle subject to this subchapter without a valid emissions control label which meets the requirements of Title 13 CCR, Division 3, Chapter 1, Article 2, § 1965, adopted and incorporated by reference.

(b) A dealer may not sell, offer for sale or lease, or deliver a new heavy-duty diesel engine or vehicle subject to this subchapter unless the engine or vehicle conforms to the standards and requirements under Title 13 CCR, Division 3, Chapter 2, Article 3, § 2151, adopted and incorporated by reference.

(c) A dealer who imports, sells, delivers, leases or rents an engine or vehicle subject to this subchapter shall retain records concerning the transaction for at least 3 years following the transaction.

[Pa.B. Doc. No. 02-844. Filed for public inspection May 10, 2002, 9:00 a.m.]
