

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 7.00 AIR POLLUTION CONTROL REGULATIONS

310 CMR 7.40 U LOW EMISSION VEHICLES PROGRAM

7.40: U Low Emission Vehicles Program

(1) U Applicability and Definitions.

(a) Under the authority of 42 U.S.C. § 7507 and M.G.L. c. 111, § 142A through § 142M, the Department hereby adopts the California Low Emission Vehicle program.

(b) Definitions. When used in 310 CMR 7.40 or in communications, notices or orders relative thereto, the following words and phrases shall have the meanings ascribed to them below:

ADD-ON PART means any aftermarket part which is not a modified part or a replacement part.

AFTERMARKET PART means any part of a motor vehicle emission control system sold for installation on a vehicle after the original retail sale of the vehicle.

CONSOLIDATED PART means a part which is designed to replace a group of original equipment parts.

EMERGENCY VEHICLES means any publicly owned vehicle operated by a peace officer in performance of their duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire calls, any publicly owned authorized emergency vehicle used by an emergency medical technician or paramedic, or used for towing or servicing other vehicles, or repairing damaged lighting or electrical equipment, any motor vehicle of mosquito abatement, vector control, or pest abatement agencies and used for those purposes, or any ambulance used by a private entity under contract with a public agency.

EMISSION CONTROL LABELS means a paper, plastic, metal or other permanent material, welded, riveted or otherwise permanently attached to an area within the engine compartment (if any) or to the engine in such a way that it will be visible to the average person after installation of the engine in

all 1995 and subsequent model year passenger cars and light-duty trucks and 2003 and subsequent model year medium-duty vehicles certified for sale in California, in accordance with Title 13 CCR 1965 and "California Motor Vehicle Emission Control and Smog Index Label Specifications".

EMISSION CONTROL WAIVER means an exemption from the requirements of 310 CMR 7.40 granted by the Department in conjunction with the Massachusetts Registry of Motor Vehicles, pursuant to M.G.L. c. 90, § 2 or regulations promulgated thereunder.

EMISSIONS-RELATED PART means any automotive part, which affects any regulated emissions from a motor vehicle which is subject to California or federal emission standards. This includes, at a minimum, those parts specified in the "Emissions-Related Parts List," adopted by the California Air Resources Board.

EXECUTIVE ORDER means a document issued by the California Air Resources Board certifying that a specified engine family, test group or model year vehicle has met all applicable Title 13 CCR requirements for certification and sale in California.

FLEETWIDE AVERAGE means a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to 310 CMR 7.40, delivered for sale to Massachusetts in any model year, based on the calculation in Title 13 CCR 1960.1(g)(2) or 1961.

HEAVY-DUTY ENGINE means any engine used to propel a heavy-duty vehicle.

HEAVY-DUTY VEHICLE means any motor vehicle having a manufacturer's gross vehicle weight rating greater than 6,000 lbs., except passenger cars.

LIGHT-DUTY TRUCK means any 2000 and subsequent model year motor vehicle certified to the standards in Title 13 CCR section 1961(a)(1) rated at 8,500 lbs. gross vehicle weight or less, and any other motor vehicle rated at 6,000 lbs. gross vehicle weight or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

MAIL OUT means a widely distributed general correspondence issued by the California Air Resources Board whenever said Board needs information from the public, or when it wishes to inform the public of new information.

MANUFACTURER means any small, intermediate or large volume motor vehicle manufacturer which offers, delivers or arranges for the delivery of new motor vehicles for sale or lease in Massachusetts as defined in Title 13 CCR 1900, except as otherwise provided in 310 CMR 7.40(12).

MANUFACTURERS ADVISORY CORRESPONDENCE means a document issued by the California Air Resources Board, which is a policy interpretation for further clarification of the California Code of Regulations.

MEDIUM-DUTY VEHICLE means any 2003 through 2006 model year heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in Title 13 CCR section 1956.8(g) or (h) or 1960.1(h)(2), having a manufacturer's gross vehicle weight rating of 14,000 pounds or less; any 2003 heavy-duty vehicle certified to the standards in Title 13 CCR 1960.1(h)(1), 1956.8(g) or (h) having a manufacturer's gross vehicle weight rating of 14,000 pounds or less; and any 2003 and subsequent model heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in Title 13 CCR 1956.8(g) or (h), 1961(a)(1) or 1962 having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 pounds.

MODEL YEAR means a manufacturer's annual production period which includes January 1st of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

MODIFIED PART means any aftermarket part intended to replace an original equipment emissions-related part and which is not functionally identical to the original equipment part in all respects which in any way affect emissions; excluding a consolidated part:

MOTOR VEHICLE POLLUTION CONTROL SYSTEM means the combination of emission-related parts which controls air pollutant emissions from a motor vehicle or motor vehicle engine.

NEW VEHICLE means any passenger car, light-duty truck or 2003 and subsequent model year medium-duty vehicle with 7,500 miles or fewer on its odometer.

PASSENGER CAR means any motor vehicle designed primarily for transportation of persons and having a design capacity of 12 persons or less.

RECALL means:

- (a) A manufacturer's issuing of notices directly to consumers that vehicles in their possession or control should be corrected;
- (b) A manufacturer's efforts to actively locate and correct vehicles in the possession or control of consumers.

RECALL CAMPAIGN means that plan approved by the California Air Resources Board or the Department, by which the manufacturer will effect the recall of noncomplying vehicles.

REPLACEMENT PART means any aftermarket part which is intended to replace an original equipment emissions-related part and which is functionally identical to the original equipment part in all respects which in any way affect emissions (including durability), or a consolidated part.

SMOG INDEX LABEL means a decal securely affixed by the manufacturer to a window of all 2001 and subsequent model year passenger cars and light-duty trucks which discloses the smog index for the vehicle in accordance with Title 13 CCR 1965 and the "California Motor Vehicle Emission Control and Smog Index Label Specifications".

TEST VEHICLE means an experimental or prototype motor vehicle which appears to have very low emission characteristics or a used motor vehicle within which an experimental motor vehicle pollution control device is installed, and which has also received a test vehicle or fleet permit from the California Air Resources Board pursuant to Manufacturers Advisory Correspondence No. 83-01.

USED VEHICLE means any passenger car, light-duty truck or 2003 and subsequent model year medium-duty vehicle with more than 7,500 miles on its odometer.

ZERO EMISSION VEHICLE (or "ZEV") means any 1995 and subsequent model year passenger car or light-duty truck, or any 2003 and subsequent model year medium duty vehicle certified to the standards in Title 13 CCR 1962 which produces zero emissions of any criteria pollutants under any and all possible operational modes and conditions. Incorporation of a fuel fired heater shall not preclude a vehicle from being certified as a ZEV provided the fuel fired heater cannot be operated at ambient temperatures above 40°F and the heater is demonstrated to have zero evaporative emissions under any and all possible operational modes and conditions. In addition, Zero Emission Vehicle or "ZEV", means any ZEV placed in service in compliance with the

California Project pursuant to the requirements of the Master Memorandum of Agreement adopted by the California Air Resources Board March 29, 1996.

(c) The Low Emission Vehicle Program regulations, 310 CMR 7.40, refer to various sections of Title 13 of the California Code of Regulations (CCR). Wherever 310 CMR 7.40 refers to a specific section of the CCR, the reference is made to that version of the section as of the amended date provided for that section in Table A below. The Department hereby incorporates by reference each of the sections of Title 13 CCR that are listed in Table A as of such section's respective Amended Date.

TABLE A:

| Title 13 CCR      | Title  | Section Amended Date |
|-------------------|--|----------------------|
| Chapter 1.        | Motor Vehicle Pollution Control Devices.   |                      |
| Article 1.        | General Provisions.  |                      |
| 1900              | Definitions.   | 11/27/99             |
| Article 2.        | Approval of Motor Vehicle Pollution Control Devices (New Vehicles).  |                      |
| 1956.8(g) and (h) | Exhaust Emissions Standards and Test Procedures – 1985 and Subsequent Model Heavy-Duty Engines and Vehicles.   | 5/15/99              |
| 1960.1            | Exhaust Emissions Standards and Test Procedures – 1981 through 2006 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles.  | 11/27/99             |
| 1960.1.5          | Optional NOx Standards for 1983 and Later Model Passenger Cars, and Light-Duty Trucks and Medium-Duty Vehicles Less Than 4000 Lbs. Equivalent Inertia Weight (EIW) or 3751 Lbs. Loaded Vehicle Weight (LVW). | 9/30/91              |
| 1960.5            | Certification of 1983 and Subsequent Model-Year Federally Certified Light-Duty Motor Vehicles for Sale in California.  | 9/30/91              |
| 1961              | Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.  | 11/27/99             |
| 1962              | Zero-Emission Vehicle Standards for 2003 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.   | 11/27/99             |
| 1964              | Special Test Procedures for Certification and Compliance – New Modifier Certified Motor Vehicles.  | 2/23/90              |
| 1965              | Emission Control and Smog Index Labels – 1979 and Subsequent Model-Year Motor Vehicles.  | 11/27/99             |

| Title 13 CCR | Title  | Section Amended Date |
|--------------|--|----------------------|
| 1968.1       | Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Engines.  | 11/27/99             |
| 1976         | Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.  | 11/27/99             |
| 1978         | Standards and Test Procedures for Vehicle Refueling Emissions.   | 11/27/99             |
| Article 6.   | Emission Control System Warranty.  |                      |
| 2035         | Purpose, Applicability, and Definitions.   | 12/26/90             |
| 2036         | Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles. | 5/15/99              |
| 2037         | Defects Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles.  | 11/27/99             |
| 2038         | Performance Warranty for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles.  | 11/27/99             |
| 2039         | Emissions Control System Warranty Statement.   | 12/26/90             |
| 2040         | Vehicle Owner Obligations.   | 12/26/90             |
| 2041         | Mediation; Finding of Warrantable Condition.   | 12/26/90             |
| Article 7.   | Procedures for Certifying Used Modifier-Certified Motor Vehicles and Licensing Requirements for Vehicle Emission Test Laboratories.  |                      |
| 2047         | Certification Procedures for Used Modifier-Certified Motor Vehicles.   | 5/31/88              |
| Chapter 2.   | Enforcement of Vehicle Emission Standards and Surveillance Testing.  |                      |
| Article 1.   | Assembly-Line Testing.   |                      |
| 2061         | Assembly-Line Test Procedures – 1983 and Subsequent Model-Years.   | 10/23/96             |
| 2062         | Assembly-Line Test Procedures – 1998 and Subsequent Model Years.   | 11/27/99             |
| Article 2.   | Enforcement of New and In-Use Vehicle Standards.   |                      |
| 2101         | Compliance Testing and Inspection – New Vehicle Selection, Evaluation, and Enforcement Action.   | 11/27/99             |
| 2106         | New Vehicle Assembly-Line Inspection Testing.  | 11/27/99             |
| 2107         | Assembly-Line Quality-Audit Testing.   | 11/27/99             |
| 2108         | Order of Executive Officer.  | 11/30/83             |

| Title 13 CCR | Title  | Section Amended Date |
|--------------|--|----------------------|
| 2109         | New Vehicle Recall Provisions.   | 11/30/83             |
| 2110         | Remedial Action for Assembly-Line Quality Audit Testing of Less Than a Full Calendar Quarter of Production Prior to the 2001 Model Year. | 11/27/99             |
| Article 2.1  | Procedures for In-Use Vehicle Voluntary and Influenced Recalls.  |                      |
| 2111         | Applicability.   | 1/26/95              |
| 2112         | Definitions.   | 11/27/99             |
|              | Appendix A to Article 2.1.   | 11/27/99             |
| 2113         | Initiation and Approval of Voluntary and Influenced Emission-Related Recalls.  | 1/26/95              |
| 2114         | Voluntary and Influenced Recall Plans.   | 11/27/99             |
| 2115         | Eligibility for Repair.  | 1/26/95              |
| 2116         | Repair Label.  | 1/26/95              |
| 2117         | Proof of Correction Certificate.   | 1/26/95              |
| 2118         | Notification.  | 1/26/95              |
| 2119         | Recordkeeping and Reporting Requirements.  | 11/27/99             |
| 2120         | Other Requirements Not Waived.   | 1/26/95              |
| 2121         | Penalties.   | 1/26/95              |
| Article 2.2. | Procedures for In-Use Vehicle Ordered Recalls.   |                      |
| 2122         | General Provisions.  | 1/26/95              |
| 2123         | Initiation and Notification of Ordered Emission-Related Recalls.   | 1/26/95              |
| 2124         | Availability of Public Hearing.  | 1/26/95              |
| 2125         | Ordered Recall Plan.   | 1/26/95              |
| 2126         | Approval and Implementation of Recall Plan.  | 1/26/95              |
| 2127         | Notification of Owners.  | 1/26/95              |
| 2128         | Repair Label.  | 1/26/95              |
| 2129         | Proof of Correction Certificate.   | 1/26/95              |
| 2130         | Capture Rates and Alternative Measures.  | 11/27/99             |
| 2131         | Preliminary Tests.   | 1/26/95              |
| 2132         | Communication with Repair Personnel.   | 1/26/95              |
| 2133         | Recordkeeping and Reporting Requirements.  | 1/26/95              |
| 2134         | Penalties.   | 1/26/95              |
| 2135         | Extension of Time.   | 1/26/95              |
| Article 2.3. | In-Use Vehicle Enforcement Test Procedures.  |                      |
| 2136         | General Provisions.  | 1/26/95              |
| 2137         | Vehicle Selection.   | 11/27/99             |
| 2138         | Restorative Maintenance.   | 11/27/99             |
| 2139         | Testing.   | 11/27/99             |
| 2140         | Notification and Use of Test Results.  | 11/27/99             |

| Title 13 CCR | Title  | Section Amended Date |
|--------------|--|----------------------|
| Article 2.4. | Procedures for Reporting Failure of Emission- Related Components.                          |                      |
| 2141         | General Provisions.  | 2/23/90              |
| 2142         | Alternative Procedures.  | 2/23/90              |
| 2143         | Failure Levels Triggering Recall.  | 11/27/99             |
| 2144         | Emission Warranty Information Report.  | 11/27/99             |
| 2145         | Field Information Report.  | 11/27/99             |
| 2146         | Emissions Information Report.  | 11/27/99             |
| 2147         | Demonstration of Compliance with Emission Standards.                                       | 11/27/99             |
| 2148         | Evaluation of Need for Recall.   | 11/27/99             |
| 2149         | Notification of Subsequent Action.   | 2/23/90              |
| Article 3.   | Surveillance Testing.  |                      |
| 2150         | Assembly-line Surveillance.  | 11/30/83             |
| 2151         | New Motor Vehicle Dealer Surveillance.   | 11/30/83             |
| 2152         | Surveillance of Used Cars at Dealerships   | 11/30/83             |
| Chapter 4.   | Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives. |                      |
| Article 2.   | Aftermarket Parts.   |                      |
| 2221         | Replacement Parts.   | 11/30/83             |
| 2222         | Add-on Parts and Modified Parts.   | 8/16/90              |
| 2224         | Surveillance.  | 8/16/90              |

(d) Pursuant to the requirements of M.G.L. c. 111, § 142K, 310 CMR 7.40 is applicable to all 1995 and subsequent model year passenger cars and light-duty trucks and 2003 and subsequent model year medium-duty vehicles sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received, or registered in Massachusetts.

(e) All documentation referenced in the CCR Title 13 sections listed in Table 1, including but not limited to California Test Procedures, California Health and Safety Code and 40 CFR, Part 86 are also hereby incorporated by reference.

(f) Pursuant to the requirements of 42 U.S.C. § 7507, the Department shall apply technical guidance issued by the California ARB relative to the implementation of Title 13 California Code of Regulations (CCR), including but not limited to Manufacturers Advisory Correspondences and Mail Outs to all vehicles subject to 310 CMR 7.40.

(2) Emissions Requirements and Prohibitions.



(a) No corporation, person or other entity shall sell, import, deliver, purchase, lease, rent, acquire, receive, or register a new vehicle subject to 310 CMR 7.40 in Massachusetts that has not received a California ARB Executive Order for all applicable requirements of Title 13 CCR 1956.8(g) or (h), 1960.1, 1960.1.5, 1960.5, 1964, 1968.1, 1976, 1978 and 2047, unless the vehicle is sold directly from one dealer to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use, or sold for registration out of state, and except as provided in 310 CMR 7.40(2)(c).

1. Effective for model years 1999 and 2000, each manufacturer shall comply with the Fleet Average Non-methane Organic Gas Exhaust Emission Requirement in Massachusetts, including the generation of non-methane organic gas credits and debits, hereinafter referred to as NMOG credits and debits, and the requirement to make up an NMOG debit, in accordance with the procedures in Title 13 CCR 1960.1(g)(2), based on passenger cars and light-duty trucks delivered for sale in Massachusetts.

2. Effective for 2001 and subsequent model years, each manufacturer shall comply with the Fleet Average Non-methane Organic Gas Exhaust Emission Requirement in Massachusetts, including the generation of NMOG credits and debits and the requirement to make up an NMOG debit, in accordance with the procedures in Title 13 CCR 1961(b) and (c) based on passenger cars and light-duty trucks delivered for sale in Massachusetts.

3. Effective for 2004 and subsequent model years, each manufacturer shall comply with the phase-in requirements in accordance with Title 13 CCR 1961(b) based on passenger cars and light-duty trucks delivered for sale in Massachusetts.

4. Effective for 2003 and subsequent model years, each manufacturer shall comply with the medium-duty vehicle phase-in requirements, including the generation of vehicle equivalent NMOG credits and debits and the requirement to make up a vehicle equivalent NMOG debit, in accordance with Title 13 CCR 1960.1(h) and 1961(b) and (c), based on vehicles delivered for sale in Massachusetts.

5. \* \* \*

(b) No motor vehicle dealer shall sell, offer for sale or lease, or deliver any new or used vehicle subject to 310 CMR 7.40 unless said vehicle conforms to the standards below:

1. Ignition timing set to manufacturer's specifications with an allowable tolerance of +/- 3°.

2. Idle speed is set to manufacturer's specifications with an allowable tolerance of +/- 100 rpm;
3. All required exhaust and evaporative emission controls, including without limitation EGR valves, are operating properly;
4. All vacuum hoses and electrical wiring for emission controls are correctly routed; and
5. Idle mixture is set to manufacturer's specifications or according to manufacturer's recommended service procedures.

(c) Exceptions.

1. Motor vehicles held for daily lease or rental to the general public or engaged in interstate commerce which are registered and principally operated outside Massachusetts, shall not be subject to the requirements of 310 CMR 7.40(2)(a) and (b).
2. Motor vehicles defined as test vehicles, as emergency vehicles, or qualifying for exemption under Section 43656 of the California Health and Safety Code, incorporated herein by reference, shall not be subject to the requirements of 310 CMR 7.40(2)(a), (b), and (d).
3. \* \* \*

(d) No corporation, person, or other entity shall register or attempt to register in Massachusetts any new vehicle subject to 310 CMR 7.40(2) unless said vehicle possesses one of the following:

1. A valid Emission Control Label pursuant to the requirements of Title 13 CCR 1965; or
2. a Massachusetts Emission Control Waiver which maybe granted by the Department in conjunction with the Massachusetts Registry of Motor Vehicles prior to submitting a vehicle's registration application exempting the vehicle from the requirements of 310 CMR 7.40(2)(a), only in the following circumstances:
  - a. vehicle purchased by nonresident prior to establishing residency in Massachusetts; or
  - b. vehicle transfer by inheritance, or by decree of divorce, dissolution or legal separation entered by a court of competent jurisdiction; or

c. vehicle acquired by a resident of the Commonwealth for the purpose of replacing a vehicle registered to said resident which was damaged or inoperative, beyond reasonable repair, or was stolen while out of the Commonwealth; provided that such replacement vehicle is acquired out of the state at the time the previously registered vehicle became damaged or inoperative, beyond reasonable repair, or was stolen.

(e) Effective for model year 2001 and subsequent model years, no manufacturer shall deliver for sale to Massachusetts a new passenger car or light-duty truck subject to 310 CMR 7.40 that does not have a Smog Index Label securely affixed to a window of the vehicle in accordance with Title 13 CCR 1965.

No motor vehicle dealer in Massachusetts shall remove or cause removal of a Smog Index Label affixed to any motor vehicle subject to 310 CMR 7.40 prior to the sale or lease of the vehicle.

(f) Anti-tampering provisions.

1. No person shall disconnect, modify, or alter any emission-related part except for purposes of repair or replacement.
2. No person shall operate or leave standing upon any highway any motor vehicle subject to 310 CMR 7.40 and required to be equipped with an emission control device meeting the standards of 310 CMR 7.40, or subject to the motor vehicle pollution control device requirements pursuant to the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the standards and requirements promulgated thereunder, unless the motor vehicle is equipped with the required motor vehicle pollution control device which is correctly installed and in operating condition.

(3) Vehicle Testing.

(a) New Vehicle Certification Testing.

1. All new vehicle models subject to 310 CMR 7.40, sold or leased in Massachusetts, must be certified as meeting the motor vehicle emission requirements of Title 13 CCR 1956.8(g) or (h), 1960.1, 1961, 1962, 1968.1, 1976, or 1978, as determined by testing conducted in accordance with the testing procedures incorporated in Title 13 CCR 1956.8(b), 1960.1(k), 1961(d), 1962(e), 1976(b) and (c) and 1978(b).
2. For the purposes of compliance with 310 CMR 7.40(3)(a)1., New Vehicle Certification Testing determinations and findings made by the California ARB shall be applicable.

(b) Assembly Line Testing.

All manufacturers of new vehicles subject to 310 CMR 7.40, certificate for sale in California and sold or leased in Massachusetts, shall conduct Quality Audit Testing until model year 2000 in accordance with Title 13 CCR 2061, 2062, 2106 and 2107 and in accordance with the testing procedures incorporated in Title 13 CCR 1960.1(k) and 1961(d).

2. All manufacturers of new vehicles subject to 310 CMR 7.40, certified for sale in California and sold or leased in Massachusetts, shall conduct Inspection Testing in accordance with Title 13 CCR 2106 and in accordance with the testing procedures incorporated in Title 13 CCR 1961(d).

3. For the purposes of compliance with 310 CMR 7.40(3)(b)1., Inspection Testing and Quality Audit Testing determinations and findings made by the California ARB shall be applicable.

(c) New Vehicle Compliance Testing.

1. New vehicle models subject to 310 CMR 7.40, prior to their being offered for sale or lease in Massachusetts, must meet the motor vehicle emission requirements of Title 13 CCR 1956.8(g) or (h), 1960.1, 1961, 1962, 1968.1, 1976 and 1978, as determined by New Vehicle Compliance Testing, conducted in accordance with Title 13 CCR 2101 through 2110, 2150 and 2151 and in accordance with the testing procedures incorporated in Title 13 CCR 1956.8(b), 1960.1(k), 1961(d), 1962(e), 1976(b) and (c) and 1978(b).

2. For the purpose of compliance with 310 CMR 7.40(3)(c)1., New Vehicle Compliance Testing determinations and findings made by the California ARB shall be applicable.

(d) In-Use Vehicle Enforcement Testing.

1. For the purposes of detection and repair of vehicles in Massachusetts failing to meet the applicable motor vehicle emission requirements of Title 13 CCR 1956.8(g) or (h), 1960.1, 1961, 1962, 1968.1, 1976, and 1978, the Department may conduct, after consultation with the California ARB, In-Use Vehicle Enforcement Testing in accordance with the protocol and testing procedures in Title 13 CCR 2136 through 2140 and in accordance with the testing procedures incorporated in Title 13 CCR 1956.8(b), 1960.1(k), 1961(d), 1962(e), 1976(b) and (c) and 1978(b).

2. For the purposes of compliance with 310 CMR 7.40(3)(d)1., In-Use Vehicle Enforcement Testing determinations and findings made by the California ARB shall be applicable.

(e) In-Use Surveillance Testing.

1. For the purposes of testing and monitoring the overall effectiveness in Massachusetts of the program set forth in 310 CMR 7.40 in controlling emissions, the Department may conduct In-Use Surveillance Testing after consultation with the California ARB.
2. For the purposes of compliance with 310 CMR 7.40(3)(e)1., In-Use Surveillance Testing determinations and findings made by the California ARB shall be applicable.

(4) Warranty.

(a) Vehicle Manufacturer Obligations.

1. Each manufacturer of new vehicles subject to 310 CMR 7.40 which are sold, leased, offered for sale or lease, or registered in Massachusetts shall warrant that each such vehicle shall comply over its period of warranty coverage with all requirements of Title 13 CCR 2035 through 2041.
2. For the purposes of mediation of unresolved emission warranty disputes in Massachusetts, "Executive Officer" in Title 13 CCR 2040 shall mean "Commissioner" as defined at 310 CMR 7.00.

(b) Vehicle Owner Obligations.

1. The owner of any vehicle warranted pursuant to Title 13 CCR 2035 through 2041 shall ensure all scheduled maintenance specified in the written instructions furnished to the owner is performed in a timely manner. Such maintenance may be performed by the owner, at a service establishment of the owner's choosing, or by a person or persons of the owner's choosing.
2. Except as specified in 310 CMR 7.40(4)(b)2.a. and b., failure of the vehicle or engine owner to ensure the performance of such scheduled maintenance or to keep maintenance records shall not, per se, be grounds for disallowing a warranty claim.
  - a. The repair or replacement of any "warranted part" otherwise eligible for warranty coverage under 310 CMR 7.40(4)(b) 1. and 2., shall be excluded from such warranty coverage if the vehicle or engine manufacturer demonstrates that the vehicle or engine has been abused, neglected, or improperly maintained, and that such abuse, neglect, or improper maintenance was the direct cause of the need for the repair or replacement of the part, and;

b. The repair of a "warranted part" otherwise eligible for warranty coverage under 310 CMR 7.40(4)(b) 1. and 2., shall be excluded from such warranty coverage if such repair consists solely of adjustments to the idle air/fuel mixture ratio, curb or high idle speed, ignition timing, valve lash, injection timing for diesel-powered vehicles, or any combination thereof.

(5) Reporting Requirements.

(a) For the purposes of determining compliance with the requirements of 310 CMR 7.40, commencing with the 1995 model year and continuing through model year 1998, each manufacturer shall submit annually, to the Department, within 60 days subsequent to the end of each model year, a report documenting total deliveries for sale of vehicles in each engine family or test group over that model year, in Massachusetts.

(b) Fleet Average Non-methane Organic Gas (NMOG) Value. Effective for 1999 and subsequent model years, each manufacturer shall calculate compliance with the Fleet Average NMOG value using the number of passenger cars and light-duty trucks delivered for sale to Massachusetts in accordance with Title 13 CCR 1960.1, and 1961. Each manufacturer shall calculate and report, in accordance with the procedures established in Title 13 CCR 1960.1 and 1961: the number of vehicles by engine family or test group certified to the standards in Title 13 CCR 1960.1, 1961 and 1962; the number of NMOG credits and debits in g/mi NMOG earned for the model year; the devaluation of NMOG credits earned in previous model years; the transfer of NMOG credits to another manufacturer; and the percent phase-in of vehicles certified to the standards established in Title 13 CCR 1961. Each manufacturer shall submit said report to the Department no later than March 1 after the completed model year.

(c) Vehicle Equivalent NMOG Credits for Medium-Duty Vehicles. Effective for 2003 and subsequent model years, each manufacturer shall calculate compliance with the medium-duty phase-in requirements using the number of medium-duty vehicles delivered for sale to Massachusetts in accordance with Title 13 CCR 1960.1 and 1961. Each manufacturer shall calculate and report, in accordance with the procedures established in Title 13 CCR 1961: the number of vehicles or engines by engine family or test group; the number of vehicle equivalent credits (VECs) or vehicle equivalent debits (VEDs) earned for the model year; the devaluation of VECs earned in previous model years; the transfer of VECs to another manufacturer; and the percent phase-in of vehicles certified to the standards established in Title 13 CCR 1956.8(g) or (h), 1960.1, 1961 and 1962. Each manufacturer shall submit said report to the Department no later than March 1 after the completed model year.

(d) Warranty Reporting. Effective for 1995 and subsequent model year passenger cars and light-duty trucks and effective for 2003 and subsequent model year medium-duty vehicles, each manufacturer shall submit to the Department Emission Warranty Information Reports, Field Information Reports and Emission Information Reports in accordance with Title 13 CCR 2144, 2145 and 2146 for warranty claims based on vehicles registered in Massachusetts, in accordance with the procedures and timelines in Title 13 CCR 2141 through 2149.

(e) Recall Reporting. Effective for 1995 and subsequent model year passenger cars and light-duty trucks and 2003 and subsequent model year medium-duty vehicles, each manufacturer shall submit to the Department Recall Plans and Recall Campaign Progress Reports for vehicles registered in Massachusetts in accordance with the procedures and timelines in Title 13 CCR 2109 through 2148.

(f) For the purposes of determining compliance with the requirements of 310 CMR 7.40(2)(a)5., commencing with the 1998 model year each manufacturer shall submit annually to the Department, within 60 days subsequent to the end of each model year, a report prepared according to the procedures contained in Title 13, CCR 1960.1(g)(2), calculating compliance with the Zero Emitting Vehicles sales mandate. Said report shall include, but not be limited to, adequate documentation to support findings, trends analysis of previous five years of available sales data, and proposed strategies for future compliance with said requirements.

(g) All manufacturers offering vehicles for sale or lease in Massachusetts shall upon request, submit to the Department test results or reports obtained and prepared in compliance with 310 CMR 7.40(3) and in accordance with the reporting requirements incorporated in Title 13 CCR 1956.8(b), 1960.1(k), 1961(d), 1962(e), 1976(b) and (c) and 1978(b).

(h) For the purposes of determining compliance with 310 CMR 7.40, the Department may require any motor vehicle manufacturer or dealer of vehicles subject to 310 CMR 7.40 to submit any documentation the Department deems necessary to the effective administration and enforcement of 310 CMR 7.40.

(6) Regional Emissions Testing Facility and Document Repository.

(a) For the purposes of emissions testing in compliance with 310 CMR 7.40(3)(c), (d), and (e), and record keeping, Massachusetts may, in conjunction with at least three other Northeast states which have adopted and are implementing the California Low Emission Vehicle Program under the authority of 42 U.S.C. § 7507, enter into an agreement to establish a regional emissions testing facility and document repository.

(b) At such time as Massachusetts enters into an agreement pursuant to 310 CMR 7.40(6)(a), for the purposes of compliance and enforcement in Massachusetts, determinations and findings of the California ARB pursuant to 310 CMR 7.40(3)(c), (d), and (e) shall be applicable, in addition to the determinations and findings obtained through any agreement under 310 CMR 7.40(6)(a).

(c) Should the Department determine that such testing is necessary or desirable, the Department reserves the right to conduct, after consultation with the California ARB, vehicle testing pursuant to 310 CMR 7.40(3)(c), (d), and (e).

(7) Enforcement.

(a) The Department may conduct inspection and surveillance of new and used motor vehicles for the purposes of compliance with the requirements set forth in 310 CMR 7.40(2).

1. Inspections by the Department or its agents, pursuant to 310 CMR 7.40(7)(a) maybe conducted on any premises owned, operated, used, leased, or rented by any vehicle dealer. Said inspection may extend to all emission-related parts and operation and may require the on premises operation and testing of an engine or vehicle, and inspection of any related records, including records of emission related part repair performed under warranty.

2. The Department or its agents may perform functional tests, steady-state tests, and other tests as reasonably necessary.

(b) Any order or enforcement action taken by the State of California to correct noncompliance with any section of Title 13 CCR 2109 through 2149, shall be applicable to all said vehicles subject to 310 CMR 7.40, sold or leased, offered for sale or lease, or registered in Massachusetts.

(c) Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13 CCR 2109 through 2149 shall extend to all applicable vehicles subject to 310 CMR 7.40, sold or leased, offered for sale or lease, or registered in Massachusetts.

(d) Massachusetts Recall. (Reserved.)

(e) The Department shall enforce the requirements of 310 CMR 7.40 in accordance with Title 13 CCR and applicable federal and Massachusetts law, including but not limited to M.G.L. c. 21 A, § 16, and M.G.L. c. 111, § 142A through 142M.

(8) Manufacturer Response To An Administrative Order.



(a) Upon receipt of an Administrative Order issued by the Department pursuant to 310 CMR 7.40, the manufacturer may request an adjudicatory hearing within ten days pursuant to the procedures set forth in 310 CMR 1.00 *et seq.*, to contest the determination of necessity for the ordered corrective action.

(b) If a manufacturer requests an adjudicatory hearing pursuant to 310 CMR 7.40(8), and if the determination of necessity is confirmed at the hearing, the manufacturer shall initiate the corrective action which has been approved by the California ARB pursuant to the requirements of Title 13 CCR 2109 through 2135 and 2141 through 2149 for vehicles subject to 310 CMR 7.40, within 30 days of receipt of the decision resulting from the hearing.

(c) Failure by a manufacturer to comply with an enforcement action ordered by the Department pursuant to 310 CMR 7.40 shall constitute violation of an order issued under the authority of M.G.L. c. 111, § 142B.

(9) Emission Control System “Aftermarket” Parts.

(a) Applicability. 310 CMR 7.40(9) shall apply to all aftermarket parts which are sold, offered for sale, or advertised for sale or use on 1995 and subsequent model-year vehicles which are subject to Massachusetts or federal emission standards.

(b) Prohibition.

1. No person engaged in a business which involves the selling of motor vehicle pollution control systems, or parts thereof, shall offer for sale, sell, or install, an air contaminant emission control system, or part thereof, unless it meets the regulations and standards set forth in 310 CMR 7.40(9).

2. No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required motor vehicle pollution control system which alters or modifies the original design or performance of any such motor vehicle pollution control system. 310 CMR 7.40 shall not apply to an alteration, modification, or modifying device, apparatus or mechanism found by the Department to either:

a. Not reduce the effectiveness of any motor vehicle pollution control system; or

b. Result in emissions from any such modified or altered vehicle which are at levels which comply with existing state or federal standards for that model year of vehicle being modified or converted.

(c) Replacement Parts.

1. a. Any replacement part, including consolidated parts, offered for sale or sold in California and subject to Title 13 CCR 2221, 2224, shall be presumed to be in compliance with 310 CMR 7.40(9) unless California makes a finding to the contrary pursuant to Title 13 CCR 2221, 2224.  
  
b. Any replacement part, including consolidated parts, not offered for sale or sold in California, shall be presumed to be in compliance with 310 CMR 7.40(9)(c) unless the Commissioner makes a finding to the contrary in accordance with Title 13 CCR 2224(a).
2. The manufacturer of any replacement part subject to the provisions of 310 CMR 7.40(9) shall maintain sufficient records, such as performance specifications, test data, or other information, to substantiate that such a replacement part is in compliance with 310 CMR 7.40(9). Such records shall be open for reasonable inspection by the Commissioner or his/her representative. All such records shall be maintained for four years from the year of manufacture of the replacement part.

(d) Add-on and modified parts.

1. As used in 310 CMR 7.40, the terms "advertise" and "advertisement" include, but are not limited to, any notice, announcement, information, publication, catalog, listing for sale, or other statement concerning a product or service communicated to the public for the purpose of furthering the sale of the product or service.
2. a. No person or company doing business solely in Massachusetts or advertising only in Massachusetts shall advertise any device, apparatus, or mechanism which alters or modifies the original design or performance of any required motor vehicle pollution control system unless such part, apparatus, or mechanism has been exempted from the provisions of 310 CMR 7.40(9), and the limitations of the exemption, if any, are contained within the advertisement in type size to give reasonable notice of such limitations.  
  
b. (i) No person shall advertise, offer for sale, or install a part as a motor vehicle pollution control system or as an approved or certified device, when in fact such part is not a motor vehicle pollution control system or is not approved or certified by the Department or by California.  
  
(ii) No person shall advertise, offer for sale, sell or install an add-on or modified part as a replacement part.  
  
c. (i) Add-on and modified parts exempted in accordance with Title 13 CCR 2222 are deemed exempt for purposes of 310 CMR 7.40(9)(d).

(ii) The Commissioner may exempt add-on and modified parts, including consolidated parts, that are not subject to Title 13 CCR 2222. The Commissioner shall make this determination in accordance with Title 13 CCR 2222.

(iii) Each person engaged in the business of retail sale or installation of an add-on or modified part which has not been exempted from 310 CMR 7.40(9)(d) shall maintain records of such activity which indicate date of sale, purchaser name address, vehicle model and work performed if applicable. Such records shall be open for inspection by the Commissioner or his/her representative. All such records shall be maintained for four years from the date of sale or installation.

(e) Surveillance.

1. Replacement parts. The Commissioner may require the manufacturer of any replacement part subject to the provisions of 310 CMR 7.40(9)(c) to submit any records relating to such part which are maintained pursuant to 310 CMR 7.40(9)(c)2. The Commissioner may require the manufacturer of any replacement part subject to the provisions of 310 CMR 7.40(9)(c) to submit a reasonable number of parts typical of the manufacturer's production for testing and evaluation. If after a review of all records submitted by the manufacturer and of the results of any tests conducted by the Department staff, the Commissioner finds that such part is not in fact a replacement part, the Commissioner may invoke 310 CMR 7.40(9)(f). Replacement parts evaluated pursuant to 310 CMR 7.40 shall be compared with the specifications contained in the applicable vehicle manufacturer's application for certification.

2. Add-on parts and modified parts. The Commissioner may require the manufacturer of any add-on or modified part subject to the provisions of 310 CMR 7.40(9)(d) to submit a reasonable number of parts typical of the manufacturer's production for testing and evaluation. If after review of the results of any test or evaluations conducted by the Department's staff and of any information submitted by the manufacturer, the Commissioner finds that an add-on part or a modified part does not conform to Title 13 CCR 2222, the Commissioner may invoke 310 CMR 7.40(9)(f).

(f) Corrective action.

1. When 310 CMR 7.40(9)(f) is invoked pursuant to 310 CMR 7.40(9)(e) or other subsection of 310 CMR 7.40(9), the Commissioner may require the manufacturer to submit a plan for correcting any deficiencies found by the Department. The manufacturer shall submit the plan within 30 calendar days after notification. The Commissioner may require any of the actions

contained in the plan, and/or may declare a part of the plan to be not in compliance with 310 CMR 7.40(9)(b)2., unless he or she finds the plan adequate to correct the deficiencies found by the Department. The manufacturer may be required to include in the plan such corrective actions as the cessation of sale of non-complying parts and corrective advertising to correct misleading information regarding the emission control capabilities of the device and to ensure compliance with Massachusetts laws. Nothing in 310 CMR 7.40 shall prevent the Commissioner from also seeking fines for violations of 310 CMR 7.40(9), or other regulations or laws, as applicable.

2. The manufacturer, within ten calendar days of its receipt of the Commissioner's demand for corrective action, may request an adjudicatory hearing, pursuant to M.G.L. c. 30A, on the necessity for and scope of any corrective action required by the Commissioner.

(g) Repair station. Any person holding a vendor's certificate of authority who sells or installs a motor vehicle pollution control system, or part thereof, in violation of 310 CMR 7.40(9)(b)2. shall thereafter be required to install a motor vehicle pollution control system, or part thereof, which is in compliance with the provisions of 310 CMR 7.40(9), upon demand of the purchaser or registered owner of the vehicle concerned, or at the election of the purchaser or registered owner to reimburse the purchaser or registered owner for the expense of replacement and installation of a motor vehicle pollution control system, or part thereof, which is in compliance.

(10) \* \* \*

(11) Fees. Fees commensurate with the Department's costs of implementing 310 CMR 7.40 shall be assessed by Massachusetts on motor vehicle manufacturers in accordance with St. 1990, c. 410, § 3, and on any persons in accordance with M.G.L. c. 21A, § 18.

(12) \* \* \*

(13) Severability. Each subsection of 310 CMR 7.40 shall be deemed severable, and in the event that any subsection of 310 CMR 7.40 is held invalid, the remainder shall continue in full force and effect.