

7.40: U Low Emission Vehicle 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 and which is functionally identical of those original equipment parts in all respects which in any way affect emissions (including durability) .

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 and 2005 and subsequent model year heavy-duty engines and 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 MassDOT Registry of Motor Vehicles Division, pursuant to M.G.L. c. 90, § 2 or regulations promulgated there under.

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.

ENVIRONMENTAL PERFORMANCE LABEL means a decal securely affixed by the manufacturer to a window of all 2010 and subsequent model year passenger cars, light-duty trucks, and medium-duty passenger vehicles which discloses the smog and global warming scores for the vehicle in accordance with Title 13, CCR §1965 and the "California Motor Vehicle Emission Control, Smog Index, and Environmental Performance Label Specifications".

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 and all greenhouse 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), 1961, or 1961.1.

GREENHOUSE GAS means any of the following gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons.

GREENHOUSE GAS VEHICLE TEST GROUP means vehicles that have an identical test group, vehicle make and model, transmission class and driveline, aspiration method (e.g., naturally aspirated, turbocharged), camshaft configuration, valvetrain configuration, and inertia weight class.

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.

INDEPENDENT LOW VOLUME MANUFACTURER means a manufacturer with California annual sales of less than 10,000 new passenger cars, light-duty trucks and medium-duty vehicles following aggregation of sales pursuant to Title 13 CCR § 1900(b)(8). Annual sales shall be determined as the average number or sales sold for the three previous consecutive model years for which a manufacturer seeks certification; however, for a manufacturer certifying for the first time in California, annual sales shall be based on projected California sales for the model year. A manufacturer's California sales shall consist of all vehicles or engines produced by the manufacturer and delivered for sale in California, except that vehicles or engines produced by the manufacturer and marketed in California by another manufacturer under the other manufacturer's nameplate shall be treated as California sales of the marketing manufacturer. The annual sales from different firms shall be aggregated in the following situations:

- (a) vehicles produced by two or more firms, one of which is 10% or greater part owned by another; or
- (b) vehicles produced by any two or more firms if a third party has equity ownership of 10% or more in each of the firms; or
- (c) vehicles produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies; or
- (d) vehicles imported or distributed by all firms where the vehicles are manufactured by the same entity and the importer or distributor is an authorized agent of the entity.

INTERMEDIATE VOLUME MANUFACTURER means any pre-2001 model year manufacturer with California sales between 3,001 and 60,000 new light- and medium-duty vehicles per model year based on the average number of vehicles sold by the manufacturer each model year from 1989 to 1993; any 2001 through 2002 model year manufacturer with California sales between 4,501 and 60,000 new light- and medium-duty vehicles per model year based on the average number of vehicles sold by the manufacturer each model year from 1989 to 1993; and any 2003 and subsequent model year manufacturer with California sales between 4,501 and 60,000 new light- and medium-duty vehicles based on the average number of vehicles sold for the three previous consecutive model years for which a manufacturer seeks certification. For a manufacturer certifying for the first time in California, model year sales shall be based on projected California sales. A manufacturer's California sales shall consist of all vehicles or engines produced by the manufacturer and delivered for sale in California, except that vehicles or engines produced by the manufacturer and marketed in California by another manufacturer under the other manufacturer's nameplate shall be treated as California sales of the marketing manufacturer.

- (a) For purposes of applying the 2005 and subsequent model year zero-emission vehicle requirements for intermediate-volume manufacturers under Title 13 CCR § 1962(b) and 1962.1(b), the annual sales from different firms shall be aggregated in the case of
 - (1) vehicles produced by two or more firms, each one of which either has a greater than 50% equity ownership in another or is more than 50% owned by another; or
 - (2) vehicles produced by any two or more firms if a third party has equity ownership of greater than 50% in each firm.

(b) For purposes of applying the 2009 and subsequent model year Greenhouse Gas requirements for intermediate volume manufacturers under Title 13 CCR § 1961.1, the annual sales from different firms shall be aggregated in the following situations:

- (1) vehicles produced by two or more firms, each one of which either has a greater than 10% equity ownership in another or is more than 10% owned by another; or
- (2) vehicles produced by any two or more firms if a third party has equity ownership of greater than 10% in each firm.

LARGE VOLUME MANUFACTURER means any 2000 and subsequent model year manufacturer that is not a small volume manufacturer, or an independent low volume manufacturer, or an intermediate volume manufacturer.

LIGHT-DUTY TRUCK means any 2000 and subsequent model year motor vehicle certified to the standards in Title 13 CCR § 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 PASSENGER VEHICLE means any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium-duty passenger vehicle definition does not include any vehicle which:

- (a) is an "incomplete truck" i.e., is a truck that does not have the primary load carrying device or container attached; or
- (b) has a seating capacity of more than 12 persons; or
- (c) is designed for more than 9 persons in seating rearward of the driver's seat; or
- (d) is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area, for purposes of this definition.

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 § 1956.8(g) or (h) or 1960.1(h)(2), having a manufacturer's gross vehicle weight rating of 14,000 lbs. 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 lbs. or less; and any 2003 and subsequent 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 1956.8 (c), (g) or (h), 1961(a)(1) or 1962 having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 lbs.

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.

NATIONAL GREENHOUSE GAS PROGRAM means the national program that applies to new 2012 through 2016 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles as promulgated by the U.S. Environmental Protection Agency (40 CFR Parts 85, 86, and 600) and Department of Transportation National Highway Traffic Safety Administration (49 CFR Parts 531, 533, 537 and 538) on April 1, 2010, as incorporated in and amended by the “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.”

NEW VEHICLE means any passenger car, light-duty truck or 2003 and subsequent model year medium-duty vehicle and 2005 and subsequent model year heavy-duty engine and 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.

PLACED IN SERVICE means having been sold or leased to an end-user and not just to a dealer or other distribution chain entity, and having been individually registered for on-road use in Massachusetts.

PROJECT MANAGER means the person responsible for the administration of Transportation System Projects pursuant to Title 13 CCR 1962 (g)(5), 1962.1(g)(5), and 310 CMR 7.40.

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.

SMALL VOLUME MANUFACTURER means, with respect to the 2001 and subsequent model-years, a manufacturer with California sales less than 4,500 new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model years for which a manufacturer seeks certification as a small volume manufacturer; however, for manufacturers certifying for the first time in California model-year sales shall be based on projected California sales. A manufacturer's California sales shall consist of all vehicles or engines produced by the manufacturer and delivered for sale in California, except that vehicles or engines produced by the manufacturer and marketed in California by another manufacturer under the other manufacturer's nameplate shall be treated as California sales of the marketing manufacturer. Except as provided in the next paragraph, beginning with the 2009 model year, the annual sales from different firms shall be aggregated in the following situations:

- (a) vehicles produced by two or more firms, one of which is 10% or greater part owned by another; or

- (b) vehicles produced by any two or more firms if a third party has equity ownership of 10% or more in each of the firms; or
- (c) vehicles produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies; or
- (d) vehicles imported or distributed by all firms where the vehicles are manufactured by the same entity and the importer or distributor is an authorized agent of the entity.

For purposes of compliance with the zero-emission vehicle requirements, heavy-duty vehicles and engines shall not be counted as part of a manufacturer's sales. For purposes of applying the 2005 and subsequent model year zero-emission vehicle requirements for small-volume manufacturers under Title 13 CCR § 1962(b) and 1962.1(b), the annual sales from different firms shall be aggregated in the case of:

- (a) vehicles produced by two or more firms, each one of which either has a greater than 50% equity ownership in another or is more than 50% owned by another; or
- (b) vehicles produced by any two or more firms if a third party has equity ownership of greater than 50% in each firm.

SMOG INDEX LABEL means a decal securely affixed by the manufacturer to a window of all 2001 through 2009 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.

VEHICLE means any passenger car, light duty truck or 2003 and subsequent model year medium-duty vehicle or 2005 and subsequent model year heavy-duty vehicle.

ZERO EMISSION VEHICLE (or "ZEV") means any passenger car, light-duty truck, or medium duty vehicle certified to the zero emission vehicle standards in Title 13 CCR 1962 and 1962.1.

- (c) The Low Emission Vehicle Program at 310 CMR 7.40, refer to various § of Title 13 of the California Code of Regulations (CCR). Wherever 310 CMR 7.40 refers to a specific § of the CCR, the reference is made to that version of the § as of the amended date provided for that § in 310 CMR 7.40: *Table 1*. The Department hereby incorporates by reference each of the § of Title13 CCR that are listed in Table 1 as of such § respective Amended Date.

TABLE 310 CMR 7.40(1)(c)1:

Title 13 CCR	Title	Section Amended Date
CHAPTER 1. Motor Vehicle Pollution Control Devices.		
Article 1. General Provisions.		
1900	Definitions.	1/1/06
Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles).		

1956.8(a)(2) - (4), (b), (c), (d), (e), (f), (g), (h)	Exhaust Emissions Standards and Test Procedures - 1985 and Subsequent Model Heavy-duty Engines and Vehicles.	12/4/03
1960.1	Exhaust Emissions Standards and Test Procedures - 1981 through 2006 Model Passenger Cars, Light-duty Trucks and Medium-duty Vehicles.	5/24/02
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.	04/01/10
1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	04/01/10
1962(a), (b), (c), (d), (e), (f), (g)(1-7), (h), (i), (j)	Zero-Emission Vehicle Standards for 2005-2008 Model Passenger Cars, Light-duty Trucks, and Medium-duty Vehicles, including California Exhaust Emission Standards and Test Procedures for 2005-2008 Model Zero-emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes except for § C.7.8.	04/17/09
1962.1(a), (b), (c), (d), (e), (f), (g)(1-7), (h), (i), (j),(l)	Zero-Emission Vehicle Standards for 2009 and Subsequent Model Passenger Cars, Light-duty Trucks, and Medium-duty Vehicles, including California Exhaust Emission Standards and Test Procedures for 2009 and Subsequent Model Zero-emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes except for § C.7.8.	04/17/09
1964	Special Test Procedures for Certification and Compliance - New Modifier Certified Motor Vehicles.	2/23/90
1965	Emission Control, Smog Index, and Environmental Performance Labels - 1979 and Subsequent Model-year Motor Vehicles.	06/16/08
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	5/15/99

	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.	
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 1.5 Enforcement of Vehicle Emission Standards and Surveillance Testing for 2005 and Subsequent Model Year Heavy-duty Engines and Vehicles		
2065	Applicability of Chapter 2 to 2005 and Subsequent Model Year Heavy-duty Engines and Vehicles	7/2501
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
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
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 and 2005 and subsequent model year heavy-duty engines and 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 § 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 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(c), (g) or (h), 1960.1, 1960.1.5, 1960.5, 1961, 1961.1, 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. Effective for 2007-2008 model years, each manufacturer shall comply with the California general percentage ZEV requirement based on the number of PCs, LDT1s, and LDT2s to the extent required by Title 13 CCR 1962(b), produced by the manufacturer and delivered for sale in Massachusetts in accordance with the requirements and procedures in Title 13 CCR § 1962 as those requirements and procedures apply in Massachusetts as set forth in 310 CMR 7.40(13).

6. Effective for 2009 and subsequent model years, each manufacturer shall comply with the California general percentage ZEV requirement based on the number of PCs, LDT1s, and LDT2s to the extent required by Title 13 CCR 1962.1(b), produced by the manufacturer and delivered for sale in Massachusetts in accordance with the requirements and procedures in Title 13 CCR § 1962.1 as those requirements and procedures apply in Massachusetts as set forth in 310 CMR 7.40(13).

7. Effective for 2009 and subsequent model years, each manufacturer shall comply with the fleet average greenhouse gas emission levels from passenger cars, light-duty trucks and medium-duty passenger vehicles, including but not limited to the generation and use of credits, in accordance with Title 13 CCR 1961.1, based on one of two options applicable throughout the model year:

Option 1: The total number of passenger cars, light-duty trucks, and medium-duty passenger vehicles that are certified to the California exhaust emission standards in section 1961.1, and are produced and delivered for sale in Massachusetts.

Option 2: The total number of passenger cars, light-duty trucks, and medium-duty passenger vehicles that are certified to the California exhaust emission standards in section 1961.1, and are produced and delivered for sale in California, the District of Columbia, and all states that have adopted California's greenhouse gas emission standards for that model year.

(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 $\pm 3^\circ$.
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 § 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).

(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 may be granted by the Department in conjunction with the MassDOT Registry of Motor Vehicles Division 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 2010 and subsequent model years, no manufacturer shall deliver for sale to Massachusetts a new passenger car, light-duty truck, or medium-duty passenger vehicle subject to 310 CMR 7.40 that does not have an Environmental Performance Label securely affixed to a window of the vehicle in accordance with Title 13 CCR § 1965.

(f) For model year 2001 through 2009, Smog Index Labels for passenger cars and light-duty trucks shall conform to the "California Motor Vehicle Emission Control and Smog Index Label Specifications".

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

(g) 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(c), (g) or (h), 1960.1, 1961, 1961.1, 1962, 1962.1, 1968.1, 1976, 1978 and 2065, 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), 1962.1(e), 1976(b) and (c), 1978(b) and 2065.

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.

1. All manufacturers of new vehicles subject to 310 CMR 7.40, certified 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(c), (g) or (h), 1960.1, 1961, 1962, 1962.1, 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), 1962.1(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, 1961.1, 1962, 1962.1, 1968.1, 1976, 1978 and 2065, 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), 1961.1, 1962(e), 1962.1(e), 1976(b) and (c), 1978(b) and 2065.

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 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 1st 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(c), (g) or (h), 1960.1, 1961 and 1962. Each manufacturer shall submit said report to the Department no later than March 1st 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 and 2005 and subsequent model year heavy-duty vehicles and engines, 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 and 2005 and subsequent model year heavy-duty vehicles and engines, 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) and (6), and consistent with the procedures contained in Title 13, CCR 1962(g)(2) and 1962.1(g)(2), commencing with the 2007 model year, each manufacturer shall submit a report annually to the Department by May 1 of the calendar year following the close of the model year, that identifies the necessary delivery and placement data of all vehicles generating ZEV credits or allowances, and all transfers and acquisitions of ZEV credits. A manufacturer may update the report by September 1 to cover activities between April 1 and June 30.

(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), 1962.1(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.

(i) Fleet Average Greenhouse Gas Emission Levels. For the purposes of determining compliance with 310 CMR 7.40(2)(a)(7):

1. For the 2009-~~2011~~-~~and 2010~~ model years, any manufacturer selecting compliance Option 2 must notify the Department of that selection in writing ~~by May 2, 2011~~~~within 30 days of the effective date of the amendments to section 310 CMR 7.40 (2)(a)(7)~~ or must comply with Option 1.

~~A manufacturer selecting Option 2 shall provide to the Department values for the number of vehicles produced and delivered for sale in Massachusetts and total values for number of vehicles produced and delivered for sale in California, the District of Columbia, and for all states that have adopted California's fleet average greenhouse gas emission standards. Each manufacturer shall submit to the Department a report using the same methodology and format used to report such information to California Air Resources Board. For the 2009 and 2010 model years, such report shall be filed with the Department by May 2, 2011 and shall include the number of greenhouse gas vehicle test groups certified pursuant to 310 CMR 7.40(2)(a)(7). For the 2011 model year, such report shall be filed with the Department by March 1st of the calendar year succeeding the end of the model year and shall include the number of greenhouse gas vehicle test groups certified pursuant to 310 CMR 7.40(2)(a)(7), delineated by model type.~~

2. For ~~the 2011+2 model year and subsequent model years,~~ any manufacturer selecting compliance Option 2 must notify the Department of that selection in writing ~~by May 2, 2011~~~~prior to start of the applicable model year~~ or must comply with Option 1. ~~For 2013 and subsequent model years any manufacturer selecting compliance Option 2 must notify the Department of that selection in writing prior to start of the applicable model year or must comply with Option 1.~~

A manufacturer selecting Option 2 shall provide to the Department values for the number of vehicles produced and delivered for sale in Massachusetts and total values for number of vehicles produced and delivered for sale in California, the District of Columbia, and for all states that have adopted California's fleet average greenhouse gas emission standards. Each manufacturer shall submit to the Department a report using the same methodology and format used to report such information to California Air Resources Board. Such report shall be filed with the Department by March 1st of the

calendar year succeeding the end of the model year and shall include the number of greenhouse gas vehicle test groups certified pursuant to 310 CMR 7.40(2)(a)(7), delineated by model type.

3. For 2012-2016 model years, a manufacturer may elect to demonstrate compliance with 310 CMR 7.40(2)(a)(7) by demonstrating compliance with the National Greenhouse Gas Program. For the 2012 model year, a manufacturer selecting compliance with this option shall notify the Department of that selection, in writing, by May 2, 2011. For 2013-2016 model years, a manufacturer selecting compliance with this option shall notify the Department of that selection, in writing, prior to the start of the applicable model year, or must comply with 310 CMR 7.40(2)(a)(7).

A manufacturer selecting to demonstrate compliance with 310 CMR 7.40(2)(a)(7) by demonstrating compliance with the National Greenhouse Gas Program shall submit to the Department a copy of the official report that is submitted as required under 40 CFR §86.1865-12 for demonstrating compliance with the National Greenhouse Gas Program and the official EPA determination of compliance. These must be submitted no later than May 1 of the calendar year following the close of the model year, for each model year that a manufacturer selects compliance with this option.

If a manufacturer has outstanding greenhouse gas debits at the end of the 2011 model year, as calculated in accordance with Title 13, CCR 1961.1(a)(1)(B), the manufacturer must submit to the Department a plan for offsetting all outstanding greenhouse gas debits by using greenhouse gas credits earned under the National Greenhouse Gas Program.

(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) may be 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 § 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. 21A, § 16, and M.G.L. c.111, § 142A through 142M.

(f) Penalty for Failure to Meet ZEV Requirements. Any manufacturer that fails to produce and deliver for sale in Massachusetts the required number of ZEVs or submit an appropriate amount of grams/mile ZEV credits and does not make up ZEV deficits within the specified time period shall be subject to penalties under M.G.L. c.111, § 142K applicable to a manufacturer that sells a new motor vehicle that does not meet the applicable emission standards adopted in 310 CMR 7.40. The cause of action shall be deemed to accrue when the ZEV deficits are not balanced by the end of the specified time period. The number of vehicles not meeting the general percentage ZEV requirement shall be calculated according to the following equation, provided that the percentage of a large volume manufacturer's ZEV requirement for a given model year that may be satisfied with partial ZEV allowance vehicles or ZEV credits from such vehicles may not exceed the percentages permitted under § C.2.1 of California Exhaust Emission Standards and Test Procedures for 2005-2008 Model Zero- Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes or § C.2.1 of California Exhaust Emission Standards and Test Procedures for 2009 and Subsequent Model Zero- Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes:

$$\frac{(\text{No. of ZEVs required to be produced and delivered for sale in Massachusetts for the model year}) - (\text{No. of ZEVs produced and delivered for sale in Massachusetts for the model year}) - (\text{No. of ZEV allowances from partial ZEV allowance vehicles produced and delivered for sale in Massachusetts for the model year}) - [(\text{Amount of ZEV credits submitted for the model year})/(\text{the fleet average requirement for PCs and LDT1s for the model year})]}{1}$$

(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) Zero Emission Vehicle Review. The Department shall conduct, by the end of calendar year 1995, a technology review of Zero Emission Vehicles, and issue a report based on said review.

(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) Repealed.

(13) Zero-emission Vehicle Standards for New 2007 and Subsequent Model Year Passenger Cars, Light-duty Trucks, and Medium-duty Vehicles.

(a) Massachusetts hereby incorporates by reference Title 13 CCR 1962 and 1962.1 Final Regulation Order for Amendments to the California Zero Emission Vehicle Regulation (1962 and 1962.1) and California Exhaust Emission Standards and Test Procedures for 2005-2008 and 2009 and Subsequent Model Zero-emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-duty Truck and Medium-duty Vehicle Classes (Test Procedures), except that the following terms are substituted as set forth in 7.40(13)(a)1. through 3.

1. The term “California” as it appears in Title 13 CCR 1962 and 1962.1, § (b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(2)(A), (b)(2)(B), (b)(2)(D), (b)(4), (c)(1), (c)(7), (d)(2) first sentence only, (d)(3), (d)(4), (d)(5)(B), (f), (g)(1), (g)(2)(A), (g)(2)(B), (g)(4), and (g)(7)(A), (i)(A), (j) and in Test Procedures § B., C.2.1(a), C.2.1(b), C.2.1(d), C.2.2(a), C.2.2(b)(1)(A) through (D) and (I), C.2.2(b)(2), C.2.2(d), C.2.4, C.3.1, C.3.7(a), C.3.7(b), C.4.1, C.4.2(a), C.4.2(b)(1), C.4.3, C.4.4(b), C.6., C.7.2(a), C.7.2(b), C.7.4, C.7.7(a) shall be replaced by the term “Massachusetts.”

2. The date of 2005 as it appears in Title 13 CCR 1962 and 1962.1, §§ (b)(1)(A), (b)(1)(B), (b)(2)(A), (b)(2)(B), (b)(2)(C), (b)(2)(d), (b)(3), (b)(6), (b)(7), and in Test Procedures § C.2.1(a), C.2.1(b), C.2.2(a) first sentence only, C.2.2(b), C.2.3(c), C.2.3 shall be replaced by the date 2007.

3. The term “Executive Officer” as it appears in Title 13 CCR 1962 and 1962.1, §§ (b)(2)(C), (g)(4), (g)(5)(A), (g)(5)(B), (g)(5)(D), (g)(6), and (g)(7)(A) and in Test Procedures § C.2.2(c), C.7.4, C.7.5(a), C.7.5(b), C.7.5(d), C.7.6, C.7.7(a) shall be replaced by the term “Massachusetts Department of Environmental Protection.”

(14) Reserved.

(15) Zero Emission Vehicle Alternative Compliance Plan.

(a) Each manufacturer that is subject to 310 CMR 7.40(2)(a)5. may, as an alternative, volunteer to comply with the requirements of 310 CMR 7.40(15).

1. If a manufacturer chooses to comply with 310 CMR 7.40(15), it shall notify the Massachusetts Department of Environmental Protection in writing that it intends to comply with the Alternative Compliance Plan requirements and shall submit a plan for such compliance, with a request for an approval by the Department that the plan complies with 310 CMR 7.40(15) by January 17, 2006; and

2. For model years 2007 and 2008, each manufacturer shall market and shall make available for purchase in Massachusetts all models of vehicles delivered for sale, sold or marketed in California, except for type III ZEVs placed in service pursuant to Title 13 CCR 1962, § (b)(2)(B); and

3. Each manufacturer shall satisfy the general percentage ZEV requirement of Title 13 CCR 1962, by using one or any combination of the elements in 310 CMR 7.40(15). The core credit value for vehicles shall be taken from the California ARB Executive Order as determined by the California ARB during the certification process.

(b) Application of the Phase-in Multiplier. The total credit value for a particular vehicle under the ACP shall be determined by multiplying the core credit value established by CARB by the phase-in multiplier listed in 310 CMR 7.40: *Table (15)(b)1*. To qualify for the multiplier, the vehicle shall meet the baseline qualifications for a PZEV, AT PZEV, or ZEV. The Massachusetts multiplier shall not be applied to type III ZEVs placed in service pursuant to the California Alternative Requirements for Large Volume Manufacturers as identified in Title 13 CCR 1962, § (b)(2)(B).

Table(15)(b)1. Phase-in Multiplier

Model Year	Requirement	PZEV Credit Multiplier	AT PZEV Credit Multiplier	ZEV Credit Multiplier
2002	Voluntary Early Introduction	1.5	1.5	3
2003	Voluntary Early Introduction	1.5	1.5	3
2004	Voluntary Early Introduction	1.5	2.25	3
2005	Voluntary Early Introduction	1.3	1.7	2
2006	Mandatory Compliance	1.15	1.3	1.5
2007	Mandatory Compliance	1.15	1.3	1.5
2008	Mandatory Compliance	1.15	1.3	1.5
2009	Equivalency with California program	1	1	1

(c) Percentage Requirements. Large volume manufacturers (LVM), as defined by the California ARB in Title 13 CCR 1900, shall meet the phase-in percentages of ZEVs, AT PZEVs and PZEVs contained in 310 CMR 7.40: *Table(15)(c)1.*, except that if such manufacturer opts into California's alternative requirements for large volume manufacturers as provided in Title 13 CCR 1962, § (b)(2)(B), model year 2007 and 2008 minimum ZEV percentage requirements may be met in the manner identified in Title 13 CCR 1962, § (b)(2)(B)2. Intermediate volume manufacturers, as defined by the California ARB in Title 13 CCR 1900, can meet the entire ZEV requirement with 100% PZEV credit. Small and independent low volume manufacturers, as defined by the California ARB in Title 13 CCR 1900, are not required to meet the ZEV percentage requirements but are able to generate and trade credits.

Table(15)(c)1. Percentage Requirements for PZEVs, ATPZEVs, ZEVs

Model Year	Minimum Percent ZEV Credit	Minimum Percent AT PZEV Credit	Maximum Percent PZEV Credit
2006	0	0	10
2007	1% of manufacturer's sales must be ZEV, AT PZEV or any combination thereof		9
2008	1	2	7

(d) ZEV Credits.

1. ZEV, AT PZEV and PZEV credit calculation, credit life, credit banking and credit deficits shall be calculated using the methods in Title 13 CCR 1962. Credits may be bought, sold or traded among manufacturers, and manufacturers not subject to the ZEV requirements may generate credits, which may be sold or traded to manufacturers subject to the ZEV requirements. A manufacturer that generates twice as many credits from model year 2006 or earlier PZEVs as required for model year 2006, has through model year 2008 to comply with the model year 2007 AT PZEV/ZEV requirement.

2. A manufacturer that qualifies to carry forward excess model year 2006 PZEV credits in accordance with 310 CMR 7.40(15)(d)2., and then generates twice as many PZEV credits as necessary by model year 2007, has through model year 2010 to comply with the model year 2008 AT PZEV/ZEV requirement.

3. A manufacturer who produces and delivers PZEV vehicles for sale in Massachusetts in model years 2003, 2004, 2005 or 2006, may use excess credits generated from the placement of such vehicles as AT PZEV credits in the 2007 and 2008 model years. Excess PZEV credits are those credits generated prior to the application of any credit multipliers from 310 CMR 7.40:

Table(15)(b)1. which exceed the number of credits equal to 6% (10% for model year 2006) of the average annual sales volume of 1997, 1998 and 1999 PC and LDT1 vehicles delivered for sale in Massachusetts by the manufacturer.

(e) Additional ZEV Credits.

1. Infrastructure and Transportation System Projects. Manufacturers can obtain credits through special projects providing alternate-fuel vehicle refueling, fuel cell vehicles, personal electric vehicle use or Transportation System projects that result in the placement of advanced technology vehicles in innovative transportation systems in Massachusetts. The Department shall determine the credit for these projects by evaluating project cost and the number and usage of advanced technology vehicles placed as a result of the project.

2. The maximum credit allowed under the Infrastructure and Transportation System Projects shall not exceed 25% of the total percentage ZEV requirement. Credits generated under this program are not subject to the phase-in multiplier and the program sunsets after model year 2008.

(f) Reporting.

1. Each manufacturer shall submit a projected compliance report by the commencement of the model year. This report shall include projected vehicle sales organized by engine family or test group, marketing plans, dealerships targeted for advanced technology vehicle sales and support, Infrastructure and Transportation System projects and credits proposed to be earned, and manufacturer projected compliance rates including credits or debits projected.

2. Compliance reports shall be submitted with annual sales reports by March 31st (with the potential to amend, based on late sales) following the completed model year. This report shall include: vehicle sales organized by engine family, if applicable; relevant data regarding any Infrastructure and Transportation System Project; the manufacturer's calculations of compliance rates including credits or debits; and a plan for curing any debit.

(16) 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.