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**BUREAU OF WASTE PREVENTION
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**Summary of Comments and Response to Comments
on the Proposed Amendments to the Regulation**

310 CMR 7.40:

**The Massachusetts
LOW EMISSION VEHICLE PROGRAM**

Regulatory Authority: M.G.L. c. 111, Sections 142A through 142M

January 2010

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I. SUMMARY OF RESPONSE TO COMMENTS ON 310 CMR 7.40: THE LOW EMISSION VEHICLE PROGRAM REGULATION

Comments were received from the following organizations:

1. The Large Volume Manufacturers (BMW of North America, American Honda Motor Co., Inc., Chrysler Group LLC, Mercedes-Benz USA, LLC, Ford Motor Company, Nissan Technical Center North America, Inc., General Motors, and Toyota Motors Sales, Inc.)
2. Massachusetts Department of Transportation, Highway Division
3. U.S. Environmental Protection Agency

The Massachusetts Department of Environmental Protection (MassDEP) proposed amendments to 310 CMR 7.40, the Low Emission Vehicle (LEV) Program regulations. In accordance with the public review process requirements of Massachusetts General Law (M.G.L.) Chapter 30A, MassDEP made the proposed amendments available for public review, published notification of the amendments, and held a public hearing in order to solicit public comment on the regulation. The public comment period ended December 28, 2009 and relevant comments have been summarized below:

1. Comment: The Large Volume Manufacturers (LVMs) commented that Massachusetts must either adopt and incorporate both Zero Emission Vehicle (ZEV) sections including:
 - a) 1962 (California Exhaust Emission Standards and Test Procedures for 2005 through 2008 Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes); and
 - b) 1962.1 (California Exhaust Emission Standards and Test Procedures for 2009 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes) from Title 13, California Code of Regulations (CCR),

or update the regulations to require only section 1962.1 for model year (MY) 2009 and subsequent MYs from Title 13 CCR.

The LVMs also requested “that the warranty and recall reporting be required only upon request of MassDEP since manufacturers are following California warranty requirements and provide the same warranty to Massachusetts.”

Response: MassDEP agrees with the LVMs that two separate sections should be incorporated in 310 CMR 7.40 to adopt sections 1962 and 1962.1 of the CCR. Therefore, the final regulations include both sections.

Since the warranty and recall reporting is not relevant to this rulemaking, MassDEP will take these comments under advisement and may consider such revisions in a subsequent rulemaking.

2. Comment: The Massachusetts Department of Transportation (MassDOT) submitted comments regarding its recent transportation reform legislation which requires the Commonwealth to integrate transportation agencies and authorities into a new, streamlined MassDOT. MassDOT made the following specific comments:
 - a) The term “Emergency Vehicles” in the Massachusetts LEV regulations should include “MassDOT related operations in the following Divisions; Highway, Aeronautics, Rail, and Transit, and the Registry of Motor Vehicles” as part of its definition.
 - b) All transportation system related projects under “Infrastructure and Transportation System Projects”, 310 CMR 7.40(15)(e)(1), should be subject to MassDOT review and approval.
 - c) MassDOT oversees four new divisions including the Registry of Motor Vehicles (RMV). The RMV is now known as MassDOT Registry of Motor Vehicles Division.

Response: Under Section 177 of the federal Clean Air Act (CAA), other states may adopt the California new motor vehicle emission standards if such standards are identical to the California standards. Therefore, the Massachusetts ZEV standards directly cite and incorporate by reference sections within Title 13 CCR. To adopt MassDOT’s suggestion to include an additional class of vehicles would be to exempt from the regulation a class of vehicles which California does not allow. Since the definition of “Emergency Vehicles” in the LEV regulation has to be consistent with California’s definition, the suggested revisions to “Emergency Vehicles” cannot be made.

The “Infrastructure and Transportation System Projects” section (Title 13 CCR §1962) relates to ZEV credits that can be earned through projects such as the development of charging stations for electric vehicles. Under the Massachusetts LEV statute and regulations, review of such projects do not come under the jurisdiction of MassDOT.

The final regulations reflect that the RMV is now known as MassDOT Registry of Motor Vehicles Division.

3. Comment: The U.S. Environmental Protection Agency (EPA) noted that Massachusetts’ ZEV requirements should remain consistent with Title 13 CCR 1962.1, California’s ZEV requirements. EPA made the following general comments regarding Table 310 CMR 7.40(1)(c)1:
 - a) The Table should be updated to reflect the provisions incorporated by reference as Article 2. Approval of Motor Vehicle Pollution Control Devices

(New Vehicles) to be listed under Article 1. Also reference Title 13 CCR, Division 3. Air Resources Board, Chapter 1. Motor vehicle Pollution Control Devices sections needed to be incorporated by reference into 310 CMR 7.40.

- b) The “Section Amended Date” in the Table should reflect the most recent amendment dates of the sections being incorporated by reference.
- c) Since the requirements for vehicles of model years prior to 2008 are not needed as these model year vehicles are no longer in production, the Table should incorporate section 1962.1 as opposed to section 1962.

Response: The provisions incorporated by reference in the Massachusetts Table 310 CMR 7.40(1)(c)1 are consistent with Title 13 of the California Code of Regulations. The ZEV section in the Table is listed appropriately under Title 13, Chapter 1. Motor Vehicle Pollution Control Devices, Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles).

The “Section Amended Date” has been updated in the final regulation to reflect the most recent amendment dates.

The final regulations include two separate sections in 310 CMR 7.40 to address sections 1962 (MY 2005-2008) and 1962.1 (MY 2009 and subsequent years).

II. FINDINGS UNDER THE MASSACHUSETTS LOW EMISSION VEHICLE STATUE

In accordance with M.G.L. c. 111, Section 142K, MassDEP assessed the air quality impacts of adopting the California ZEV requirements and reviewed the extensive analysis performed by California Air Resources Board in the development of the standards. The results of the analysis showed that adoption of the California ZEV standards by Massachusetts will have environmental benefits because it will introduce zero emission technologies to reduce and/or eliminate tailpipe emissions from motor vehicles. As a result, it will reduce air pollution and GHG emissions that contribute to global warming.