

COMMONWEALTH OF MASSACHUSETTS

Michael S. Dukakis

Governor

EXECUTIVE ORDER NO. 145

CONSULTATION WITH CITIES & TOWNS
ON ADMINISTRATIVE MANDATES

WHEREAS, municipal officials must be able to consider statewide agency policy and regulatory actions which have significant financial, procedural, or organizational impact on local governments in order to effectively provide services to their citizens; and

WHEREAS, state agencies ought to consider the impact on local governments of policy and regulatory mandates which include significant financial, procedural, or organizational obligations in order to make informed, credible decisions regarding the application of such policies and regulations; and

WHEREAS, the Governor recognizes that state-local cooperation in the formulation of the Commonwealth's administrative policies and regulations affecting local governments is essential to the successful implementation of viable policies and regulations; and

WHEREAS, affirmative steps are necessary to ensure that municipal officials are fully informed of proposed agency policies and regulations which affect local governments, prior to their promulgation; and

WHEREAS, state administrative mandates may place significant additional financial burdens on municipalities;

NOW, THEREFORE, I, Michael S. Dukakis, Governor of the Commonwealth by virtue of the authority vested in me as supreme executive magistrate, do hereby order as follows.

SECTION I: DECLARATION OF POLICY

Agencies shall take no action (as defined in Section II) without having followed the consultation procedures as set forth in Section III to inform and thereafter receive advice from local governments of the potential impact on local governments of the proposed action.

SECTION II: DEFINITION

Agency is defined as any agency, department, board, commission, authority or other instrumentality of the Commonwealth.

Action is defined as (a) the adoption, repeal or amendment of any rule or regulation subject to the Mass. Administrative Procedure Act (hereinafter called A.P.A.), M.G.L. Chapter 30A; (b) any administrative action that either places additional expenditure, procedural, or organizational requirements on local governments or limits the discretionary powers of local officials or agencies on a statewide basis. Enforcement of duly enacted laws and regulations is not within the scope of this executive order.

The Local Government Advisory Committee established pursuant to

Executive Order No. 123 (1976) is hereinafter called L.G.A.C. The Department of Community Affairs is hereinafter called D.C.A.

SECTION III: PROCEDURES

1. In the case of action subject to the A.P.A., at least 14 calendar days prior to the initiation of compliance with the A.P.A., agencies shall initiate the procedures set forth below. In the case of actions not subject to the A.P.A., agencies shall initiate said procedures at least 45 calendar days prior to the proposed implementation of said action.

2. Agencies shall provide L.G.A.C. and D.C.A. with a brief statement describing the proposed action which emphasizes the responsible agency officials' best judgement of those elements which might impact on local governments including, when feasible, preliminary cost estimates.

3. Within 21 calendar days of receipt of said notice, either L.G.A.C. or D.C.A. shall notify the originating agency as to whether or not it believes the proposed action presents potential for significant impact. Failure to so notify within 21 calendar days shall be deemed to constitute a judgement of no significant impact.

4. Any such notice shall set forth the aspects of the proposed action which the L.G.A.C. or the D.C.A., as the case may be, believes present potential for significant impact.

5. Within 14 calendar days of the receipt of a notice under Section III 3,4, the originating agency shall convene a meeting of representatives of the agency, L.G.A.C., and D.C.A. to review and discuss the potentially significant impact of the proposed action.

SECTION IV: EMERGENCY ACTION

Agencies may initiate emergency actions under relevant sections of the Administrative Procedure Act without prior compliance with this order, provided that compliance shall be initiated as soon as practicable following the emergency action and in any event to making any emergency action permanent.

SECTION V: DETERMINATION OF SIGNIFICANT IMPACT

In determining whether the proposed action may present potential for significant impact, agencies, L.G.A.C., and the D.C.A. shall consider the extent to which the proposed action might require municipalities:

- a) to significantly expand existing services;
- b) to employ additional personnel;
- c) to significantly alter administrative and work procedures;
- d) to realign organizational structures;
- e) to increase disbursements which are not reimbursed by the federal or state government; or
- f) to limit the discretion exercised by local officials.

Each agency head, or a designee of the agency head, shall have responsibility within that agency for reviewing proposed administrative policies and regulations to ensure compliance with this order.

SECTION VI: EFFECTIVE DATE

This order shall take effect on November 20, 1978, provided, however, that it shall not apply to any action subject to the A.P.A. for which compliance with the A.P.A. is initiated prior to November 20, 1978.

SECTION VII

This order shall continue in effect until amended, superseded or terminated by subsequent Executive Order.

Given at the Executive Chamber
in Boston this twenty-first
day of October, in the year of
Our Lord one thousand nine hundred
and seventy eight and of the indepen-
dence of the United States of
America, two hundred and second.

MICHAEL S. DUKAKIS
GOVERNOR
Commonwealth of Massachusetts

Paul Guzzi
Secretary of the Commonwealth

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE II** EXECUTIVE AND ADMINISTRATIVE OFFICERS
OF THE COMMONWEALTH**CHAPTER 21A** EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS**Section 16** Civil administrative penalties

Section 16. As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Department”, the department of environmental protection.

“Person”, any agency or political subdivision of the commonwealth, any state, public or private corporation or authority, individual, trust firm, joint stock company, partnership, association or other entity or any group thereof or any officer, employee or agent thereof.

The department may assess a civil administrative penalty on a person who fails to comply with any provision of any regulation, order, license or approval issued or adopted by the department, or of any law which the department has the authority or responsibility to enforce; provided, however, that such noncompliance occurred after the department had given such person written notice of such noncompliance, and after reasonable time, as determined by the department and stated in said notice, had elapsed for coming into compliance; and provided, further, that the department may assess such penalty without providing such written notice if such failure to comply: (1) was part of a pattern of noncompliance and not an isolated instance, or (2) was willful and not the result of error, or (3) resulted in significant impact on public health, safety, welfare or the environment, or (4) consisted of failure to promptly report to the department (a) any unauthorized disposal of hazardous waste, as is defined by chapter twenty-one C, or (b) any unauthorized release or discharge of oil or hazardous material into the environment, as are defined by chapter twenty-one E, or (5) consisted of failure to maintain a permanent solution or a remedy operation status, pursuant to chapter 21E, or (6) consisted of failure to comply with the terms of an activity and use limitation pursuant to section 6 of said chapter 21E or consisted of knowingly making, or causing any person to make, a false, inaccurate, incomplete or misleading statement in a document submitted to or required to be kept by the department. Any such penalty shall be an alternative to any other civil penalty that may be prescribed by law. For the purpose of determining whether such noncompliance was part of a pattern of noncompliance and not an isolated instance, the department shall consider, but not be limited to, the following: whether the department had previously notified the person of such noncompliance on two occasions during the previous four-year period or of any noncompliance with the same provision of a

law, regulation, order, license or approval as the current noncompliance during the previous five-year period; whether the current and previous noncompliances occurred at the same facility; and whether the current and previous noncompliances, considered together, indicate a potential threat to public health, safety, welfare or the environment or an interference with the department's ability to efficiently and effectively administer its programs or to enforce any regulation, order, license or approval it has issued or adopted or any law which it has authority or responsibility to enforce. If a person who has received a notice of noncompliance fails to come into compliance within the time period stated in such notice, the civil administrative penalty may be assessed by the department upon such person from the date of receipt of such notice.

Whenever the department seeks to assess a civil administrative penalty on any person, the department shall cause to be served upon such person, either by service, in hand, or by certified mail, return receipt requested, a written notice of its intent to assess a civil administrative penalty which shall include a concise statement of the alleged act or omission for which such civil administrative penalty is sought to be assessed, each law, regulation, order, license or approval which has not been complied with as a result of such alleged act or omission, the amount which the department seeks to assess as a civil administrative penalty for each such alleged act or omission, a statement of such person's right to an adjudicatory hearing on the proposed assessment, the requirements such person must comply with to avoid being deemed to have waived the right to an adjudicatory hearing and the manner of payment thereof if such person elects to pay the penalty and waive an adjudicatory hearing. After written notice of noncompliance or intent to assess a civil administrative penalty has been given, each such day thereafter during which such noncompliance occurs or continues shall constitute a separate offense and shall be subject to a separate civil administrative penalty if reasonable efforts have not been made to promptly come into compliance.

Whenever the department seeks to assess a civil administrative penalty on any person, such person shall have the right to an adjudicatory hearing under chapter thirty A whose provisions shall apply except when they are inconsistent with the provisions of this section.

Such person shall be deemed to have waived such right to an adjudicatory hearing unless, within twenty-one days of the date of the department's notice that it seeks to assess a civil administrative penalty, such person files with the department a written statement denying the occurrence of any of the acts or omissions alleged by the department in such notice, or asserting that the money amount of the proposed civil administrative penalty is excessive. In any adjudicatory hearing authorized pursuant to chapter thirty A, the department shall, by a preponderance of the evidence, prove the occurrence of each act or omission alleged by the department.

If a person waives his right to an adjudicatory hearing, the proposed civil administrative penalty shall be final immediately upon such waiver.

If a civil administrative penalty is assessed at the conclusion of an adjudicatory hearing, said civil administrative penalty shall be final upon the expiration of thirty days if no action for judicial review of such decision is commenced pursuant to chapter thirty A.

Any person who institutes proceedings for judicial review of the final assessment of a civil administrative penalty shall place the full amount of the final assessment in an interest-bearing escrow account in the custody of the clerk/magistrate of the reviewing court. The establishment of such an interest-bearing escrow account shall be a condition precedent to the jurisdiction of the reviewing court unless the party seeking judicial review demonstrates in a preliminary hearing held within twenty days of the filing of the complaint either the presence of a substantial question for review by the court or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of such interest-bearing escrow account, the posting of a bond payable directly to the commonwealth in the amount of one hundred and twenty-five per cent of the assessed penalty. If, after judicial review, in a case where the requirement for an escrow account has been waived, and in cases where a bond has been posted in lieu of such requirement, the court affirms, in whole or in part, the assessment of a civil administrative penalty the department shall be paid the amount thereof together with interest at the rate set forth in section six C of chapter two hundred and thirty-one. If, after such review in a case where an interest-bearing escrow account has been established, the court affirms the assessment of such penalty, in whole or in part, the department shall be paid the amount thereof together with the accumulated interest thereon in such interest-bearing escrow account. If the court sets aside the assessment of a civil administrative penalty in a case where the amount of such penalty has been deposited in an interest-bearing escrow account, the person on whom the civil administrative penalty was assessed shall be repaid the amount so set aside, together with the accumulated interest thereon.

Each person who fails to pay a civil administrative penalty on time, and each person who issues a bond pursuant to this section and who fails to pay to the commonwealth on time the amount required hereunder, shall be liable to the commonwealth for up to three times the amount of the civil administrative penalty, together with costs, plus interest from the time the civil administrative penalty became final and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection thereof. The rate of interest shall be the rate set forth in section six C of chapter two hundred and thirty-one. Notwithstanding any general or special law to the contrary, including the limitations and considerations set forth in this section, the department may require that the amount of a civil administrative penalty imposed pursuant to this section exceed the economic benefit realized by a person for noncompliance.

In determining the amount of each civil administrative penalty, the department shall include, but not be limited to, the following in its considerations: the actual and potential impact on public health, safety and welfare and the environment of the failure to comply; the actual and potential damages suffered, and actual or potential costs incurred, by the commonwealth, or by any other person; whether the person being assessed the civil administrative penalty took steps to prevent noncompliance, to promptly come into compliance and to remedy and mitigate whatever harm might have been done as a result of such noncompliance; whether the person being assessed the civil administrative penalty has previously failed to comply with any regulation, order, license or approval issued or adopted by the department, or any law which the department has the authority or responsibility to enforce; making compliance less costly than noncompliance; deterring future noncompliance; the financial condition of the person being assessed the civil administrative penalty; and the public interest.

No civil administrative penalty assessed hereunder shall be less than one hundred dollars. For each of the following failures to comply, the civil administrative penalty shall not exceed twenty-five thousand dollars; a failure to comply that is part of a pattern of noncompliance and not an isolated instance; knowingly making, or causing any person to make, any false, inaccurate, incomplete or misleading statement in any document submitted to or required to be kept by the department each release, discharge, or disposal of material into the environment without the approval of the department, or in a manner not approved by the department, whenever such release, discharge or disposal requires the approval of the department; engaging in any business or activity without a license or other authorization from the department, whenever engaging in such business or activity requires such license or authorization by the department; failure to promptly report to the department each unauthorized disposal of hazardous waste, as defined by chapter twenty-one C; and failure to promptly report to the department each unauthorized release or discharge of oil or hazardous materials into the environment, as defined by chapter twenty-one E, or a failure to maintain a permanent solution or remedy operation status, pursuant to said chapter 21E or a failure to comply with the terms of an activity and use limitation pursuant to section 6 of said chapter 21E.

Any person who fails to comply with or otherwise violates the provisions of chapter one hundred and eleven F enforceable by the department shall be liable for a civil administrative penalty not to exceed two hundred and fifty dollars per day for each day that such violation continues and the department shall follow the procedures set forth therein in assessing such penalty. Any person who fails to comply with or otherwise violates chapter 21E or any regulation adopted thereunder shall be liable for a civil administrative penalty not to exceed \$25,000 for each day the violation continues. For any other failure to comply with any regulation, order, license or approval issued or adopted by the department, or any law which

the department has authority or responsibility to enforce, the civil administrative penalty for each failure to comply shall not exceed one thousand dollars.

Any person who fails to comply with or otherwise violates chapter 21N shall be liable for a civil administrative penalty not to exceed \$25,000 for each day the violation continues.

**PART IV** CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES**TITLE I** CRIMES AND PUNISHMENTS**CHAPTER 268A** CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES**Section 6** Financial interest of state employee, relative or associates; disclosure

Section 6. (a) Except as permitted by this section, any state employee who participates as such employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

Any state employee whose duties would otherwise require him to participate in such a particular matter shall advise the official responsible for appointment to his position and the state ethics commission of the nature and circumstances of the particular matter and make full disclosure of such financial interest, and the appointing official shall thereupon either

- (1) assign the particular matter to another employee; or
- (2) assume responsibility for the particular matter; or
- (3) make a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the commonwealth may expect from the employee, in which case it shall not be a violation for the employee to participate in the particular matter. Copies of such written determination shall be forwarded to the state employee and filed with the state ethics commission by the person who made the determination. Such copy shall be retained by the commission for a period of six years.

[There is no subsection (b).]

**PART IV** CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES**TITLE I** CRIMES AND PUNISHMENTS**CHAPTER 268A** CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES**Section 6A** Conflict of interest of public official; reporting requirement

Section 6A. Any public official, as defined by section one of chapter two hundred and sixty-eight B, who in the discharge of his official duties would be required knowingly to take an action which would substantially affect such official's financial interests, unless the effect on such an official is no greater than the effect on the general public, shall file a written description of the required action and the potential conflict of interest with the state ethics commission established by said chapter two hundred and sixty-eight B.

**PART IV** CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES**TITLE I** CRIMES AND PUNISHMENTS**CHAPTER 268A** CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES**Section 6B** Candidates for employment as state employee; disclosure of relation to state employee

Section 6B. Each candidate for employment as a state employee shall be required by the hiring authority as part of the application process to disclose, in writing, the names of any state employee who is related to the candidate as: spouse, parent, child or sibling or the spouse of the candidate's parent, child or sibling.

The contents of a disclosure received under this section from an employee when such employee was a candidate shall be considered public records under section 7 of chapter 4 and chapter 66.

All disclosures made by applicants hired by a state agency shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

**PART IV** CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES**TITLE I** CRIMES AND PUNISHMENTS**CHAPTER 268A** CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES**Section 7** Financial interest in contracts of state agency; application of section

Section 7. A state employee who has a financial interest, directly or indirectly, in a contract made by a state agency, in which the commonwealth or a state agency is an interested party, of which interest he has knowledge or has reason to know, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one per cent of the stock of a corporation.

This section shall not apply (a) to a state employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or (b) to a state employee other than a member of the general court who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the state employee files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, and if in the case of a contract for personal services (1) the services will be provided outside the normal working hours of the state employee, (2) the services are not required as part of the state employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year, and (3) the head of the contracting agency makes and files with the state ethics commission a written certification that no employee of that agency is available to perform those services as a part of their regular duties, or (c) to the interest of a member of the general court in a contract made by an agency other than the general court or either branch thereof, if his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten per cent of the total proprietary interests therein, and the contract is made through competitive bidding and he files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family or (d) to a special state employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the

state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, or (e) to a special state employee who files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the governor with the advice and consent of the executive council exempts him.

This section shall not apply to a state employee who provides services or furnishes supplies, goods and materials to a recipient of public assistance, provided that such services or such supplies, goods and materials are provided in accordance with a schedule of charges promulgated by the department of transitional assistance or the division of health care policy and finance and provided, further, that such recipient has the right under law to choose and in fact does choose the person or firm that will provide such services or furnish such supplies, goods and materials.

This section shall not prohibit a state employee from teaching or performing other related duties in an educational institution of the commonwealth; provided, that such employee does not participate in, or have official responsibility for, the financial management of such educational institution; and provided, further, that such employee is so employed on a part-time basis. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty.

This section shall not prohibit a state employee from being employed on a part-time basis by a facility operated or designed for the care of mentally ill or mentally retarded persons, public health, correctional facility or any other facility principally funded by the state which provides similar services and which operates on an uninterrupted and continuous basis; provided that such employee does not participate in, or have official responsibility for, the financial management of such facility, that he is compensated for such part-time employment for not more than four hours in any day in which he is otherwise compensated by the commonwealth, and at a rate which does not exceed that of a state employee classified in step one of job group XX of the general salary schedule contained in section forty-six of chapter thirty, and that the head of the facility makes and files with the state ethics commission a written certification that there is a critical need for the services of the employee. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty.

This section shall not preclude an officer or employee of the Massachusetts Port Authority from eligibility for any residential sound insulation program or the bayswater environmental program provided that the officer or employee has no responsibility for the administration for that program from which he is to receive the benefit.



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PART I ADMINISTRATION OF THE GOVERNMENT**TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH****Section 2C** Pollution violations; orders of department of environmental protection

Section 2C. The commissioner of environmental protection or his designee may issue orders in the name of the department of environmental protection upon witnessing or being presented proof of the violation of any statute, rule, regulation or code which the said department is authorized to enforce relative to pollution. Such orders shall have the same force and effect as any rule or regulation promulgated by said department and any such order may be revoked by said department.

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE XVI** PUBLIC HEALTH**CHAPTER 111** PUBLIC HEALTH**Section 142A** Pollution or contamination of atmosphere; prevention; regulations; violation; enforcement

Section 142A. The department of environmental protection, referred to in this section and in sections one hundred and forty-two B through one hundred and forty-two M, inclusive, as the department may from time to time adopt regulations, pursuant to this section and sections one hundred and forty-two B through one hundred and forty-two M, inclusive, to prevent pollution or contamination of the atmosphere. Whoever violates any such regulation or any permit or plan approval or order issued thereunder: (a) shall be punished for each violation by a fine of not more than twenty-five thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment; or (b) shall be subject to a civil penalty of not more than twenty-five thousand dollars for each violation. Each day or part thereof that such violation occurs or continues shall be a separate violation. The civil penalty may be assessed in an action brought on behalf of the commonwealth in the superior court. The commonwealth may also bring an action for injunctive relief in the superior court for any such violation, and the superior court shall have jurisdiction to enjoin such violation and to grant such further relief as it may deem appropriate.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH**

Section 142B Metropolitan air pollution control district; establishment; composition; powers of department of environmental protection

Section 142B. There is hereby established a metropolitan air pollution control district, to consist of the territory and waters comprised within the cities and towns of Arlington, Belmont, Boston, Braintree, Brookline, Cambridge, Canton, Chelsea, Dedham, Everett, Lynn, Malden, Medford, Melrose, Milton, Needham, Newton, Peabody, Quincy, Revere, Saugus, Somerville, Stoneham, Wakefield, Waltham, Watertown, Weymouth, Winchester, Winthrop, and Woburn, and such other cities and towns as may, after application for admission to the said district, be admitted thereto by the department; provided, that said district shall at all times be composed of contiguous territory.

The department shall control the pollution of the atmosphere within said district. The department may from time to time, after a public hearing, prescribe and establish, amend or repeal, rules and regulations to prevent pollution or undue contamination of the atmosphere within said district.

Personnel of the department may in the performance of their duties under this section enter and inspect any premises, providing said personnel receive the consent of the owner or person in control of such premises. A court, judge or justice authorized to issue warrants in criminal cases may, upon sworn testimony by said personnel that consent for such entry and inspection has been requested and refused, and upon further sworn testimony either (1) that a reasonable inspection of industrial or commercial premises is necessary to detect, prevent or warn against conduct or conditions which may threaten the public health, comfort and convenience by contributing to air pollution, or (2) that a reasonable nondiscriminatory public health inspection, of which the inspection of the particular premises is a part, has been authorized by the department and is being undertaken to detect, prevent or warn against conduct or conditions which may threaten the public health, comfort and convenience by contributing to air pollution, if satisfied that such testimony is true, issue a warrant identifying the particular premises and authorizing said personnel seeking the warrant to conduct a reasonable search of such premises during daylight hours if the premises is residential, or during operating hours if the premises is industrial or commercial. For the purposes of securing a warrant under this section, belief or knowledge regarding actual conduct or conditions in a particular premises shall not be necessary. Notwithstanding the provisions of any law to the contrary, any information, record, or particular part thereof, other than emission

data, submitted to the department pursuant to this section, shall, upon request, be kept confidential and not considered to be a public record when it is deemed by the commissioner that such information, record, or report relates to secret processes, methods of manufacture, or production or that such information, record, or report if made public would divulge a trade secret.

This section shall not operate to abrogate any of the powers and duties, as defined by general or special law, of any agency or political subdivision of the commonwealth.

The department shall have power to order any person, corporation, or political subdivision having control of an air contamination source, other than an employee, to stop or abate violation of any of the rules and regulations adopted pursuant to this section or of any of the rules and regulations adopted under the provisions of section one hundred and forty-two A and standards adopted under section one hundred and forty-two A and regulations adopted under section one hundred and forty-two D. Said order shall inform the alleged violator in writing of his right to request, within ten days, a hearing under the provisions of chapter thirty A, but if no such request is made within ten days, said person, corporation, or political subdivision shall be deemed to have consented to the order. If said person, corporation, or political subdivision requests a hearing, the commissioner of environmental protection, in this section and section one hundred and forty-two E called the commissioner, or his designee, shall within a reasonable time hold a hearing under the provisions of said chapter thirty A. The commissioner may reissue such order as is warranted and all orders, permits, or other determinations of the commissioner, except those consented thereto, shall be subject to judicial review as provided in chapter thirty A. In addition, any person who participates in any public participation process required by the federal Clean Air Act, section 502 (b) (6), 42 U.S.C. section 7661a (b) (6), or any amended version thereof or any regulation enacted thereunder, with respect to the department's final action on operating permits governing air emissions, and who has standing to sue with respect to the matter pursuant to federal constitutional law, may initiate an adjudicatory hearing pursuant to chapter thirty A, and may obtain judicial review, pursuant to chapter thirty A, of a final decision therein. Any person, corporation, or political subdivision violating any order of the department (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than one year, or both such fine and imprisonment; or (b), shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each such violation. The civil penalty may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. For the purpose of this paragraph each subsequent day or part thereof of violation of such an order, whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense. The superior court sitting in equity, on petition of the department or any person authorized by the department shall have

jurisdiction to enforce any such order and to restrain violations of any rules or regulations adopted pursuant to this section until such rules and regulations have been complied with.

The department may, for the purpose of conducting a continuing inventory of air pollution source emissions, require any person owning, operating, or having control of any air contamination source to register said source with the department and to supply such information pertaining to said source as the department may specify. Registration shall be on a form supplied by the department and shall be accomplished within a period of time specified by the department after public notice, provided said period of time shall be not less than thirty days.

Nothing in this section or in any rule or regulation adopted hereunder shall be construed as relieving, under any circumstances, any person, corporation, or political subdivision from responsibility or liability for any damages which may occur or for civil or criminal proceedings arising out of or as a result of any action of said person, corporation, or political subdivision, regardless of any action of the department, and persons other than the department shall not acquire actionable rights by virtue of such action.

The department shall maintain and operate such air sampling stations and devices; make or perform such routine and special examinations, inspections, observations, determinations, laboratory analyses, and surveys; maintain such records; and perform such other acts as it deems necessary to conduct an adequate air pollution control program within the metropolitan air pollution control district.

The commonwealth shall be reimbursed, as hereinafter provided, for all appropriations made by the general court and expended by the department for such purposes. The state treasurer shall issue his warrant requiring the assessors of the cities and towns of the metropolitan air pollution control district to assess a tax in the amount of the sums expended, one half of which shall be in proportion to their assessed valuations and one half of which shall be in proportion to their respective populations; provided, that any such city or town may in any year anticipate in whole or in part its assessment, and appropriate, raise, and deposit the amount thereof with the state treasurer, and any sum so deposited shall be credited against such assessment. The assessed valuations of the several cities and towns shall be the last preceding valuations made for purposes of apportioning the state tax.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH****Section 142C** Future districts; formation

Section 142C. Other air pollution control districts similar to that established by section one hundred and forty-two B may be formed upon approval of the department. Each such district shall be composed of two or more political subdivisions of the commonwealth and of contiguous territory. Cities or towns wishing to form such a district shall make joint application to the department, requesting the department to approve such district and to effect the control of air pollution therein. The powers, duties, and rights of the department in the exercise of air pollution control in such districts and the manner in which funds shall be made available to it shall be as provided in section one hundred and forty-two B.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH**

Section 142D Air pollution control districts; standards and plans for implementation; establishment; periodic review; amendment; compliance with minimum federal standards

Section 142D. The department, with the approval of the governor, may establish air pollution control districts compatible with such air quality control regions as may be designated by the secretary of the federal department of health, education and welfare under the provisions of the Air Quality Act of 1967, or any additions or amendments thereto. The department, with the approval of the governor, may add to or remove from air pollution control districts such cities and towns, and may establish or abolish such other air pollution control districts, as it may deem advisable and necessary to effect air pollution control in the commonwealth. The department may adopt, and from time to time amend, after public hearings, ambient air quality standards applicable to said districts and to other portions of the commonwealth, and shall adopt a plan for the implementation, maintenance and attainment of such standards. The powers, duties and rights of the department in the exercise of air pollution control in districts established under this section and the manner in which funds shall be made available to it shall be as provided in section one hundred and forty-two B.

From time to time the department shall review the ambient air quality standards and plan for implementation, maintenance and attainment of such standards adopted pursuant to this section and, after public hearings, shall amend such standards and implementation plan so as to minimize the economic cost of such standards and plan for implementation, provided, however, that such standards shall not be less than the minimum federal standards. The initial such amendments to such standards and implementation plan shall postpone the achievement dates for the primary and secondary ambient air quality standards to the latest dates permitted pursuant to federal law. Any compliance schedule, emission limitation, for new or existing facilities, order, rule, plan or regulation adopted pursuant to such standards or implementation plan shall be amended to conform to such amended standards and implementation plan upon petition of the owner or operator of a facility whose construction, maintenance or operation is affected by such compliance schedule, emission limitation, for new or existing facilities, order, rule, plan or regulation. The department shall, after opportunity for public hearing, issue a final order with respect to the subject matter of such petition within sixty days of the filing of the petition.

In any standard, implementation plan, compliance schedule, emission limitation, for new or existing facilities, order, rule, plan or regulation where the sulphur or ash content, or other

chemical or physical characteristic of fuels or emissions therefrom is subject to consideration by the department, the department shall allow stack height, fuel switching and variations in plant operation to be used instead of controls on such sulphur or ash content or chemical or physical characteristic of such fuels or emissions therefrom if the owner or operator of the facility shall demonstrate to the satisfaction of the department that such controls are not necessary to achieve ambient air quality standards; provided, however, the department may impose conditions necessary to minimize public nuisance and adverse effects to the public health. If a variance or other permission granted by the department with respect to the sulphur or ash content, or other chemical or physical characteristic of fuels or emissions therefrom would otherwise prevent the achievement of primary or secondary federal ambient air quality standards within a time period required by the express language of a federal statute or regulation such variance or other permission shall be limited to the maximum time period allowed by federal law.

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE XVI** PUBLIC HEALTH**CHAPTER 111** PUBLIC HEALTH

Section 142E Air pollution; preventing and controlling by departments, agencies, commissions, authorities and political subdivisions

Section 142E. Any department, agency, commission, authority or political subdivision of the commonwealth having control and supervision over any building, installation or other property shall cooperate with the department of environmental protection in preventing and controlling pollution of the air insofar as the discharge of any matter from or by such building, installation or other property may cause or contribute to air pollution.

All departments, agencies, commissions, authorities and political subdivisions shall be subject to rules and regulations adopted by the department pursuant to sections one hundred and forty-two A to one hundred and forty-two C, inclusive. The department may serve upon any such department, agency, commission, authority or political subdivision an order to cease and desist from violating such rules or regulations. If objection to such order is made within ten days, the department, agency, commission, authority or political subdivision so objecting shall be entitled to a hearing before a person designated by the commissioner whose recommendations when adopted, or amended and adopted, by the department of environmental protection shall be a final decision within the meaning of section fourteen of chapter thirty A, subject to judicial review as therein provided. If such order is violated the department may file a bill of complaint in the superior court to enjoin such violation; provided, however, that in such a proceeding the sole questions in issue shall be (1) was the order of the department violated and (2) is the relief sought appropriate.

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE XVI** PUBLIC HEALTH**CHAPTER 111** PUBLIC HEALTH**Section 142F** Discharging excess fuel from aircraft into atmosphere; penalty; definitions

Section 142F. Whoever, except in an emergency, allows excess fuel to be discharged into the atmosphere from an aircraft shall be punished by a fine of not less than two hundred and fifty dollars nor more than seven hundred and fifty dollars. As used in this section "excess fuel" shall mean that quantity of unused fuel which collects in "drain cans" from the engines of aircraft following the starting up or the shutting off of such engines, and "drain can" shall mean that receptacle located below or adjacent to an aircraft engine in which unused fuel collects or is collected when the engine is not in operation or just after the engine has been put into operation.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH****Section 142G** Burning of Christmas trees restricted

Section 142G. Notwithstanding the provisions of sections one hundred and forty-two A and one hundred and forty-two B, any person may burn Christmas trees during the period from December twenty-sixth to January seventh in each year, provided that said person obtains a permit from the head of the fire department of the city or town wherein such burning shall take place and provided further that such burning is conducted under the supervision and control of said head of the fire department.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH****Section 142H** Ceremonial bonfires restricted; permits

Section 142H. The city council of a city with the approval of its mayor, or the board of selectmen or town council of a town, may authorize the fire department of such city or town to issue not more than one permit in any one year for a ceremonial bonfire in such city or town. Said ceremonial bonfire shall mark the observance of a significant municipal, state, or national event, and any such ceremonial bonfire shall be under the continuous supervision of the fire department. A permit for such a ceremonial bonfire shall be issued only to a municipal department or a civic, fraternal or veterans organization within such city or town. Only wood which has not been painted, impregnated, or otherwise treated with any foreign substance shall be permitted to burn in ceremonial bonfires. No ceremonial bonfire shall burn for more than twelve hours.

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE XVI** PUBLIC HEALTH**CHAPTER 111** PUBLIC HEALTH**Section 142I** Bonfires from July 2 to July 6 authorized

Section 142I. Notwithstanding any provision of sections one hundred and forty-two A and one hundred and forty-two B, and in addition to the ceremonial bonfires permitted under the provisions of section one hundred and forty-two H, any civic, fraternal, veteran, community, or business organization may build and ignite bonfires under the supervision and control of the fire department of the city or town in which such burning takes place during the period from July second to July sixth in each year. A permit for such bonfire shall be obtained by such organization from the head of the fire department upon his determination that such organization will conduct such burning in a proper and responsible manner.



PART I ADMINISTRATION OF THE GOVERNMENT

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CHAPTER 111 PUBLIC HEALTH

Section 142J Repealed, 1998, 490, Sec. 8

Repealed, 1998, 490, Sec. 8

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE XVI** PUBLIC HEALTH**CHAPTER 111** PUBLIC HEALTH**Section 142K** Motor vehicle emissions standards; late models

Section 142K. (a) In addition to the provisions of section one hundred and forty-two J authorizing the department of environmental protection to establish and administer setting motor vehicle emissions standards, for model years beginning with the model year nineteen hundred and ninety-three or as soon thereafter as allowable under federal law, the department of environmental protection, hereinafter referred to as the department, shall adopt motor vehicle emissions standards based on the California's duly promulgated motor vehicle emissions standards of the state of California unless, after a public hearing, the department establishes, based on substantial evidence, that said emissions standards and a compliance program similar to the state of California's will not achieve, in the aggregate, greater motor vehicle pollution reductions than the federal standards and compliance program for any such model year. The department shall publicly issue detailed written findings before and after holding a public hearing pursuant to this paragraph and said hearing shall be subject to the provisions for public hearings contained in chapter thirty A. A decision not to adopt said standards shall apply as long as the federal standards and the standards of the state of California do not change. Emissions standards adopted pursuant to this section shall include the one hundred thousand mile certification standards of the state of California.

Notwithstanding any other provision of this section, the department may postpone, for no more than one year, the adoption of said motor vehicle emission standards if the department makes a written determination that none of the following states is likely to adopt California's motor vehicle emission standards for model year nineteen hundred and ninety-three pursuant to the requirements of 42 USC 7507: Connecticut, Maine, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. The department may further postpone adopting said motor vehicle emission standards for an additional year if the department makes a written determination that none of the aforesaid listed states is likely to adopt California's motor vehicle emission standards for model year nineteen hundred and ninety-four.

(b) No corporation, person or other entity shall sell or offer for sale a motor vehicle or motor vehicle engine, manufactured during or after the first model year that the motor vehicle emissions standards specified in subsection (a) are in effect which is intended for use primarily in the commonwealth and which has not been certified according to regulations promulgated by the department; provided, however, that reasonable exemptions may be

made by the department for: (1) out-of-state registered vehicles transferred by inheritance, or by decree of divorce, dissolution or legal separation entered by a court of competent jurisdiction; (2) vehicles purchased by nonresidents prior to establishing residency in the commonwealth; and (3) used vehicles, as defined by regulations of the department, which were originally purchased in states with emission standards different from the standards of the commonwealth. Upon the granting of an exemption from the provisions of this section, a motor vehicle shall forever be exempt. The department may promulgate regulations including, but not limited to, prohibitions on the purchase, importation, delivery, receipt, rental, leasing or acquisition of motor vehicles or motor vehicle engines not in compliance with the provisions of this section.

(c) On or before August first, nineteen hundred and ninety, the department shall promulgate regulations to ensure maximum motor vehicle pollution reductions pursuant to the provisions of this section including, but not limited to: engine family certification standards; after-market parts certification; one hundred percent assembly line functional testing; two percent manufacturer quality audits; post assembly line pre-sale new vehicle testing; dealership inspection; in-use testing; anti-tampering protections; on-board diagnostics, and warranty and recall requirements. The promulgation of these regulations may be postponed in accordance with the provisions of subsection (a) concerning postponement but, in no event shall the department promulgate regulations later than June first, nineteen hundred and ninety-two.

(d) The manufacturer's warranty for passenger vehicles certified pursuant to subsection (a) shall extend, at a minimum, for three years or fifty thousand miles for emissions related parts with a retail cost of less than three hundred dollars and seven years or seventy thousand miles for emissions related parts with a retail cost of three hundred dollars or more. The department shall periodically adjust said three hundred dollar repair level by the percentage change in the consumer price index, as published by the United States Bureau of Labor Statistics. For the model year nineteen hundred and ninety-three, if the motor vehicle emissions standards as specified in subsection (a) are in effect, manufacturers shall report to the department all repairs made under warranty if the number of repairs on a specific model, for a specific emissions part, exceeds four percent of the total number of the model sold. For model year nineteen hundred and ninety-four and subsequent model years, if the motor vehicle emissions standards as specified in subsection (a) are in effect, manufacturers shall report to the department all repairs made under warranty if the number of repairs on a specific model for a specific emissions part exceeds two percent of the total number of the model sold.

(e) Any corporation, person, municipality or other entity that violates the requirements of this section or any regulation adopted hereunder shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than one year or both such fine and imprisonment and shall be subject to a civil penalty of not more than twenty-five

thousand dollars for each such violation. Each day that a violation for any motor vehicle continues shall be a separate offense. The civil penalty may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction.

The penalties imposed hereunder shall be in addition to all other enforcement powers of the department under applicable law.

(f) The provisions of this section are intended as minimum requirements of the commonwealth's motor vehicle emissions program and shall not limit the department's authority to adopt and implement the stricter air quality regulations allowed under any other federal and state law.

(g) To decrease the impact of out-of-state generated auto emissions on the air quality of the commonwealth, the department is hereby directed to work in cooperation with other states to facilitate Massachusetts' and other states' adoption of more stringent motor vehicle emissions control programs. The department is authorized to work in cooperation with and enter into contracts with other states in generating and reviewing certification, testing, recall and warranty data so long as such cooperation does not limit the effectiveness of the program established by this section and the department may adopt other states' certification results by reference.

(h) The responsibilities hereunder shall be in addition to all other responsibilities imposed by any other general or special law or rule or regulation.

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE XVI** PUBLIC HEALTH**CHAPTER 111** PUBLIC HEALTH**Section 142L** Agricultural burning

Section 142L. Notwithstanding the provisions of sections one hundred and forty-two A to one hundred and forty-two E, inclusive, the burning of tree prunings, diseased plant materials, and brush from land clearing operations, which are the direct result of the normal commercial pursuit of agriculture, as defined in section one A of chapter one hundred and twenty-eight, shall be allowed subject to the permission of the local fire chief which need not be in writing. Said permission shall be based solely upon whether or not appropriate meteorological conditions exist to ensure safe burning.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH**

Section 142M Motor vehicle emissions inspection and repair; definitions; rules and regulations; inspection facilities; waivers; quality assurance program; violations

Section 142M. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Commissioner", the commissioner of environmental protection.

"Department", the department of environmental protection.

"Dynamometer", a device which applies a load to a vehicle's drive wheels while operating in a stationary, secure position to simulate actual driving conditions for an emissions inspection.

"Electronic network", or "network", a computerized communication system including, but not limited to, the computers, communications devices and software for such system which links emissions analyzers, the department's emissions database, and the registry of motor vehicles' registration database and which allows the department and the registry to store and analyze data on motor vehicle emissions inspections, motor vehicles and emissions inspectors.

"Emissions analyzer", a device which measures the volume of air pollutants and gases in motor vehicle exhaust or a device which analyzes a motor vehicle's computer system relating to emissions.

"Emissions inspection", a component of the periodic staggered inspection of motor vehicles required by section 7A of chapter 90 which may include, but shall not be limited to, the inspection of a motor vehicle's emissions control equipment, including its computer system relating to emissions, the measurement of air pollutant concentrations or mass in vehicle exhaust with an analyzer while the vehicle is operated on a dynamometer, the verification of vehicle fuel system integrity and the entry of a complete emissions inspection record in the registry's database for the vehicle being inspected, as prescribed by the department in regulations and performed by an emissions inspector.

"Emissions inspection certificate" or "inspection certificate", a printed statement, instrument or device in a form prescribed by the registrar, in consultation with the commissioner, which

provides inspection information and facilitates effective enforcement of the emissions inspection and maintenance requirements of this section and chapter 90.

“Emissions inspection facility”, a facility, licensed by the registrar under section 7W of chapter 90 for conducting motor vehicle emissions inspections and other related duties.

“Emissions inspector”, a properly trained person, licensed by the registrar and certified by the department and meeting the department’s requirements for performing motor vehicle emissions inspections.

“Emissions repair technician”, a person registered with the department and meeting departmental training standards for diagnosing and repairing motor vehicles which fail an emissions inspection.

“Emissions inspection and maintenance program” or “I&M program”, a component of the periodic staggered motor vehicle inspection required by section 7A of chapter 90 which shall include motor vehicle emissions inspections, including accurate and effective testing of vehicles, using emission testing equipment, visual and functional tests of evaporative systems, rigorous compliance and enforcement activities and quality assurance and quality control procedures which promotes effective emissions repair and maintenance of the motor vehicle.

“Evaporative emissions test”, a test administered to determine whether there are leaks in a vehicle’s fuel or evaporative control system, such as purge functions of a vapor canister.

“Emissions waiver certificate”, a written statement, instrument or device indicating that the requirement of compliance with the emissions standards and criteria for the emissions component of the motor vehicle inspection program has been waived for a particular motor vehicle.

“On-road test”, a field test designed and conducted to assess the emissions of motor vehicles.

“Registrar”, the registrar of motor vehicles.

“Registry”, the registry of motor vehicles.

“Tampering”, (i) the act of removing or rendering inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under section 203(a) of the federal Clean Air Act prior to its sale and delivery to the ultimate

purchaser; or (ii) for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.

"Vehicle identification number" or "VIN ", the unique number assigned to each vehicle by the vehicle manufacturer identifying specific vehicle characteristics, such as make, model, model year, pollution control devices and the particular vehicle itself.

(b) Pursuant to this section, the department shall develop the standards, requirements and rules and regulations for the emissions component of the periodic staggered inspection program established pursuant to section 7A of chapter 90. It shall be the responsibility of the department, under authority of this chapter, to provide the direct primary oversight of the operational and environmental aspects of the emissions component of the inspection program. Nothing in this section shall be construed to require the leasing or purchasing of a dynamometer, an emissions analyzer or any necessary computer hardware or software by an emissions inspection facility from the network contractor; provided, however, the network contractor shall provide access to the data acquisition and management network to any emissions inspection facility who purchases or leases a dynamometer, emissions analyzer or necessary computer hardware or software through sources other than the network contractor so long as such equipment complies with testing equipment specifications as established by the commissioner in consultation with the registrar. Any requests for proposals for contracting with a network contractor shall require that the commissioner, in consultation with the registrar, shall have oversight over the charge assessed by the network contractor for access to the data acquisition and management network to emissions inspection facilities who purchased equipment through sources other than the network contractor; provided, however, that notwithstanding the provisions of this section, the commissioner and the registrar may require emissions inspection facilities to obtain, lease or purchase such equipment from the network contractor upon the determination that allowing emissions inspection facilities to lease or purchase such equipment through sources other than the network contractor would result in an increase in the inspection fee. Said determination shall be made by the commissioner and registrar, in consultation with the secretary of administration and finance, only upon a finding that no feasible option exists by which emissions inspection facilities may obtain such equipment through sources other than the network contractor without increasing the inspection fee. The amount of said fee for said inspection shall be uniform statewide. It shall be the responsibility of the registrar, under authority of chapter 90, to license inspection facilities and inspectors and to register vehicles complying with the inspection program requirements and to conduct audit and enforcement activities related thereto. The department, on behalf of the commonwealth, shall be responsible for submitting all appropriate and required program regulations on the motor vehicle emissions component of the inspection and maintenance program and applicable revisions to the state implementation plan to the United States Environmental Protection Agency, in accordance with the

requirements of the federal Clean Air Act. The department, in conjunction with the registry, may develop and implement a demonstration or pilot of the motor vehicle emissions inspection program or elements of such program to evaluate the effectiveness of such program, or elements of such program, in successfully reducing air contaminants emitted by motor vehicles in the commonwealth as required by federal law.

The emissions component of the inspection program shall be required statewide, shall be conducted on a staggered basis throughout the year and shall be required of each subject motor vehicle at least every two years unless otherwise exempted or specified by the department. The commissioner shall establish rules and regulations specifying which motor vehicles shall be subject to the motor vehicles emissions component of the inspection program.

The commissioner shall establish rules and regulations establishing standards and criteria for motor vehicle emissions inspections, giving consideration to the United States Environmental Protection Agency's performance standards for the enhanced emissions inspection and maintenance program and the level of emission reductions necessary to achieve and maintain federal and state ambient air quality standards. Such standards and criteria may include, but shall not be limited to, a requirement to test motor vehicle emissions for hydrocarbons, carbon monoxide and oxides of nitrogen. The standards and criteria may be different for different model years and types of vehicles.

Street rods and custom vehicles, as defined and registered pursuant to section 2H of chapter 90, shall receive an emissions waiver certificate. Specially constructed vehicles and replica vehicles, as defined and registered pursuant to said section 2H of said chapter 90, and registered on or before April 30, 2012, shall receive an emissions waiver certificate. Specially constructed vehicles and replica vehicles, as so defined, registered after April 30, 2012 shall be subject to emission control requirements based on the model year and configuration of the engine installed in the specially constructed or replica vehicle, whether the engine is an original equipment manufacturer's production engine, rebuilt engine or crate engine. Regulations relative to emissions compliance for replica or specially constructed vehicles registered after April 30, 2012 may establish maximum limits on the annual number of vehicle miles traveled by these vehicles; provided, however, that any such limit set, shall not be set at less than 3,000 miles per year. If the model year of the engine installed in the specially constructed or replica vehicle requires an onboard diagnostic system, the vehicle shall be subject to an onboard diagnostic system emissions test applicable to the certified configuration, including any exclusions or exemptions otherwise granted to that certified configuration.

The commissioner, in consultation with the registrar, shall establish rules and regulations relative to testing equipment specifications, including emissions analyzers, quality assurance

and quality control procedures for testing equipment, calibration gases, failure rates, emission standards, testing procedures, data collection and data analysis, and program evaluation.

The registrar, in consultation with the commissioner, shall determine the number and location of inspection facilities necessary for the success of the emissions component of the inspection program while considering consumer convenience and cost and achieving an equitable distribution across the commonwealth. Said registrar shall report to the joint committee on public safety and the house and senate committees on ways and means the actual number and location of inspection facilities on or before July 1, 1998. The commissioner may establish criteria and a process to select qualified applicants who shall be authorized to participate in the emissions component of the inspection program. In no event shall the use of state-owned or municipal-owned property as a site for an inspection facility or a test center relieve the owner or operator of the inspection facility from paying to the municipality an amount equal to the local property taxes due if such property was not state-owned or municipal-owned.

The department and the registry, in implementing the requirements of this section, shall acquire personnel, purchase equipment and procure services necessary to achieve the objectives hereunder including, but not limited to, the following: (i) inspection of motor vehicles; (ii) data acquisition and data management; (iii) quality control and quality assurance; (iv) on-road testing; (v) program evaluation; (vi) public communications; (vii) research and development; and (viii) any other purposes related to the development and implementation of the motor vehicle emissions component of the inspection program.

The technical and performance specifications of any equipment determined by the department to be necessary and required in the implementation of the provisions of this section, shall be reevaluated periodically as to its useful life, flexibility and applicability as to changing technological conditions and continued effectiveness in the emissions inspection and maintenance program.

The department and the registry shall contract with or any private entities that demonstrate an ability to manage emissions programs, hereinafter referred to as the network contractor, to develop and manage the network and inspection facilities of said motor vehicle inspection program. The department and the registry shall, as a term and condition of such contract, require the network contractor to: (i) acquire and distribute inspection facility equipment; and (ii) acquire such equipment and the associated maintenance services from one or more suppliers at discount prices through volume purchasing. Such contract shall also include performance standards which shall pertain to the motor vehicle inspection program goals as set forth in the commonwealth's state implementation plan. Such contract shall also require the network contractor to establish at least five test centers to be evenly distributed across the commonwealth for research, training, repair assistance and for any other purposes

related to the implementation and success of the emissions component of the inspection program. The network contractor shall be responsible for achieving such goals as set forth in regulations, policies and contract terms established by the department and registry. Such contract shall require an extensive public education and awareness program prior to the implementation of the motor vehicle inspection program. Such public education program shall include, but not be limited to, establishing and maintaining a comprehensive consumer outreach campaign concerning air quality, sources of pollutants, relevant aspects of automobile maintenance and other topics related to the motor vehicle inspection requirements of chapter 90 and this chapter. Such consumer outreach campaign shall include a consumer hotline to receive motorists' complaints and to answer questions regarding the inspection procedures, repair information and other related inspection issues.

(c) The commissioner shall establish rules and regulations implementing the motor vehicle emissions component of the inspection program required by section 7A of chapter 90. Such rules and regulations may reflect a phased-in schedule for the motor vehicles subject to the emissions component of the inspection program; provided, however, that such phase-in shall not begin prior to July 1, 1998. The department may continue to implement the motor vehicle emissions inspection program established pursuant to section 142J of chapter 111 while phasing-in the new requirements of this section.

The department shall notify the registrar as to which motor vehicles shall be subject to the motor vehicle emissions component of the inspection program. Said registrar shall give reasonable notification in the form prescribed by said registrar, to the owners of motor vehicles subject to the emissions inspection indicating which emissions inspection procedures shall be required. The registrar shall not issue a registration or, if such registration has already been issued, shall suspend or not renew the registration of any motor vehicle which does not comply with the provisions of this section or any regulation promulgated hereunder.

The commissioner may establish regulations for exempting certain motor vehicles from some or all of the requirements of this section. The following motor vehicles may be exempt from the provisions of this section and may require alternative test procedures: (i) any motor vehicle the model year of which is 15 years before the year in which the inspection occurs; (ii) any motor vehicle or class of motor vehicle that is exempted by regulation or policy by the department because the vehicle or class presents a prohibitive inspection problem or is inappropriate for inspection; (iii) any motor vehicle operated exclusively by electric power; (iv) any motor vehicle that the United States Environmental Protection Agency or the California Air Resources Board new vehicle certification requirements do not require to be equipped with an onboard diagnostic system, as determined by the commissioner; and (v) for one inspection cycle only, any motor vehicle two model years old or less at the time the vehicle is due for inspection.

The commissioner and the registrar shall establish procedures under which fleet operators of fleets of 12 or more vehicles that are centrally fueled and maintained may be authorized under such program to conduct inspections and maintenance activities regarding such vehicles, subject to such audit, review and enforcement under this section as the commissioner and registrar deem appropriate.

The motorist presenting a motor vehicle for an emissions inspection shall pay a fee to the inspection facility pursuant to section 7A of chapter 90.

The registrar shall establish certification, training and continuing education requirements for the safety component of the inspection program. The commissioner shall establish certification, training and continuing education requirements for the emissions component of the inspection program. Such requirements shall be a precondition to the issuance of a license to conduct motor vehicle inspections issued by the registrar. Any person conducting an official motor vehicle inspection without having received such license and certification shall be subject to the penalties set forth in subsection (f).

The commissioner shall take steps to ensure that the capability exists in the repair industry to repair motor vehicles which fail the emissions component of the inspections required herein. Such steps shall include, but not be limited to, training and continuing education for emissions repair technicians and the involvement of vocational or technical schools and various members and sectors of the automobile and automotive repair industry. The commissioner shall establish procedures to register emissions repair technicians and to conduct a performance monitoring program of repair technicians, emissions inspection facilities and emissions inspectors. Such performance monitoring may include, but not be limited to, collection and evaluation of data on repairs. The provision of this paragraph shall not prevent any person not so registered from performing emissions repairs.

The department and the registry may conduct on-road testing of motor vehicles, including trucks and buses, for research, development, inspection or enforcement purposes. On-road testing may include identification of motor vehicles which would pass the emissions inspection and motor vehicles which would fail the emissions inspection. The on-road testing program may include, but shall not be limited to: (i) the use of portable or remote sensing equipment to measure pollutants of a moving motor vehicle; (ii) evaluation of the use of such equipment, alone or with other analytical information, equipment or techniques, as a supplement or alternative to, replacement of or enforcement of the emissions inspection; and (iii) the establishment of test centers to research and evaluate the accuracy and effectiveness of various emissions testing and enforcement methods.

The department and the registry shall create or enter into contracts to create an electronic network linking the department, emissions inspection equipment, the registry and any contractor to the department. Such electronic network shall facilitate implementation, evaluation and enforcement of the emissions inspection and maintenance program by the department and the registry.

The registrar shall establish protocols for communication on the electronic network. At its discretion, the registrar may grant emissions inspection equipment, inspection facilities and inspectors access to the electronic network. The commissioner and the registrar shall require emissions inspection equipment to communicate with the commissioner through the electronic network. The registrar, in consultation with the commissioner shall establish procedures and requirements for connecting and disconnecting emissions inspection equipment and inspection facilities and for granting emissions inspectors access to the electronic network.

The commissioner, in consultation with the registrar, may adopt rules and regulations to implement an emissions inspection and maintenance program for diesel-fueled motor vehicles.

The commissioner, in consultation with the registrar, shall promulgate rules and regulations to establish a program for the issuance of emissions waiver certificates; provided, however, that such rules and regulations shall include eligibility standards and criteria, a procedure whereby motorists may petition for emissions waiver certificates and a notification process to inform motorists of the emissions waiver certificate program and the emissions waiver certificate petition process. Such eligibility standards and criteria shall include, but not be limited to, provisions for the issuance of emissions waiver certificates to any owner of a motor vehicle who displays satisfactory proof that such motor vehicle has undergone emissions-related repairs at a cost that exceeds a maximum cost threshold to be determined by the commissioner and the registrar. The commissioner shall report on the emissions waiver certificate program to the joint committees on public safety and the house and senate committees on ways and means on or before July 1, 1998.

(d) The commissioner and the registrar shall establish programs for public information and consumer protection. The commissioner shall establish procedures and requirements for the network contractor to ensure maximum convenience to the motorist.

Each emissions inspection facility shall distribute information to inform the public about the requirements, benefits and other consumer-related matters of the emissions inspection and maintenance program and any other information useful to the better understanding and facilitation of the emissions inspection to the consumer as directed by the commissioner.

Each inspection facility, while performing the emissions inspection, shall be capable of providing consumer protection by generating data on warranty-related recalls in a form and manner prescribed by the commissioner and any other related information deemed necessary by the commissioner. In addition, the commissioner shall establish procedures to advise motorists whose vehicles are subject to either a voluntary emissions recall or remedial action plan, as defined in and pursuant to section 207 of the federal Clean Air Act, to obtain the appropriate repairs.

(e) The commissioner, in consultation with the registrar, shall develop, establish and implement a quality control program to ensure the accuracy and integrity of the emissions component of the inspection program. Such quality control program may include, but not be limited to, procedures for: (i) calibrating, operating and maintaining emissions inspection equipment; (ii) documenting the results from the performance of such calibration, operation and maintenance; and (iii) transmitting such documentation to the department.

The registrar, in consultation with the commissioner, shall develop, establish and implement an on-going quality assurance program to discover and prevent fraud, waste and abuse in the emissions component of the inspection program. The quality assurance program shall include, but not be limited to, overt and covert audits of emissions inspection facilities and emissions inspectors, audits of data from emissions inspection facilities, examination of emissions inspection equipment, evaluation of quality control records and procedures and audits of consumer complaints and responses to such complaints.

(f) The commissioner and the registrar or their designees shall have the authority to enforce any provision of this section and may establish rules and regulations pursuant to such authority. Such enforcement authority shall permit officers or agents of the department or the registry to enter the premises of any motor vehicle inspection facility or any contractor to protect the public health and the environment, implement the quality control and quality assurance requirements of this section and for any other reasonable purpose related to implementation and enforcement of the motor vehicle inspection and maintenance program as determined by the commissioner and the registrar.

The registrar shall establish rules and regulations prohibiting any person from issuing an inspection certificate for a motor vehicle that has not been inspected in accordance with, or is not in compliance with, the standards and criteria for motor vehicle inspections as required in this section. The registrar also shall establish rules and regulations prohibiting any person from failing to issue a certificate for a motor vehicle that has been inspected in accordance with, and in compliance with, the standards and criteria for motor vehicle inspections required in this section if such motor vehicle meets the applicable standards and criteria. No person shall alter, falsify or counterfeit an emissions inspection certificate.

The registrar may deny access to the electronic network to any inspection facility or emissions inspector that said registrar has reason to believe is not performing inspections in compliance with the registry's rules and regulations adopted pursuant to this section or under the authority of chapter 90.

Tampering with any emissions control device or system is hereby prohibited. No person shall take any action that has the effect of causing a motor vehicle to no longer comply with federal law or with the applicable standards and criteria for the motor vehicle emissions inspection and maintenance program or with requirements for motor vehicle registration. Nothing in this section shall be construed to prevent the temporary alteration of equipment for motor vehicle repair or for the quality assurance program established pursuant to subsection (e).

The commissioner and the registrar shall have the authority to order any person, inspection facility or contractor to stop or abate a violation of any rule or regulation adopted pursuant to this section or chapter 90.

Any person who violates any of the provisions of the second or fourth paragraph of this subsection and any person or facility licensed or required to be licensed pursuant to section 7W of chapter 90 who violates any requirement or regulation adopted pursuant to this section or any certificate or order issued thereunder shall: (i) be punished for each violation by a fine of not more than \$25,000 or by imprisonment for not more than one year, or both such fine and imprisonment; or (ii) be subject to a civil penalty of not more than \$25,000 for each such violation. Each day or part thereof that such violation occurs or continues shall be deemed a separate violation. The civil penalty may be assessed in an action brought on behalf of the commonwealth in the superior court. The commonwealth also may bring an action for injunctive relief in the superior court for any such violation, and the superior court shall have jurisdiction to enjoin such violation and to grant such further relief as it may deem appropriate.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH**

Section 142M Motor vehicle emissions inspection and repair; definitions; rules and regulations; inspection facilities; waivers; quality assurance program; violations

Section 142M. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Commissioner", the commissioner of environmental protection.

"Department", the department of environmental protection.

"Dynamometer", a device which applies a load to a vehicle's drive wheels while operating in a stationary, secure position to simulate actual driving conditions for an emissions inspection.

"Electronic network", or "network", a computerized communication system including, but not limited to, the computers, communications devices and software for such system which links emissions analyzers, the department's emissions database, and the registry of motor vehicles' registration database and which allows the department and the registry to store and analyze data on motor vehicle emissions inspections, motor vehicles and emissions inspectors.

"Emissions analyzer", a device which measures the volume of air pollutants and gases in motor vehicle exhaust or a device which analyzes a motor vehicle's computer system relating to emissions.

"Emissions inspection", a component of the periodic staggered inspection of motor vehicles required by section 7A of chapter 90 which may include, but shall not be limited to, the inspection of a motor vehicle's emissions control equipment, including its computer system relating to emissions, the measurement of air pollutant concentrations or mass in vehicle exhaust with an analyzer while the vehicle is operated on a dynamometer, the verification of vehicle fuel system integrity and the entry of a complete emissions inspection record in the registry's database for the vehicle being inspected, as prescribed by the department in regulations and performed by an emissions inspector.

"Emissions inspection certificate" or "inspection certificate", a printed statement, instrument or device in a form prescribed by the registrar, in consultation with the commissioner, which

provides inspection information and facilitates effective enforcement of the emissions inspection and maintenance requirements of this section and chapter 90.

"Emissions inspection facility", a facility, licensed by the registrar under section 7W of chapter 90 for conducting motor vehicle emissions inspections and other related duties.

"Emissions inspector", a properly trained person, licensed by the registrar and certified by the department and meeting the department's requirements for performing motor vehicle emissions inspections.

"Emissions repair technician", a person registered with the department and meeting departmental training standards for diagnosing and repairing motor vehicles which fail an emissions inspection.

"Emissions inspection and maintenance program" or "I&M program", a component of the periodic staggered motor vehicle inspection required by section 7A of chapter 90 which shall include motor vehicle emissions inspections, including accurate and effective testing of vehicles, using emission testing equipment, visual and functional tests of evaporative systems, rigorous compliance and enforcement activities and quality assurance and quality control procedures which promotes effective emissions repair and maintenance of the motor vehicle.

"Evaporative emissions test", a test administered to determine whether there are leaks in a vehicle's fuel or evaporative control system, such as purge functions of a vapor canister.

"Emissions waiver certificate", a written statement, instrument or device indicating that the requirement of compliance with the emissions standards and criteria for the emissions component of the motor vehicle inspection program has been waived for a particular motor vehicle.

"On-road test", a field test designed and conducted to assess the emissions of motor vehicles.

"Registrar", the registrar of motor vehicles.

"Registry", the registry of motor vehicles.

"Tampering", (i) the act of removing or rendering inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under section 203(a) of the federal Clean Air Act prior to its sale and delivery to the ultimate

purchaser; or (ii) for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.

"Vehicle identification number" or "VIN ", the unique number assigned to each vehicle by the vehicle manufacturer identifying specific vehicle characteristics, such as make, model, model year, pollution control devices and the particular vehicle itself.

(b) Pursuant to this section, the department shall develop the standards, requirements and rules and regulations for the emissions component of the periodic staggered inspection program established pursuant to section 7A of chapter 90. It shall be the responsibility of the department, under authority of this chapter, to provide the direct primary oversight of the operational and environmental aspects of the emissions component of the inspection program. Nothing in this section shall be construed to require the leasing or purchasing of a dynamometer, an emissions analyzer or any necessary computer hardware or software by an emissions inspection facility from the network contractor; provided, however, the network contractor shall provide access to the data acquisition and management network to any emissions inspection facility who purchases or leases a dynamometer, emissions analyzer or necessary computer hardware or software through sources other than the network contractor so long as such equipment complies with testing equipment specifications as established by the commissioner in consultation with the registrar. Any requests for proposals for contracting with a network contractor shall require that the commissioner, in consultation with the registrar, shall have oversight over the charge assessed by the network contractor for access to the data acquisition and management network to emissions inspection facilities who purchased equipment through sources other than the network contractor; provided, however, that notwithstanding the provisions of this section, the commissioner and the registrar may require emissions inspection facilities to obtain, lease or purchase such equipment from the network contractor upon the determination that allowing emissions inspection facilities to lease or purchase such equipment through sources other than the network contractor would result in an increase in the inspection fee. Said determination shall be made by the commissioner and registrar, in consultation with the secretary of administration and finance, only upon a finding that no feasible option exists by which emissions inspection facilities may obtain such equipment through sources other than the network contractor without increasing the inspection fee. The amount of said fee for said inspection shall be uniform statewide. It shall be the responsibility of the registrar, under authority of chapter 90, to license inspection facilities and inspectors and to register vehicles complying with the inspection program requirements and to conduct audit and enforcement activities related thereto. The department, on behalf of the commonwealth, shall be responsible for submitting all appropriate and required program regulations on the motor vehicle emissions component of the inspection and maintenance program and applicable revisions to the state implementation plan to the United States Environmental Protection Agency, in accordance with the

requirements of the federal Clean Air Act. The department, in conjunction with the registry, may develop and implement a demonstration or pilot of the motor vehicle emissions inspection program or elements of such program to evaluate the effectiveness of such program, or elements of such program, in successfully reducing air contaminants emitted by motor vehicles in the commonwealth as required by federal law.

The emissions component of the inspection program shall be required statewide, shall be conducted on a staggered basis throughout the year and shall be required of each subject motor vehicle at least every two years unless otherwise exempted or specified by the department. The commissioner shall establish rules and regulations specifying which motor vehicles shall be subject to the motor vehicles emissions component of the inspection program.

The commissioner shall establish rules and regulations establishing standards and criteria for motor vehicle emissions inspections, giving consideration to the United States Environmental Protection Agency's performance standards for the enhanced emissions inspection and maintenance program and the level of emission reductions necessary to achieve and maintain federal and state ambient air quality standards. Such standards and criteria may include, but shall not be limited to, a requirement to test motor vehicle emissions for hydrocarbons, carbon monoxide and oxides of nitrogen. The standards and criteria may be different for different model years and types of vehicles.

Street rods and custom vehicles, as defined and registered pursuant to section 2H of chapter 90, shall receive an emissions waiver certificate. Specially constructed vehicles and replica vehicles, as defined and registered pursuant to said section 2H of said chapter 90, and registered on or before April 30, 2012, shall receive an emissions waiver certificate. Specially constructed vehicles and replica vehicles, as so defined, registered after April 30, 2012 shall be subject to emission control requirements based on the model year and configuration of the engine installed in the specially constructed or replica vehicle, whether the engine is an original equipment manufacturer's production engine, rebuilt engine or crate engine. Regulations relative to emissions compliance for replica or specially constructed vehicles registered after April 30, 2012 may establish maximum limits on the annual number of vehicle miles traveled by these vehicles; provided, however, that any such limit set, shall not be set at less than 3,000 miles per year. If the model year of the engine installed in the specially constructed or replica vehicle requires an onboard diagnostic system, the vehicle shall be subject to an onboard diagnostic system emissions test applicable to the certified configuration, including any exclusions or exemptions otherwise granted to that certified configuration.

The commissioner, in consultation with the registrar, shall establish rules and regulations relative to testing equipment specifications, including emissions analyzers, quality assurance

and quality control procedures for testing equipment, calibration gases, failure rates, emission standards, testing procedures, data collection and data analysis, and program evaluation.

The registrar, in consultation with the commissioner, shall determine the number and location of inspection facilities necessary for the success of the emissions component of the inspection program while considering consumer convenience and cost and achieving an equitable distribution across the commonwealth. Said registrar shall report to the joint committee on public safety and the house and senate committees on ways and means the actual number and location of inspection facilities on or before July 1, 1998. The commissioner may establish criteria and a process to select qualified applicants who shall be authorized to participate in the emissions component of the inspection program. In no event shall the use of state-owned or municipal-owned property as a site for an inspection facility or a test center relieve the owner or operator of the inspection facility from paying to the municipality an amount equal to the local property taxes due if such property was not state-owned or municipal-owned.

The department and the registry, in implementing the requirements of this section, shall acquire personnel, purchase equipment and procure services necessary to achieve the objectives hereunder including, but not limited to, the following: (i) inspection of motor vehicles; (ii) data acquisition and data management; (iii) quality control and quality assurance; (iv) on-road testing; (v) program evaluation; (vi) public communications; (vii) research and development; and (viii) any other purposes related to the development and implementation of the motor vehicle emissions component of the inspection program.

The technical and performance specifications of any equipment determined by the department to be necessary and required in the implementation of the provisions of this section, shall be reevaluated periodically as to its useful life, flexibility and applicability as to changing technological conditions and continued effectiveness in the emissions inspection and maintenance program.

The department and the registry shall contract with or any private entities that demonstrate an ability to manage emissions programs, hereinafter referred to as the network contractor, to develop and manage the network and inspection facilities of said motor vehicle inspection program. The department and the registry shall, as a term and condition of such contract, require the network contractor to: (i) acquire and distribute inspection facility equipment; and (ii) acquire such equipment and the associated maintenance services from one or more suppliers at discount prices through volume purchasing. Such contract shall also include performance standards which shall pertain to the motor vehicle inspection program goals as set forth in the commonwealth's state implementation plan. Such contract shall also require the network contractor to establish at least five test centers to be evenly distributed across the commonwealth for research, training, repair assistance and for any other purposes

related to the implementation and success of the emissions component of the inspection program. The network contractor shall be responsible for achieving such goals as set forth in regulations, policies and contract terms established by the department and registry. Such contract shall require an extensive public education and awareness program prior to the implementation of the motor vehicle inspection program. Such public education program shall include, but not be limited to, establishing and maintaining a comprehensive consumer outreach campaign concerning air quality, sources of pollutants, relevant aspects of automobile maintenance and other topics related to the motor vehicle inspection requirements of chapter 90 and this chapter. Such consumer outreach campaign shall include a consumer hotline to receive motorists' complaints and to answer questions regarding the inspection procedures, repair information and other related inspection issues.

(c) The commissioner shall establish rules and regulations implementing the motor vehicle emissions component of the inspection program required by section 7A of chapter 90. Such rules and regulations may reflect a phased-in schedule for the motor vehicles subject to the emissions component of the inspection program; provided, however, that such phase-in shall not begin prior to July 1, 1998. The department may continue to implement the motor vehicle emissions inspection program established pursuant to section 142J of chapter 111 while phasing-in the new requirements of this section.

The department shall notify the registrar as to which motor vehicles shall be subject to the motor vehicle emissions component of the inspection program. Said registrar shall give reasonable notification in the form prescribed by said registrar, to the owners of motor vehicles subject to the emissions inspection indicating which emissions inspection procedures shall be required. The registrar shall not issue a registration or, if such registration has already been issued, shall suspend or not renew the registration of any motor vehicle which does not comply with the provisions of this section or any regulation promulgated hereunder.

The commissioner may establish regulations for exempting certain motor vehicles from some or all of the requirements of this section. The following motor vehicles may be exempt from the provisions of this section and may require alternative test procedures: (i) any motor vehicle the model year of which is 15 years before the year in which the inspection occurs; (ii) any motor vehicle or class of motor vehicle that is exempted by regulation or policy by the department because the vehicle or class presents a prohibitive inspection problem or is inappropriate for inspection; (iii) any motor vehicle operated exclusively by electric power; (iv) any motor vehicle that the United States Environmental Protection Agency or the California Air Resources Board new vehicle certification requirements do not require to be equipped with an onboard diagnostic system, as determined by the commissioner; and (v) for one inspection cycle only, any motor vehicle two model years old or less at the time the vehicle is due for inspection.

The commissioner and the registrar shall establish procedures under which fleet operators of fleets of 12 or more vehicles that are centrally fueled and maintained may be authorized under such program to conduct inspections and maintenance activities regarding such vehicles, subject to such audit, review and enforcement under this section as the commissioner and registrar deem appropriate.

The motorist presenting a motor vehicle for an emissions inspection shall pay a fee to the inspection facility pursuant to section 7A of chapter 90.

The registrar shall establish certification, training and continuing education requirements for the safety component of the inspection program. The commissioner shall establish certification, training and continuing education requirements for the emissions component of the inspection program. Such requirements shall be a precondition to the issuance of a license to conduct motor vehicle inspections issued by the registrar. Any person conducting an official motor vehicle inspection without having received such license and certification shall be subject to the penalties set forth in subsection (f).

The commissioner shall take steps to ensure that the capability exists in the repair industry to repair motor vehicles which fail the emissions component of the inspections required herein. Such steps shall include, but not be limited to, training and continuing education for emissions repair technicians and the involvement of vocational or technical schools and various members and sectors of the automobile and automotive repair industry. The commissioner shall establish procedures to register emissions repair technicians and to conduct a performance monitoring program of repair technicians, emissions inspection facilities and emissions inspectors. Such performance monitoring may include, but not be limited to, collection and evaluation of data on repairs. The provision of this paragraph shall not prevent any person not so registered from performing emissions repairs.

The department and the registry may conduct on-road testing of motor vehicles, including trucks and buses, for research, development, inspection or enforcement purposes. On-road testing may include identification of motor vehicles which would pass the emissions inspection and motor vehicles which would fail the emissions inspection. The on-road testing program may include, but shall not be limited to: (i) the use of portable or remote sensing equipment to measure pollutants of a moving motor vehicle; (ii) evaluation of the use of such equipment, alone or with other analytical information, equipment or techniques, as a supplement or alternative to, replacement of or enforcement of the emissions inspection; and (iii) the establishment of test centers to research and evaluate the accuracy and effectiveness of various emissions testing and enforcement methods.

The department and the registry shall create or enter into contracts to create an electronic network linking the department, emissions inspection equipment, the registry and any contractor to the department. Such electronic network shall facilitate implementation, evaluation and enforcement of the emissions inspection and maintenance program by the department and the registry.

The registrar shall establish protocols for communication on the electronic network. At its discretion, the registrar may grant emissions inspection equipment, inspection facilities and inspectors access to the electronic network. The commissioner and the registrar shall require emissions inspection equipment to communicate with the commissioner through the electronic network. The registrar, in consultation with the commissioner shall establish procedures and requirements for connecting and disconnecting emissions inspection equipment and inspection facilities and for granting emissions inspectors access to the electronic network.

The commissioner, in consultation with the registrar, may adopt rules and regulations to implement an emissions inspection and maintenance program for diesel-fueled motor vehicles.

The commissioner, in consultation with the registrar, shall promulgate rules and regulations to establish a program for the issuance of emissions waiver certificates; provided, however, that such rules and regulations shall include eligibility standards and criteria, a procedure whereby motorists may petition for emissions waiver certificates and a notification process to inform motorists of the emissions waiver certificate program and the emissions waiver certificate petition process. Such eligibility standards and criteria shall include, but not be limited to, provisions for the issuance of emissions waiver certificates to any owner of a motor vehicle who displays satisfactory proof that such motor vehicle has undergone emissions-related repairs at a cost that exceeds a maximum cost threshold to be determined by the commissioner and the registrar. The commissioner shall report on the emissions waiver certificate program to the joint committees on public safety and the house and senate committees on ways and means on or before July 1, 1998.

(d) The commissioner and the registrar shall establish programs for public information and consumer protection. The commissioner shall establish procedures and requirements for the network contractor to ensure maximum convenience to the motorist.

Each emissions inspection facility shall distribute information to inform the public about the requirements, benefits and other consumer-related matters of the emissions inspection and maintenance program and any other information useful to the better understanding and facilitation of the emissions inspection to the consumer as directed by the commissioner.

Each inspection facility, while performing the emissions inspection, shall be capable of providing consumer protection by generating data on warranty-related recalls in a form and manner prescribed by the commissioner and any other related information deemed necessary by the commissioner. In addition, the commissioner shall establish procedures to advise motorists whose vehicles are subject to either a voluntary emissions recall or remedial action plan, as defined in and pursuant to section 207 of the federal Clean Air Act, to obtain the appropriate repairs.

(e) The commissioner, in consultation with the registrar, shall develop, establish and implement a quality control program to ensure the accuracy and integrity of the emissions component of the inspection program. Such quality control program may include, but not be limited to, procedures for: (i) calibrating, operating and maintaining emissions inspection equipment; (ii) documenting the results from the performance of such calibration, operation and maintenance; and (iii) transmitting such documentation to the department.

The registrar, in consultation with the commissioner, shall develop, establish and implement an on-going quality assurance program to discover and prevent fraud, waste and abuse in the emissions component of the inspection program. The quality assurance program shall include, but not be limited to, overt and covert audits of emissions inspection facilities and emissions inspectors, audits of data from emissions inspection facilities, examination of emissions inspection equipment, evaluation of quality control records and procedures and audits of consumer complaints and responses to such complaints.

(f) The commissioner and the registrar or their designees shall have the authority to enforce any provision of this section and may establish rules and regulations pursuant to such authority. Such enforcement authority shall permit officers or agents of the department or the registry to enter the premises of any motor vehicle inspection facility or any contractor to protect the public health and the environment, implement the quality control and quality assurance requirements of this section and for any other reasonable purpose related to implementation and enforcement of the motor vehicle inspection and maintenance program as determined by the commissioner and the registrar.

The registrar shall establish rules and regulations prohibiting any person from issuing an inspection certificate for a motor vehicle that has not been inspected in accordance with, or is not in compliance with, the standards and criteria for motor vehicle inspections as required in this section. The registrar also shall establish rules and regulations prohibiting any person from failing to issue a certificate for a motor vehicle that has been inspected in accordance with, and in compliance with, the standards and criteria for motor vehicle inspections required in this section if such motor vehicle meets the applicable standards and criteria. No person shall alter, falsify or counterfeit an emissions inspection certificate.

The registrar may deny access to the electronic network to any inspection facility or emissions inspector that said registrar has reason to believe is not performing inspections in compliance with the registry's rules and regulations adopted pursuant to this section or under the authority of chapter 90.

Tampering with any emissions control device or system is hereby prohibited. No person shall take any action that has the effect of causing a motor vehicle to no longer comply with federal law or with the applicable standards and criteria for the motor vehicle emissions inspection and maintenance program or with requirements for motor vehicle registration. Nothing in this section shall be construed to prevent the temporary alteration of equipment for motor vehicle repair or for the quality assurance program established pursuant to subsection (e).

The commissioner and the registrar shall have the authority to order any person, inspection facility or contractor to stop or abate a violation of any rule or regulation adopted pursuant to this section or chapter 90.

Any person who violates any of the provisions of the second or fourth paragraph of this subsection and any person or facility licensed or required to be licensed pursuant to section 7W of chapter 90 who violates any requirement or regulation adopted pursuant to this section or any certificate or order issued thereunder shall: (i) be punished for each violation by a fine of not more than \$25,000 or by imprisonment for not more than one year, or both such fine and imprisonment; or (ii) be subject to a civil penalty of not more than \$25,000 for each such violation. Each day or part thereof that such violation occurs or continues shall be deemed a separate violation. The civil penalty may be assessed in an action brought on behalf of the commonwealth in the superior court. The commonwealth also may bring an action for injunctive relief in the superior court for any such violation, and the superior court shall have jurisdiction to enjoin such violation and to grant such further relief as it may deem appropriate.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH****Section 142N** Fossil fuel-fired electric generation facilities; uniform performance standards

Section 142N. For the purpose of preventing, mitigating, or alleviating impacts on the resources of the commonwealth and to the health of its citizens from pollutants emitted by fossil fuel-fired electric generation facilities serving retail customers in the commonwealth, the department of environmental protection shall, in consultation with the office of the attorney general and the department of telecommunications and energy, promulgate rules and regulations to adopt and implement for fossil fuel-fired electric generation facilities uniform generation performance standards of emissions produced per unit of electrical output on a portfolio basis for any pollutant determined by the department of environmental protection to be of concern to public health, and produced in quantity by electric generation facilities. The department of environmental protection shall have said uniform performance standards for at least one pollutant in effect on, but not before, May 1, 2003, unless three or more other northeastern states enact similar standards before that date, in which case the department of environmental protection may adopt such standards prior to May 1, 2003. The department of environmental protection shall issue annually, by March first of each year, an annual report detailing the implementation and compliance of said program, its standards, and its companion rules and regulations.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XVI PUBLIC HEALTH****CHAPTER 111 PUBLIC HEALTH****Section 142O** Motor vehicle fuel dispensing facilities; stage II vapor recovery systems; operation and standards

Section 142O. (a) As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Motor vehicle fuel dispensing facility", a motor vehicle fuel facility which dispenses gasoline directly to motor vehicles.

"Stage II system", a vapor collection and control system specifically designed for the purpose of controlling vapors during the direct dispensing of motor vehicle fuel to a motor vehicle.

(b) The department shall notify a motor vehicle fuel dispensing facility owner and operator, in writing, within 30 days of an inspection, when the department determines that a violation of its stage II system rules has occurred.

(c) The department shall not promulgate or enforce a requirement that a motor vehicle fuel dispensing facility with a defective component in the stage II system shall cease dispensing fuel at the facility after the discovery of the defective component if: (i) the facility operator marks the defective component "out of order"; (ii) the facility operator takes the component out of service until repaired or replaced; and (iii) the remainder of the stage II system is operating in accordance with the General Laws and the regulations of the department of environmental protection. This subsection shall not prohibit the department from promulgating or enforcing a requirement that a motor vehicle fuel dispensing facility shall cease dispensing fuel after failing the annual compliance test of the stage II system until such time as the system passes the compliance test.

(d) The department shall not promulgate or enforce a requirement that less than 2 responsible individuals or officials shall certify, subject to criminal sanctions or civil penalties, all Stage II system compliance requirements at a dispensing facility where the facility is owned by 1 party, leased or managed by another independent party and both parties have separate Stage II compliance responsibilities.

(e) The department shall establish and implement ongoing programs to communicate the department's Stage II system standards and operating requirements to motor vehicle fuel dispensing facility owners and operators.