

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1140

FINAL

Secretary's Order No.: 2013-A-0055

1140 Delaware National Low Emission Vehicle Program

Date of Issuance: November 15, 2013

Effective Date of the Amendment: December 11, 2013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding. These amendments to the Delaware Low Emission Vehicle Program will allow Delaware to efficiently reduce the impacts of toxic air pollution from our fleet of vehicles, while continuing to make progress toward the federal attainment of the national ambient air quality standards.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 **DE Admin. Code** 1140: Delaware Low Emission Vehicle Program. The primary purpose of this promulgation is to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle III (LEV III) standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025.

The Clean Air Act ("CAA") establishes the framework for controlling mobile source emissions. Section 208 of the CAA allows California to regulate tailpipe emissions from mobile sources, and CAA Section 177 allows other states to adopt the California standards. Delaware is currently regulating mobile sources pursuant to its adoption of California Low Emission Vehicle II (LEV II) requirements. California has revised its LEV II requirements to LEV III requirements. Delaware currently has two options under the CAA, to wit: (1) adopt the LEV III requirements; or (2) revert to the federal program. This proposed action seeks to adopt the LEV III standards by incorporating by reference the applicable sections within Title 13 of the California Code of Regulations as they exist on December 31, 2012.

Contrary to concerns voiced by various members of the public during the course of this promulgation, the aforementioned adoption method does not "lock" Delaware to future changes adopted by California. If California makes any changes to its requirements, they will have no effect in Delaware because Delaware's proposal incorporates the California requirements as they exist on December 31, 2012. Each time that California makes a change to its requirements, Delaware will, in turn, evaluate that change, and propose to either adopt the new California requirement or revert to the federal program. Either way, a regulatory revision will be necessary, subject to all of the provisions of 7 **Del.C.** Chapter 60 and 29 **Del.C.** Chapter 101.

Additional concern was raised by the public with regard to the burden placed on taxpayers should this proposed action be promulgated by the Department. Specific comments opined that to blame Delaware's pollution on auto emissions was not logical, and that the secondary cost to Delaware taxpayers would be obscene. In response to such comment, the Department seeks to adopt this regulation because Delaware has poor air quality, and auto emissions are a significant source of air pollutants in Delaware. The most recent emission inventory data for Delaware shows vehicle emissions have become the largest source of pollution in the state. Mobile sources in the on-road and off-road categories account for 91% carbon monoxide (CO) emissions, 64% in NO_x emissions, and 56% in VOC emissions, respectively. Further, the transportation sector is one of the largest contributors of greenhouse gases in Delaware, producing close to 29% of all such emissions.

As noted above, Delaware adopted the LEV II requirements in December 2010. California has since adopted LEV III requirements, and Delaware now has the option of either adopting the LEV III requirements or reverting to the federal program. Because mobile sources are becoming the largest part of Delaware's overall emissions inventory, and because Delaware's air quality does not meet federal health based standards, and because LEV III requirements are reasonable and have greater emission benefit than the current federal program, the Department's Division of Air Quality recommends the adoption of LEV requirements. Thus, I believe the adoption of LEV III requirements is a reasonable and highly cost-effective means to reduce auto emissions.

With regard to other comments suggesting that the adoption of the LEV III will result in Delawareans traveling to other states (such as New Jersey) to purchase their cars because they will be less expensive (due to lesser pollution rules), it

should be noted that the LEV III requirements have already been adopted in surrounding states, including New Jersey, Pennsylvania, and Maryland. In addition to California and these three states, 10 other states have adopted the standards: Oregon, Washington, New York, Vermont, Maine, Massachusetts, New Mexico, Rhode Island, Connecticut and Arizona. Vehicles purchased in any of these states must be certified to the LEV III emission standards.

Responding again to the numerous comments received by the Department regarding the projected increased costs for a new vehicle in 2025, the Department has set forth the economics associated with the proposed revision to adopt the LEV III requirements. The estimated cost of LEV III was presented at the public hearing as \$1,900.00 per vehicle price increase in 2025, due to technology upgrades. These increased costs will be further offset and result in a much greater savings from the improved fuel economy, resulting in a 3:1 savings over the projected increase. This estimated cost/savings was taken directly from work done by California when they adopted the LEV III requirements. LEV III is comprised of three main components: (1) a Greenhouse Gas ("GHG") component; (2) an exhaust/evaporative component; and (3) a Zero Emission Vehicle (ZEV) component. The Department proposal is to adopt the GHG and tailpipe/evaporative components, but not the ZEV component. Given the cost concerns raised in public comments, the Department has reviewed the California work again, and found that the aforementioned \$1,900.00 cost (actually, \$1,840.00 which the Department rounded up) included the ZEV component, which the Department is not proposing to adopt. Without the ZEV component, California estimated the cost of the LEV III program to be \$170.00 per light-duty passenger vehicle in 2017, up to a maximum of \$1,360.00 for light duty trucks in 2025; however, this calculation does not include the anticipated fuel savings which are projected to be significantly greater than any limited price impact.

It should also be noted that Delaware consumers will likely see this increase in cost in the near future in Delaware, regardless of whether LEV III requirements are adopted in Delaware. Because our neighboring states - Maryland, Pennsylvania and New Jersey - have all adopted LEV III, residents of these states can only purchase vehicles that meet LEV III standards. Should Delaware choose to not adopt LEV III, and the Delaware dealers inventoried non-LEV III vehicles, they could not sell them to residents of these border states. Because of this, Delaware dealers will more than likely inventory only LEV III cars, regardless of whether Delaware adopts LEV III. Furthermore, since all border states have adopted LEV III, only cars that meet LEV III standards may be sold in these states, so the Delaware adoption of LEV III will have no impact on cost to Delaware residents that purchase vehicles from surrounding states' dealerships. The Department notes that, from a practical standpoint, there will be no cost difference to Delaware citizens as a result of this action. Thus, because adjacent states have adopted this standard, Delawareans will be purchasing these vehicles regardless, whether in Delaware or in adjacent states, and adopting the LEV III standard ensures that residents also receive the extended warranty and other benefits.

If, however, the Department chooses not to adopt LEV III requirements, Delaware citizens would be placed at a disadvantage relative to surrounding states, due to the fact that any car sold to a resident of a state that has adopted LEV III receives an extended 15 year, 150,000 mile warranty. Any car sold to a resident of a state that has not adopted LEV III, however, gets the standard 10 year, 120,000 mile warranty. The car is the same car, however, the warranty period is based upon the status of the resident's home state only. Delaware's adoption of LEV III benefits Delaware citizens by providing them with a better warranty, at no additional cost.

With regard to comments received by the Department concerning how increased repair costs were factored into the economic analysis, and the correlating impact of the increased warranty period on the final price of a vehicle, the Department notes that this comment asserts that LEV III vehicles will be more complex, and that there is a relationship between vehicle complexity and repair/maintenance cost. The Department's Division of Air Quality maintains that the cost of any new technology needed to meet LEV III requirements is clearly factored into the California and EPA cost analysis, and the Department believes that the refinement of current vehicle technology is adequate to meet the new requirements. EPA explains in their Tier 3 Vehicle Emissions and Fuel Standards (March 2013) proposal that,

"...the federal fleet is already demonstrating actual emissions performance that is much cleaner than the level to which it is currently being certified. Although the vehicles that make up the federal light-duty fleet are capable of meeting lower standards there is no impetus for vehicle manufacturers to certify their respective fleets to anything lower than the current requirements. In addition, we anticipate that not every technology will be required on all vehicles to meet the proposed standards. While catalyst loading and engine calibration changes will most likely be applied on all vehicles, only the most difficult powertrain applications will require very expensive emissions control solutions such as active hydrocarbon absorbers. We expect that manufacturers will implement emission control solutions as a function of increasing cost and will avoid implementing very expensive designs whenever possible."

With respect to other concerns voiced at the time of the public hearing on September 23, 2013, one commenter stated that the adoption of these proposed amendments was viewed as a reversal of the Secretary's decision to adopt the LEV II standards. At that time, the Department did not include the dates by which California had adopted the standards. One of the purposes of this action is to correct this error by removing the provisions of existing 7 **DE Admin. Code** 1140 that provide for the prospective incorporation by reference of future revisions made by California and require that future changes be considered through a Delaware regulatory process.

Additional comments were received by the Department in this matter which argued whether global warming is

occurring and questioned the need to reduce PM2.5 and GHG emissions, as well as the health impacts of PM2.5. The Department agrees with the overwhelming global scientific consensus that the increased atmospheric concentration of GHG emissions has intensified the greenhouse effect and is contributing to climate impacts ranging from greater temperature and precipitation variability, more extreme weather events, and sea level rise. These climate impacts threaten Delaware's economy, public health, air and water resources, infrastructure, and coastal resources, and can increase energy demand. Reducing emissions globally can help mitigate these impacts in the decades ahead. Further, the science is overwhelming that PM2.5 concentrations are a significant contributor to numerous respiratory related illnesses and particularly impact at-risk populations.

It should be noted that, in addition to the concerns noted within the public comment received by the Department as detailed above, numerous comment was also received which support the adoption of cleaner vehicle standards. Such comment indicated support for Delaware's adopting of the Low Emission Vehicle Program, and encouraged the Department to move forward expeditiously to finalize the adoption of the proposed amendments to **7 DE Admin. Code 1140**.

Lastly, with regard to a few clerical errors caught subsequent to the initial proposed amendments to **7 DE Admin. Code 1140** being published in the Delaware *Register of Regulations*, the Department seeks to correct the same with minor, non-substantive revisions, so that the final amendments to **7 DE Admin. Code 1140** will be correct upon promulgation.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2013-01. The Department published the initial proposed regulatory amendments in the September 1, 2013 Delaware *Register of Regulations* and held a public hearing on September 23, 2013. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 15, 2013 (Report). The Report recommends certain findings and the adoption of the proposed revised Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed revised Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed revised Amendments. With regard to the public comment that was received by the Department, both at the time of the hearing and subsequent to the hearing held on September 23, 2013, I find that the Department's experts were responsive to the questions and concerns raised by the public, and provided thorough, rational responses and reasoned conclusions with respect to the same.

Furthermore, I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these revised Amendments. With the adoption of the revised regulatory amendments to **7 DE Admin. Code 1140**: Delaware Low Emission Vehicle Program, Delaware will be able to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle III (LEV III) standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025.

In conclusion, the following findings and conclusions are entered:

1. The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed revised Amendments as final;
2. The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;
3. The Department held a public hearing on the proposed Amendments on September 25, 2013;
4. The Department's Hearing Officer's Report, including its recommended record and the recommended revised Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
5. The recommended revised Amendments do not reflect any substantive change from the initial proposed regulation Amendments as published in the September 1, 2013, Delaware *Register of Regulations*;
6. The recommended revised Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle III (LEV III) standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025; and
7. Adopting these amendments will allow Delaware to receive omission reduction credits that it would otherwise not receive if it were not to adopt these measures, and Delaware residents purchase vehicles equipped with LEV III technology either in Delaware or from surrounding states;
8. The Department shall submit this Order approving the final regulation Amendments to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

1140 Delaware ~~National~~ Low Emission Vehicle Program

12/11/2013

1.0 Purpose

- 1.1 The provisions of this regulation establish in Delaware a ~~LEV~~ Low Emission Vehicle (LEV) program, which incorporates the requirements of the California LEV program.
- 1.2 The LEV program shall apply to all new model year 2014 and subsequent model year motor vehicles that are passenger cars, light-duty trucks, [~~and~~] medium-duty passenger vehicles[, ~~and medium-duty vehicles~~] subject to the California LEV program and delivered for sale in Delaware.

12/11/2013

2.0 Applicability

- 2.1 Except as set forth in 2.3 of this regulation no person shall deliver for sale, offer for sale, sell, deliver, purchase, rent, acquire, receive, or register a new model year 2014 or subsequent model-year passenger car, light-duty truck, or medium-duty vehicle within Delaware unless the vehicle has been certified by CARB and has received a CARB Executive Order.
- 2.2 For the purposes of this regulation, it is presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser and that the equitable or legal title to any motor vehicle with an odometer reading of fewer than 7,500 miles has not been transferred to an ultimate purchaser.
- 2.3 The prohibitions contained in 2.1 of this regulation shall not apply to vehicles that are:
 - 2.3.1 Held for daily lease or rental to the general public or engaged in interstate commerce, which are registered and principally operated outside of Delaware;
 - 2.3.2 Test vehicles and emergency vehicles;
 - 2.3.3 Acquired by a resident of Delaware for the purposes of replacing a vehicle registered to such resident, which vehicle was damaged, or became inoperative beyond reasonable repair, or was stolen while out of Delaware; provided that such replacement vehicle is acquired outside of Delaware at the time the previously registered vehicle was either damaged or became inoperative beyond reasonable repair or was stolen;
 - 2.3.4 Transferred by inheritance;
 - 2.3.5 Transferred by court decree;
 - 2.3.6 Issued a certificate of conformity pursuant to the Clean Air Act and originally registered in another state by a resident of that state who subsequently establishes residence in Delaware;
 - 2.3.7 Sold directly from one dealer to another dealer;
 - 2.3.8 Sold for the purpose of being wrecked or dismantled;
 - 2.3.9 Sold exclusively for off-highway use; or
 - 2.3.10 Sold for registration outside of Delaware.
 - 2.3.11 Military tactical vehicles.
 - 2.3.12 Acquired by a Delaware resident serving in the armed forces while stationed in another state.

12/11/2013

3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meanings unless the context clearly indicates otherwise.

“Air contaminant emission control system” means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine or a system or engine modifications on a motor vehicle which causes a reduction of air contaminants emitted from the motor vehicle engine, including but not limited to exhaust control systems, fuel evaporative control systems and crankcase ventilating systems.

“Business” means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; a profit-seeking enterprise or concern.

“California-certified” (vehicle) means a vehicle having a valid Executive Order stating that the vehicle meets all applicable requirements under applicable sections of Title 13, CCR and approved for sale in California by CARB.

“California Air Resources Board or CARB” means the agency or its successor established and empowered to regulate sources of air pollution in the state of California, including motor vehicles, pursuant to Section 39003, California Health & Safety Code, as amended or supplemented.

“California low emission vehicle program” means the low emission vehicle program being implemented in the state of California, pursuant to the provisions of the Clean Air Act and the California Code of Regulations.

“CCR” means the California Code of Regulations.

“Certificate of conformity” means that document issued by California Air Resources Board, or the United States Environmental Protection Agency.

“Clean Air Act or CAA” means the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., as amended and supplemented.

“Dealer” means any person actively engaged in the business of offering to sell, soliciting or advertising the sale, buying, transferring, leasing, selling or exchanging new motor vehicles and who has an established place of business.

“Delivered for sale” means vehicles that have received a bill of lading for sale in Delaware and are shipped, or are in the process of being shipped to a dealer in Delaware.

“Department” means the Delaware Department of Natural Resources and Environmental Control.

“Emergency vehicle” means any publicly owned vehicle operated by a peace officer in the performance of their duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire calls and any publicly owned authorized emergency vehicle used by an emergency medical technician or –paramedic or any ambulance used by a private entity under contract with a public agency.

“Emission Control Label” means a paper, plastic, metal or other permanent material, welded, riveted or otherwise permanently attached to an area within the engine compartment (if any), or to the engine, in such a way that it will be visible to the average person after installation of the engine in all new vehicles certified for sale in California, in accordance with Title 13, California Code of Regulations Section 1965.

“Emission standards” mean specified limitations on the discharge of air contaminants into the atmosphere.

“Engine family” means the basic classification unit comprised of the engine and drive train configuration selected by a manufacturer and used for the purpose of certification testing.

“Environmental Performance Label” means a paper or plastic decal securely affixed by the manufacturer to a window of all passenger cars, light-duty trucks, and medium-duty passenger vehicles which disclose the global warming and smog score for the vehicle in accordance with Title 13, CCR Section 1965.

“Executive Order” means a document issued by CARB certifying that a specified test group or model year vehicle has met all applicable requirements adopted by CARB pursuant to the applicable sections of Title 13, CCR for the control of specified air contaminants from motor vehicles and is thereby certified for sale in California.

“Federal Fuel Economy and Environmental Label” means a Federal Label that is affixed by the manufacturer to a window on all 2013 and subsequent model year passenger cars, light-duty trucks, and medium-duty passenger vehicles and would deem automobile manufacturers compliant with the federal Economy and Environmental Label published in 40 CFR Parts 85, 86 and 600 as promulgated on July 6, 2011 as compliant with the California Environmental Performance Label requirements. The label must disclose the smog and global warming scores for the vehicle in accordance with Title 13, CCR Section 1965 and the “California Motor Vehicle Emission Control, Smog Index, and Environmental Performance Label Specifications.”

“Fleet Average Emission” means a vehicle manufacturer’s average vehicle emissions of all greenhouse gases, non-methane organic gases (NMOG), or NMOG plus oxides of nitrogen (NOx), as applicable, from all new vehicles delivered for sale or lease in Delaware in any model-year.

“Greenhouse Gas” means any of the following gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons.

“Greenhouse Gas Credit” means greenhouse gas credit.

“Greenhouse Gas Vehicle Test Group” means vehicles that have an identical test group, vehicle make and model, transmission class and driveline, aspiration method (e.g., naturally aspirated, turbocharged), camshaft configuration, valve train configuration, and inertia weight class.

“Gross vehicle weight rating or GVWR” means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

“Heavy-duty Engine” means any engine used to propel a heavy-duty vehicle.

“Heavy-duty Vehicle” means a heavy-duty vehicle as defined at Title 13, CCR, Section 1900.

“Independent Low Volume Manufacturer” means a manufacturer that has been designated by CARB as an independent low volume manufacturer as defined at Title 13, CCR, Section 1900.

“Intermediate volume manufacturer” means a manufacturer that has been designated by CARB as an intermediate volume manufacturer as defined at Title 13, CCR, Section 1900.

“Large volume manufacturer” means a manufacturer that has been designated by the CARB as a large volume manufacturer as defined at Title 13, CCR, Section 1900.

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

~~“Light-duty truck 1 or LDT-1” means a light-duty truck with a loaded vehicle weight of 3,750 pounds or less.~~

~~“Light-duty truck 2 or LDT-2” means a light-duty truck with a loaded vehicle weight of greater than 3,750 pounds and a gross vehicle weight of less than or equal to 8,500 pounds and includes medium-duty passenger vehicles when determining compliance with the greenhouse gas emission standards of this regulation.~~

“Loaded vehicle weight” means the vehicle curb weight plus 300 pounds.

~~“Mail out” means a widely distributed general correspondence issued by CARB whenever said board needs information from the public, or when it wishes to inform the public of new information.~~

“Manufacturer” means any independent low volume, small, intermediate or large volume vehicle manufacturer as defined at Title 13, CCR, Section 1900.

“Medium-duty passenger vehicle” means medium-duty passenger vehicle as defined at Title 13, CCR, Section 1900.

“Medium-duty vehicle” means medium-duty vehicle as defined at Title 13, CCR, Section 1900.

“Military tactical vehicle” means all land combat and transportation vehicles, excluding rail-based, which are designed for or are in use by any of the United States armed forces.

~~“Model year” means model year as defined at 40 CFR 85.2302 and determined in accordance with the provisions of 40 CFR 85.2301 through 85.2304, as supplemented or amended, and incorporated herein by reference~~ **means, for each vehicle manufacturer the period which includes January 1 of the calendar year in which the model is first offered for sale and ends December 31 of the final calendar year of sale or, if the manufacturer has no annual production period, the calendar year. In case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.**

“Motor vehicle or vehicle” means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, excepting such devices as run only upon rails or tracks and motorized bicycles.

“Motor vehicle engine” means an engine that is used to propel a motor vehicle.

“New motor vehicle engine” means a new engine in a motor vehicle.

“New vehicle” means any vehicle with 7,500 miles or fewer on its odometer.

“Non-methane organic gas or NMOG” means the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

“NMOG + NOx Credit” means non-methane organic gas plus oxides of nitrogen credit.

“Passenger car” means any motor vehicle designed primarily for transportation of individuals and having a design capacity of 12 individuals or fewer.

“Person” means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, or any Board, commission, employee, agent, officer or political subdivision of a state, an interstate body or the United States.

“Placed in service” means having been sold or leased to an ~~ultimate purchaser~~ end-user and not to a dealer or other distribution chain entity, and having been individually registered for on-road use by the Delaware Division of Motor Vehicles.

“Recall” means: a manufacturer's issuing of notices directly to consumers that vehicles in their possession or control should be corrected; and/or a manufacturer's efforts to actively locate and correct vehicles in the possession or control of consumers.

“Recall Campaign” means that plan approved by the California Air Resources Board or the Department, by which the manufacturer will effect the recall of noncomplying vehicles.

“Sale or sell” means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.

“Secretary” means the Secretary of the Department.

“Small Volume Manufacturer” means a manufacturer that has been designated by the CARB as a small volume manufacturer as defined at Title 13, CCR, Section 1900.

“State” means the State of Delaware, unless otherwise specified.

“Test group” means a grouping of vehicles as defined by 40 CFR 86.1827-01, as supplemented or amended, and incorporated herein by reference.

“Test vehicle” means an experimental or prototype motor vehicle that appears to have very low emission characteristics, or a used motor vehicle within which an experimental motor vehicle pollution control device is installed, and which has also received a test vehicle or fleet permit from CARB.

“Ultimate purchaser” means, with respect to any new motor vehicle or new motor vehicle engine, the first person whom in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

“USEPA” means the United States Environmental Protection Agency.

“Vehicle identification number or VIN” means a unique, 17 digit, alphanumeric code that the vehicle manufacturer assigns to a vehicle.

12/11/2013

4.0 Emission certification standards

Each model year and subsequent motor vehicle subject to 2.1 of this regulation shall be California-certified.

12/11/2013

5.0 ~~NMOG fleet-wide average exhaust emission requirement~~ **New Vehicle Emission Requirements**

5.1 ~~A manufacturer of model year 2014 or later passenger cars, light-duty trucks, or medium-duty vehicles delivered for sale in Delaware, shall demonstrate compliance with the NMOG fleet-wide average exhaust emission requirement of Title 13, CCR, Section 1961, which average shall be based on the number of the manufacturer's vehicles subject to 2.1 of this regulation. No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or subsequent model-year passenger car, light-duty truck[, and medium-duty vehicles,] or medium-duty vehicle in Delaware unless the vehicle is California-certified and complies with the following criteria:~~

5.1.1 the exhaust emission standards, as applicable in Title 13, CCR Section 1956.8 (g) or (h), 1960.1, 1961, 1961.1, 1961.2, or 1961.3 and

5.1.2 the environmental performance label requirements for 2014 and subsequent model year vehicles in accordance with Title 13, CCR, Section 1965, and

5.1.3 the evaporative emission standards in Title 13, CCR, Section 1976, and

5.1.4 the refueling emission standards in Title 13, CCR, Section 1978, and

5.1.5 the malfunction and diagnostic system requirements in Title 13, CCR, 1968.2, and

5.1.6 the assembly-line testing procedure requirements in Title 13, CCR, Section 2062, and

5.1.7 the specifications for fill pipes and openings of motor vehicle fuel tanks in Title 13, CCR, Section 2235.

5.2 ~~A manufacturer may accrue NMOG credits and debits and use them in accordance with Title 13, CCR, Section 1961(c), except that the formula for accruing credits at Title 13, CCR, Section 1961(c) shall be based upon the number of vehicles the manufacturer produces and delivers for sale in Delaware in accordance with this regulation.~~

12/11/2013

6.0 ~~Vehicle Testing~~ **Manufacturer Fleet Requirements**

6.1 Each manufacturer shall meet the following fleet requirements for the new vehicles delivered for sale or lease in Delaware:

6.1.1 Effective for 2014 model-years, each manufacturer shall comply with the fleet average NMOG emission requirements and LEV II phase-in requirements for passenger cars and light-duty trucks which average shall be based on the number of the manufacturer's vehicles subject to 2.1 of this regulation and, for 2014 and subsequent model-years, may earn and bank NMOG credits, both in accordance with Title 13, CCR, Section 1961(c), except that the formula for accruing credits at Title 13, CCR, Section 1961(c) shall be based upon the number of vehicles the manufacturer produces and delivers for sale in Delaware in accordance with this regulation.

6.1.2 Effective for the 2015 and subsequent model-years, each manufacturer shall comply with the fleet average NMOG + NOx emission requirements and the LEV III phase-in requirements for passenger cars, light-duty

trucks and medium-duty vehicles, and may earn and bank NMOG + NOx credits as applicable, all in accordance with Title 13, CCR, Section 1961.2.

- 6.1.3 Effective for the 2014 through 2016 model-years, each manufacturer shall comply with the fleet average emission greenhouse gas requirements for passenger cars, light-duty trucks and medium-duty passenger vehicles, and for 2014 and subsequent model-years earn and bank GHG credits, in accordance with Title 13, CCR, Section 1961.1.
- 6.1.4 Effective for the 2017 and subsequent model years, each manufacturer shall comply with the fleet average emission greenhouse gas requirements for passenger cars, light-duty trucks and medium-duty passenger vehicles, and may earn and bank GHG credits, in accordance with Title 13, CCR, Section 1961.3.
- 6.42 Each new vehicle model subject to 2.1 of this regulation shall satisfy the motor vehicle emission requirements of Title 13, CCR, Sections: 1956.8 (g) or (h), 1960.1, 1961, 1962, 1962.1, 1961.1, 1961.2, 1961.3, 1965, 1968.4, 1968.2, 1968.5, 1976, 1978, 2037, 2038, 2062, 2101, 2111, and 2235. A manufacturer shall demonstrate compliance by presenting to the Department upon request copies of the applicable Executive Order.
- 6.23 Each manufacturer of a vehicle subject to 2.1 of this regulation shall conduct Inspection Testing and Quality Audit Testing in accordance with Title 13, CCR, Section 2062, and shall provide the test results to the Department upon request. A manufacturer shall demonstrate compliance by presenting to the Department, upon request, copies of the test results and the determination and findings made by CARB.
- 6.34 Each new vehicle subject to 2.1 of this regulation, prior to being offered for sale in Delaware, shall meet the motor vehicle emission requirements of Title 13, CCR, Section 1961, as determined by compliance testing, conducted by CARB in accordance with Title 13, CCR, Sections 2101 through 2110, 2150, and 2151. A manufacturer shall demonstrate compliance by presenting to the Department, upon request, copies of the test results and the determination and findings made by CARB.
- 6.45 For the purposes of detection and repair of vehicles subject to this regulation failing to meet the motor vehicle emission requirements of Title 13, CCR, Section 1961 the Department may conduct, after consultation with CARB, In-Use Vehicle Enforcement Testing in accordance with the protocol and testing procedures in Title 13, CCR, Section 2140. A manufacturer shall demonstrate compliance by presenting to the Department, upon request, copies of the test results and the determination and findings made by CARB.

12/11/2013

7.0 Warranty

- 7.1 Each manufacturer of a vehicle subject to 2.1 of this regulation shall warrant to the ultimate purchaser and each subsequent purchaser that the vehicle shall comply over its period of warranty coverage with all requirements of Title 13, CCR, Sections 2035 through 2038, 2040, and 2041.
- 7.2 Each manufacturer of a vehicle subject to 2.1 of this regulation shall submit to the Department, upon request, a ~~Failure of Emission-Related Components~~ Emission Warranty Information report as defined at Title 13, CCR, Section 2144.
- 7.3 For purposes of compliance with 7.2 of this regulation, a manufacturer may submit copies of the ~~Failure of Emission-Related Components~~ Emission Warranty Information report that are submitted to CARB.

12/11/2013

8.0 Reporting and Record-Keeping Requirements

- 8.1 Beginning with the 2014 model year, each manufacturer of a vehicle subject to 2.1 of this regulation shall submit annually to the Department, no later than ~~March~~ May 1 following the close of the model year, a report itemized by test group and emissions standard documenting total new vehicle deliveries for sale or lease in Delaware ~~of vehicles in each test group during that model year.~~
- 8.2 Beginning with the 2014 model year, each manufacturer of a vehicle subject to 2.1 of this regulation shall submit annually to the Department, by no later than ~~March~~ May 1 following the close of the model year, a report, ~~prepared according to Title 13, CCR, Section 1961, calculating the NMOG fleet-wide average exhaust emission~~ itemized by test group and emission standard, that demonstrates the manufacturer has met the fleet requirements of Section 6.0 of this regulation for the model year just ended for vehicles delivered for sale in Delaware.
- 8.3 If a manufacturer wants to bank GHG, NMOG, or NMOG + NOx credits, the manufacturer shall submit annually to the Department, by no later than May 1 following the end of the model-year, a report which demonstrates that such manufacturer has earned GHG, NMOG, or NMOG + NOx credits in Delaware. Credits are to be calculated in the same manner as required by CARB.

8.34 Beginning with the 2014 model year, each ~~manufacturer~~ dealer of a vehicle exempted under 2.3.7 of this regulation must keep records on all inter or intra-dealer trades of new 2014 or subsequent model-year vehicles that have not been certified by CARB and therefore have not received a CARB Executive Order, and these records shall be made readily available to the Department upon request.

12/11/2013

9.0 Enforcement

- 9.1 Records to support any application, notice, report or amendment submitted to the Department under this regulation shall be maintained for a period of no less than five years after submitting the information to the Department, and shall be made readily available to the Department upon request.
- 9.2 Failure to comply with any of the obligations or requirements of this regulation shall subject the violator to an enforcement action pursuant to the provisions of 7 **Del.C.** Ch 60.
- 9.3 Any order or enforcement action taken by CARB to correct noncompliance with any section of Title 13, CCR, which action results in the recall of any vehicle pursuant to Title 13, CCR, sections 2109 through 2135, shall be applicable in Delaware, except where the manufacturer demonstrates to the Department's satisfaction within 30 days of issuance of the CARB action that the action is not applicable to vehicles subject to this regulation.
- 9.4 Any emission-related recall campaign, voluntary or otherwise, initiated by any manufacturer pursuant to Title 13, CCR, Sections 2113 through 2121, shall extend to all similar vehicles subject to 2.1 of this regulation, except where the manufacturer demonstrates to the Department's satisfaction within 30 days of CARB approval of the campaign that the campaign is not applicable to vehicles subject to 2.1 of this regulation.

12/11/2013

10.0 Incorporation by Reference

- 10.1 Unless specifically excluded by this regulation, when a provision of the CCR is incorporated by reference, all notes, comments, appendices, diagrams, tables, forms, figures, and publications are also incorporated by reference.
- 10.2 ~~Prospective incorporation by reference means the ongoing process, whereby all provisions of regulations incorporated into this regulation from the CCR, as set forth in Table 40-1, are continually automatically updated in order to maintain consistency with the most current CCR. Thus, any supplements, amendments, and any other changes including, without limitation, repeals or stays that affect the meaning or operational status of a California rule, brought about by either judicial or administrative action and adopted or otherwise noticed by the state of California, shall be paralleled by a similar change to the Delaware regulation so that the Delaware regulation will have the same meaning and status as its California counterpart. The Low Emission Vehicle Program at 7 **DE Admin. Code** 1140, refer to various section of Title 13 of the California Code of Regulations (CCR). Wherever 7 **DE Admin. Code** 1140 refers to a specific section of the CCR, the reference is made to that version of the § as of the amended date provided for that section in 7 **DE Admin. Code** 1140: *Table 40-1*. The Department hereby incorporates by reference each of the sections of Title 13 CCR that are listed in Table 1 as of such § respective Amended Date.~~
- 10.3 Provisions of the CCR that are excluded from incorporation by reference in this regulation are excluded in their entirety, unless otherwise specified. If there is a cross-reference to a California citation that was not specifically incorporated, the cross-referenced citation is not incorporated by virtue of the cross-reference. ~~Provisions that have been excluded from incorporation by reference are also excluded from the process of prospective incorporation by reference.~~
- 10.4 Nothing in these provisions incorporated by reference from the CCR shall affect the Department's authority to enforce statutes, rules, permits or orders administered or issued by the Secretary.
- 10.5 The following documents and sources of Title 13 of the California Code of Regulations (CCR) are incorporated by reference within this regulation:

**Table 40-1
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference**

Title 13, CCR	Title	Section Amended Date
	Chapter 1 Motor Vehicle Pollution Control Devices Article 1 General Provisions	

Section 1900	Definitions	<u>As effective December 31, 2012</u>
Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
Section 1956.8(g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	<u>As effective December 31, 2012</u>
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	<u>As effective December 31, 2012</u>
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 and Subsequent <u>through 2019</u> Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<u>As effective December 31, 2012</u>
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 and Subsequent <u>through 2016</u> Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles	<u>As effective August 7, 2012</u>
Section 1961.2	Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<u>As effective December 31, 2012</u>
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<u>As effective December 31, 2012</u>
Section 1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	<u>As effective August 7, 2012</u>
Section 1968.1	Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<u>As effective November 27, 1999</u>
Section 1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<u>As effective August 7, 2012</u>
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	<u>As effective August 7, 2012</u>
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	<u>As effective December 31, 2012</u>
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	<u>As effective August 7, 2012</u>
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	<u>As effective November 9, 2007</u>
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles; 1979 and Subsequent Model Year Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	<u>As effective May 15, 1999</u>
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<u>As effective August 7, 2012</u>
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<u>As effective August 7, 2012</u>

Section 2039	Emission Control System Warranty Statement	<i>As effective December 26, 1990</i>
Section 2040	Vehicle Owner Obligations	<i>As effective December 26, 1990</i>
Section 2041	Mediation; Finding of Warrantable Condition	<i>As effective December 26, 1990</i>
Section 2046	Defective Catalyst	<i>As effective February 15, 1979</i>
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing Article 1 Assembly Line Testing		
Section 2062	Assembly-line Test Procedures 1998 and Subsequent Model years	<i>As effective August 7, 2012</i>
Article 2 Enforcement of New and In-use Vehicle Standards		
Section 2101	Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action	<i>As effective December 8, 2010</i>
Section 2109	New Vehicle Recall Provisions	<i>As effective December 30, 1983</i>
Section 2110	Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model Year	<i>As effective November 27, 1999</i>
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	<i>As effective December 8, 2010</i>
Section 2112	Definitions	<i>As effective August 7, 2012</i>
Appendix A to Article 2.1		
Section 2113	Initiation and Approval of Voluntary and Influenced Recalls	<i>As effective January 26, 1995</i>
Section 2114	Voluntary and Influenced Recall Plans	<i>As effective November 27, 1999</i>
Section 2115	Eligibility for Repair	<i>As effective January 26, 1995</i>
Section 2127	Notification of Owners	<i>As effective January 26, 1995</i>
Section 2128	Repair Label	<i>As effective January 26, 1995</i>
Section 2129	Proof of Correction Certificate	<i>As effective January 26, 1995</i>
Section 2130	Capture Rates and Alternative Measures	<i>As effective November 27, 1999</i>
Section 2131	Preliminary Tests	<i>As effective January 26, 1995</i>
Section 2132	Communication with Repair Personnel	<i>As effective January 26, 1995</i>
Section 2133	Record keeping and Reporting Requirements	<i>As effective January 26, 1995</i>
Section 2135	Extension of Time	<i>As effective January 26, 1995</i>
Article 2.3 In-Use Vehicle Enforcement Test Procedures		
Section 2136	General Provisions	<i>As effective January 8, 2008</i>
Section 2137	Vehicle Selection	<i>As effective December 28, 2000</i>
Section 2138	Restorative Maintenance	<i>As effective November 27, 1999</i>
Section 2139	Testing	<i>As effective August 7, 2012</i>
Section 2140	Notification of In-Use Results	<i>As effective August 7, 2012</i>
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	<i>As effective December 8, 2010</i>
Section 2142	Alternative Procedures	<i>As effective February 23, 1990</i>
Section 2143	Failure Levels Triggering Recall	<i>As effective November 27, 1999</i>
Section 2144	Emission Warranty Information Report	<i>As effective November 27, 1999</i>
Section 2145	Field Information Report	<i>As effective August 7, 2012</i>

Section 2146	Emissions Information Report	<i>As effective November 27, 1999</i>
Section 2147	Demonstration of Compliance with Emission Standards	<i>As effective August 7, 2012</i>
Section 2148	Evaluation of Need for Recall	<i>As effective November 27, 1999</i>
Section 2149	Notification of Subsequent Action	<i>As effective February 23, 1990</i>
Chapter 3 Surveillance Testing		
Section 2150	Assembly-Line Surveillance	<i>As effective December 30, 1983</i>
Section 2151	New Motor Vehicle Dealer Surveillance	<i>As effective December 30, 1983</i>
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	<i>As effective August 7, 2012</i>

12/11/2013

11.0 Document Availability

Any of the documents incorporated by reference may be obtained either from the Department or from the State of California Office of Administrative Law, 300 Capitol Mall, Suite 1250 Sacramento, California 95814-4339 or at the California Office of Administrative Law website at: <http://www.oal.ca.gov/>

12/11/2013

12.0 Severability

Each section of this subchapter is severable. In the event that any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

14 DE Reg. 583 (12/01/10)

17 DE Reg. 640 (12/01/13) (Final)