

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL  
DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Sections 6010 and 6703 (7 Del.C. §§6010 & 6703)  
7 DE Admin. Code 1140

**FINAL**

**ORDER**

**Secretary's Order No.: 2023-A-0028**

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1140 - *Delaware's Low-Emission Vehicle Program***

**Date of Issuance: November 15, 2023**

**Effective Date of the Amendment: December 11, 2023**

**1140 Delaware Low Emission Vehicle Program**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del.C. §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

**Background, Procedural History and Findings of Fact**

This Order relates to the proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1140 - *Delaware's Low Emission Vehicle Program* ("Regulation"). The Department is proposing to amend the Regulation by updating the adoption by reference of California's Advanced Clean Car II ("ACC II") program as amended on August 25, 2022, and finalized on November 30, 2022, by the California Air Resource Board ("CARB"). The Advanced Clean Car program is comprised of three elements - (1) low-emission vehicle standards; (2) greenhouse gas emission standards; and (3) zero emission standards for new vehicles weighing up to 14,000 pounds gross vehicle weight. The adoption of the ACC II regulations seeks to reduce criteria pollutant and greenhouse gas emissions from new light- and medium-duty vehicles beginning with model year 2027 and to add new requirements for zero-emission vehicles.

The Clean Air Act ("CAA") authorized the U.S. Environmental Protection Agency ("EPA") to establish the National Ambient Air Quality Standards ("NAAQS") for criteria pollutants shown to threaten human health, welfare, and the environment. The criteria pollutants include sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), carbon monoxide (CO), ozone (O<sub>3</sub>), lead (Pb), particulate matter less than 10 microns in diameter (PM<sub>10</sub>), and particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>).

The EPA establishes air quality standards for the criteria pollutants and uses measurement of the pollutants from the ambient air monitoring network to determine how high the pollution is in an area. Delaware has monitoring stations throughout the state to measure air pollution concentrations of criteria pollutants. Many of the monitoring stations are concentrated in the northern urban/industrial areas, such as New Castle County, that have the highest population and number of pollutant sources. When levels of criteria pollutants are measured above the levels of the NAAQS, the EPA designates the area as nonattainment for the criteria pollutant.

Today, the largest source of pollution emissions in Delaware is from the transportation sector. These include the criteria pollutants, particulate matter, volatile organic compounds (VOCs), CO, NO<sub>x</sub>, and greenhouse gas (GHG) emissions. When NO<sub>x</sub> emissions from a vehicle are combined with VOCs and sunlight/heat, it produces ground-level ozone. Ground-level ozone ultimately affects public health, especially the elderly and children with underlying health conditions.

Vehicle emissions contribute 30% of greenhouse gas emissions compared to other sectors such as industrial, residential/commercial, and electric power. Of the 30% of GHG emissions produced by Delaware's transportation sector, passenger vehicles and light-duty trucks contribute 60% of these emissions. As the EPA deemed New Castle County as a contributor of emissions in the Philadelphia area, the County is included in the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE metropolitan statistical area. The EPA made a final rule dated November 7, 2022 (87 FR 60897) that designated New Castle County as "Moderate" non-attainment for the 2015 Ozone NAAQS.

In 1967, the CAA established the framework for controlling mobile source emissions. Under subsection 202(a)(1) of the CAA, Congress directed the EPA to promulgate regulations applicable to the emissions of any air pollution from new motor vehicles or new motor vehicle engines that contribute to air pollution that could endanger public health or welfare. The EPA established the federal standards for cars and light-duty trucks in 1975, and under the CAA, state and local agencies were prohibited from enforcing any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines, thus requiring states to adhere to the federal standards established in the CAA. The exception is California, the one state authorized by the CAA to enact stricter standards than the federal standards established by the EPA.

In 1990, Congress amended the CAA by revising the federal standards by adding Section 177, a provision that allows other states that have non-attainment areas to adopt the CARB approved (more stringent) vehicle emission standards, thus providing an additional option to the federal standards. Under Section 209 of the CAA (40 U.S.C. §7507), states that choose to adopt these vehicle emission standards are required (1) to adopt an identical version of California's standards that have been approved by the EPA, and (2) to provide auto manufacturers with a two-year advance notice before the start of the model year.

In 2010, Delaware adopted the vehicle emission standards known as the Low Emission Vehicle Standards (LEV III), beginning with model year (MY) 2014. The CARB then established the Advanced Clean Car program, incorporating LEV III, GHG Standards, and Zero-Emission Vehicles ("ZEV") Standards. The Advanced Clean Car program includes reducing criteria pollutants and greenhouse gas emissions and establishes requirements for the increase of zero-emitting vehicles to be delivered and offered for sale. The three elements combined the control of smog-causing pollutants and greenhouse gas emissions into a single coordinated package of requirements for MY 2015 through MY 2025. After the adoption of the ACC I program, Delaware updated the vehicle emission standards and adopted two of the three standards established by CARB, LEV III standard and GHG standard. To remain in compliance with Section 209 of the CAA, the Department amended the Delaware Low Emission Vehicle Program in 2013, 2018, and 2019.

In March 2022, Governor John Carney directed the Department to begin the regulatory development process for the adoption of the ZEV portion of the Advanced Clean Car program to achieve the GHG goals set for 2025. On August 25, 2022, the vehicle emission program was revised, and it was adopted by CARB on November 30, 2022, as the ACC II program. The purpose of the ACC II program is to increase the manufacture and sale of new cars and light-duty trucks to 100% ZEVs by MY 2035, thus reducing smog-forming emissions that form from new internal combustion engine vehicles (ICEVs), GHG, and other toxic air pollutants. This will be achieved by incrementally increasing sales of ZEVs, battery electric vehicles (BEVs), hydrogen fuel cell electric vehicles (FCEV), and the cleanest possible plug-in hybrid-electric vehicles (PHEVs).

The ACC II program requires automobile manufacturers to design, produce, and deliver new vehicles to market that meet the Advanced Clean Car emission standards. Commencing at 35% in MY 2026, auto manufacturers will be required to deliver an increased percentage of ZEVs until it reaches 100% in MY 2035. Auto manufacturers are required to certify that their vehicles meet the Criteria and GHG emissions standards established by CARB. The ACC II program also implements charging and ZEV assurance measures which set minimum warranty and durability requirements, increase serviceability, and facilitate battery labeling. There are also various flexibilities established in the ACC II program to assist manufacturers in meeting the established ZEV goals.

Although the ACC II program moves the new vehicle model year fleet to 100% zero-emission vehicles by 2035, gasoline vehicles purchased prior to MY 2035 are not affected. The proposed ACC II rule also includes low-emission vehicle requirements on ICEVs to continue to reduce smog-forming emissions while the sector transitions toward 100% zero-emitting vehicles by 2035. The updated ICEV standards address the increased emissions associated with aggressive driving and cold starts, more stringent exhaust and evaporative emissions standards, and changes to the fleet average requirements. Additionally, auto manufacturers will be able to continue to deliver for sale PHEVs, to make up to 20% of the ZEV compliance obligations in a model year.

The ACC II program requires auto manufacturers to deliver for sale a percentage of ZEVs that will expand the availability and opportunity for the market to have an upsurge in sales. The increased sales of BEVs, FCEVs, and PHEVs will significantly reduce criteria pollutants and GHG from vehicle emissions yearly, which are the greatest contributors to emissions in Delaware. Beginning with MY 2027 implementation, Delawareans will have realized a reduction of emissions by the year 2030 of 123 tons of nitrogen oxides, 8 tons of particulate matter, and 1.2 million metric tons of well-to-wheel carbon dioxide. Additional emission reductions will continue as more ZEV are incorporated into the fleet of vehicles in use.

As previously mentioned, states have the option to be governed by the federal emissions standards or adopt the CARB approved emission standards. The federal emissions standards, known as tier three engine standards, were adopted by

the EPA in 2014 and limit the amount of sulfur in gasoline and reduce nitrogen oxide and other pollutants. The Federal Greenhouse Gas Standards initially covered model years 2012 through 2025 and were recently amended in December 2021, for model years 2023 through 2026.

The Department's mission is to protect public health and the environment by reducing the impact of mobile source emissions on public health and to reduce Delaware's greenhouse gas emissions, which will also reduce emissions to combat climate change goals. These goals move in concert with one another. Increasing the use of ZEVs reduces emissions of criteria pollutants and GHG from the mobile source sector. Pursuant to 7 *Del.C.* §6010 and 7 *Del.C.* §6703, the Department is authorized by the Delaware General Assembly to regulate emissions and reduce air pollution and air contaminants. With this authority, the Department initially adopted the Advanced Clean Car program in 2010 and is now proposing a Regulation update by incorporating the ACC II program by reference.

Furthermore, in accordance with Section 209 of the CAA, the Department is required to adopt an identical version of the standards that have been approved by the EPA (November 2022). The Department is proposing to adopt by reference, all three elements of the ACC II: (1) low-emission vehicle standards; (2) greenhouse gas emission standards; and (3) zero emission standards for new vehicles weighing up to 14,000 pounds gross vehicle weight. By implementing the third element, ZEV standards, the proposed Amendments will help to ensure long-lasting emissions benefits and enable consumers to successfully replace their ICEVs with new or used ZEVs and PHEVs that meet their transportation needs. Commencing with MY 2027 and progressively elevating the requirement percentage each year, the implementation of ZEV requirements will result in an annual reduction in emissions, ultimately benefiting public health and meeting the goals of the Paris Agreement and establishing standards in accordance with Delaware's House Bill 99 to update *Delaware's Climate Action Plan*.

In addition, the Department proposed to amend the title of the Regulation from "Low Emission Vehicle Program" to "Advanced Clean Car Program," with minor revisions through the Regulation to align with the regulatory style manual and add definitions related to the ACC II program.

The Department held two virtual stakeholder workshops (October 13 and October 26, 2022) and five virtual public workshops (November 15, 16, and 17, 2022, and December 13 and 15, 2022) to review the Regulation language, provide information on complementary policies and programs, review the implementation process of the Amendments, and provide a platform for public comment. At the conclusion of all the workshops held, the Department received over 700 comments from October 2, 2022, through March 31, 2023, on the proposed Amendments.

The Department published its initial proposed Amendments in the April 1, 2023, *Delaware Register of Regulations*. The virtual public hearing regarding this matter was held on April 26, 2023. There were approximately 250 virtual attendees at the Department's virtual public hearing. The Department also provided an opportunity for the public to attend and provide verbal comments at an in-person venue located at the Kent County Levy Court Building in Dover, DE. There were 77 participants in attendance at the in-person venue. The Department received 130 registrations for public comment. Pursuant to 29 *Del.C.* §10118(a), the Hearing Record ("Record") remained open for receipt of written comment for 30 days following the public hearing. The Record formally closed for comment in this matter on May 26, 2023, with 2,469 written comments received by the Department during this phase of the formal promulgation. All comments were posted on the DNREC public hearing web page dedicated to this matter upon their receipt.

Subsequent to the close of the public comment period on May 26, 2023, Hearing Officer Theresa Smith requested a Technical Response Memorandum ("TRM") from the Department's subject matter experts in the Division of Air Quality. That TRM, dated September 15, 2023, is discussed herein in greater detail below. It should be noted that the Department revised the initially proposed Amendment subsequent to the public hearing. These revisions are not substantive in nature therefor no further noticing or additional hearing is necessary in this matter.

Thereafter, Hearing Officer Theresa Smith prepared her report dated October 17, 2023 ("Report"), which expressly incorporated into the Record the above-referenced TRM regarding the comments received from the public in this matter, attached thereto as Appendix "B." Mrs. Smith's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report and provided findings of fact, reasons, and conclusions that recommend the approval of the *revised* proposed Amendments pending before the Department.

The Report, along with its Appendices, is incorporated herein by reference. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed Amendments as attached to the Report as Appendix "A."

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these

revised proposed Amendments, pursuant to 7 Del.C. §6010 and 7 Del.C. §6703. All notification and noticing requirements concerning this matter were met by the Department and proper notice of the hearing was provided as required by law.

## Reasons and Conclusions

Currently pending before the Department are the proposed regulatory amendments to 7 DE Admin. Code 1140 - *Low Emission Vehicle Program*. In reviewing the applicable statutes and regulations, as well as weighing the public benefits of the proposed Amendments against potential detriments, the Department's experts in the Division of Air Quality ("DAQ") have concluded that the proposed Amendments comply with all applicable federal and state laws and regulations. Further, the proposed Amendments as published in the April 1, 2023, *Delaware Register of Regulations*, and subsequently revised, are reflective of the Department's authority under 7 Del.C. §6010 and 7 Del.C. §6703, to ensure continued protection of public health and the environment by regulating emissions and reduce air pollution and air contaminants.

The Department's TRM, attached and incorporated into Mrs. Smith's Report as Appendix "B," acknowledges the comments received from the public concerning the proposed Amendments, and provides a thorough and balanced response to the same, accurately reflecting the Record generated in this matter. Rather than attempting to relay each of the public comments received in this matter, this Order will highlight the Department's responses to the same, as provided for in full within the Report's Appendices, as referenced above. During the Department's review of the Record generated in this matter, the subject matter experts in the DAQ grouped the comments received into areas of concern or support, and then offered responses to the same.

The topics listed below are related to the proposed Amendments and impacts on public health and the environment and address the public comments received by the Department in this matter. Again, all public comments received can be viewed in their entirety on the Department's hearing web page dedicated to this regulatory matter.

Some members of the public expressed opposition to the rulemaking, stating that they should have the freedom to choose a vehicle that best suits their needs. The focus of the public opposition appears to be the standards for MYs with very high percentages of ZEVs and the final 100% requirement in MY 2035 and later. The Department's intent of the proposed Amendments is to reduce criteria and greenhouse gas emissions through the largest sources of these emissions, the transportation sector, which will enable Delaware to progress towards continuous attainment of all NAAQS and meeting the Climate Action Plan goals. The requirements of ACC II are applicable to auto manufacturers to deliver for sale a certain percentage of new ZEV vehicles per year beginning with 43% in MY 2027, 51% in MY 2028, 59% in MY 2029, 68% in MY 2030, 76% in MY 2031, 82% in MY 2032, 88% in MY 2033, 94% in MY 2034, and 100% in 2035 and thereafter.

In addition to ZEVs, PHEVs will be permitted to make up a maximum of 20% of a manufacturer's ZEV credit compliance obligations in any model year prior to 2035. The ACC II regulations do not prohibit the sale of other light and medium-duty vehicles for model years prior to MY 2035, including vehicles used for farming equipment. Under 21 Del.C. §2113- *Special Farm Vehicle Registration*, vehicles tagged as "Farm Vehicles" or "FV" tags, are exempt from the Regulation.

The Department also received concerns about affordability, fueling infrastructure, and access to ZEV charging stations for people in multi-unit dwellings or downtown areas. The Department advised that it is widely expected that advancements in technology, supply chains, and battery cost/performance will allow ZEVs to eclipse conventionally powered vehicles in affordability, range, and performance, even leaving their environmental benefits aside. The CARB and the International Council on Clean Transportation project a decrease in the cost of ZEVs over the next decade, due to expected battery costs decreasing and an increase in ZEV production to meet market demands. Also, lower-cost models, including high-range models, are increasingly available and industry trends indicate that they will become more prevalent, offer extended battery range, and cost less, making the ZEVs competitively priced with ICEVs.

According to the International Council on Clean Transportation analysis, lower-range EVs (i.e., 150-mile ranges) are projected to be at price parity with comparable classes of ICEVs starting in 2024 while larger vehicles such as pickups with large ranges (e.g., 400-mile ranges) are projected to reach price parity with comparable ICEVs around 2033. The ACC II program offers incentives for auto manufacturers to gain credits towards the annual requirement through MY 2028, which generates more than 20% zero emission market shares in 2024 and 2025. The credit incentive is expected to slightly increase sales over the next few years and to support a robust used ZEV market that offers ZEVs at a lower cost for customers.

Additionally, the federal government offers incentives such as tax credits/rebates, up to \$4000 toward used ZEV purchases and up to \$7500 towards new ZEV purchases, and Delaware also offers new and used vehicle rebates of up to \$2,500 for BEVs. In 2023 a federal tax credit was extended to bi-directional charges, which enables electric vehicles to

serve as grid-connected batteries typically earning bill credits from their utility for providing this service and providing backup power for the home during blackouts. There is also a federal tax credit, valid through December 31, 2032, which covers 30% of the cost of hardware and installation, up to \$1,000.28, for home charging stations. Specific electricity providers will also provide incentives to their customers for savings on their electric bill.

The infrastructure for ZEVs is expected to expand to a much broader network of charging stations with the increased use of ZEV vehicles. Significant federal funding through the Bipartisan Infrastructure Bill and the Inflation Reduction Act are also helping to accelerate the deployment of ZEVs and fueling stations. Additionally, Delaware's Department of Transportation and the Department's Division of Climate, Coastal, and Energy are developing a Delaware Statewide EV Charging Infrastructure Plan, that will help guide charging station locations and feasibility with a special interest in serving rural communities, disadvantaged communities, and those who live in multi-unit dwellings.

Moreover, under the National Electric Vehicle Infrastructure Formula funding, a program included in the Bipartisan Infrastructure Law, the Delaware Department of Transportation will receive funding over fiscal years 2022 to 2026 for the installation of DC fast charging stations along the state's alternative fuel corridors, including Routes 1, 13, 113, and I-95. The U.S. Department of Transportation's Charging and Fueling Infrastructure Discretionary Grant Program, established by the Bipartisan Infrastructure Law, will provide \$2.5 billion over five years to a wide range of applicants, including cities, counties, local governments, and Tribes. Additionally, \$700 million is available in fiscal years 2022 and 2023 to strategically deploy EV charging and other alternative vehicle-fueling infrastructure project in publicly accessible locations in urban and rural communities, as well as along designated Alternative Fuel Corridors.

The Department also received comments regarding environmental justice strategies to help low-income households afford ZEVs, ensure cultural competence of the Department's outreach strategies, and implement consistent definitions of environmental justice terms such as "community-based clean mobility program" and "financial assistance program" across the Department's programs.

As discussed above, the Department acknowledged the affordability aspect of the concerns, addressing the federal tax credits and incentives, and the expected price parity ZEVs will have with comparable classes of ICEVs, making ZEVs affordable and equaling the market value of a used ZEV to ICEVs. Also as mentioned above, the Delaware Statewide EV Charging Infrastructure Plan is geared towards developing charging station locations to serve rural communities and disadvantaged communities. The proposed Amendments also include incentive opportunities for manufacturers to meet the ZEV percent requirements by investing in community car share programs, producing affordable ZEVs, and keeping used vehicles in Delaware, which in turn will benefit disadvantaged, low-income, and other frontline communities. Terms have also been defined within the proposed Amendments to clarify the Qualifying Community-based Clean Mobility Program.

Lastly, concerns were expressed regarding the timeline of the ACC II program - increasing sales of new ZEVs, commencing at 43% in 2027, and increasing yearly until it reaches 100% by 2035. Some commenters expressed that the timeframe is too short to phase out gasoline and diesel-powered cars. Based on the available evidence, the Department believes the timeline is achievable and allows Delaware to meet its scientifically driven climate goals. Additionally, the Department plans to work with staff from the Northeast States for Coordinated Air Use Management and programmatic staff from other states that have adopted ACC II, using tracking tools developed by CARB, to conduct annual reviews of the program. These annual reviews will confirm the delivery of compliant vehicles to Delaware and indicate that technological advancements are occurring in the automotive industry as anticipated. In addition, concerns related to affordability and whether the infrastructure will manifest can be addressed through the above annual review process as well.

Throughout this process, the Department has been cognizant of the public's concerns that the ACC II will impose limitations that will require ZEV vehicles to become an increasingly large percentage of the new vehicles sold within Delaware until it reaches 100% in 2035. However, in order to take action to reduce emissions from motor vehicles within Delaware, the Department is limited by Section 177 of the CAA to either adopt the CARB approved or continue to rely on federal standards. Continuing to rely on the federal standards forgoes the significant emissions reductions that could be achieved through the adoption of the CARB approved vehicle emission program.

Significant emissions reductions are necessary and while Delaware cannot adopt standards different from ACC II, the public concerns in the record regarding opposition to a mandate were sufficient for Delaware to consider adopting ACC II only through MY 2032, rather than through MY 2035. The record shows that such a practice has been considered by other states that had similar concerns with adopting the entire ACC II program. If Delaware adopts only through MY 2032, evidence in the record demonstrates that significant reductions in nitrogen oxides, particulate matter, and carbon dioxide will be achieved. This approach not only helps achieve significant pollution reduction from vehicle emissions, but this will ensure that Delaware makes the changes necessary to support the transition to ZEVs, while avoiding the requirement that

ZEVs become 100% of the new vehicle sales market.

The Department has the authority to propose and adopt regulations to reduce air pollution from vehicles by the Delaware General Assembly under 7 *Del.C.* Chapters 60 and 67. The Department has the authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del.C.* §6010, and consistent with the CAA, to adopt ACC II through MY 2032, and to revise the initially proposed Amendments to provide further clarity. These revisions are not substantive in nature therefor no further noticing or additional hearing is necessary in this matter. The Department will utilize the annual reviews and may take further action in the future to adopt additional model years of ACC II.

Based on the record developed by the Department's staff in the DAQ, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments are well-supported. I further find that the Amendments will enable the Department to update the adoption by reference of the Advanced Clean Car II low-emission vehicle and greenhouse gas standards and add the requirements for zero-emitting vehicles commencing at 43% in MY 2027 and increasing yearly until it reaches 82% in MY 2032. I find that the Department's only opportunity to seek reductions beyond the federal emissions standards is to adopt the ACC II standards; however, there is no prohibition against adopting selective model years ACC II vehicle standards in order to achieve those reductions. These actions will protect public health and the environment by reducing the impact of mobile source emissions on public health and reducing Delaware's greenhouse gas inventory, which will also reduce emissions to combat climate change goals, established by *Delaware's Climate Action*.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to adopt and enforce these proposed regulatory amendments pursuant to 7 *Del.C.* §6010 and 7 *Del.C.* §6703 and Section 209 of the *Clean Air Act*;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these revised proposed Amendments as final;
3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the virtual public hearing held on April 26, 2023, and during the 30 days subsequent to the hearing (through May 26, 2023), before making any final decision;
4. Promulgation of the *revised* proposed Amendments to 7 DE Admin. Code 1140 - *Low Emission Vehicle Program*, will enable the Department to update the adoption by reference of the Advanced Clean Car II low-emission vehicle and greenhouse gas standards and add the requirements for zero-emitting vehicles commencing at 43% in MY 2027 and increasing yearly until it reaches 82% in MY 2032, thereby protecting public health and the environment by reducing the impact of mobile source emissions on public health and reducing Delaware's greenhouse gas inventory, which will also reduce emissions to combat climate change goals, established by *Delaware's Climate Action Plan*;
5. The Department has reviewed the *revised* proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
6. Furthermore, the Department has reviewed the Record generated in this matter with the consideration of the Environmental Justice issues related to the *revised* proposed Amendments, and has determined that the approval of the same is consistent with the Department's Environmental Justice policy;
7. The Department has generated an adequate record to support the incorporating by reference the Advanced Clean Car II low-emission vehicle and greenhouse gas standards starting from MY 2027, and may either choose to adopt standards until MY 2035, as initially proposed during the public hearing, or opt for standards until MY 2032 as a reasonable response to the concerns raised in the record, and the decision does not constitute a significant alteration necessitating further public notification or commentary;
8. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
9. The Department's proposed regulatory Amendments, as initially published in the April 1, 2023, *Delaware Register of Regulations*, and then subsequently *revised* as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;
10. The Department has an adequate Record of its decision, and no further public hearing is appropriate or necessary; and
11. The Department shall submit this Order approving the revised proposed Amendments as final regulations 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.

Shawn M. Garvin  
Secretary

## 1140 Delaware ~~Low Emission Vehicle~~ Advanced Clean Car Program

~~12/11/2013~~

### 1.0 Purpose

- 1.1 The provisions of this regulation establish in Delaware a Low Emission Vehicle (LEV) and Advanced Clean Car (ACC) program, which incorporates the requirements of the California LEV and Advance Clean Car 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, medium-duty passenger vehicles, and medium-duty vehicles subject to the California LEV ~~[and ACC]~~ program and delivered for sale in Delaware.
- [1.3 The ACC program shall apply to all new model year 2027 through 2032 model year vehicles that are passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles subject to the California ACC program and delivered for sale in Delaware.]**

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

~~12/11/2013~~

### 2.0 Applicability

- 2.1 Except as set forth in subsection 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 **[for meeting the exhaust and greenhouse gas emission standards in Section 5.0]**.
- 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 subsection 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;
  - 2.3.10 Sold for registration outside of Delaware;
  - 2.3.11 Military tactical vehicles; or
  - 2.3.12 Acquired by a Delaware resident serving in the armed forces while stationed in another state.

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

~~3/11/2018~~

### 3.0 Definitions

The following words and terms, when used in this regulation or in the context of the California LEV and ACC program, shall have the following ~~meanings unless the context clearly indicates otherwise.~~ meanings:

**"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.

**"ATPZEV"** means advanced technology partial zero emission vehicle.

**"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 Air Resources Board or CARB" 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-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 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 credits"** means credits earned when a manufacturer's reported fleet average is less than the required fleet average.

**"Emission debits"** means debits earned when a manufacturer's reported fleet average exceeds the required fleet average.

**"Emission standards"** mean specified limitations on the discharge of air contaminants into the atmosphere.

**"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 (NMOG + 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.

**"Loaded vehicle weight"** means the vehicle curb weight plus 300 pounds.

**"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, 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 engine"** means an engine that is used to propel a motor vehicle.

**"Motor vehicle or vehicle"** 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.

**"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.

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

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

**"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 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.

**"PZEV"** means partial zero emission vehicle.

"Qualifying Community-based Clean Mobility Program" means a program determined by the Department to qualify as a community-based clean mobility program pursuant to guidance issued by the Department of Natural Resources & Environmental Control. The Department must determine that a program qualifies as a community-based clean mobility program before a manufacturer may earn vehicle value pursuant to the requirements of Title 13, CCR, Section 1962.4.

"**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"~~ "**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.

"TZEVE" means transitional zero emission vehicle.

"**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 number**" or "**VIN**" means a unique, 17 digit, alphanumeric code that the vehicle manufacturer assigns to a vehicle.

"ZEV" means any passenger car, light-duty truck, or medium-duty truck certified to the zero emission vehicle standards in Title 13 CCR § 1962, 1962.1, 1962.2, and 1962.4.

"ZEV credit bank" means a zero-emission vehicle credit bank set up by the CARB or the environment department that records and tracks the generation, verification, transfer, voluntary retirement, use, and invalidation of zero-emission vehicle credits.

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

21 DE Reg. 730 (03/01/18)

**12/11/2013**

#### **4.0 Emission certification standards**

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

**3/11/2018**

#### **5.0 New Vehicle Emission Requirements**

5.1 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 passenger vehicles, or medium-duty vehicle in Delaware unless the vehicle is California-certified and complies with the following criteria:

5.1.1 ~~the~~ The exhaust emission standards, as applicable in Title 13, CCR Section including:

5.1.1.1 The Low Emission Vehicle Program, Sections 1900, Section 1956.8 (g) or (h), 1960.1, 1961, 1961.1, 1961.2, or 1961.3, and 1961.4; and

5.1.1.2 The Greenhouse Gas Emission Standards Program, Sections 1961.1 and 1961.3; and

5.1.1.3 Beginning with model year 2027 [through 2032], the Zero Emission Vehicle Program Sections 1962, 1962.1, 1962.2, 1962.3, 1962.4, 1962.5; and

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

- 5.1.3 ~~the~~ The evaporative emission standards in Title 13, CCR, Section ~~4976, 1976~~; and
  - 5.1.4 ~~the~~ The refueling emission standards in Title 13, CCR, Section ~~4978, 1978~~; and
  - 5.1.5 ~~the~~ The malfunction and diagnostic system requirements in Title 13, CCR, ~~4968.2, Sections 1968.1, 1968.2~~; and
  - 5.1.6 ~~the~~ The assembly-line testing procedure requirements in Title 13, CCR, Section ~~2062, 2062~~; and
  - 5.1.7 ~~the~~ The specifications for fill pipes and openings of motor vehicle fuel tanks in Title 13, CCR, Section 2235.
- 5.2 For new 2027 ~~[and subsequent through 2032]~~ model year, each manufacturer's sales fleet of passenger cars and light-duty trucks produced and delivered for sale in Delaware shall contain at least the same percentage of zero emission vehicles subject to the same requirements set forth in Title 13, CCR, Section 1962.4 using Delaware specific vehicle production volume calculated per Title 13, CCR, Sections 1962.4.

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

21 DE Reg. 730 (03/01/18)

~~12/14/2013~~

## 6.0 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. RESERVED~~
  - 6.1.2 Effective for the 2015 ~~and subsequent through 2025~~ model-years, each manufacturer shall comply with the fleet average NMOG + NOx emission requirements and the LEV<sup>III</sup> 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. Effective for the 2027 ~~[and subsequent through 2032]~~ model-years, each manufacturer shall comply with the fleet average NMOG + NOx emission requirements and 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 1961.4.~~
  - 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.
- 6.2 Each new vehicle model subject to subsection 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, 1961.1, 1961.2, 1961.3, 1961.4, 1962.3, 1962.4, 1962.5, 1962.6, 1962.7, 1962.8, 1965, 1968.2, 1968.5, 1969, 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.
- 6.3 Each manufacturer of a vehicle subject to subsection 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.
- 6.4 Each new vehicle subject to subsection 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.
- 6.5 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.

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

~~3/11/2018~~

**7.0 Warranty**

- 7.1 Each manufacturer of a vehicle subject to subsection 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,~~ and 2046.
- 7.2 Each manufacturer of a vehicle subject to subsection 2.1 of this regulation shall submit to the Department, upon request, an Emission Warranty Information report as defined at Title 13, CCR, Section 2144.
- 7.3 For purposes of compliance with subsection 7.2 of this regulation, a manufacturer may submit copies of the Emission Warranty Information report that are submitted to CARB.
- 7.4 Each manufacturer of a vehicle subject to subsection 2.1 of this regulation shall include the emission control system warranty statement that complies with the requirements of Title 13, CCR, Section 2039. Manufacturers may modify this statement as necessary to inform Delaware vehicle owners of the warranty applicability. The manufacturer shall provide a telephone number appropriate for Delaware residents.

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

**21 DE Reg. 730 (03/01/18)**

~~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 subsection 2.1 of this regulation shall submit annually to the Department, no later than ~~May~~ March 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.
- 8.2 Beginning with the 2014 model year, each manufacturer of a vehicle subject to subsection 2.1 of this regulation shall submit annually to the Department, by no later than ~~May~~ March 1 following the close of the model year, a report, 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.
- 8.4 Beginning with the 2014 model year, each dealer of a vehicle exempted under subsection 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.
- 8.5 No later than the 2027 model year [and through model year 2032] , manufacturers shall establish a ZEV Credit Bank per Section 13.0 of this regulation and submit ZEV reports to the Department in accordance with Title 13, CCR, Section 1962.4 as adopted by reference pursuant to Section 10.0 of this regulation.

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

~~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 subsections 2.1 and 2.4 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 the vehicles ~~subject to 2.1 of this regulation.~~

**3/11/2018**

**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 The Low Emission Vehicle Program at 7 **DE Admin. Code** 1140 refers to various sections 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 section as of the section amended date provided for that section in Table 1 ~~of this regulation.~~ The Department hereby incorporates by reference each of the sections of Title 13 CCR that are listed in Table 1 as of such section’s respective section 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.
- 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 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	<del>As effective July 25, 2016</del> <u>November 30, 2022</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	<del>As effective July 25, 2016</del>
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	<del>As effective December 31, 2012</del>
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 through 2019 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<del>As effective December 31, 2012</del>
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 through 2016 Model Passenger <del>Cars,</del> <u>Cars and</u> Light-Duty Trucks, and Medium-Duty Vehicles	<del>As effective August 7, 2012</del>
Section 1961.2	Exhaust Emission Standards and Test Procedures – 2015 <del>and Subsequent</del> <u>through 2025</u> Model Passenger Cars, <del>and</del> <u>2015 through 2028 Model Year</u> Medium-Duty <del>Vehicles.</del> <u>Vehicles</u>	<del>As effective December 12, 2018</del> <u>November 30, 2022</u>
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty <del>Vehicles.</del> <u>Vehicles</u>	<del>As effective December 12, 2018</del> <u>November 30, 2022</u>
Section 1961.4	<u>Exhaust Emission Standards and Test Procedures - 2026 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles</u>	<u>As effective November 30, 2022</u>

<u>Section 1962.2</u>	<u>Zero-Emission Vehicle Standards for 2018 through 2025 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles</u>	<u>As effective November 30, 2022</u>
<u>Section 1962.3</u>	<u>Electric Vehicle Charging Requirements</u>	<u>As effective November 30, 2022</u>
<u>Section 1962.4</u>	<u>Zero-Emission Vehicle Requirements for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks</u>	<u>As effective November 30, 2022</u>
<u>Section 1962.5</u>	<u>Data Standardization Requirements for 2026 and Subsequent Model Year Light-Duty Zero Emission Vehicles and Plug-in Hybrid Electric Vehicles</u>	<u>As effective November 30, 2022</u>
<u>Section 1962.6</u>	<u>Battery Labeling Requirements</u>	<u>As effective November 30, 2022</u>
<u>Section 1962.7</u>	<u>In-Use Compliance, Corrective Action and Recall Protocols for Zero Emission for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks</u>	<u>As effective November 30, 2022</u>
<u>Section 1962.8</u>	<u>Warranty Requirements for Zero Emission and Batteries in Plug-in Hybrid Electric 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks</u>	<u>As effective November 30, 2022</u>
Section 1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	<u>As effective October 8, 2015 November 30, 2022</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 July 25, 2016 November 30, 2022</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 July 25, 2016</u>
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	<u>As effective October 8, 2015 November 30, 2022</u>
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	<u>As effective October 8, 2015 November 30, 2022</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 December 5, 2014</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 December 5, 2014 November 30, 2022</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 November 30, 2022</u>
Section 2039	Emission Control System Warranty Statement	<u>As effective December 26, 1990</u>
Section 2040	Vehicle Owner Obligations	<u>As effective December 26, 1990</u>
Section 2041	Mediation; Finding of Warrantable Condition	<u>As effective December 26, 1990</u>
Section 2046	Defective Catalyst	<u>As effective February 15, 1979</u>

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 November 27, 1999</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 <del>December 5, 2014</del> November 30, 2022</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 2116	<u>Repair Label</u>	<i>As effective December 22, 2021</i>
Section 2117	<u>Proof of Correction Certificate</u>	<i>As effective December 22, 2021</i>
Section 2118	<u>Notification</u>	<i>As effective December 22, 2021</i>
Section 2119	<u>Recordkeeping and Reporting Requirements</u>	<i>As effective December 22, 2021</i>
Section 2120	<u>Other Requirements Not Waived.</u>	<i>As effective January 26, 1995</i>
Section 2121	<u>Penalties.</u>	<i>As effective December 22, 2021</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 December 8, 2010</i>
Section 2137	Vehicle and Engine 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 <del>December 5, 2014</del> November 30, 2022</i>
Section 2140	Notification of In-Use Results	<i>As effective <del>December 5, 2014</del> November 30, 2022</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 <del>December 5, 2014</del> November 30, 2022</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>
<u>Chapter 4 Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives</u>		
<u>Section 2222</u>	<u>Add-On Parts and Modified Parts</u>	<u><i>As effective October 1, 2021</i></u>
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	<i>As effective August 8, 2012</i>

17 DE Reg. 640 (12/01/13)  
21 DE Reg. 730 (03/01/18)  
22 DE Reg. 949 (05/01/19)

~~3/11/2018~~

#### 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/>.

21 DE Reg. 730 (03/01/18)

~~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.

#### 13.0 Recall

For all California-certified vehicles registered in Delaware, each manufacturer shall undertake an action equivalent to that which is required by any order or enforcement action taken by CARB, or any voluntary or influenced emission related recall initiated by any manufacturer pursuant to Title 13, CCR, Sections 1962.7, 2101, 2109 through 2120, 2122 through 2133, 2135 through 2149, 2167, and 2168 unless within 30 days of CARB approval of said recall, the manufacturer demonstrates to the Agency that such recall is not applicable to vehicles registered in Delaware. Each manufacturer must send to owners of Delaware registered California-certified vehicles the same notice that is used for California owners required by Title 13, CCR, Sections 2118 or 2127, except that it should contain a telephone number appropriate for Delaware.

#### 14.0 ZERO EMISSION VEHICLES (ZEV)

14.1 Emission Standard. Certification for ZEV Emission Standards of new 2027 and subsequent model year passenger cars, light-duty trucks and medium-duty vehicles shall be made pursuant to Title 13, CCR, Section 1962.4.

14.2 Percentage Requirements. Beginning with the 2027 model year, each manufacturer's sales fleet of passenger cars and light-duty trucks produced and delivered for sale in Delaware shall contain at least the same percentage of ZEVs subject to the same requirements set forth in the Title 13, CCR, Section 1962.4 using Delaware specific vehicle production volume calculated per Title 13, CCR, Section 1962.4.



- 14.3 Reporting Requirements. Beginning with model year 2027, a manufacturer must submit a report to the Department for each on-road vehicle produced and delivered for sale in Delaware for each model year as required by Title 13, CCR, Section 1962.4.
- 14.4 Proportional Credits. A manufacturer may deposit into its Delaware account a number of credits equal to the manufacturer's 2027 model year starting California "Converted credit" balance (i.e., those converted pursuant to Title 13, CCR, Section 1962.4(g)(2)) multiplied by the number of new passenger cars and light-duty trucks the manufacturer produced and delivered for sale in Delaware in model year 2026 and divided by the number of new passenger cars and light-duty trucks that the manufacturer produced and delivered for sale in California in model year 2026.
- 14.5 Early Action Credits. A manufacturer may earn early action credits for any 2023, 2024 or 2025 model year range extended battery electric vehicles, neighborhood electric vehicles, transitional zero emission vehicles and zero emission vehicles meeting the requirements of Title 13, CCR, Section 1962.2, the manufacturer produces and delivers for sale in Delaware by reporting the total production and delivery of such vehicles to the Department. Any early action credits earned pursuant to this section will be deposited into the manufacturer's account by the Department in the California ZEV Credit System for model year 2027 in addition to the credits deposited pursuant to subsection 14.4. These credits shall be converted in accordance with Title 13, CCR, Section 1962.4(g)(2).

**3 DE Reg. 532 (10/01/99)**

**12 DE Reg. 347 (09/01/08)**

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

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

**21 DE Reg. 730 (03/01/18)**

**22 DE Reg. 949 (05/01/19)**

**27 DE Reg. 433 (12/01/23) (Final)**