

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

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

PROPOSED

REGISTER NOTICE SAN # 2009-33

1140 Delaware's National Low Emission Vehicle (NLEV) Regulation

1. Title of the Regulation:

Regulation 1140 – Delaware Low Emission Vehicle Program

2. Brief Synopsis of the Subject, Substance and Issues:

The provisions of this regulation establish in Delaware a LEV program, which incorporates the requirements of the California LEV program.

The LEV program shall apply to all model year 2013 and subsequent motor vehicles that are passenger cars and light-duty trucks subject to the California LEV program and delivered for sale in Delaware on or after January 1, 2013.

3. Possible Terms of the Agency Action:

None.

4. Statutory Basis or Legal Authority to Act:

7 Delaware Code, Chapter 60 and the Federal Clean Air Act, section 177 (42 U.S.C. § 7507), which allows states to establish more stringent motor vehicle standards than the Federal program by implementing the California program.

5. Other Regulations That May Be Affected by the Proposal:

None.

6. Notice of Public Comment:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Friday, October 22, 2010 beginning at 6:00 p.m. in DNREC's R & R Building auditorium, Dover, DE. Interested parties may submit comments in writing to:

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Regulatory Flexibility Act Analysis

Regulatory Action

The Department is proposing to implement Regulation 1140 that would affect vehicle manufacturers, dealers, and any other person who transfers vehicles within DE. The proposed regulation would replace the Federal Tier 2 program in Delaware beginning with MY 2013, and as a result, only California certified vehicles can be legally sold in Delaware after January 1st of 2013. Considerable benefits to human health and the environment will be realized under this program in the long term. A significant portion of particulate emissions, ozone-forming emissions, and airborne cancer risks come from vehicle emissions. The primary goal of this proposal is to reduce the emissions of ozone precursors, particulates, toxic air pollutants and greenhouse gas emissions.

Conclusions

After thorough consideration of the proposed implementation of Regulation 1140 under the *Regulatory Flexibility Act*, 29 Del.C. Ch. 104, (Act), the Department concludes the following:

- After considering the impact on small business, as discussed below, there is no reason to exempt or to lessen the requirements by implementing Regulation 1140 for individuals or small businesses.
- That the Department's proposed implementation of Regulation 1140, when compared to EPA's national Tier 2 standard,
 - Will not add to the reporting requirements, compared to the federal notification and reporting requirements;
 - Will not create a need for any legal, consulting, or accounting services;
 - Will not create any competitive disadvantages;
 - Will not drastically alter the operating cost for the Department compared to maintaining the less stringent national rule; and
 - Will reduce the public's potential cancer and non-cancer health risks through the reduction of air pollutant emissions.

Background

- The purpose of the Act is "to establish as a principle of regulatory policy that regulatory and reporting requirements fit the scale of those being regulated, that fewer, simpler requirements be made of individuals and small businesses and that to achieve these ends agencies be empowered and encouraged to issue regulations which apply differently to individuals and small businesses than to larger businesses."
- In making the consideration for qualifying small business entities, the Department must consider the following:
 - The nature of the reports and cost of their preparation;
 - The nature and cost of required measures or investment;
 - The nature and cost of legal, consulting and accounting services;
 - The ability of the entity to absorb or recover the added costs without suffering economic harm and without adversely affecting competition in the marketplace;
 - The added cost to the Department if exemptions or lesser requirements were promulgated; and
 - The impact on the public interest of exempting or setting lesser requirements of compliance.

Considerations

1. The nature of the reports and cost of their preparation. Currently, vehicle manufactures either report to EPA or CARB and the corresponding state if a LEV program is implemented.

Reporting requirements for manufactures under the federal program:

- Total Deliveries.
- Fleet-wide NOx average.

- Durability demonstration (if requested).
- Emission standards testing including: tailpipe emissions, on-board diagnostic requirements, and evaporative emission standards (if requested).

Proposed Regulation 1140 reporting requirements for manufacturers:

- Total Deliveries in DE.
- Fleet-wide NMOG average.
- Durability demonstration (if requested).
- Emission standards testing including: tailpipe emissions, on-board diagnostic requirements, and evaporative emission standards (if requested).

2. The nature and cost of required measures or investment. As both the federal program and California programs have evolved over the past two decades, the programs have become strikingly similar. Emission limits for both (including GHGs) have tightened to current levels that essentially mirror each other. However, the federal program contains three less stringent vehicle categories that are not acceptable under the LEV program.

Required measures

Vehicle manufacturers already produce “California certified” vehicles for our region. When extensive research was conducted with local dealers, the highest percentage of non-CARB vehicles available on a lot was less than ten percentage. The majority of dealers had zero, one, or two vehicles (larger trucks) that did not have a CARB certification

Required investment

Since vehicle manufactures already produce LEV cars on a regional basis, no additional investment will be necessary if DE implements Regulation 1140. With over 20 states and Washington D.C. already participating in the LEV program, vehicle manufacturers are well prepared for DE to implement a LEV program.

3. The nature and cost of legal, consulting and accounting services. There are no requirements in proposed Regulation 1140 that would necessitate a need for legal, consulting or accounting services. Therefore, there are no added costs for these services.

4. The ability of the entity to absorb or recover the added costs without suffering economic harm and without adversely affecting competition in the marketplace.

- Vehicle manufacturers affected by proposed Regulation 1140 are subject to the requirements of the Cal LEV equivalent already established by surrounding states that comprise the North East Region (New England States, NY, PA, MD, NJ). Vehicles are not individually manufactured specifically for DE.
- As the requirements of proposed Regulation 1140 apply equally to all regulated sources, the Department does not anticipate any source to have a competitive advantage over the other sources.

5. The added cost to the Department if exemptions or lesser requirements were promulgated.

- Due to the “third wheel” clause stipulated by the CAA, no such exemptions or lesser requirements diverting from Cal LEV requirements can be promulgated.

6. The impact on the public interest of exempting or setting lesser requirements of compliance.

- Were the Department to continue with the Federal Tier 2 program requirements rather than proposed Regulation 1140, the public would potentially experience greater exposure to vehicle emissions.
 - The exposure to higher concentrations of vehicle emissions (VOCs, NOx, and PM) could lead to increased incidences of cancer, primarily manifested in lung tumors.
 - Long term exposure to higher concentrations of vehicle emission could also lead to other non-carcinogenic health impacts. These health impacts range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity.

~~1140 Delaware’s National Low Emission Vehicle (NLEV) Regulation~~

~~09/11/1999~~

~~1.0 Applicability~~

~~The environmental benefits of this regulation will be realized in all counties in the State of Delaware.~~

09/11/1999

2.0 Definitions

The following terms, when used in this regulation, shall have the following meanings:

~~“NLEV Program” or “National Low Emission Vehicle Program” means a federally enforceable, voluntary nationwide clean car program designed to reduce smog and other pollution from new motor vehicles and that would achieve emission reductions from new motor vehicles in the Ozone Transport Region equivalent to or greater than would be achieved by the adoption of the CAL LEV (California-Low Emission Vehicle) Program by all the OTC states.~~

09/11/1999

3.0 Program Participation

- 3.1 ~~For the duration of Delaware’s participation in NLEV, manufacturers may comply with NLEV or equally stringent mandatory federal standards in lieu of compliance with any program, including the provisions of this subchapter and including any mandates for sales of ZEVs (zero emission vehicles), adopted by the State pursuant to the authority provided in Section 177 of the Clean Air Act (CAA), 42 U.S.C. Section 7401 et seq., applicable to passenger cars, light duty trucks up through 6,000 pounds GVWR (gross vehicle weight rating), or medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900, incorporated herein by reference.~~
- 3.2 ~~Delaware’s participation in NLEV extends until the commencement of model year 2006, except as provided in 40 C.F.R. Section 86.1707. If, no later than December 15, 2000, the EPA does not adopt standards at least as stringent as the NLEV standards provided in 40 C.F.R. Part 86, subpart R, that apply to new motor vehicles in model year 2004, 2005 or 2006, the State’s participation in NLEV extends only until the commencement of model year 2004, except as provided in 40 C.F.R. Section 86.1707.~~
- 3.3 ~~If a covered manufacturer, as defined at 40 C.F.R. 86.1702, opts out of the NLEV program pursuant to the EPA NLEV regulations at 40 C.F.R. Section 86.1707, the transition from NLEV requirements to any state Clean Air Act Section 177 Program applicable to passenger cars, light-duty trucks up through 6000 pounds GVWR, or medium-duty vehicles from 6001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900, incorporated herein by reference will proceed in accordance with the EPA NLEV regulations at 40 C.F.R. Section 86.1707.~~

~~3-DE Reg. 532 (10/01/99)~~

~~12-DE Reg. 347 (09/01/08)~~

1140 – Delaware Low Emission Vehicle Program

1.0 Purpose

- 1.1 The provisions of this regulation establish in Delaware a LEV program, which incorporates the requirements of the California LEV program.
- 1.2 The LEV program shall apply to all model year 2013 and subsequent motor vehicles that are passenger cars and light-duty trucks subject to the California LEV program and delivered for sale in Delaware on or after January 1, 2013.

2.0 Applicability

- 2.1 Except as set forth in 2.2 and 2.3 of this regulation, on or after January 1, 2013, no person shall deliver for sale, offer for sale, sell, deliver, purchase, rent, acquire, receive, or register a model year 2013 or subsequent model-year passenger car or light-duty truck within Delaware unless the vehicle has been certified by CARB and has received a CARB Executive Order.
- 2.2 Prior to January 1, 2014, model year 2013 vehicles that do not meet the requirements of 2.1 of this regulation, but were delivered for sale in Delaware on or before January 1, 2013, and have a certificate of conformity issued pursuant to the Clean Air Act, may be sold, offered for sale, purchased, acquired or received in Delaware.

- 2.3 The prohibitions contained in 2.1 of this regulation shall not apply to passenger cars and light-duty trucks 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.
- 2.4 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.

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 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.

“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.

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

“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.

“LDT-2 or Light-duty truck-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 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.

“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.

“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.

“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, the United States, 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 to an ultimate purchaser 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.

“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.

“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.

4.0 Emission certification standards

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

5.0 NMOG fleet-wide average exhaust emission requirement

5.1 A manufacturer of model year 2013 or later passenger cars or light-duty trucks delivered for sale in Delaware on or after January 1, 2013, 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.

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.

6.0 Vehicle Testing

6.1 Each new vehicle model subject to 2.1 of this regulation shall satisfy the motor vehicle emission requirements of Title 13, CCR, Sections: 1960.1, 1961, 1962, 1962.1, 1965, 1968.1, 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.

- 6.2 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.
- 6.3 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.
- 6.4 For the purposes of detection and repair of vehicles subject to this subchapter 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.

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 shall submit to the Department, upon request, a Failure of Emission-Related Components 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 report that are submitted to CARB.

8.0 Reporting and Record-Keeping Requirements

- 8.1 Beginning with the 2013 model year, each manufacturer of a vehicle subject to 2.1 of this regulation shall submit annually to the Department, no later than March 1 following the close of the model year, a report documenting total deliveries for sale in Delaware of vehicles in each test group during that model year. For the 2013 model year, the report shall separately show deliveries for sale prior to January 1, 2013 and on and after January 1, 2013.
- 8.2 Beginning with the 2013 model year, each manufacturer of a vehicle subject to 2.1 shall submit annually to the Department, by no later than March 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 for the model year just ended for vehicles delivered for sale in Delaware. For the 2013 model year, the report shall separately show deliveries for sale prior to January 1, 2013 and on and after January 1, 2013.
- 8.3 Beginning with the 2013 model year, each manufacturer of a vehicle exempted under 2.3.7 of this regulation must keep records on all inter or intra-dealer trades of new 2013 or subsequent model-year passenger car or light-duty truck 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.

9.0 Enforcement

- 9.1 Records to support any application, notice, report or amendment submitted to the Department under this subchapter 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 subchapter 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.

10.0 Incorporation by Reference

- 10.1 Unless specifically excluded by this subchapter, 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 subchapter 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.
- 10.3 Provisions of the CCR that are excluded from incorporation by reference in these rules 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 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
	Chapter 1 Motor Vehicle Pollution Control Devices Article 1 General Provisions
Section 1900	Definitions
	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
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles

<u>Section 1965</u>	<u>Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles</u>
<u>Section 1968.1</u>	<u>Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles</u>
<u>Section 1968.2</u>	<u>Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles</u>
<u>Section 1968.5</u>	<u>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>
<u>Section 1976</u>	<u>Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions</u>
<u>Section 1978</u>	<u>Standards and Test Procedures for Vehicle Refueling Emissions</u>
Article 6 Emission Control System Warranty	
<u>Section 2035</u>	<u>Purpose, Applicability and Definitions</u>
<u>Section 2036</u>	<u>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>
<u>Section 2037</u>	<u>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>
<u>Section 2038</u>	<u>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>
<u>Section 2039</u>	<u>Emission Control System Warranty Statement</u>
<u>Section 2040</u>	<u>Vehicle Owner Obligations</u>
<u>Section 2041</u>	<u>Mediation; Finding of Warrantable Condition</u>
<u>Section 2046</u>	<u>Defective Catalyst</u>
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing	
Article 1 Assembly Line Testing	
<u>Section 2062</u>	<u>Assembly-line Test Procedures 1998 and Subsequent Model years</u>
Article 2 Enforcement of New and In-use Vehicle Standards	
<u>Section 2101</u>	<u>Compliance Testing and Inspection - New Vehicle Selection, Evaluation and Enforcement Action</u>
<u>Section 2109</u>	<u>New Vehicle Recall Provisions</u>
<u>Section 2110</u>	<u>Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model Year</u>
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls	
<u>Section 2111</u>	<u>Applicability</u>
<u>Section 2112</u>	<u>Definitions</u>
Appendix A to Article 2.1	
<u>Section 2113</u>	<u>Initiation and Approval of Voluntary and Influenced Recalls</u>
<u>Section 2114</u>	<u>Voluntary and Influenced Recall Plans</u>
<u>Section 2115</u>	<u>Eligibility for Repair</u>
<u>Section 2127</u>	<u>Notification of Owners</u>
<u>Section 2138</u>	<u>Restorative Maintenance</u>
<u>Section 2128</u>	<u>Repair Label</u>
<u>Section 2129</u>	<u>Proof of Correction Certificate</u>
<u>Section 2130</u>	<u>Capture Rates and Alternative Measures</u>

Section 2131	Preliminary Tests
Section 2132	Communication with Repair Personnel
Section 2133	Record keeping and Reporting Requirements
Section 2135	Extension of Time
Article 2.3 In-Use Vehicle Enforcement Test Procedures	
Section 2136	General Provisions
Section 2137	Vehicle Selection
Section 2139	Testing
Section 2140	Notification of In-Use Results
Article 2.4 Procedures for Reporting Failure of Emission-Related Components	
Section 2141	General Provisions
Section 2142	Alternative Procedures
Section 2143	Failure Levels Triggering Recall
Section 2144	Emission Warranty Information Report
Section 2145	Field Information Report
Section 2146	Emissions Information Report
Section 2147	Demonstration of Compliance with Emission Standards
Section 2148	Evaluation of Need for Recall
Section 2149	Notification of Subsequent Action
Chapter 3 Surveillance Testing	
Section 2150	Assembly-Line Surveillance
Section 2151	New Motor Vehicle Dealer Surveillance
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks	
Section 2235	Requirements

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/>

12.0 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. 264 (10/01/10) (Prop.)