

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF AIR QUALITY

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

### FINAL

**Secretary's Order No.: 2018-A-0007**

**Date of Issuance: February 6, 2018**

**Effective Date of the Amendment: March 11, 2018**

#### **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 the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

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

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 1140, *Delaware Low Emission Vehicle Program*. The Department proposes to update the adoption by reference of the California standards in Table 1 of Regulation 1140. These updates are necessary to conform to the federal Clean Air Act and to Delaware's State Implementation Plan ("SIP"). Several non-substantive technical corrections are also being proposed to the current regulatory language at this time.

The federal Clean Air Act ("CAA", "Act") establishes the framework for controlling mobile source emissions. In considering the impact of air pollution on the public health, one finds that the aggregate emission from motor vehicles contributes a very significant impact, when compared to the impact of other air pollution sources. The *Delaware Low Emission Vehicle Program* is just one means for the Department to reduce the impact of mobile sources on the public health.

The United States Congress has sought to reduce public health impacts due to air pollutants in various sections of the original Clean Air Act and its subsequent amendments. Under Subsection 202(a)(1) of the Act, Congress directed the U.S. Environmental Protection Agency ("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 which may reasonably be anticipated to endanger the public health or welfare. To avoid disruption in the motor vehicle manufacturing industry, Congress prohibited State and local agencies from regulating new motor vehicles or new motor vehicle engines under Subsection 209(a). Recognizing that California had been regulating this industry segment prior to March 30, 1966, Congress allowed California to continue adopting new motor vehicle standards, pending the EPA's review and approval of those standards under Subsection 209(b). Under Section 177, Congress allowed States in non-attainment areas to adopt new motor vehicle or motor vehicle engine standards, if such standards are identical to the California standards.

On December 1, 2013, Delaware adopted California's Low Emission Vehicle III standard and the Greenhouse Gas standard into 7 **DE Admin. Code** 1140. On August 30, 2014, Delaware submitted 7 **DE Admin. Code** 1140, and requested the EPA to incorporate this updated version of Delaware's low emission vehicle program into Delaware's State Implementation Plan ("SIP"). The EPA approved Delaware's low emission vehicle program SIP revision on October 14, 2015.

During the first half of 2017, the Department conducted a thorough review of the California Code of Regulations, and determined that, subsequent to the most recent revisions to 7 **DE Admin. Code** 1140 in 2013 as noted above, California had since revised fourteen of the fifty-six Sections listed in Table 1 of that regulation. Accordingly, the Department began its internal regulatory development process to update 7 **DE Admin. Code** 1140, to ensure that Delaware's standards were once again made identical to California standards, as required by Section 177 of the federal Clean Air Act. It should be noted that, while updating the fourteen Sections in the current 7 **DE Admin. Code** 1140, the Department identified the need to make several non-substantive technical corrections to this existing regulation. These corrections have been included in the proposed regulatory amendments as well.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice #2017-09 (July 3, 2017). The Department published its initial proposed regulation Amendments in the October 1, 2017 *Delaware Register of Regulations*. The Department then held a public hearing on October 25, 2017. Members of the public attended that hearing, however, no comment was received by the Department at that time. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through November 10, 2017. No comment was received from the public during the post-hearing phase of this promulgation.

Hearing Officer Vest prepared a Hearing Officer's Report dated January 26, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

### Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to **7 DE Admin. Code 1140, Delaware Low Emission Vehicle Program**, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will enable the Department to update the adoption by reference of the fourteen California sections previously incorporated into **7 DE Admin. Code 1140, Delaware Low Emission Vehicle Program**, to ensure that Delaware's standards remain identical to the EPA approved California standards, as mandated in Section 177 of the Clean Air Act, as well as make necessary non-substantive technical corrections to the existing regulation.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments to **7 DE Admin. Code 1140, Delaware Low Emission Vehicle Program**, pursuant to **7 Del.C. Ch. 60**;
2. The Department has jurisdiction under its statutory authority, pursuant to **7 Del.C. Ch. 60**, to issue an Order adopting these proposed regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed repeal, including at the time of the public hearing held on October 25, 2017, and held the record open through close of business on November 10, 2017, consistent with **29 Del.C. §10118(a)**, in order to consider public comment on the same before making any final decision;
4. Promulgation of the proposed regulatory amendments to **7 DE Admin. Code 1140, Delaware Low Emission Vehicle Program** will enable the Department to (1) update the adoption by reference of the fourteen California sections previously incorporated into **7 DE Admin. Code 1140, Delaware Low Emission Vehicle Program**, to ensure that Delaware's standards remain identical to the EPA approved California standards, as mandated in Section 177 of the Clean Air Act; and (2) make necessary non-substantive technical corrections to the existing regulation.
5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with **29 Del.C. Ch. 104**, and has selected Exemption "B1" regarding same, as this proposed promulgation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as published in the October 1, 2017 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, 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*; and
8. The Department shall submit this Order approving as final the proposed Amendments to **7 DE Admin. Code 1140, Delaware Low Emission Vehicle Program**, 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 Program

12/11/2013

#### 1.0 Purpose

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

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## 2.0 Applicability

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

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## 3.0 Definitions

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

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

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

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

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

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

**"CCR"** means the California Code of Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Secretary”** means the Secretary of the Department.

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

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

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

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

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

**“USEPA”** means the United States Environmental Protection Agency.

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

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4.0 Emission certification standards

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

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## **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 exhaust emission standards, as applicable in Title 13, CCR Section 1956.8 (g) or (h), 1960.1, 1961, 1961.1, 1961.2, or 1961.3 and
  - 5.1.2 the environmental performance label requirements for 2014 and subsequent model year vehicles in accordance with Title 13, CCR, Section 1965, and
  - 5.1.3 the evaporative emission standards in Title 13, CCR, Section 1976, and
  - 5.1.4 the refueling emission standards in Title 13, CCR, Section 1978, and
  - 5.1.5 the malfunction and diagnostic system requirements in Title 13, CCR, 1968.2, and
  - 5.1.6 the assembly-line testing procedure requirements in Title 13, CCR, Section 2062, and
  - 5.1.7 the specifications for fill pipes and openings of motor vehicle fuel tanks in Title 13, CCR, Section 2235.

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## **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.
  - 6.1.2 Effective for the 2015 and subsequent model-years, each manufacturer shall comply with the fleet average NMOG + NOx emission requirements and the LEV III phase-in requirements for passenger cars, light-duty trucks and medium-duty vehicles, and may earn and bank NMOG + NOx credits as applicable, all in accordance with Title 13, CCR, Section 1961.2.
  - 6.1.3 Effective for the 2014 through 2016 model-years, each manufacturer shall comply with the fleet average emission greenhouse gas requirements for passenger cars, light-duty trucks and medium-duty passenger vehicles, and for 2014 and subsequent model-years earn and bank GHG credits, in accordance with Title 13, CCR, Section 1961.1.
  - 6.1.4 Effective for the 2017 and subsequent model years, each manufacturer shall comply with the fleet average emission greenhouse gas requirements for passenger cars, light-duty trucks and medium-duty passenger vehicles, and may earn and bank GHG credits, in accordance with Title 13, CCR, Section 1961.3.
- 6.2 Each new vehicle model subject to 2.1 of this regulation shall satisfy the motor vehicle emission requirements of Title 13, CCR, Sections: 1956.8 (g) or (h), 1960.1, 1961, 1961.1, 1961.2, 1961.3, 1965, 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.
- 6.3 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.
- 6.4 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.
- 6.5 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.

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## **7.0 Warranty**

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

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## **8.0 Reporting and Record-Keeping Requirements**

- 8.1 Beginning with the 2014 model year, each manufacturer of a vehicle subject to 2.1 of this regulation shall submit annually to the Department, no later than May 1 following the close of the model year, a report itemized by test group and emissions standard documenting total new vehicle deliveries for sale or lease in Delaware.
- 8.2 Beginning with the 2014 model year, each manufacturer of a vehicle subject to 2.1 of this regulation shall submit annually to the Department, by no later than May 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 + NO<sub>x</sub> 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 + NO<sub>x</sub> 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 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.

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## **9.0 Enforcement**

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

~~12/11/2013~~ ~~[12/11/17~~ 3/11/18]

## 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, ~~refer 1140 refers~~ to various ~~section 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 ~~7 DE Admin. Code 1140: Table 40-1~~ 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 ~~Amended Date~~ ~~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 40-1**  
**California Code of Regulations (CCR)**  
**Title 13**  
**Provisions Incorporated by Reference**

Title 13, CCR	Title	Section Amended Date
	Chapter 1 Motor Vehicle Pollution Control Devices Article 1 General Provisions	
Section 1900	Definitions	<del>As effective December 31, 2012</del> <u>July 25, 2016</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 December 31, 2012</del> <u>July 25, 2016</u>
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 Cars, Light-Duty Trucks, and Medium-Duty Vehicles	<del>As effective August 7, 2012</del>
Section 1961.2	Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<del>As effective December 31, 2012</del> <u>October 8, 2015</u>
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<del>As effective December 31, 2012</del>
Section 1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	<del>As effective August 7, 2012</del> <u>October 8, 2015</u>
Section 1968.1	Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<del>As effective November 27, 1999</del>
Section 1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<del>As effective August 7, 2012</del> <u>July 25, 2016</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	<i>As effective <del>August 7, 2012</del> <u>July 25, 2016</u></i>
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	<i>As effective <del>December 31, 2012</del> <u>October 8, 2015</u></i>
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	<i>As effective <del>August 7, 2012</del> <u>October 8, 2015</u></i>
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	<i>As effective November 9, 2007</i>
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	<i>As effective <del>May 15, 1999</del> <u>December 5, 2014</u></i>
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	<i>As effective <del>August 7, 2012</del> <u>December 5, 2014</u></i>
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	<i>As effective August 7, 2012</i>
Section 2039	Emission Control System Warranty Statement	<i>As effective December 26, 1990</i>
Section 2040	Vehicle Owner Obligations	<i>As effective December 26, 1990</i>
Section 2041	Mediation; Finding of Warrantable Condition	<i>As effective December 26, 1990</i>
Section 2046	Defective Catalyst	<i>As effective February 15, 1979</i>
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing Article 1 Assembly Line Testing		
Section 2062	Assembly-line Test Procedures 1998 and Subsequent Model years	<i>As effective August 7, 2012</i>
Article 2 Enforcement of New and In-use Vehicle Standards		
Section 2101	Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action	<i>As effective <del>December 8, 2010</del> <u>November 27, 1999</u></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>August 7, 2012</del> <u>December 5, 2014</u></i>
Appendix A to Article 2.1		
Section 2113	Initiation and Approval of Voluntary and Influenced Recalls	<i>As effective January 26, 1995</i>
Section 2114	Voluntary and Influenced Recall Plans	<i>As effective November 27, 1999</i>
Section 2115	Eligibility for Repair	<i>As effective January 26, 1995</i>
Section 2127	Notification of Owners	<i>As effective January 26, 1995</i>
Section 2128	Repair Label	<i>As effective January 26, 1995</i>
Section 2129	Proof of Correction Certificate	<i>As effective January 26, 1995</i>

Section 2130	Capture Rates and Alternative Measures	<i>As effective November 27, 1999</i>
Section 2131	Preliminary Tests	<i>As effective January 26, 1995</i>
Section 2132	Communication with Repair Personnel	<i>As effective January 26, 1995</i>
Section 2133	Record keeping and Reporting Requirements	<i>As effective January 26, 1995</i>
Section 2135	Extension of Time	<i>As effective January 26, 1995</i>
Article 2.3 In-Use Vehicle Enforcement Test Procedures		
Section 2136	General Provisions	<i>As effective <del>January 8, 2008</del> 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>August 7, 2012</del> December 5, 2014</i>
Section 2140	Notification of In-Use Results	<i>As effective <del>August 7, 2012</del> December 5, 2014</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>August 7, 2012</del> December 5, 2014</i>
Section 2148	Evaluation of Need for Recall	<i>As effective November 27, 1999</i>
Section 2149	Notification of Subsequent Action	<i>As effective February 23, 1990</i>
Chapter 3 Surveillance Testing		
Section 2150	Assembly-Line Surveillance	<i>As effective December 30, 1983</i>
Section 2151	New Motor Vehicle Dealer Surveillance	<i>As effective December 30, 1983</i>
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	<i>As effective <del>August 7</del> August 8, 2012</i>

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

**~~12/11/2013~~ [12/11/17 3/11/18]**

#### **11.0 Document Availability**

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

**12/11/2013**

#### **12.0 Severability**

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

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

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