

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Smith, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: Proposed Regulation Amendments to 7 DE Admin. Code 1140 –
Delaware's Low-Emission Vehicle Program

DATE: October 17, 2023

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Wednesday, April 26, 2023, at 6:00 p.m. via the State of Delaware Zoom Platform by the Department of Natural Resources and Environmental Control (“DNREC,” “Department”) to receive comment on the proposed 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”) as amended on August 25, 2022, and finalized on November 30, 2022. 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 and greenhouse gas emissions from new light- and medium-duty vehicles commencing with model year 2027, and to add new requirements for zero-emission vehicles.

The U.S. Environmental Protection Agency (“EPA”) National Ambient Air Quality Standards (“NAAQS”) establishes the criteria for pollutants shown to threaten human health, welfare, and the environment. The criteria pollutants include sulfur dioxide (SO₂), nitrogen dioxide (NO_x), carbon monoxide (CO), ozone (O₃), lead (Pb), particulate matter less than 10 microns in diameter (PM₁₀), and particulate matter less than 2.5 microns in diameter (PM_{2.5}). The EPA establishes air quality standards of the

criteria pollutants and states measure the pollutants using the ambient air monitoring network to determine how high the pollution is in that area.

Currently, the largest source contributing to emissions in Delaware is the transportation sector's air quality pollutants. These pollutants consist of particulate matter, CO, NO_x, and greenhouse gas (GHG) emissions. Vehicle emissions contribute to 30% of greenhouse gas emissions compared to other factors 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 to 60% of these emissions.

Delaware's ambient air quality monitors showed that New Castle County did not record pollution concentrations below the ozone standard. Although Kent County and Sussex County were designated as attainment, New Castle County is a part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE metropolitan statistical area, and the EPA made a final rule dated November 7, 2022 (87 FR 60897) that designated New Castle County, Delaware as "Moderate" non-attainment for the 2015 Ozone NAAQS.

Historical Background

In 1967, the federal *Clean Air Act* ("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. Vehicle emissions consist of volatile organic compounds (VOC), particulate matter, CO, NO_x, and GHG. When the NO_x combines with VOC emissions and sunlight/heat, it produces ground-level ozone. Ground-level ozone ultimately affects public health, especially the elderly and children with underlying health conditions.

In 1970 the CAA established the first national motor vehicle tailpipe emission standards to curb emissions of CO, VOCs, and NO_x. The federal standards took effect

for cars and light-duty trucks in 1975. Under subsection 209(a) of the CAA, state and local agencies were prohibited from regulating any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines, thus requiring states to adhere to federal standards established in the CAA. The stipulation was put in place to avoid disruption of the motor vehicle manufacturing industry however, as California had the worst air pollution, they were exempt from this requirement and granted a waiver under Section 209(b) of the CAA. California was granted the authority to enact stricter standards than the federal standards established by the EPA.

In 1990, Congress amended the CAA by revising the federal standards and adding Section 177, allowing other states that are non-attainment to adopt California's (more stringent) vehicle emission standards. This gives states the option to adopt either the federal standards or the California standards. States that choose to adopt California's vehicle emission standards are required to adopt an identical version of California's standards that have been approved by the EPA and must provide auto manufacturers a two-year advance notice before the start of the model year.

During that time, the California Air Resource Board ("CARB") implemented the Low-Emission Vehicle ("LEV I") program. LEV I regulations included three primary elements: 1) tiers of exhaust emission standards for increasingly more stringent categories of low-emission vehicles, 2) a mechanism requiring each auto manufacturer to phase in a progressively cleaner mix of vehicles from year to year with the option of credit banking and trading, and 3) a requirement that a specified percentage of passenger cars and light-duty trucks be zero-emission vehicles (ZEVs) with no exhaust or evaporative emissions. After California established its vehicle emission standards, several states came together with the auto industry to develop the National Low Emission Standard ("NLEV"), which was finalized by the EPA in 1997. The NLEV served as the federal standard and was adopted by Delaware in October 1999. Delaware continued under the federal standards through 2010.

In 2010, Delaware adopted the California 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 (“ACC I”) program, incorporating LEV III with GHG Standards and Zero-Emission Vehicles (“ZEV”) Standards. The three elements combined the control of smog-causing pollutants and greenhouse gas emissions into a single coordinated package of requirements for model year 2015 through 2025.

On December 1, 2013, Delaware adopted two of the three components of the ACCI program into the Regulation, specifically California’s LEV III and GHG Standard. The Department chose not to adopt the third element – ZEV Standards. It should be noted that subsequent to adopting the California standards, the Department has amended the Delaware Low Emission Vehicle Program (2013, 2018, and 2019) to remain in compliance with Section 209 of the CAA. Delaware’s adoption of the ACCI program allowed Delaware to make great strides towards reducing greenhouse gas emissions however, the 2016 GHG inventory resulted in an overall emissions reduction of 18.3%.

In 2017, Governor Carney committed to the Paris Agreement to reduce pollution. Delaware’s goal is to achieve a 26-28% reduction of emissions, from the 2005 levels, by 2025. Nevertheless, Delaware has not yet achieved the emissions reduction targets set in alignment with the 2017 commitment made by Governor Carney. Delaware’s *Climate Change Plan* identifies strategies to reduce greenhouse gas emissions and one of the strategies is the adoption of California’s ZEV Standards.

In March 2022, Governor Carney directed the Department to begin the regulatory development process for the adoption of California’s Advanced Clean Car program which includes reducing criteria and greenhouse gas emissions and establishes requirements for the increase of zero-emitting vehicles to be delivered and offered for sale. 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 inventory, which will also reduce emissions to combat climate change goals.

Advanced Clean Car II Program

On August 25, 2022, California revised its vehicle emission program, and it was adopted by CARB on November 30, 2022, as the Advanced Clean Car II (“ACC II”) program. The purpose of the ACC II program is to increase the sales of new cars and light-duty trucks to 100% ZEVs by MY 2035 which will reduce smog-forming emissions from new internal combustion engine vehicles (ICEVs) and other toxic air pollutants. This will be achieved by increasing sales of new ZEVs, battery electric vehicles (BEVs), hydrogen fuel cell electric vehicles (FCEV), and the cleanest possible plug-in hybrid-electric vehicles (PHEVs) each year beginning with MY 2026.

The ACC II program requires automobile manufacturers (Original Engine Manufacturers, OEM) to design, produce, and deliver vehicles to market that meet the Advanced Clean Car emission standards. They will be required to certify 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 various flexibilities established in the ACC II program to assist manufacturers in meeting the established ZEVs goals.

The table below identifies the percentage requirement imposed solely on auto manufacturers to deliver new ZEVs, increasing yearly from MY 2026 through MY 2035. The chart below identifies where the market is expected to be based on consumer purchases in previous years.

Model Year	% Requirement	Model Year	% Requirement
2026	35%	2031	76%
2027	43%	2032	82%
2028	51%	2033	88%
2029	59%	2034	94%
2030	68%	2035 and subsequent	100%

It should be noted that as the ACC II program moves the new vehicle model year fleet to electric vehicles by MY 2035, many of the gasoline vehicles sold before that model year will continue to be utilized well beyond MY 2035. The proposed ACC II rule 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.

The Environmental Research Company, which is partnered with the U.S. Climate Alliance, analyzed the projected baseline sales of ICEVs, PHEVs, BEVs, and FCEVs to evaluate the economic impacts with and without the adoption of the ACC II program. Using the 2019 sales data, linear trends were estimated for each type of vehicle without the adoption of the ACC II program. While clean vehicle sales are expected to increase through the years, PHEVs and FCEVs are expected to plateau at 0.8% sales in 2028, BEVs are expected to plateau at 7.8% in 2030, and contrary to trend clean vehicles, ICEVs trends are expected to slightly decrease through the years and plateau in 2030 at 88%.

With the adoption of the ACC II program, manufacturers are required to deliver for sale, a percentage of ZEVs to Delaware, which will expand the availability and opportunity for the market to significantly upsurge in sales. Based on the 2019 BEV sales in Delaware, and using the sales growth in California, the below chart estimates the expected sales through MY 2035.

Model Year	BEV+FCEV	PHEV	Model Year	BEV+FCEV	PHEV
2026	22.2%	3.3%	2031	72.6%	3.4%
2027	30.7%	3.3%	2032	78.6%	3.4%
2028	39.1%	3.4%	2033	81.3%	6.7%
2029	47.6%	3.4%	2034	82.7%	11.3%
2030	56.1%	3.4%	2035	82.7%	17.3%

Through the adoption of the ACC II, the increase of BEVs and FCEVs sales will reduce criteria pollutants and greenhouse gas emissions from light- and medium-duty vehicles which are the greatest contributor to emissions of criteria pollutants and GHG in Delaware. In general, adopting ACC II reduces on-road mobile source emissions and gasoline production and distribution emissions, but would increase the electric generation emissions.

Beginning with MY 2027 implementation, Delaware citizens will have realized a reduction in nitrogen oxides of 123 tons, particulate matter of 8 tons, and a well-to-wheel carbon dioxide of 1.2 million metric tons by 2030. In 2035, there is a significant reduction from the 2030 projected emission reduction, estimating a reduction of 502 tons of nitrogen oxides, 38 tons of particulate matter, and 5.3 million metric tons of well-to-wheel carbon dioxide by 2035. Thereafter, in 2040 a reduction in nitrogen oxides of 1,169 tons, 85 tons of particulate matter, and 11.9 million metric tons of well-to-wheel carbon dioxide.

In addition, the Department considered the impact of the proposed Amendments on low-income and disadvantaged communities. The communities that are often disproportionately exposed to vehicular pollution will benefit from cleaner ICEVs as well as ZEVs, by reducing exposure to vehicle pollution in communities throughout Delaware. Further, the proposed ACC II program provides ZEV assurance measures (13 CCR 1962.4(e)) that will ensure these emissions benefits are realized and long-lasting while supporting more reliable ZEVs in the used vehicle market, where the cost of ZEVs become more affordable to lower-income households. The proposed amendments also provide opportunities for manufacturers to take actions that improve access to ZEVs for disadvantaged, low-income, and other frontline communities, including investments in community car share programs, producing affordable ZEVs, and keeping used vehicles in Delaware.

The ACC II program also provides charging requirements, minimum warranty and durability requirements, increased serviceability, and facilitates battery labeling, which will help ensure consumers can successfully replace their ICEVs within Delaware households with new or used ZEVs and PHEVs that meet their needs for transportation and protect the emission benefits of the program. These standards will also reduce the total cost of ownership for passenger cars and light trucks, saving drivers money in the long term and further promoting consumer adoption.

As previously noted, the EPA allows states to implement one of two options, the federal emissions standards or California emission standards. The federal emission standards are less stringent than the ACC II program. Federal emissions standards for vehicles, 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 MY 2012 through MY 2025 and were recently amended in December 2021, for MY 2023 through MY 2026.

In accordance with *7 Del.C. Chapter 60 Environmental Control § 6010* and *7 Del. C. Chapter 67 Motor Vehicle Emissions §6703*, the Department is authorized to regulate emissions and reduce air pollution and air contaminants from legislation passed by the Delaware General Assembly. As the Department initially adopted California's vehicle emission program in 2010, and in accordance with Section 209 of the CAA, the Department is required to adopt an identical version of California's standards that have been approved by the EPA (November 2022). The Department is proposing to adopt 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, Delaware can achieve long-term reduction goals by requiring auto manufacturers to design, produce, and certify their products to meet the requirements before delivering them for sale in Delaware. Additionally, under Section 209 of the CAA, the Department must implement the adoption of California's standards 2 years prior to the Department's commencement of the newest vehicle model release. Vehicle models are released in the

fall of the previous year, i.e., MY 2027 is released in the fall of 2026. The Department plans to commence the adoption of the Regulation no later than January 2024, to which the earliest model year applicable to the proposed Amendments will begin with MY 2027. This will require the manufacturer to offer a specific percentage of zero-emission beginning with MY 2027 and increasing yearly through 2035.

The proposed Amendments will 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. In addition, the Department is also proposing to amend the title of the Regulation from “Low Emission Vehicle Program” to “Advanced Clean Car Program”, proposed minor revisions through the Regulation to align with the regulatory style manual, and added definitions related to the proposed adoption of the ACC II program.

The Department held two virtual stakeholder workshops, on October 13, 2022, and October 26, 2022. The agenda of the stakeholder’s workshop was to provide an overview of the Advanced Clean Cars II program, review the Regulation language, provide information on complementary policies and programs, review the implementation process of the Amendments, and provide a platform for comments from stakeholders. The stakeholder's workshops helped the Department identify and understand the issues relative to implementing the Advance Clean Car II program and helped to craft Delaware’s plan for achieving the clean air outcomes anticipated by the ACC2 program.

The Department then held five virtual public workshops on November 15, 16, and 17, 2022 and December 13 and 15, 2022. The workshops provided the same information and opportunity for the public to provide comments, as the stakeholder's workshop detailed above. 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 has the statutory basis and legal authority to act with regard to proposed regulatory promulgation, pursuant to 7 *Del.C.* §6010(a) and (c). The Department published its proposed regulation Amendments in the April 1, 2023, *Delaware Register of Regulations*. Thereafter, a virtual public hearing was held on April 26, 2023, with an in-person viewing option located at Kent County Levy Court Building in Dover, DE. There were approximately 250 virtual attendees at the Department’s virtual public hearing and 77 participants in attendance at the in-person venue. The Department received one-hundred and thirty-four registrations for public comment. The Department required the public to register to provide verbal comment at the hearing, by 12 p.m. the day of the hearing. The Department received 134 public comment registrations. Due to time restrictions of the in-person venue, the comment period ended shortly after 10:00 p.m. and the Department concluded the hearing at 10:11 p.m. The Department afforded all public members to provide their comments in writing through the hearing record (“Record”). Pursuant to Delaware law, the Record remained open for a thirty (30) day period, subsequent to the public hearing for receipt of public comment. The Record formally closed with regard to public comment on May 26, 2023, with 2,469 comments received by the Department in this matter.

Subsequent to the close of the Record as noted above, this Hearing Officer, Theresa Smith (formally “Theresa Newman”) requested a Technical Response Memorandum (“TRM”) from the Department’s subject matter experts in the Division of Air Quality, to address the comments and concerns associated with this proposed Amendments, as set forth in the public comment received by the Department. The TRM provides full details of the public comments and the Department’s responses, however, the report herein will provide a brief overview of the TRM, discussed below.

It should be noted that, subsequent to TRM the Department proposed revisions to the initially proposed Amendments. These revisions are not substantive in nature therefor no further noticing or additional hearing is necessary in this matter. As set forth above, all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents: (1) a verbatim transcript of the virtual public hearing held on April 26, 2023; (2) eighteen (18) documents introduced by the responsible Department staff at the time of the virtual public hearing and marked by this Hearing Officer accordingly as “Department Exhibits “1-18”, and (3) the TRM, dated September 15, 2023. The Department’s staff primarily responsible for the drafting and overall promulgation of the proposed Amendments, Kyle Krall, Engineer I with the Division of Air Quality (“DAQ”), developed the Record with the relevant documents in the Department’s files.

The Department extended the hearing record through May 26, 2023, providing the public an opportunity to provide comment for a total of 30 days after the hearing was conducted. From that, the Department received a total of 2,469 comments regarding the proposed Amendments. In response to all comments received from April 1, 2023, through the close of the hearing record on May 26, 2023, the Department’s responsible staff developed the TRM that responds to all comments and concerns.

I find that the aforementioned TRM offers a detailed regulatory review of all aspects of the proposed Amendments, identifies all of the concerns raised by the public, and responds to them in a balanced manner, accurately reflecting the information contained in the Record. The Department’s TRM is attached hereto as Appendix “B” and are expressly incorporated herein by reference. Details of the TRM will be discussed below.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Currently pending before the Department is the proposed Amendments to 7 DE Admin. Code 1140 – Low Emission Vehicle Program., updating the adoption by reference of California’s ACC II Regulation, revising the title of the Regulation from “Low Emission Vehicle Program” to “Advanced Clean Car Program”, minor revisions throughout the Regulation to align with the regulatory style manual, and added

definitions related to the proposed adoption of the ACC II program. In accordance with 7 *Del.C.* §6010(a) and (c), the Department has the statutory basis and legal authority to act with regard to the regulatory promulgation. I find that under Section 177 of the CAA, the EPA authorizes states to adopt the CARB-approved California's motor vehicle emission standards. Furthermore, under CAA Section 209, such State that chooses to adopt California's motor vehicle emission standards must: (1) adopt standards that are identical to the California standards for which a waiver has been granted for such model year, and (2) such State adopts the standards at least two years before the commencement of such model year.

The Department's TRM, attached hereto as Appendix "B," acknowledges the comments received from the public concerning proposed Amendments and provides a thorough and balanced response to the same, accurately reflecting the Record generated in this matter. The scope of the comments varied from support for the entire regulation to comments on specific aspects of the regulation.

For the purposes of brevity, this Report defers to Appendix "B" attached hereto, along with all other previously identified supporting documents that comprise the Record (including, but not limited to, the DNREC public hearing web page dedicated to this matter, where all comments received regarding the proposed Amendments, including the source of each comment, are posted in their entirety), for a comprehensive understanding of the public comments received by the Department in this matter, as well as the Department's formal responses to the same.

The Department received several comments in support of and concerns about the proposed Amendments. Those who were in support of the proposed Amendments expressed benefits to air quality and public health, especially for overburdened communities. The concerns on various topics are discussed in the following section of this Report and provide a summary of topics received in this matter, related to the proposed Amendments, along with the Department's responses to the same. Again, the entirety of the Department's responses to all comments is fully set forth in the

aforementioned TRM, which again has been expressly incorporated herein as Appendix “B.”

The Department received misconception comments about the proposed Amendments. The Department provided clarity on the authority, intent, applicability, and exemptions, pertaining to the mandate of ZEV vehicles. Some comments expressed that the proposed Amendments were unconstitutional. The Delaware General Assembly delegated the Department the authority to propose and adopt regulations to reduce air pollution from vehicles, under the 7 *Del.C.* Chapter 60 and 67. Furthermore, the Department is mandated under the EPA’s *Clean Air Act* to adopt federal or California, vehicle emission standards that have been approved by the EPA. Moreover, under Section 209 of the *Clean Air Act*, states that adopt California standards must adopt an identical version. The Department does have the option to adopt the less stringent federal vehicle standards, however, the intent of the proposed Regulation, to reduce GHG emissions is supported by California’s (more stringent) requirements.

The public comment expressed opposition to the rulemaking, stating that they should have the freedom to choose a vehicle that best suits their needs. The intent of the proposed Amendments is to reduce criteria and greenhouse gas emissions through the largest sources of these emissions, the transportation sector, that will enable Delaware to progress towards meeting the *Climate Action Plan* goals. The proposed Amendments 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. It should be noted that in addition to ZEVs, PHEVs will be permitted to make up a maximum of 20% of a manufacturer’s ZEV credit compliance obligations in a model year. The proposed Amendment does not prohibit the sales of other light and medium-duty vehicles for model years prior to MY 2035, including vehicles used for farming equipment. Furthermore, under 21 *Del.C.* §2113- Special Farm Vehicle Registration, vehicles tagged as “Farm Vehicles” or “FV” tags, are exempt from the Regulation.

There were also reservations raised about the schedule within the ACC II program, which aims to increase the sales of new ZEVs from 43% in 2027 to 100% by 2035. Commenters have expressed that the timeframe insufficient for the gradual replacement of new gasoline- and diesel-powered cars. Based on the available evidence, the Department believes the schedule is achievable and allows Delaware to meet its scientifically driven climate goals based on the data mentioned above. Additionally, the Department plans to conduct annual reviews to confirm the delivery of compliant vehicles to Delaware to indicate that the technological advancements are occurring in the automotive industry as anticipated. 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 California standards, using tracking tools developed by CARB.

Although the Department believes the standards set forth by California standards are achievable for the reasons mentioned above, the Department is also aware of the public concerns regarding the requirement of ZEVs increasingly large percentage, reaching 100% by 2035. The Department considered the above annual review process as an essential aspect of Delaware's anticipated economic trends. As Section 209 of the CAA limits the flexibilities that states have when adopting California standards, other states have considered adopting California standards through MY 2032, which is a possible option for Delaware.

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. 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 ICCT's 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 around 2033. Additionally, the federal government offers incentives such as tax credits/ rebates, up to \$4000 toward used ZEVs purchases and up to \$7500 towards new ZEVs purchases, and Delaware also offers new and used vehicle rebates of up to \$2,500 for BEVs. There is also a federal tax credit of 30% of the cost of hardware and installation, up to \$1,000.28 for home charging stations. This tax credit is available through December 31, 2032, and then beginning in 2023, the credit will also apply to bi-directional charges, which will enable 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. Other program incentives will be applied by Delmarva Power and Delaware Electric Cooperative for their customers.

The fuel 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.

Lastly, the Department received comments regarding environmental justice strategies to help low-income households afford ZEVs, ensure the 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.

I find that given the significant opposition to phasing out the sale of new ICEV vehicles by 2035, there may be merit to the option, referenced in the record, of adopting the identical version of the ACC II program only through 2032. If that option is chosen, for the model year 2033 and beyond, the ACC II program percentage requirements for model years 2033 through 2035 and beyond of zero-emission vehicles, would not apply in Delaware, and the federal standard would apply, by default. For clarity purposes, the

Department proposed a draft of the *revised* proposed Amendments, for the consideration of the Secretary, if the option to adopt the California standards through MY 2032 is chosen. Furthermore, I find that the *revised* proposed Amendments, if chosen, are a reasonable response to concerns raised in the record, and is not a substantial change that would require additional public notice, public comment, or an additional hearing. The Department's initial proposed Amendments and *revised* proposed Amendment are attached hereto as Appendix "C" and "Appendix "A" and are expressly incorporated herein by reference, respectively.

Based on the Record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendments to 7 DE Admin. Code 1140 to update the adoption by reference to California's Advanced Clean Car II low-emission vehicle and greenhouse gas standards and to add the requirements for zero-emitting vehicles beginning with the model year 2027. The proposed Amendments or the *revised* proposed Amendments, will enable the Department to protect public health and the environment by reducing the impact of mobile source emissions and reducing Delaware's greenhouse gas inventory. Additionally, it will also reduce emissions to progress toward climate change goals established by *Delaware's Climate Action Plan*.

Accordingly, I recommend the promulgation of adopting the ACC II program, in accordance with Section 177 of the CAA in which the Secretary has the authority under 7 *Del. C.* §6010 and implement identical standards of California through either 2032 or through 2035 and beyond. Such recommendations shall be considered in a customary manner provided by law.

Additionally, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §§6010, 6703:
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 initial 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 same, including at the time of the 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 proposed amendments or the *revised* proposed amendments to 7 DE Admin. Code 1140, as set forth herein, will enable the Department to update the adoption by reference of California's Advanced Clean Car II low-emission vehicle and greenhouse gas standards and add the requirements for zero-emitting vehicles beginning with the model year 2027, 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 provided adequate reasoning to adopt by reference the California Advanced Clean Car II low-emission vehicle and

greenhouse gas standards beginning with MY 2027, and to adopt standards through MY 2035, which was the proposal discussed at the public hearing, or adopt standards through MY 2032, which is a reasonable response to concerns raised in the record, and is not a substantial change that would require additional public notice or comment;

6. The Department has reviewed the initially proposed Amendments in 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;
7. 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 above-referenced regulatory Amendments is consistent with the Department's Environmental Justice policy;
8. The Department has provided adequate reasoning to adopt by reference the California Advanced Clean Car II low-emission vehicle and greenhouse gas standards beginning with MY 2027, and to adopt standards through MY 2035, which was the proposal discussed at the public hearing, or adopt standards through MY 2032, which is a reasonable response to concerns raised in the record, and is not a substantial change that would require additional public notice or comment;
9. The Department's proposed regulatory Amendments, as initially published in the April 1, 2023, *Delaware Register of Regulations*, and subsequently *revised*, as set forth in Appendix "C" and Appendix "A", respectively

hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulation. Consequently, they should be 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

10. The Department shall submit the *revised* proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



Theresa L. Smith
Public Hearing Officer

\ahear\ Reg.Amend.1140 - Delaware's Low-Emission Vehicle Program. 2023

Attachments/Appendix:

Appendix A: *revised* Proposed Reg. Amendments

Appendix B: TRM dated 09.15.23

Appendix C: Proposed Reg. Amendments