Delaware Register of Regulations

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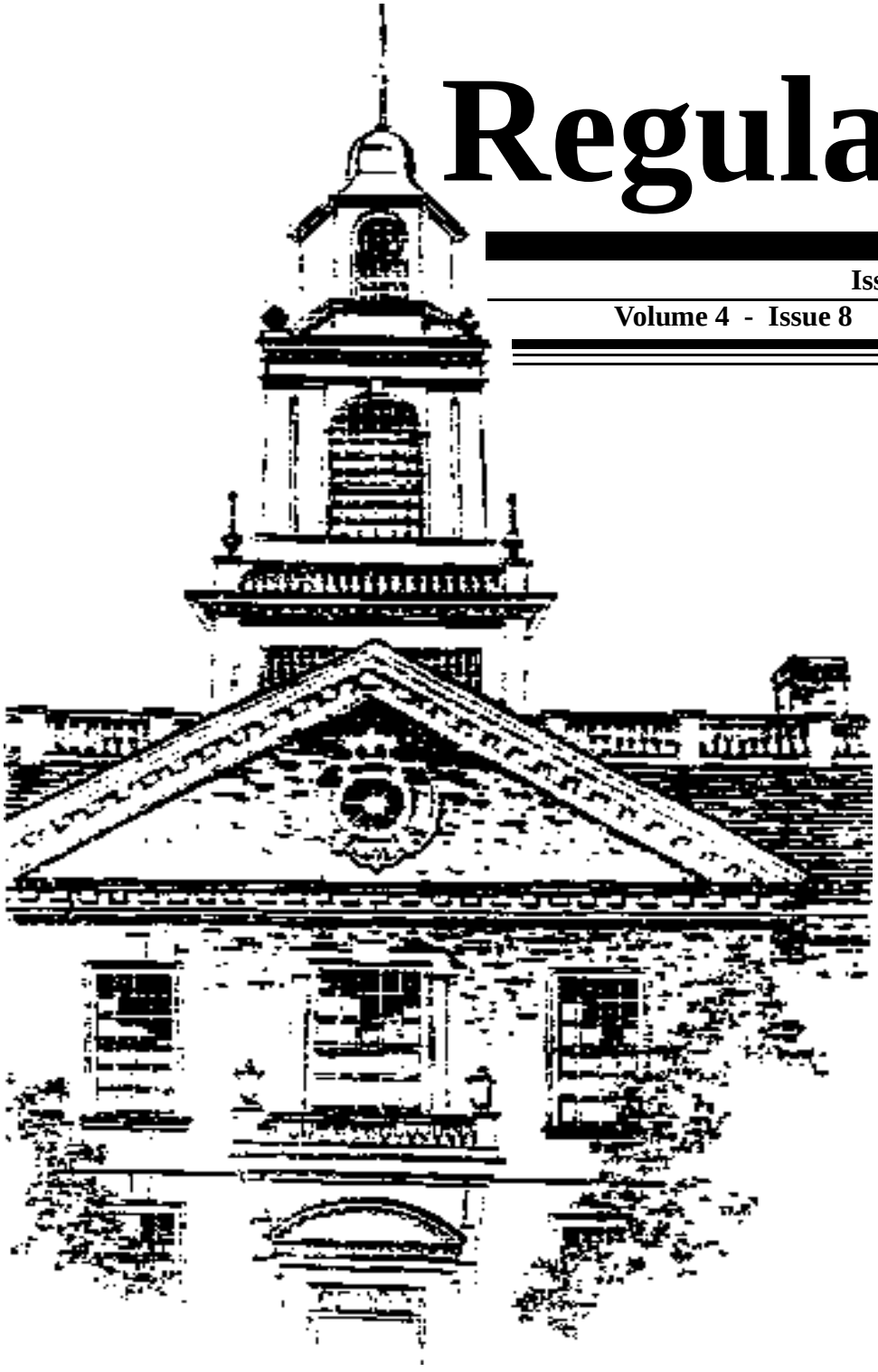

IN THIS ISSUE:

Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before January 15, 2000.

DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

4 **DE Reg.** 769 - 775 (11/1/00)

Refers to Volume 4, pages 769 - 7775 of the Delaware Register issued on November 1, 2000.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is $120.00. Single copies are available at a cost of $12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.

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PROPOSED

FINAL

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GOVERNOR

ATTORNEY GENERAL

GENERAL NOTICES

CALENDAR OF EVENTS/HEARING NOTICES

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the Delaware Register of Regulations.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the Register in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF ELECTRICAL EXAMINERS

24 DE Admin. Code 1400

Statutory Authority: 24 Delaware Code, Sections 1406(a)(1) (24 **Del.C.** §§1406(a)(1))

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(a)(1) has proposed changes to its rules and regulations to supplement the comprehensive revision that was effective April 11, 2000. The changes clarify the documentation to satisfy the statutory qualifications, the insurance requirement for employees, and the continuing education approval and compliance process. A renewal requirement for inspection agencies is included and the term "expired" is substituted for "lapse" to describe a license that was not timely renewed.

A public hearing will be held at 9:00 a.m. on March 7, 2001 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

Board of Electrical Examiners

Statutory Authority:(24 **Del.C.** 1406)

1.0 License required
2.0 Applications
3.0 Qualifications
4.0 Examinations
5.0 Fees
6.0 License and Insurance
7.0 Expiration and Renewal
8.0 Continuing Education
9.0 Loss of license holder
10.0 Exceptions
11.0 Reciprocity
12.0 Required Inspection
13.0 Organization of the Board
14.0 Homeowners Permits
15.0 Inspection agencies
16.0 Voluntary treatment option for chemically dependent or impaired professionals

1.0 License required.

1.1 No person shall perform electrical services or represent themselves as qualified to perform electrical services without first having been duly licensed unless specifically excepted by statute. 24 **Del.C.** §§1407, 1419

1.2 To perform "electrical services" or "electrical work" means to plan, estimate, layout, perform, or supervise the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting,

heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, and overhead and underground primary distribution systems.

1.3 A license is not required for servicing equipment in the fields of heating, air conditioning, refrigeration or appliances.

2.0 Applications.

2.1 Applications may be obtained in person during regular business hours or by mail from the Division of Professional Regulation, Cannon Building, Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904-2467 . Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.

2.2 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

2.3 Applications approved for testing will be valid for two years. If the test isn't taken, the application is destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

3.0 Qualifications.

3.1 Persons demonstrating the education and experience qualifications set forth in 24 **Del. C.** §1408 may be licensed as a master electrician, limited electrician, master electrician special, or limited electrician special.

3.2 An applicant shall submit proof of qualifications verified by his or her affidavit on a form approved by the Board. Proof of experience requires either an employer's affidavit or a tax form w-2~~, or tax Schedule C~~. The required experience and training must be completed prior to taking the licensure test.

3.3 Applicants relying on military training and experience shall submit official documentation from the supervising officials showing type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted when supervisory officials are not available or cannot be located.

3.4 The requirement of two years of technical training under 24 **Del.C.**§ 1408 (a)(1)(c) can be met by successful completion of two years of technical training related to electrical technology in a vocational/technical high school or by completion of 48 credit hours in technical training related to electrical technology at an accredited post-secondary school.

3.5 The experience necessary under 24 **Del.C.** §1408 to qualify for a particular license must relate to the activity authorized by such a license as defined in 24 **Del.C.** §1402(10) - (13).

4.0 Examinations.

4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance, and payment of the fee as provided herein. A member of the State Board of Electrical Examiners ~~will~~ may attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.

4.2 Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.

5.0 Fees

5.1 Fee information can be obtained from the Division of Professional Regulation, Cannon Building Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904 -2467.

6.0 License and Insurance.

6.1 The license will be issued by the Division of Professional Regulation to a qualified applicant upon receipt of the required fee and proof of insurance.

6.2 Each licensee shall maintain general liability insurance of at least $300,000.00. Proof of said insurance shall be submitted at the time of license issuance and each renewal.

6.3 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his or her employer must maintain separate insurance for that risk as provided under these regulations.

7.0 Expiration and Renewal.

7.1 ~~All licenses as master electrician or master electrician special expire on June 30, 2000 and even - numbered years thereafter. All licenses as limited electrician or limited electrician special expire on June 30, 2001 and odd - numbered years thereafter.~~ Beginning in 2002, all licenses expire June 30 and biennially every two years thereafter.

7.2 As a condition of renewal, each applicant must show proof of continuing education as required in the Rules and Regulations. Extra continuing education hours do not

carry over to the next licensing period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.

7.3 A license is ~~lapsed~~ expired when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee may activate ~~a lapsed~~ an expired license within one year of the date the renewal application was due by meeting all requirements and paying an additional fee set by the Division of Professional Regulation.

7.4 A licensee with a valid license may request in writing to be placed on inactive status. An inactive status can be effective for up to two years and renewed biennially by application to the Division upon proof of 10 hours of continuing education. Said license may be reactivated by the Board upon written request ~~which includes evidence of 10 hours of continuing education completed within the preceding 2 years~~, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of ~~lapse or~~ inactive status.

7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience satisfies the requirements under 24 **Del.C.** §1408(a). However, the applicant must take the examination required by §1408(5) again and achieve a passing score.

8.0 Continuing Education

8.1 Continuing education (CE) is required of all licensees and proof shall be submitted to the Board by April 30 of any year after 2000 in which a license is to be renewed. For example, if a license must be renewed June 30, 2001, the proof of completion of CE is due on April 30, 2001. A licensee who has submitted CE hours that are not allowed will be notified so that he or she may obtain replacement CE before the June 30 expiration of the license.

8.2 Courses must be approved by the Board in order to qualify as CE. Licensees may contact the Administrative Assistant of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.

8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.

8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and name of the instructor.

~~8.2~~ 8.2.3 Sponsors or licensees seeking pre-approval ~~of CE hours~~ should submit the request as provided in 8.1.2 ~~on a form approved by the Board~~ at least 60 days before the CE course is being offered.

8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.1.

8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.

8.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

8.5 A log of CE on a form approved by the Board shall be maintained and submitted. Documentation of the CE should not be routinely sent with the log but must be retained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirements. Licensees selected for the random audit shall submit attendance verification.

9.0 Loss of license holder

9.1 A procedure permitting temporary practice after loss of a licensee to avoid business interruption is provided in 24 **Del.C.** §1418 and is necessary only where there is no currently employed licensee to assume the duties of the former license holder.

9.2 The notification must include documentation of the business relationship with the former license holder.

10.0 Exceptions.

10.1 No license is required for performing electrical work by the following persons or entities:

10.1.1 persons working under the supervision of a Delaware licensed master or limited electrician;

10.1.2 persons under the supervision of a licensed electrician who is the owner or full-time employee of a company performing electrical work;

10.1.3 a professional engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board as the person responsible for the plant repairs, maintenance, and electrical additions;

10.1.4 the Department of Transportation, or a contractor, for work performed by or under the supervision of the Department for the installation erection, construction, reconstruction and/or maintenance of drawbridges and traffic control devices

10.1.5 persons working beyond the main breaker or

fuse of 200 amps or less in a structure used exclusively for agriculture;

10.1.6 persons performing the work of any light or power company, electric or steam railway company, telegraph or telephone company when the work is part of the plant or service used in rendering authorized service to the public such as power delivery by an electric company. This exception ends at the point of service, termination box, or demarcation point;

10.1.7 a homeowner who has obtained a homeowner's permit provided by law.

11.0 Reciprocity

11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of reciprocal state's current licensure requirements. If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof or practice can be by an employer's affidavit, tax form w-2 , or tax Schedule C

12.0 Required Inspection.

12.1 Every licensee shall file for an inspection by a licensed inspection agency no later than five working days after the commencement of electrical work. The inspection agency shall complete the inspections no later than five working days after the application has been received.

12.2 Any professional engineer excepted from licensure shall at least annually file with the Board a certificate of inspection by a licensed inspection agency and a letter stating that all repairs, maintenance, and additions to a manufacturing or industrial plant meet the Standards of the National Electrical Code. The annual inspection should include a representative sampling of the work performed by the authority of the responsible professional engineer.

12.3 Any person performing electrical work on agricultural structures excepted from licensure shall nevertheless obtain a certificate of inspection from a licensed inspection agency for new installations.

12.4 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection by a licensed inspection agency.

13.0 Organization of the Board

13.1 Election of Officers

Annually during the July meeting, the Board shall elect officers to serve for a one year term from September 1-August 31.

13.2 Duties of the Officers

13.2.1 President - The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position. In conducting meetings or hearings, the President may limit or exclude evidence as provided under the Administrative Procedures Act unless overruled by a majority of the Board.

13.2.2 Vice President - The Vice President assumes the duties and powers of the President when the President is unavailable.

13.2.3 Secretary - The Secretary assumes the duties and powers of the President when neither the President nor the Vice President is available.

13.2.4Complaint officer - The complaint officer shall be a professional member who works with the investigator of the Division of Professional Regulation when complaints are investigated pursuant to 29 **Del.C.** §8807. The complaint officer shall report to the Board when complaints are closed and recuse himself or herself from participating in disciplinary hearings involving matters that have been reviewed in his or her capacity as complaint officer.

13.2.5 Education officer - The education officer may review courses submitted for continuing education approval and makes recommendations to the Board.

13.3 Meeting Minutes

The minutes of each meeting are taken by the Administrative Assistant from the Division of Professional Regulation and approved by the Board.

14.0 Homeowners Permits

14.1 The Division of Professional Regulation is authorized to issue homeowners' permits pursuant to an application process approved by the Board. Generally homeowner's permits are not required for replacement in kind but are required for new construction, renovation, and any work that requires a building permit.

14.2 A homeowner shall not be permitted to install a hot tub or a swimming pool.

15.0 Inspection agencies

15.1 Inspection agencies shall be licensed in accord with the provisions of 24 **Del.C.** §1421 in order to operate in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation. Licenses must be renewed annually on June 30 by completing the renewal form and paying the fee determined by the Division.

15.2 No inspection agency will be approved until it produces proof of general liability insurance in the amount of at least $1,000,000.00 and errors and omissions insurance in the amount of at least $1,000,000.00.

15.3 Inspection agencies must submit, to the Division of Professional Regulation, the names of its employees who

are inspectors and proof of compliance with the statutory requirements for inspectors. Inspectors must have seven years of experience in residential, commercial, or industrial wiring. Proof of experience shall be submitted by affidavit of the named employer, a tax form w-2, or tax Schedule C**.** The experience requirement for an inspector employed by an approved inspection agency on July 20, 1999 is satisfied with seven years of inspection experience. Each inspector shall also submit a passing score for the Electrical one and two family dwelling and the Electrical General examinations within 18 months of employment and the Electrical Plan Review examination within 24 months of employment. For inspectors employed by the inspection agency on July 20, 1999, the time for taking said examinations shall run from the date these regulations become effective and not the date first employed.

16.0 Voluntary treatment option for chemically dependent or impaired professionals.

A voluntary treatment option is available for chemically dependent or impaired professionals as provided in 29 **Del.C.** §8807 (n) who are reported to the Board or Division using the following procedures:

16.1 If the report is received by the president of the Board, that president shall immediately notify the Director of Professional regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the president of the Board, or that president's designate or designates.

16.2 The president of the Board or that president's designate or designates shall, within seven (7) days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

16.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within thirty (30) days following notification to the professional by the participating Board president or that president's designate(s).

16.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board president or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the president of the Board or that president's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the President of the Board.

16.5 Failure to cooperate fully with the Board president or that president's designate or designates or the Director of the Division of Professional Regulation or his/ her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option and the Board president or that president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in 29 **Del.C.** §8807(h).

16.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to the following provisions:

16.6.1 Entry of the regulated professional into a treatment program approved by the Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

16.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the president of the Board or to that president's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the president of the Board or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

16.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

16.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this paragraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs

associated with the Voluntary Treatment Option.

16.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the Board's president, or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

16.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

16.8 The Board's president, his/her designate or designates or the Direction of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

16.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

16.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

16.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a non-disciplinary matter.

16.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected.

DEPARTMENT OF EDUCATION

14 DE Admin. Code 103
Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. 122(d))

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

103 SCHOOL ACCOUNTABILITY FOR ACADEMIC PERFORMANCE

A. TYPE OF REGULATORY ACTION REQUESTED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary of Education seeks the approval of the State Board of Education to adopt the regulation School Accountability for Academic Performance. This regulation is being re-advertised with changes suggested by a broad base of individuals after a series of meetings held around the state. The changes have been made in the following sections to address the concerns expressed at the meetings and in written communications. They include the definition of an accountability school, students taking the test more than one time, subject weights, and nonaggregable accommodations.

C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards?

The regulation defines school accountability and definitely has an impact on student achievement.

2. Will the regulation help ensure that all students receive an equitable education?

The regulation was designed to be as fair as possible to the schools and to the students as the school accountability program is implemented.

3. Will the regulation help to ensure that all students' health and safety are adequately protected?

The regulation addresses school accountability, not students' health and safety issues.

4. Will the regulation help to ensure that all students' legal rights are respected?

The regulation addresses school accountability, not students' legal rights.

5. Will the regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The school accountability statute and this regulation define how the program will be implemented. Some decision making is removed from the local board and school level.

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The statute and the regulation will add to the reporting and administrative requirements of the local boards and schools.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

Some of the decision making and accountability for addressing school accountability will be with the State.

8. Will the regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulation?

The statute requires that regulations be developed to implement the law.

10. What is the cost to the state and to the local school boards of compliance with the regulation?

Implementing and complying with the school accountability requirements will require additional funds but the State has provided supplemental resources and will continue to do so.

103 School Accountability for Academic Performance

1.0 Accountability School: The school to which a student's performance is assigned shall be the Accountability School. Except as defined in sections 1.1 to 1.3 the Accountability School shall be the school that provided the majority of instructional services to that student in a given school year so long as the student was enrolled in the school for more than 530 school hours or more than 90 school days. No student shall have his/her performance assigned to more than one Accountability School in a given school year.

1.1 Except as in section 1.1.1, for students enrolled in an intra-district intensive learning center or intra-district special school or program operating within one or more existing school facilities the school facility in which the student is served shall be the Accountability School.

1.1.1 If in such a program the number of students included in a School Composite Score would be greater than or equal to 30 a school district may elect to define the program as an Accountability School.

1.1.2 Within 30 days of request by the Secretary of Education school districts shall inform the Secretary of Education in writing of any Accountability Schools they elect to define pursuant to section 1.1.1. Such definitions may not be changed for four measurement cycles.

1.2 For students enrolled in inter-district special schools or programs that have an agreement to serve students from multiple school districts that school or program shall be the Accountability School provided the number of students included in the School Composite Score is greater than or equal to 30.

1.2.1 If in such a school or program the number of students included in a School Composite Score is less than 30 the student scores shall be assigned to the Accountability School the student would have been assigned to if an Individual Education Program was not in place.

1.3 For students enrolled in alternative school programs pursuant to 14 *Del. C.*, Chapter 16, or the Delaware Adolescent Program the Accountability School shall be the school that assigned them to the program. For the purposes of this chapter the time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School.

2.0 Composite Score: A School Composite Score for each Accountability School shall be created utilizing the formula found in 14 *Del. C.*, Section154(b)(1).

2.1 The School Composite Score shall include the collective performance of all students in each Standards Cluster as defined in section 2.6 and 2.7 below on the assessments administered pursuant to 14 *Del. C.*, Section 151 (b) and (c).

2.1.1 For students who take a portion of the assessment more than once within a measurement cycle, all administrations except re-tests by 12th grade students shall be included in the School Composite Score.

2.1.2 For school accountability purposes a student not assessed either pursuant to 14 *Del. C.*, Section 151 (b) and (c) or with alternate assessments approved by the Department of Education shall be assigned to Performance Level 0, and such score shall be assigned to the school that failed to assess the student.

2.1.3 Except for students who participate in out-of-level testing, students who test with non-aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and*

Students with Limited English Proficiency shall have her/his performance level included in the School Composite Score.

2.1.4 For school accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's Scoring Specifications, who participates in out-of-level testing or otherwise receives an invalid score shall be assigned to Performance Level 1.

2.1.5 A student participating in alternate assessments shall have her/his performance level included in the School Composite Score.

2.2 Schools with more than one tested grade shall receive a single School Composite Score determined by aggregating the performance levels of students who score at each performance level in each tested grade.

2.3 Baselines for Accountability Schools shall be determined using two years of their students' performance, beginning with the Accountability School's first two administrations of the Delaware Student Testing Program. New School Composite Scores shall be established each two years thereafter.

2.3.1 Prior to 2003 reading, writing and mathematics results shall be utilized to determine School Composite Scores.

2.3.2 In 2003 two School Composite Scores shall be calculated. The School Composite Score used to determine accreditation shall include reading, writing and mathematics results. The School Composite Score used as the school's new baseline shall include reading, writing, mathematics, science and social studies results.

2.3.3 After 2003 reading, writing, mathematics, science and social studies results shall be utilized to determine all School Composite Scores.

2.4 Schools shall be evaluated for accreditation by comparing their performance on the three measures defined in section 3.0 over a measurement cycle.

2.5 Student performance in a tested grade shall be apportioned in equal weights to each grade in a Standards Cluster, except that Kindergarten shall be weighted at 10%.

2.6 Prior to the inclusion of science and social studies results in the School Composite Score the weights assigned to each subject shall be 40% for reading, 40% for mathematics and 20% for writing.

2.6.1 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A
Grades K-3	Grade 3 reading. writing, mathematics
Grades 4-5	Grade 5 reading. writing, mathematics
Grades 6-8	Grade 8 reading, writing, mathematics
Grades 9-10	Grade 10 reading, writing, mathematics

2.7 When science and social studies results are included in the School Composite Score, the weights assigned to each subject shall be as follows:

2.7.1 For assessments in grades 3 through grade 6:

35% for reading, 35% for mathematics, 10% for writing, 10% for science and 10% for social studies.

2.7.2 For assessments in grades 8 through grade 11:

20% for reading, 20% for mathematics, 20% for writing, 20% for science and 20% for social studies.

2.7.3 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A	Fall Assessments, Calendar Year A
Grades K-3	Grade 3 reading. writing, mathematics	Grade 4 science, social studies
Grades 4-5	Grade 5 reading. writing, mathematics	Grade 6 science, social studies
Grades 6-8	Grade 8 reading, writing, mathematics, science, social studies	
Grades 9-10	Grade 10 reading, writing, mathematics	
Grades 9-11	Grade 11 science, social studies	

3.0 Performance Criteria: The Department of Education shall determine the accreditation status of a school by utilizing three measures of performance.

3.1 Absolute Performance: The Absolute Performance of the school's student body on the assessments administered pursuant to 14 *Del. C.*, Section 151 (b) and (c) measured using the School Composite Score. Target School Composite Scores shall be determined by the Department of Education with the consent of the State Board of Education.

3.2 Improvement Performance: The school's record in improving its School Composite Score over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.2.1 The expected improvement for a given school

shall be the difference between the school's current composite score and a target School Composite Score that all schools are expected to achieve divided by the number of measurement cycles the school has to reach the target School Composite Score.

3.2.2 For schools that have already met the target School Composite Score, a higher target shall be established. Target School Composite Scores and time periods shall be determined by the Department of Education with the consent of the State Board of Education.

3.3 Distributional Performance: The school's record in improving the performance of low achieving students over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.3.1 The expected Distributional Performance for a given school shall be a specified decrease in the percentage of students performing below the standard (those in levels 0, 1, and 2) in tested content areas while the percentage of students in Level 0 and the percentage of students in Level 1 in tested content areas do not increase.

3.3.2 An Accountability School that has no change in the percentage of students performing below the standard or reduces that percentage by less than the target shall be assessed by whether the Distributional Composite Score, calculated by including only those students who have not met the standard, increases by a targeted amount. Distributional Targets shall be determined by the Department of Education with the consent of the State Board of Education.

4.0 Accreditation: Schools shall be accredited by the Department of Education based on the collective performance of their students on the assessments administered pursuant to the Delaware Student Testing Program. The accreditation status of each school shall be reported in School Profiles.

4.1 Superior Accredited: A school's performance is deemed excellent. Schools in this category shall have Absolute Performance at or above a threshold determined by the Department of Education with the consent of the State Board of Education and have met Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education. Schools in this category shall receive awards as defined in 14 *Del. C.*, Section 154(c).

4.2 Accredited: A school's performance is deemed satisfactory. Schools in this category shall have Absolute Performance at or above a minimally required threshold determined pursuant to14 *Del. C.*, Section 154(d) by the Department of Education with the consent of the State Board of Education and have met Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education. Schools in this category may be eligible for awards if they meet Superior Absolute, Improvement or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education.

4.3 Accreditation Watch: A school's performance is deemed unsatisfactory. Schools in this category have Absolute Performance below a minimally required threshold determined pursuant to14 *Del. C.*, Section 154(d) by the Department of Education with the consent of the State Board of Education or have not met Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 *Del. C.*, Section 154(d)(2). Schools in this category may be eligible for awards if they meet Superior Improvement or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education.

4.4 Non-Accredited: Schools on Accreditation Watch who have not met Absolute, Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education after two years shall be Non Accredited. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 *Del. C.*, Section 154(d)(3). Schools in this category shall not be eligible for awards.

4.5 Schools required to develop a school improvement plan pursuant to 14 *Del. C.*, Section 154(d)(2) and (3) shall include a plan to improve the performance of students in each low performing sub-population as defined by the Improving America's Schools Act, Title I, Part A.

5.0 Appeals process: A school may appeal its accreditation status to the Department of Education within 30 days of receiving notice of its classification status by filing a written notice of appeal with the Secretary of Education. The notice of appeal shall state the grounds there for with specificity. The school must prove by clear and convincing evidence that the classification was contrary to law or regulation, not supported by substantial evidence, was arbitrary or capricious, or should be changed because of circumstances beyond the school's control.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** 505)

PUBLIC NOTICE

Delaware's A Better Chance

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS)/Division of Social Services/Delaware's A Better Chance Program is proposing to implement a policy change to the Division of Social Services Manual, Section 4005.3: Step-parent budgeting is only used to determine the financial eligibility or benefit level of a step-child when the step-child's natural parent resides in the home. Stepparent income is not used to determine financial eligibility or benefit levels when the step-child's natural parent does not reside in the home.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by February 28, 2001.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

REVISION

4005.3 Step-Parent Income in the ABC Program

In the ABC Program, a step-parent who resides with his/her step-children is considered responsible for supporting those children. A portion of the step-parent's income is used to determine the step-children's financial eligibility and the amount of assistance the children receive. To determine the amount of the step-parent's income that is deemed to the assistance unit, follow the steps listed below:

NOTE: The assistance unit must include the step-child, the step-child's natural or adoptive parent, and siblings who are also living in the home and who are otherwise eligible.

1. Determine the step-parent's gross income.
2. Deduct $90.00 from earned income.
3. Deduct the ABC standard of need (See DSSM 4007.2) for the family size that includes the step-parent and those individuals who
   a. live in the step-parent's home
   b. are the step-parent's dependents for income tax purposes
   c. are not members of the ABC assistance unit.

(These individuals cannot include a person who is removed from the ABC unit because he/she failed without good cause to cooperate with DCSE or the First Step Program and is being sanctioned.)

4. Deduct amounts paid by the step-parent to individuals who are not living in the home, but who are claimed as dependents for income tax purposes.
5. Deduct child support or alimony payments made to individuals not living in the home.

The remainder is unearned income used to determine the assistance unit's financial eligibility and grant amount.

Summary - Total Income
- $90.00 from earned income
- Standard of Need
- Payments to dependents

Countable Income

The resources of a step-parent are not considered in determining the financial eligibility of the assistance unit. Resources held jointly by the step-parent and the step-parent's spouse are considered available in their entirety to both partners. If the spouse is a member of the assistance unit, these resources are considered in determining the unit's eligibility.

Step-parent budgeting is only used to determine the financial eligibility or benefit level of a step-child ~~even if~~ when the step-child's natural parent ~~does not~~ resides in the home. Stepparent income is not used to determine financial eligibility or benefit levels when the step-child's natural parent does not reside in the home.

NOTE: If the step-parent is included as a member of the ABC unit, his/her income is budgeted in accordance with rules governing the income of ABC applicants and recipients.

DEPARTMENT OF LABOR

COUNCIL ON APPRENTICESHIP & TRAINING

Statutory Authority: 19 Delaware Code, Section 202(a) (19 **Del.C.** §202(a))

PLEASE TAKE NOTICE, pursuant to 19 Del. C. §202(a), the Department of Labor, with the advice of the Council on Apprenticeship and Training, has made proposed modifications to Sections 106.9 and 106.10 of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The modification will clarify the process for deregistration of a sponsor.

A public hearing was held on the Proposed changes on December 12, 2000 that resulted in substantive changes to the proposal previously published in the Register of Regulations, Vol. 4, Issue 5 (November 1, 2000). Those changes to the proposal appear below in boldface. The Council will hold another public hearing on March 13, 2001 at 10:00 a.m. at Buena Vista State Conference Center, 661 South DuPont Highway, New Castle, Delaware. The Council will receive and consider input from any person on the proposed changes. Written comment can be submitted at any time prior to the hearing in care of Kevin Calio at the Division of Employment & Training, Department of Labor 4425 North Market Street, P.O. Box 9828, Wilmington, DE 19809-0828. The Council will consider its recommendation to the Secretary of Labor at its regular meeting following the public hearing.

In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Kevin Calio by calling (302)761-8121.

Sec. 106.9 DEREGISTRATION OF STATE REGISTERED PROGRAM

~~(A) Deregistration proceedings shall be undertaken when the Program is not conducted, operated or administered in accordance with the Registration standards and the requirements of this chapter;~~

~~(B) Where it appears the Program is not being operated in accordance with the Registered standards or with the requirements of the chapter, the Administrator shall so notify the Program Registrant in writing;~~

~~(C) The notice shall be sent by registered or certified mail, return receipt requested, and shall state the deficiency(s) or violation(s);~~

~~(D) It is declared to be the policy to this State to:~~

~~(1) deny the privilege of operation of a Program to persons who, by their conduct and record, have demonstrated their indifference to the aforementioned policies; and~~

~~(2) discourage repetition of violations of rules and regulations governing the operation of Registered Apprenticeship Programs by individuals, Sponsors, or Committees against the prescribed policies of the State, and its political subdivisions, and to impose increased and added deprivation of the privilege to operate Programs against those who have been found in violation of these rules and regulations;~~

~~(3) deregister a Program either upon the voluntary action of the Registrant by a Request for cancellation of the Registration, or upon notice by the State to the Registrant stating cause, and instituting formal deregistration proceedings in accordance with the provisions of this chapter;~~

~~(4) at the request of Sponsor, permit the Administrator to cancel the Registration of a Program by a written acknowledgment of such request stating, but not limited to, the following:~~

~~(a) that the Registration is canceled at Sponsor's request and giving the effective date of such cancellation.~~

~~(b) that, within fifteen (15) working days of the date of the acknowledgment, the Registrant must notify all Apprentices of such Cancellation, the effective date, and that such Cancellation automatically deprives the Apprentice of his/her individual Registration.~~

~~(E) Any Sponsor who violates major provisions of the rules repeatedly, as determined by the Administrator of Apprenticeship and Training (three violations in any give twelve month period), shall be sent a notice which shall contain the violations and will inform the Sponsor that the Program will be placed in a probationary status for the next six (6) month period. Any new major violations in this period shall constitute cause for deregistration. In such a case, the Administrator shall notify the chairman of the Apprenticeship and Training Council, who shall convene the Council.~~

~~The Sponsor in question will be notified of said meeting and may present whatever facts, witnesses, etc., the Sponsor deems appropriate. After said hearing, the Council shall make a recommendation based on the facts presented to the Secretary, as to whether the Program should be deregistered. The Secretary's decision shall be final and binding on the matter.~~

~~(F) Sponsors with fewer than three (3) violations shall be sent a notice by registered or certified mail, return receipt requested, stating that deficiencies for cause unless corrective action is taken within thirty (30) days. Upon request by Registrant, the thirty (30) day period may be extended for up to an additional thirty (30) day period.~~

~~(G) If the required action is not taken with the allotted time, the Administrator shall send a notice to the Registrant by registered or certified mail, return receipt requested, stating the following:~~

~~(1) this notice is sent pursuant to this subsection;~~

~~(2) that certain deficiencies were called to the Registrant's attention and remedial action requested;~~

~~(3) based upon the stated cause and failure of remedy, the Program will be deregistered, unless within fifteen (15) working days of receipt of this notice, the Registrant requests a hearing;~~

~~(4) If a hearing is not requested by the Registrant, the Program will automatically be deregistered.~~

~~(H) Every order of deregistration shall contain a provision that the Registrant and State shall, within fifteen (15) working days of the effective date of the order, notify all registered Apprentices of the deregistration of the Program, the effective date, and that such action automatically deprives the Apprentice of his/her individual~~

~~Registration.~~

(A) It is the policy of this State to discourage violations of the law or these rules and regulations by limiting or revoking the privilege to operate programs when Sponsors demonstrate an indifference to these requirements.

(B) Where it appears to the Administrator that a program is not being operated in accordance with federal or state law or these rules and regulations, the Administrator shall so notify the Sponsor in writing stating the deficiency and providing a period for corrective action not to exceed 10 days. Such notice shall be sent by certified mail, return receipt requested. The Sponsor shall respond in writing to the letter within 10 days of receipt.

(C) If the Sponsor fails to correct a deficiency after notice by the Administrator under (B), deregistration proceedings will be undertaken.

1. Voluntary deregistration is available to a Sponsor upon written request to the Administrator. Within fifteen (15) working days of the effective date of deregistration demonstrated by the acknowledgment of the Administrator, the Sponsor must notify all Apprentices of such deregistration, the effective date, and that the deregistration automatically deprives the apprentice of his/her individual registration.

2. Involuntary deregistration is initiated by the Administrator as follows:

(a) If the Sponsor fails to respond to the notice of deficiency, the Administrator shall advise the Sponsor by certified mail, return receipt requested, that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

(b) If the response by the Sponsor to the notice is insufficient to correct the deficiency, the Administrator shall so advise the sponsor by certified mail, return receipt requested. Said letter shall advise the Sponsor that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

(c) If no hearing is timely requested, the Administrator will recommend deregistration to the Secretary. The decision of the Secretary is final and no further appeal is provided. The sponsor will be notified of the effective date of deregistration. In addition, a decision of deregistration and its effective date will be mailed to all Apprentices registered in the program.

(d) All recommendations for involuntary deregistration as a result of violations of the Rules and Regulations will include a recommended period of deregistration of up to three (3) years.

SEC. 106.10. HEARING

~~(A) Within ten (10) working days of a request for a hearing, the Administrator or his/her designee, shall give reasonable notice of such hearing by registered mail, return receipt requested, to the Registrant. Such notice shall include:~~

~~(1) the time and place of the hearing;~~

~~(2) a statement of the provisions of the chapter pursuant to which the hearing is to be held;~~

~~(3) a statement of the cause for which the Program may be deregistered and the purpose of the hearing.~~

~~(B) The chairman of the Council on Apprenticeship and Training or his/her designee shall conduct the hearing, which shall be informal in nature. Each party shall have the right to counsel, and the opportunity to present his/her case fully, including cross-examination of witnesses as appropriate.~~

~~(C) The Administrator shall make every effort to resolve the complaint and shall render an opinion within ninety (90) days after receipt of the complaint, based upon the record before him and an investigation, if necessary. The Administrator shall notify, in writing, all partied of his decisions. If any party is dissatisfied with or feels that they have been treated unfairly by said decision, they may request a hearing by the Apprenticeship and Training Council. Those provisions of the hearing process that are applicable shall be followed and Council shall make a determination on the basis of the record and the proposed findings of the Administrator. This determination shall be subject to review and approval by the Secretary, whose decision shall be final.~~

(A) A deregistration hearing will be scheduled before the Council on Apprenticeship and Training within 45 days of receipt of a timely request by the Sponsor.

(B) Notice shall be in accord with the provisions of the Administrative Procedures Act.

(C) Each party shall have the right to present evidence, to be represented by counsel, and to cross-examine witnesses.

(D) A record from which a *verbatim* transcript can be prepared shall be made of the hearing. A party may request a transcript at his or her expense.

(E) At the conclusion of the hearing, the Council will determine, by a majority of the quorum, its recommendation to the Secretary.

(F) The Council shall submit its recommended findings of fact, conclusions of law, and decision to the Secretary. Said recommendations may be authenticated by the chairperson.

(G) The decision of the Secretary is final and no further appeal is provided. The decision will by sent by certified mail to the Sponsor. In addition, a decision of deregistration and its effective date will be mailed to all Apprentices registered in the program.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH & WILDLIFE

Statutory Authority:
7 Delaware Code, Sections 903(e)(2)(a),
7 **Del.C.** §§903(e)(2)(a))

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

TIDAL FINFISH REGULATION NO. 23, BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To amend TIDAL FINFISH REGULATION NO. 23 in order to be in compliance with the Fishery Management Plan for Black Sea Bass, (FMP) approved by the Atlantic States Marine Fisheries Commission and the Mid Atlantic Fishery Management Council. The FMP requires the recreational harvest to be reduced by 27% relative to the 2000 harvest to meet the 2001 target. The minimum size limit for black sea bass is proposed to be increased from 10 inches to 11 inches with a daily creel limit of 25 sea bass and a closed fishing season from January 1 through May 9 for recreational fishermen.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

If Delaware is found to be not in compliance with the FMP, the Black Sea Bass fishery may be closed by the Secretary of the U.S. Department of Commerce.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code §903 (e)(2)(a)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302-739-3441). A public hearing will be held in the Department of Natural Resources and Environmental Control Auditorium, at the same address at 7:30 PM on Tuesday, February 20, 2001. The record will remain open for written comments until 4:30 PM on March 2, 2001.

7. PREPARED BY:

Charles A. Lesser, 302-739-3441, January 3, 2001

TIDAL FINFISH REGULATION NO. 23 BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS

a) It shall be unlawful for any ~~person~~ commercial fisherman to have in possession any black sea bass Centropritis striata that measures less than ten (10) inches, total length.

b) It shall be unlawful for any recreational fisherman to have in possession any black sea bass that measure less than eleven (11) inches, total length.

c) It shall be unlawful for any ~~person~~ commercial fisherman to possess on board a vessel at any time or to land after one trip more than the following quantities of black sea bass during the quarter listed:

First Quarter (January, February and March) – 9,000 lbs.

Second Quarter (April, May and June) – 3,000 lbs.

Third Quarter (July, August and September) – 2,000 lbs.

Fourth Quarter (October, November and December) – 3,000 lbs.

"One trip" shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware."

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter indicated in subsection (c) after the date in said quarter that the National Marine Fisheries Services determines that quarter's quota is filled."

e) It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass during the period beginning at 12:01 AM on January 1 and ending at midnight on May 9, next ensuing.

f) It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

DEPARTMENT OF PUBIC SAFETY

DIVISION OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code, Section 302 (21 **Del.C.** 302)

The Department of Public Safety will hold a hearing pursuant to 29 **Del.C.** Chapter 101 concerning the adoption of Policy Regulation 36 entitled "Driving Under the Influence Evaluation Program, Courses of Instruction, Programs of Rehabilitation and Related Fees." The Department will receive public comment regarding the proposed Department of Public Safety Policy Regulation.

DEPARTMENT OF PUBLIC SAFETY AND DIVISION OF HIGHWAY SAFETY POLICY REGULATION NUMBER 36 CONCERNING: DRIVING UNDER THE INFLUENCE EDUCATION AND TREATMENT PROGRAM FEES.

DATE, TIME AND PLACE OF PUBLIC HEARING

DATE: March 6, 2001
TIME: 10:00 AM
PLACE: Main Conference Room, 2nd Floor
Department of Public Safety
Public Safety Building
303 Transportation Circle
Dover, DE 19901

Persons may view the proposed Policy Regulation between the hours of 8:00 AM to 4:00 PM, Monday through Friday, at the Division of Highway Safety, in the Public Safety Building, 2nd Floor, 303 Transportation Circle, Dover, DE 19901.

Persons may present their views in writing by mailing them to Lisa Moore, DUI Coordinator, Division of Highway Safety, PO Box 1321, Dover, DE 19903 or by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

~~POLICY REGULATION NUMBER 36 JANUARY 2, 1979~~
~~(REPLACES POLICY REGULATIONJANUARY 29, 1980~~
~~NUMBER 32)~~
~~FEBRUARY 10, 1984~~
~~JULY 1, 1985~~
~~APRIL 1, 1987~~
~~JUNE 1, 1988~~
~~MARCH 1, 1989~~
~~MARCH 16, 1992~~

~~CONCERNING: EVALUATION PROGRAM, COURSES OF INSTRUCTION AND PROGRAMS OF REHABILITATION AND RELATED FEES; PURSUANT TO SECTION 4177D, TITLE 21.~~

~~A program is hereby established which involves an evaluation, and referral to appropriate courses of instruction and/or rehabilitation.~~

~~**1. THE DELAWARE EVALUATION & REFERRAL PROGRAM, (DERP).**~~

~~All persons who have been ordered to or have volunteered to, enter a course of instruction or program of rehabilitation, shall first be evaluated by the Delaware DUI Evaluation & Referral Program. All evaluations completed by any other agency are subject to a review and approval by DERP.~~

~~The minimum fee for the Delaware DUI Evaluation & Referral Program is $50.00. The fee for processing out-of-state evaluation is $25.00. These fees shall be the responsibility of the clients.~~

~~**2. THE DELAWARE SAFETY COUNCIL, INC., (DSC), A COURSE OF INSTRUCTION.** The course of instruction shall be administered by the Delaware Safety Council, Inc., and/or any other instructional courses approved by DSC. Any agency providing an instructional course must submit a notice of satisfactory completion to the Delaware Safety Council, Inc. The Division of Motor Vehicles shall accept notice of completions from the Delaware Safety Council, Inc., for courses of instruction administered and/or approved by them. DERP shall have the responsibility for all out-of-state instructional programs.~~

~~The minimum fee for the Delaware Safety Council's course of instruction is $100.00. The fee for processing notice of completion of educational program is $25.00. These fees shall be the responsibility of the client.~~

~~Persons with more than one alcohol-related violations must enter treatment and cannot be referred to an educational program.~~

~~**3. THE DELAWARE DRINKING DRIVER PROGRAM, INC., (DDDPI) IS AN OUTPATIENT PROGRAM OF REHABILITATION.** The program of rehabilitation shall be administered by the Delaware Drinking Driver Programs, Thresholds, Inc., and/or any other outpatient rehabilitation programs approved by the Delaware Division of Alcoholism, Drug Abuse and Mental Health and the Secretary of Public Safety. Any agency providing a program of outpatient rehabilitation, other than DDDPI, must submit a report of satisfactory completion to DDDPI or DERP. The Division of Motor Vehicles shall accept notice of completions only from DDDPI or DERP. The program of rehabilitation may be required for persons who have one alcohol-related violation, and shall be required~~

of persons who have two or more alcohol-related violations. Further, it shall be required for persons who have a blood alcohol content of .20 or greater, as shown by a chemical analysis of a blood, breath, or urine sample.

The standard fee for this program is $490.00. The fee for processing the notice of completion for alcohol rehabilitation programs certified by DDDPI or DERP is $25.00. These fees shall be the responsibility of the clients.

4. AN INPATIENT TREATMENT PROGRAM FOLLOWED BY OUTPATIENT TREATMENT. An inpatient treatment program may be ordered by DERP (Delaware DUI Evaluation & Referral Program) and/or DDDP. DERP must first comply with the following criteria prior to assignment to an inpatient treatment program.

CRITERIA TO DETERMINE REFERRAL OF DUI OFFENDER TO RESIDENTIAL TREATMENT
DMS-III-R Diagnosis of Alcohol Dependence (303.90)
Or Alcohol Abuse (305.00) or other
DSM-III-R Psychoactive Substance Use Disorder
PLUS Two (2) of the following:

1. BAC of .20 or more for this offense.
2. Two or more previous alcohol/drug-related driving convictions.
3. History of failure with significant attempts to remain alcohol/drug-free.
4. A likely possibility of experiencing withdrawal if alcohol/drug use is discontinued.
5. Loss of control of alcohol/drug use.
6. Little or no significant support from family, friends, or significant others for remaining alcohol/drug free.

The period of inpatient treatment shall be no more than six months for a first alcohol-related offense, and fifteen months for a subsequent alcohol-related offense. The fee shall not exceed the maximum fine as set forth in 21 Del. C., Section 4177 (d). All fees shall be the responsibility of the clients. The Division of Motor Vehicles will accept notice of completions only from DERP for inpatient treatment.

5. FAILURE TO APPEAR. Additional fees may be charged by the evaluation unit, the educational program and the treatment program to clients failing to keep scheduled appointments or classes. If clients are unable to attend a scheduled appointment or a scheduled class, they must contact the evaluation unit or treatment unit, present an acceptable excuse, and request a rescheduling of their appointment or class. A fee not to exceed $25.00 may be charged for failure to attend an evaluation appointment. A fee not to exceed a $10.00 may be charged for failure to attend a scheduled class. A fee not to exceed $17.50 may be charged for failure to attend an individual treatment session. A fee not to exceed $14.50 may be charged for failure to attend a group treatment session. All fees shall be the responsibility of the clients.

6. NON-COMPLIANCE. As a general rule, the absence of any client contact within a 30-day period is cause for non-compliance. More specifically, clients who miss two or more educational and/or treatment sessions are subject to non-compliance proceedings. It is the responsibility of the authorized provider to draft standard criteria as to what constitute a "valid excuse" for a "no-show" or a nonattendance of a class, an evaluation interview, and/or a treatment session.

7. JCAH ACCREDITATION. In addition to the state licensure requirement of the Division of Alcoholism, Drug Abuse, and Mental Health, all authorized DUI evaluation and treatment providers are required to apply for accreditation by the Joint Commission on Accreditation of Healthcare Organization (JCAH). State contracts will not be awarded to DUI providers unless they have started the application process to obtain JCAH accreditation. All authorized DUI evaluation & treatment providers must be awarded full JCAH accreditation three years from the time they commenced the application process.

8. PROGRAM EVALUATION. The Secretary of Public Safety or designee retains the authority to evaluate, whenever he/she deems appropriate, the above courses of instruction, programs of rehabilitation, and alcohol evaluation agency.

9. DEFINITION OF ALCOHOL RELATED VIOLATION/OFFENSE. For purposes of this policy regulation, alcohol-related violation/offense shall mean any violation under 21 Del. C., that is a violation of, or as result of a reduction in charges from a violation of, Sections 2740, 2742, 4177, 4177B, 4175 and all conforming statutes of any other state or the District of Columbia, or local ordinances in conformity therewith.

STATE OF DELAWARE
DEPARTMENT OF PUBLIC SAFETY DIVISION OF MOTOR VEHICLES
POLICY REGULATION NUMBER 36
January 2, 1979

(Replaces Policy Regulation Number 32)

CONCERNING:
EVALUATION PROGRAM, COURSES OF INSTRUCTION, AND PROGRAMS OF REHABILITATION AND RELATED FEES.

I. AUTHORITY

The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §4177(D) and 29 **Del.C.** §10115.

II. PURPOSE

A program is hereby established which involves an evaluation and referral to appropriate courses of instruction and/or rehabilitation for an alcohol-related violation/offense.

III. APPLICABILITY

This policy regulation concerns the following sections found in Title 21: §4177, §4177A, §4177B, §4177C, §4177D, 4177E, §4177F, §2742, §2743, and §4175(b).

IV. SUBSTANCE OF POLICY

1. THE DELAWARE EVALUATION & REFERRAL PROGRAM, (DERP)

All persons who have been ordered to, or have volunteered to, enter a course of instruction or program of rehabilitation, shall first be evaluated by the Delaware DUI Evaluation & Referral Program. All evaluations completed by any other agencies (for out-of-state clients) are subject to a review and approval by DERP.

The minimum fee for DERP is $75.00. The minimum fee for processing an out-of-state evaluation and referral is $50.00. These fees shall be the responsibility of the clients.

2. THE EDUCATION PROGRAM

A course of instruction shall be administered by any State of Delaware contracted education program provider. Any agency providing an instructional course must submit notice of completion to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of instruction administered by State of Delaware contracted education program providers. Any out-of-state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.

The minimum fee for the Education program is not to exceed the maximum fine imposed for the offense as set forth in § 4177 of the Delaware Code. These fees shall be the responsibility of the clients.

Persons with more than one alcohol-related violation must enter treatment and cannot be referred to an educational program.

3. THE OUT-PATIENT TREATMENT PROGRAM

The program of rehabilitation shall be administered by any State of Delaware contracted treatment provider. Any agency providing rehabilitation treatment must submit a discharge summary for each client to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of rehabilitation administered by State of Delaware contracted treatment program providers. Any out-of-state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.

The minimum fee for this program is not to exceed the maximum fine imposed for the offense as set forth in § 4177 of the Delaware Code. These fees shall be the responsibility of the clients.

The program of rehabilitation may be required for persons who have one alcohol-related violation, and shall be required for persons who have two or more alcohol-related violations. Further, this rehabilitation program may be required for persons regardless of blood alcohol content or refusal to submit to the chemical test and shall be required for persons with a blood alcohol content greater than 1½ times the legal limit.

4. ALTERNATIVE TREATMENT PROGRAMS

Programs shall be made available through existing contracted agencies to provide treatment services for those clients with alternative needs. Programs shall administer programs for those individuals under the age of 21 years, as well as for those individuals with mental health issues. In addition, if the treatment providers reach a clinical determination that the client needs further services not available at the providers' level, the client may be referred outside the network for those necessary services. (i.e. residential treatment services) Monitoring of additional treatment services and satisfactory completion release from the program shall be made by the designated contracted agency.

5. FAILURE TO APPEAR

Additional fees may be charged by the evaluation unit, the educational program, and the treatment program for those clients failing to keep scheduled appointments or classes. If clients are unable to keep scheduled appointments, they must contact the evaluation unit or treatment unit, present an acceptable excuse, and request a rescheduling of their appointment or class. The fee for failure to appear shall not exceed $25.00. All fees shall be the responsibility of the clients.

6. NON-COMPLIANCE

The absence of client contact within a 30-day period is cause for non-compliance. More specifically, clients who miss two subsequent appointments, or miss three appointments over the course of treatment, are subject to non-compliance processing as well. The fee for a client to be reinstated in the program (within a 2-year period) shall not exceed $25.00. Any clients waiting longer than 2 years to re-enter the program will be required to pay all DERP fees in full as indicated in Section 1.

7. PROGRAM EVALUATION

The Secretary of Public Safety or designee retains the authority to evaluate, whenever he/she deems appropriate, the above courses of instruction, programs of rehabilitation, and alcohol evaluation agency.

8. SCHEDULE OF FEES

The schedule of fees for the courses of instruction, programs of rehabilitation, and alcohol evaluation agency shall be

established by the Secretary of the Department of Public Safety and shall be posted within the standard operating procedures manual for the programs. All changes to the schedule of fees must be approved by the Secretary of Public Safety, and such fees not exceed the maximum fine imposed for the offense as set forth in 21 **Del. C.** §4177

9. DEFINITION OF ALCOHOL RELATED VIOLATIONS AND OFFENSES

For purposes of this policy regulation, alcohol-related violation/offense shall mean any violation under 21 Del C. that is a violation of, Sections 2740, 2742, 4177, 4177B, 4175 and all conforming statutes of any other state or the District of Columbia, or local ordinances in conformity therewith.

V. SEVERABILITY

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

VI. EFFECTIVE DATE

The following regulations shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del. C. §10118(e).

Reference: Last Prior Revision: March 16, 1992

Brian J. Bushweller, Secretary,
Department of Public Safety

Michael D. Shahan, Director,
Division of Motor Vehicles

DIVISION OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code, Section 4713 (21 **Del.C.** 4713)

NOTICE OF PUBLIC HEARING

The Delaware Department of Public Safety, in accordance with 21 **Delaware Code** §4713 and 29 **Delaware Code** §10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on February 27, 2001 at 9:00 a.m. in the second floor conference room, State Police Headquarters, N. DuPont Highway, Dover, Delaware 19903.

The Department of Public Safety will receive written comments or oral testimony from interested persons regarding the following Regulation "A" – Motor Carrier Safety Enforcement. The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be addressed to: Captain James Paige, Traffic Control Section, Delaware State Police Headquarters, P.O. Box 430, Dover, DE 19903-0430. Anyone wishing to make written or oral comments who would like a copy of the proposed regulation may contact the Traffic Control Section at (302) 739-5937, or write to the above address.

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE POLICE
REGULATION "A" – MOTOR CARRIER SAFETY ENFORCEMENT

Pursuant to Section 4713 of Title 21 of the Delaware Code, the Department of Public Safety, on behalf of its Division of State Police, hereby adopts regulations to implement the mandates set forth in Chapter 47 of Title 21 to ensure motor carrier safety in the State of Delaware.

Section 1. Inspection of Records

(A) Authorized representatives of the Division of State Police, upon presenting credentials, may enter a motor carrier's established place of business, without undue delay, to inspect and examine records of motor carriers to determine compliance with the federal Motor Carrier Safety Regulations ("MCSR").

(B) The motor carrier or a representative of the motor carrier shall be entitled to be present during an inspection conducted pursuant to this Section. However, the presence of the motor carrier or an authorized representative of the motor carrier is not a condition precedent to such an inspection.

(C) An inspection conducted pursuant to this Section may be initiated at any time that business is being conducted or work is being performed by the motor carrier, or its representatives, agents, or employees, whether or not open to the public, or when the motor carrier or a representative of the motor carrier other than a custodian or watchman is present. The fact that a motor carrier or representative of a motor carrier leaves the premises after an inspection has been initiated shall not require the termination of the inspection.

(D) Any inspection conducted pursuant to this Section shall not continue for more than twenty-four (24) clock hours after initiation, without the consent of the motor carrier or representative of the motor carrier, but in no event shall the inspection continue for more than seventy-two (72) hours after initiation.

(E) In the event information comes to the attention of the individuals conducting an investigation that may give rise to the necessity of obtaining a search warrant, and in the

event steps are initiated for the procurement of a search warrant, the individuals conducting such inspection may take all necessary steps to secure the premises under inspection until the warrant application is acted upon by a judicial officer.

(F) No more than three (3) inspections of a motor carrier shall be conducted pursuant to this Section within any six (6) month period except pursuant to a search warrant.

(G) Notwithstanding the limitation in subsection (F), nothing in this Section shall be construed to limit the authority of the State Police to respond to complaints of violations of the MCSR by inspecting the records of a commercial motor vehicle operating on the highways of the State of Delaware. For purposes of this subsection, a public complaint is one in which the complainant identifies himself or herself and sets forth the specific basis for his or her complaint against the motor carrier.

(H) Nothing in this Section shall be construed to limit the authority of the State Police, pursuant to this Section, to conduct a search of motor carrier records pursuant to an authorized search warrant.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** 209(a))

IN THE MATTER OF THE ADOPTION OF RULES CONCERNING THE IMPLEMENTATION OF 72 DEL. LAWS CH. 402 (2000) GRANTING THE COMMISSION THE JURISDICTION TO GRANT AND REVOKE THE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR PUBLIC UTILITY WATER UTILITIES (OPENED NOVEMBER 21, 2000)	PSC REGULATION DOCKET NO. 51

ORDER NO. 5646

AND NOW, this 30th day of January, 2001, the Commission having considered the proposed regulations governing water utilities prepared by the Staff, the comments and discussion at a workshop on November 30, 2000, and written comments received from interested parties;

IT IS ORDERED THAT:

1. Pursuant to 72 Delaware Laws Ch. 402, 26 Del. C. § 209(a), and 29 Del. C. §§ 10111 et seq., the Commission promulgates proposed Regulations Governing Water Utilities Subject to the Jurisdiction of the Public Service Commission ("Regulations").

2. The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the notice and the proposed Regulations attached hereto as Exhibits "A" and "B" respectively.

3. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before February 1, 2001.

4. The Secretary shall cause the notice attached hereto as Exhibit "A" to be sent by U.S. mail to all water utilities currently operating under a CPCN in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

5. G. Arthur Padmore is designated as the Hearing Examiner for this matter pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct the public hearing contemplated under the attached notice, and to make proposed findings and recommendations to the Commission concerning Staff's proposed regulations on the basis of the materials, evidence, and testimony submitted. Hearing Examiner Padmore is specifically authorized, in his discretion, to solicit additional comment and to conduct, on due notice, such public hearing(s) as may be required to develop further materials and evidence concerning any later-submitted proposed regulations or amendments thereto. Hearing Examiner Padmore shall submit a report in such time to allow the Commission to promulgate final regulations by July 1, 2001.

6. Francis J. Murphy, Esquire, is designated Staff Counsel for this matter.

7. The public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del. C. § 114.

8. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

E X H I B I T "A"

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF RULES CONCERNING THE IMPLEMENTATION OF 72 DEL. LAWS CH. 402 (2000) GRANTING THE COMMISSION	PSC REGULATION DOCKET NO. 51

THE JURISDICTION TO GRANT AND REVOKE THE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR PUBLIC UTILITY WATER UTILITIES (OPENED NOVEMBER 21, 2000)

NOTICE OF COMMENT PERIOD AND PUBLIC HEARING ON PROPOSED REGULATIONS CONCERNING WATER UTILITIES INCLUDING THE COMMISSION'S JURISDICTION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION

The Delaware General Assembly has enacted legislation that will make applications by water utilities for Certificates of Public Convenience and Necessity ("CPCN") subject to the jurisdiction of the Public Service Commission (the "Commission"). The new law is found at 72 Delaware Laws Ch. 402. Presently, water utilities file applications for CPCNs with the Department of Natural Resources and Environmental Control ("DNREC"). The transfer of jurisdiction from DNREC to the Commission will become effective July 1, 2001.

In preparation for the transfer of jurisdiction, the Commission is promulgating regulations intended to govern certain practices and procedures before the Commission relating to water utilities. In addition, certain of the regulations are being promulgated to comply with the General Assembly's directive to the Commission in 72 Delaware Laws Ch. 402, section 6 – codified at 26 Del. C. § 203C(l) – that the Commission shall establish rules governing the revocation of a CPCN held by a water utility.

The Commission has promulgated fourteen proposed new regulations to govern water utilities. The first addresses the scope of the regulations themselves. The regulations are intended to govern certain practices and procedures before the Commission relating to water utilities. The second regulation contains definitions of terms used in the regulations.

Two regulations set forth requirements for an application for a CPCN, including requirements for a new water utility that has never before been awarded a CPCN. A related regulation addresses the review, by the Commission's Staff, of a new CPCN application for compliance with statutes, applicable Rules of the Commission, and the regulations. A second related regulation requires the Commission to cooperate with DNREC, the State Fire Marshal, the Department of Public Health and other interested state, local and federal authorities, when the application for a CPCN is under review. A third related regulation affords the Commission discretion to waive the filing requirements in the regulations.

Three of the regulations address the notice to be given landowners in the proposed service territory covered by a water utility's CPCN application, and the time limits within which affected landowners must object to the CPCN, elect to opt-out from inclusion in the proposed service territory, and/or request a public hearing. One of the three regulations governing notice contains a proposed statement to the landowners that would have to be included in the notice sent by a water utility applying for a CPCN.

One of the proposed regulations deals with the conditions the Commission may impose on the award of a CPCN to a water utility.

Two of the new regulations are designed to govern proceedings to suspend or revoke a CPCN, and identify the factors that must be present for the Commission to make a finding of good cause to suspend or revoke a CPCN.

One of the regulations confirms that CPCN proceedings before the Commission must be conducted in accordance with applicable provisions of the Delaware Administrative Procedures Act, 29 Del. C. Ch. 101, Subchapter III.

The Commission has authority to promulgate the regulations pursuant to 26 Del. C. § 209(a), 29 29 Del. C. § 10111 et seq., and 72 Delaware Laws Ch. 402.

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before March 15, 2001.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before March 15, 2001.

In addition, the Commission will conduct a public hearing concerning the proposed changes on March 28, 2001, beginning at 10:00 AM. The hearing will continue on March 29, 2001 at 10:00 AM, if necessary. The public hearing will be held at the Commission's Dover office, located at the address set forth in the preceding paragraph. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is $0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the Commission's website:

www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to knickerson@state.de.us.

E X H I B I T "B"
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF RULES CONCERNING THE IMPLEMENTATION OF 72 DEL. LAWS CH. 402 (2000) GRANTING THE COMMISSION THE JURISDICTION TO GRANT AND REVOKE THE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR PUBLIC UTILITY WATER UTILITIES (OPENED NOVEMBER 21, 2000)	PSC REGULATION DOCKET NO. 51

PROPOSED REGULATIONS CONCERNING WATER UTILITIES INCLUDING THE PUBLIC SERVICE COMMISSION'S JURISDICTION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

10.101 Scope of regulations.

These regulations are intended to govern certain practices and procedures before the Delaware Public Service Commission relating to water utilities.

10.102 Definitions.

As used in these regulations:

"Commission" means the Delaware Public Service Commission.

"CPCN" means a certificate of public convenience and necessity.

"DPH" means the Delaware Division of Public Health.

"DNREC" means the Delaware Department of Natural Resources and Environmental Control.

"Staff" means the Staff of the Delaware Public Service Commission.

"Secretary" means the Secretary of the Delaware Public Service Commission.

10.103 Application for Certificate of Public Convenience and Necessity.

(a) An application for a certificate of public convenience and necessity to begin the business of a water utility or to extend or expand the business or operations of any existing water utility shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission and these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:

(1) Contain a statement explaining the reason(s) why the Commission should grant the CPCN, and citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application;

(2) Clearly state the relief sought by the application;

(3) State the name, address, telephone number, and email address (if any) of the person to be notified in the event the Staff determines there are deficiencies in the application;

(4) Contain the supporting documentation required by 26 Del. C. § 203C, including evidence that all the landowners of the proposed territory have been notified of the application;

(5) Include a complete list of county tax map parcel number(s) for the area covered by the application;

(6) Include (along with a complete list of tax map number(s)) corresponding names and addresses of property owners and a copy of all tax map(s) for the area;

(7) For any proposed extension of service, contain a certification by the applicant that the extension will satisfy the provisions of 26 Del. C. § 403C, including the following:

(i) The applicant is furnishing water to its present customers or subscribers in this State in such fashion that water pressure at every house supplied is at least 25 pounds at all times at the service connection;

(ii) The applicant shall furnish water to the house or separate location of each new customer or subscriber in this State at the pressure of at least 25 pounds at each such location or house at all times at the service connection while continuing also to supply each old customer or subscriber at the pressure of at least 25 pounds at each house at all times at the service connection;

(iii) The applicant is not subject to a finding by the appropriate federal or state regulatory authority that it has materially failed to comply with applicable safe drinking water or water quality standards; and

(iv) The applicant is not subject to any Order issued by the Commission finding that the company has materially failed to provide adequate or proper safe water

services to existing customers;, and

(8) For applications submitted under 26 Del. C. § 203C(e), include a statement indicating whether the applicant has determined if a majority of the landowners of the proposed territory to be served object to the issuance of a CPCN to the applicant, and the documentation relied upon to support the applicant's determination.

(b) If an application for a CPCN involves a water utility project or service that requires the review, approval, or authorization of any other state or federal regulatory body, including DNREC, the State Fire Marshal or DPH, the application to the Commission shall so state and shall include the following:

(1) A statement of the current status of such application;

(2) If the application to the other regulatory body or bodies has already been filed, a copy of any permit, order, certificate, or other document issued by the regulatory body relating thereto; and

(3) If such an application or amendment thereof is filed with another state or federal regulatory body or a determination is made by any such regulatory body subsequent to the date of filing the CPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document that has been issued relating thereto shall be filed with the Commission.

(c) An applicant for a CPCN – other than a municipality or other governmental subdivision – shall provide, with the application (if not presently on file with the Commission), the following:

(1) A corporate history including dates of incorporation, subsequent acquisitions, and/or mergers;

(2) A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates. Furnish a chart or charts which depict(s) the inter-company relationships;

(3) A map identifying all areas, including all towns, cities, counties, and other government subdivisions to which service is already provided;

(4) A statement identifying any significant element of the application which, to the applicant's knowledge, represents a departure from prior decisions of the Commission;

(5) Annual reports to stockholders for applicant, its subsidiaries, and its parent for the last two years;

(6) The applicant's audited financial statements, 10K's, and all proxy material for the last two years; and

(7) Any reports submitted by the applicant within the preceding twelve months to any state, local, or federal authorities in any proceedings wherein an issue has been raised about the applicant's failure to comply with any statute, regulation, rule or order related to the provision of safe, adequate, and reliable water service, including the water quality of water provided to existing customers.

(d) A municipality or other governmental subdivision applying for a CPCN shall provide with the application (if not presently on file with the Commission) the statement and documents identified in subsections (c)(3), (4) and (7) hereof.

(e) After a completed application has been filed, the Commission may require an applicant to furnish additional information during the course of the Staff investigation of an application.

(f) Supporting documentation not filed with the application must be made available for Staff inspection upon request.

10.104 Additional requirements for an application filed by a new water utility.

(a) If the applicant for a CPCN is a new water utility that has not previously been awarded a CPCN in Delaware, the application, in addition to meeting the requirements of section 10.103, shall include the following:

(1) Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and federal safe drinking requirements and that it has, or will procure, adequate supplies of water to meet demand, even in drought conditions, by maintaining supply sufficient to meet existing and reasonably anticipated future peak daily and monthly demands;

(2) A certified copy of the applicant's certificate of incorporation;

(3) Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and

(4) A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.

(b) If the applicant for a CPCN is a new water utility that is an unincorporated proprietorship, the applicant shall be subject to a rebuttal presumption that the applicant lacks the financial, operational, and managerial capacity to comply with the requirements for a CPCN.

10.105 Review of application; deficiencies in the application.

(a) The Staff shall review all CPCN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty-one days after the date of filing, specifically identify any deficiencies in the application, and immediately request the Secretary to promptly notify the applicant of the alleged deficiencies. The applicant shall have thirty days from the date of the receipt of the notice from the Secretary of the deficiencies in the application to file a corrected or supplemental application. The Commission may, in its discretion, extend the period to cure deficiencies in the application for an

additional thirty days.

(b) Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 Del. C. §203C(h). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these regulations.

(c) Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice, such informal review and comment not to be unreasonably withheld by Staff; nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non-compliance is deemed minor or immaterial by the Commission or its Staff.

10.106 Filing of application with DNREC, the State Fire Marshal and DPH; coordination and cooperation.

(a) An applicant for a CPCN shall file a copy of the application and supporting documentation with DNREC, the State Fire Marshal, and DPH within three days of filing the same with the Commission. The Staff shall send written requests to DNREC, the State Fire Marshal, and DPH soliciting comments on each application. The Staff shall coordinate and cooperate with DNREC, the State Fire Marshal, and DPH during the process of reviewing an application for a CPCN. The Staff shall also coordinate and cooperate with other interested state, local and federal authorities.

10.107 Provision of notice to all landowners of the proposed territory.

(a) Pursuant to the provisions of 26 Del.C. § 203C(d)(1) and (e)(1), prior to filing the application with the Commission, the applicant shall provide written notice to all landowners of the proposed territory of the anticipated filing of the application.

(b) The written notice required by 26 Del. C. § 203C(d)(1) and (e)(1) shall be sent to all landowners of the proposed territory not more than forty-five days and not less than thirty days prior to the filing of the application.

10.108 Landowners who object, opt-out, and/or request a public hearing; time limits; extension of time.

(a) In proceedings involving an application submitted under 26 Del.C. § 203C(e), any landowner whose property, or any part thereof, is located within the proposed territory to be served shall be permitted to: (i) object to the issuance of the CPCN; (ii) opt-out of inclusion in the territory; and/or (iii) request a public hearing. The applicant shall inform the Commission of the name and address of all landowners who notify the applicant of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall file with the Commission any written notices received from such landowners. The Commission shall maintain records identifying all landowners who have provided written notice of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall make such records available to the applicant.

(b) A landowner shall notify the Commission, in writing, if the landowner: (i) objects to the issuance of the CPCN; (ii) intends to opt-out of inclusion in the territory; and/or (iii) requests a public hearing. The notice to the Commission from the landowner must be filed with the Commission within: (i) forty-five days from the date of the landowner's receipt of a written notice from the water utility, that complies with applicable statutes and these regulations, of the landowner's inclusion in the service territory; or (ii) thirty days of the filing of the completed application, whichever period is greater. The Commission may, in the exercise of its discretion, extend the time to object, opt-out, and/or request a public hearing even though the period in which to do so has expired. The Commission shall accept for filing written notices from landowners that were sent to the applicant and transmitted by the applicant to the Commission.

10.109 Notification to all landowners of the proposed territory of their rights to object, opt-out, and/or request a public hearing.

(a) Pursuant to 26 Del. C. § 203C(e), and for the purposes of notification to all landowners of the proposed territory encompassed by the CPCN, the notice sent to the landowners of the proposed territory must include, at a minimum, the following statement:

> "(1) Pursuant to Title 26, §203C(e) of the Delaware Code, an application for a Certificate of Public Convenience and Necessity (CPCN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area (enter name of your organization) intends to serve with public water and we are required to inform you of certain information. The area to be served is (provide a shorthand description of the service area).
>
> (2) Pursuant to current law, you may file an objection to receiving water service from (enter name of your organization). Under Delaware law, the Public Service Commission cannot grant a CPCN to (enter name of your organization) for the proposed service area including your property, if a majority of the landowners in the proposed service

area object to the issuance of the CPCN. If you object to receiving water service from (enter the name of your organization), you must notify the Commission, in writing, within forty-five days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(3) Pursuant to current law, you may also elect to opt-out of inclusion in the proposed service area. The term "opt-out" means that you decide that you do not want to receive water service from (enter name of your organization), even if a majority of the landowners in the proposed service area do elect to receive water service from (enter name of your organization). If you decide that you do not want to receive water service from (enter name of your organization) and instead wish to opt-out, you must notify the Commission, in writing, within forty-five days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(4) You may also request a public hearing on this matter. A request for a public hearing must be made in writing to the Commission within forty-five days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(5) The written notice of your decision to object to the issuance of the CPCN, to opt-out of receiving water service from (enter name of your organization), and/or your written request for a public hearing shall be sent to the Secretary of the Delaware Public Service Commission at the following address:

Secretary
Delaware Public Service Commission
(insert the address of the Secretary of the Delaware Public Service Commission)

(6) Any written notice you send to the Commission must include the description of the service area referred to in paragraph (1) above and the name of the applicant so the Commission will be able to identify the CPCN application to which your notice is related.

(7) Questions regarding objections, opt-outs, and hearings may be directed to: (enter the name or title, and the address and telephone number of the Commission's contact person(s))."

(b) If a landowner sends a written notice directly to the applicant, the applicant shall file the notice with the Commission.

10.110 Imposition of conditions on CPCN.

(a) In awarding a CPCN to a water utility, the Commission may impose conditions consistent with: (i) Delaware statutes governing the jurisdiction of the Commission; and (ii) the present or future public convenience and necessity.

10.111 Suspension or revocation of CPCN for good cause.

(a) Pursuant to the provisions of 26 Del. C. § 203C(k) and (l), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:

(1) A finding by the Commission of non-compliance by the holder of a CPCN with any provisions of Titles 7, 16 or 26 of the Delaware Code dealing with obtaining water or providing water and water services to customers, or any order or rule of the Commission relating to the same;

(2) A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service, including a trustee or receiver appointed by the Delaware Court of Chancery; and

(3) Either: (i) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (ii) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

(b) In addition to the factors required by section 10.111(a)(1), (2) and (3), the Commission may consider one or more of the following factors in determining whether to suspend or revoke a CPCN:

(1) Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or

(2) Criminal conduct on the part of the water utility;, or

(3) Actual, threatened or impending insolvency of the water utility; or

(4) Persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by paragraph (a)(1) above; or

(5) Failure or inability on the part of the water utility to comply with an order of any other state or federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

(6) Such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

10.112 Proceedings to suspend or revoke a CPCN for good cause.

(a) Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del. C. § 101, subchapter III.

(b) Unless the Commission finds that: (i) the conduct of a water utility poses an imminent threat to the health and safety of its customers; or (ii) is unable to provide safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without first affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN.

10.113 Compliance with 29 Del. C. Ch. 101, subchapter III.

Proceedings before the Commission involving Certificates of Public Convenience and Necessity for water utilities shall be conducted in accordance with the procedures set forth in 29 Del. C. Ch. 101, Subchapter III, including any proceedings related to any findings under 29 Del. C. § 203C(f) that an applicant is unwilling or unable to provide safe, adequate, and reliable water service to existing customers, or is currently subject to such a Commission finding.

10.114 Waiver of requirements of sections 10.103 and 10.104.

(a) The Commission may, in the exercise of its discretion, waive any of the requirements of sections 10.103 and 10.104 above.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. **[~~Bracketed stricken through~~]** indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6603 (16 **Del.C.** 6603)

Order

The State Fire Prevention Commission ("Commission") held a properly noticed public hearing on November 21, 2000 at 1:00 p.m. and 7:00 p.m. to receive comment on proposed changes to Regulations, Part I, Annex A, Part I, Annex B and Part III, Chapter. The attendance sheets and transcribed minutes of this hearing are attached to this Order as Exhibit "A" in lieu of a statement of the summary of evidence.

Based upon the evidence receieved, the Commission finds the following facts to be supported by the evidence.

The Regulations as proposed will safeguard life and property from the hazards of fire and explosion.

Decision

The Commission hereby adopts the Regulations as proposed and these new Regulations are attached hereto.

IT IS SO ORDERED the 21st DAY OF December, 2000.

Kenneth H. McMahn, Chairman
W. Bill Betts, Vice-Chairman
Carlton E. Carey, Sr.
Francis J. Dougherty
Robert E. Palmer
Daniel W. Magee
Stephen P. Austin

STATE FIRE PREVENTION REGULATIONS
1997 EDITION
PART I, ANNEX A

NFPA Code	SFMO NOW USING (Edition)	CHANGING TO (Edition)
10	1994	1998
13	1996	1999
13R	1996	1999
14	1996	2000
20	1996	1999
22	1996	1998
72	1996	1999
88A	1995	1998
88B	1991	1997
90A	1996	1999
96	1994	1998
99	1996	1999
101	1997	2000
220	1995	1999
221	1994	1997
230	Not currently adopted	1999

231	1995	Delete (rolled into 230)
231C	1995	Delete (rolled into 230)
909	Not currently adopted	1997

STATE FIRE PREVENTION REGULATIONS
1997 EDITION
PART I, ANNEX B

Current Modification	Proposed Modification
SFPR Page 41 Modification to NFPA 13, 1996 Chapter 4, Installation Requirement Section 4-15.2.3.5 Fire Department Connection	Change section reference to NFPA 13, 1999 Chapter 5, Installation Requirements Section 5-15.2 Fire Department Connections 5-15.2.3.5 **No change to modification wording**
SFPR Page 41 Modification to NFPA 13, 1996 Chapter 6, Plans and Calculations Section 6-4.4.9	Change section reference to NFPA 13, 1999 Chapter 8 8-4.4.9 Calculation Procedure **No change to modification wording**
SFPR Page 42 Modification to NFPA 13R, 1996 Chapter 2, Working Plans, Design, Installation, Acceptance Tests and Maintenance Section 2-4.2	**Delete our modification**. 1999 standard uses our modification wording.
SFPR Page 42 Modification to NFPA 13R, Section 2-4.6	**No change – same reference and wording**
SFPR Page 42 Modification to NFPA 14, 4-3.5.2	**No change – same reference and wording**
SFPR Page 47 Modification to NFPA 72, Section 1-5.7	**Delete our modification.** Wording in 1999 code is now almost exactly the same as our modification wording.
SFPR Page 47 Modification to NFPA 99, 1996, Health Care Facilities Chapter 3, Electrical Systems Section 3-4.2.2.2(b) AMEND 3-4.2.2.2(b), Life Safety Branch by adding a new subsection to read as follows: 3-4.2.2.2(b)(7) Electric Fire Pumps	Change modification to: NFPA 99, 2000 Health Care Facilities Chapter 3, Electrical Systems Section 3-4.2.2.2(b) AMEND 3-4.2.2.2(b) by adding a new subsection: 3-4.2.2.2(b)(8) **No change to modification wording** New edition of NFPA 99 now has a (b)(7) section. We're simply bumping our subsection we are adding up one number so as not to conflict.
SFPR Page 47 Modification to NFPA 101, 1997, The Life Safety Code Chapter 7, Building Service and Fire Protection Equipment Section 7-2 Heating, Ventilating and Air Condition AMEND 7-2.2 by adding a new 7-2.3, unvented fuel-fired heating equipment, and renumber the following sections, to read as follows:	Change modification to: NFPA 101, 2000 The Life Safety Code Chapter 9, Building Service and Fire Protection Equipment Heating, Ventilating and Air Conditioning AMEND 9.2.1 by adding a new 9.2.1.1 New wording to read: Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas of all occupancies. In all other areas, gas space heaters installed in compliance with NFPA 54 as adopted and modified by these regulations shall be permitted. NOTE: Rather than having multiple modifications within our SFPR related to various specific occupancies, this change prohibits unvented heating devices in bathrooms and sleeping areas across the board. NOTE: New edition of NFPA 101 has added chapters thus skewing all past references. Our change corrects our reference in order to track with the new 101. .
SFPR Page 48 Modification to NFPA 101, 1997 The Life Safety Code Chapter 18, 18-3.4.1	Change section reference to: NFPA 101, 2000 Chapter 30 30.3.4.1 **No change to modification wording**

SFPR Page 48 Modification to NFPA 101, 1997 The Life Safety Code Chapter 18, 18-3.4.4	Change reference to NFPA 101, 2000 Chapter 30 30.3.4.4.1 **No change to modification wording**
SFPR Page 49 Modification to NFPA 101, 1997 The Life Safety Code Chapter 18, 18-3.5.2	Change reference to NFPA 101, 2000 Chapter 30 30.3.5.2 **No change to new exceptions wording**
SFPR Page 49 Modification to NFPA 101, 1997 The Life Safety Code Chapter 20, 20-3.3.5	Change reference to NFPA 101, 2000 Chapter 26 26-3.3.4 **No change to modification wording**
SFPR Page 49 Modification to NFPA 101, 1997 The Life Safety Code Chapter 21 21-1.1.2	Change reference to NFPA 101, 2000 Chapter 24 24.1.1.2 **No change to modification wording**
SFPR Page 50 Modification to NFPA 101, 1997 The Life Safety Code Chapter 22 Adding 22-2.2.7, 22-2.2.8, 22-2.2.9 and 22-2.3.4.4 Deleting existing 22-3.3.4.6 and inserting our modification	Change reference to NFPA 101, 2000 Chapter 32 Adding of 32.2.2.7, 32.2.2.8, 32.2.2.9 and 32.2.3.4.4 Deleting 32.3.3.4.6 and insert our existing modified wording **No change to addition or modification wording in any section**
SFPR Page 50 Modification to NFPA 101, 1997 The Life Safety Code Chapter 30 Delete existing 30-2.2.2.2 and 30-3.4.4 Exception and insert our modification	Change reference to NFPA 101, 2000 Chapter 16 Delete 16.2.2.2.2 and 16.3.4.4 Exception and insert our modification **No change to modification wording in either section**

STATE FIRE PREVENTION REGULATIONS
1997 EDITION
PART III, CHAPTER 1
OPERATION, MAINTENANCE AND TESTING OF FIRE PROTECTION SYSTEMS

ADD NEW SECTION 1-8

1-8 NOTIFICATION REQUIRED PRIOR TO ANY TESTING, INSPECTION, MAINTENANCE OR WORK ON SYSTEMS

1-8.1 Prior to any Testing, Maintenance, Inspection or any work on the fire protection systems as found in this Chapter, the company performing such services must notify the 911 Center providing service for the location, where the fire protection systems are located, of the following:

(a) Prior to initiating or starting such work as referenced in Section 1-8.1 notify the 911 Center that such work is being performed, identifying the name of the facility, the address of the facility, the name of the company, and the License Number of the company providing the services.

(b) That any alarms received from the facility shall be verified by the 911 Center prior to any emergency services dispatch being made.

(c) That at the conclusion or finish of the work being performed on the systems, the 911 Center will be notified that the company has completed the work and that the alarm system is back in-service and any alarms from the facility shall represent an "alarm" condition, requiring the appropriate emergency services dispatch.

1-8.2 It is the responsibility of the company performing the Testing, Inspection, Maintenance or any work on the fire protection systems to identify the correct 911 Center or the correct emergency services dispatch center which serves the area in which the facility to have work performed is located.

1-8.3 The failure of the company performing the services as referenced in this Chapter to comply with the provisions of this Section, shall constitute a violation of the State Fire Prevention Regulations, and action will be taken pursuant to the provisions of the Delaware Code Title 16, Chapter 66 for such violations.

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF LANDSCAPE ARCHITECTURE

24 DE Admin. Code 200

Statutory Authority: 24 Delaware Code, Section 205(1) (24 **Del.C.** §205(1))

In Re: |
Adoption of Rules and |
Regulations |

Order Adopting Rules and Regulations

AND NOW, this 4th day of January, 2001, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Landscape Architecture of the State

of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

Nature of the Proceedings

Pursuant to its authority under 24 Del. C. §506(1) the Board proposed to adopt new Rules and Regulations to revise its existing Rules and Regulations. Substantive changes to the regulations included clarification of the passing examination score; addition of rules regarding use of the seal on drawings and other documents; clarification of procedural requirements concerning license renewal and inactive status; deletion of provisions regarding death or retirement; clarification of provisions for pre-approval of certain self-directed continuing education activities; and addition of procedural rules pertaining to disciplinary matters and hearings before the Board. In addition, material which unnecessarily duplicated the statutes or other rules and regulations was stricken.

Notice of the public hearing on the Board's proposed rule adoption was published in the *Delaware Register of Regulations* on September 1, 2000 and in two Delaware newspapers of general circulation, all in accordance with 29 Del. C. §10115. The public hearing was held as noticed on Thursdays, November 9, 2000. The Board deliberated and voted on the proposed rule amendments immediately following the public hearing, voting unanimously to adopt the revised rules and regulations. This is the Board's Decision and Order ADOPTING the rule revisions as proposed.

Evidence and Information Submitted at Public Hearing

The Board received no written comments in response to the notice of intention to adopt the proposed rule revisions. No public comment was received at the November 9, 2000 public hearing.

Findings of Fact and Conclusions

As outlined in the preceding section, the public was given the required notice of the Board's intention to comprehensively revise its regulations and was offered an adequate opportunity to provide the Board with comments on the proposed changes. The Board concludes that its consideration of the proposed revisions to its Rules and Regulations is within its general authority to promulgate regulations under 24 Del.C. §205(1). The Board finds that adoption of the proposed rules and regulations is necessary to comply with and enforce 24 Del.C. Chapter 2, and for the full and effective performance of the Board's duties under that chapter. The Board finds that the revised rules clarify the law and will better assist applicants and licensees to understand their responsibilities under the Board's law. The Board therefore unanimously voted to adopt the revised rules and regulations as published

Order

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Landscape Architecture, **IT IS HEREBY ORDERED THAT:**

1. The proposed Rules and Regulations are *approved and adopted* in their entirety, in the exact text attached hereto as Exhibit "A".

2. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 Del.C. §10118(e).

3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

By Order of the Board of Landscape Architecture

Denise Husband, RLA, President, Professional Member
Marlene A. Bradley, Secretary, Public Member
Lorene Athey, Professional Member
Abby L. Betts, Public Member
Paul DeVilbiss, RLA, Professional Member

1.0 Filing of Applications for Written Examination
2.0 Filing of Applications for Reciprocity
3.0 Filing of Applications for Certificate of Authorization
4.0 Licenses
5.0 Seal
6.0 Renewal of Licenses
7.0 Continuing Education as a Condition of Biennial Renewal
8.0 Inactive Status
9.0 Disciplinary Proceedings and Hearings
10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Filing of Applications for Written Examination

1.1 Persons seeking licensure pursuant to 24 *Del. C.* § 206 shall submit an application for written examination on a form prescribed by the Board to the Board's office at the Division of Professional Regulation (the "Division") along with the application fee established by the Division. Applicants for written examination shall be filed in such office of the Board no later than twelve (12) weeks prior to the opening date of the examination.

1.2 Each applicant must submit documentary evidence, as more fully described on the application form, to show the Board that the applicant is clearly eligible to sit for the examination under 24 *Del. C.* § 206.

1.3 The Board shall not consider an application for written examination until all items described in paragraphs 1.1 and 1.2 of this Rule have been submitted to the Board's

office.

1.4 The Board reserves the right to retain as a permanent part of the application any or all documents submitted. ~~which shall be properly marked for identification and ownership. Original documents may be replaced by photostated copies of such documents at the request and expense of the applicant.~~

1.5 The examination shall be the Council of Landscape Architectural Registration Board's ("CLARB") current uniform national examination. CLARB establishes a passing score for each uniform national examination.

Statutory Authority: 24 Del. C. §§206, 207

2.0 Filing of Applications for Reciprocity

2.1 Persons seeking licensure pursuant to 24 *Del. C.* § 208, shall submit payment of the ~~reciprocity~~ fee established by the Division and an application on a form prescribed by the Board which shall include proof of licensure and good standing in each state or territory of current licensure, and on what basis the license was obtained therein, including the date licensure was granted. Letters of good standing must also be provided for each state or jurisdiction in which the applicant was ever previously licensed.

2.2 The Board shall not consider an application for licensure by reciprocity until all items described in 24 *Del. C.* § 208 and paragraph 2.1 of this Rule have been submitted to the Board's office.

2.3 A passing exam score for purposes of reciprocity shall be the passing score set by CLARB, or the passing score accepted by the Delaware Board, for the year in which the exam was taken.

Statutory Authority: 24 Del. C. §208.

3.0 Filing of Applications for Certificate of Authorization

Corporations or partnerships seeking a certificate of authorization pursuant to 24 *Del. C.* § 212 shall submit an application on a form prescribed by the Board. Such application shall include the (a) names and addresses of all officers and members of the corporation, or officers and partners of the partnership, and (b) the name of ~~a~~an corporate officer ~~or member~~ in the case of a corporation, or the name of a~~n officer or~~ partner in the case of a partnership, who is licensed to practice landscape architecture in this State and who shall be ~~in responsible charge of~~ responsible for services in the practice of landscape architecture ~~through~~ on behalf of the corporation or partnership.

Statutory Authority: 24 Del. C. §212.

4.0 Licenses

Only one license shall be issued to a licensed landscape architect, except for a duplicate issued to replace a lost or destroyed license.

~~5. Administration (Seal)~~

5.0 Seal

5.1 Technical Requirements

5.1.1 For the purpose of signing and sealing ~~the~~ drawings, specifications, ~~and~~ contract documents, plans, reports and other documents (hereinafter collectively referred to as "drawings"), each landscape architect shall provide him or herself with an individual seal of design and size as approved by the Board to be used as hereinafter directed on documents prepared by him or her or under his/her direct supervision for use in the State of Delaware.

5.1.2 The application of the seal impression or rubber stamp to the first sheet of the bound sheets of the drawings (with index of drawings included), title page of specifications, and other drawings and contract documents shall constitute the licensed landscape architect's stamp.

5.1.3 The seal to be used by a licensee of the Board shall be of the embossing type or a rubber stamp, and have two (2) concentric circles. The outside circle measures across the center 1 13/16 inches. The inner circle shall contain only the words "NO." and "State of Delaware." At the bottom the words "Registered Landscape Architect" reading counterclockwise, and at the top the name of the licensee.

5.1.4 An impression of the seal is to be submitted to the Board to be included in the licensee's records.

5.2 Use of the Seal

5.2.1 A landscape architect shall not sign or seal drawings unless they were prepared by him/her or under his/her direct supervision.

5.2.2 "Supervision" for purposes of signing and/or sealing drawings shall mean direct supervision, involving responsible control over and detailed professional knowledge of the contents of the drawings throughout their preparation. Reviewing, or reviewing and correcting, drawings after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over, nor detailed professional knowledge of, the content of such drawings throughout their preparation.

5.2.3 The seal appearing on any drawings shall be prima facie evidence that said drawings were prepared by or under the direct supervision of the individual who signed and/or sealed the drawings. Signing or sealing of drawings prepared by another shall be a representation by the registered landscape architect that he/she has detailed professional knowledge of and vouches for the contents of the drawings.

Statutory Authority: 24 Del. C. §205(a)(1); 212(a).

6.0 ~~Late~~ Renewal of Licenses

6.1 Each application for license renewal or request for inactive status shall be submitted on or before the expiration

date of the current licensing period. However, a practitioner may still renew his or her license within 60 days following the license renewal date upon payment of a late fee set by the Division. Upon the expiration of 60 days following the license renewal date an unrenewed license shall be deemed lapsed and the practitioner must reapply pursuant to the terms of 24 Del.C. §210(b). ~~Except on a showing of exceptional hardship, there shall be no extension of time for license renewals for practitioners who fail to renew their licenses on or before the renewal date. "Exceptional hardship" includes, but is not limited to, disability and illness. The Board reserves the right to require a letter from a physician attesting to the licensee's physical condition when the hardship request is based on disability or illness.~~

6.2 It shall be the responsibility of all licensees to keep the Board and the Division informed of any change in name, home or business address.

Statutory Authority: 24 Del. C. §210.

~~**7.0 Death or Retirement**~~

~~Where the names of deceased, retired, or inactive partners or firm members are used in firm names or otherwise listed on the letterhead, their dates of death or retirement shall be indicated.~~

7.0 Continuing Education as a Condition of Biennial Renewal

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 To be acceptable for credit toward this requirement, all courses, seminars, sessions, programs or self-directed activities shall be submitted to the Board. The Board shall recommend any course, seminar, session or program for continuing education credit that meets the criteria in sub-paragraph 7.1.2.1 below.

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the Delaware Code and contain elements which will ~~enhance~~ assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

7.1.2.2 The Board shall meet at least once during each calendar quarter of the year and act on each course, seminar, session or program properly submitted for its review. Each program, or portion thereof, shall be either recommended for approval, recommended for disapproval or deferred for lack of information. If deferred or disapproved, the licensee will be notified and may be granted a period of time in which to correct deficiencies. The Board may also seek verification of information submitted by the licensee.

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:

7.1.3.1 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.2 Council of Landscape Architectural Registration

7.1.4 Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.

7.2 Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).

7.3 For licensing periods beginning February 1, 1999 and thereafter, requests for approval of continuing education activity, along with the required supporting documentation, shall be submitted to the Board on or before November 1 of the year preceding the biennial renewal date of the licenses. A license shall not be renewed until the Board has approved twenty (20) hours of continuing education classes as provided in Rule 7.1 or has granted an extension of time for reasons of hardship.

7.4 Reporting: The licensee shall submit the following documentation to the Board for each continuing education activity completed:

- A completed Continuing Education Reporting Form
- A syllabus, agenda, itinerary or brochure published by the sponsor of the activity
- A document showing proof of attendance (i.e. certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). ~~from the college/university).~~

7.4.1 Each licensee must retain copies of Board approved continuing education reporting forms and all

supporting materials documenting proof of continuing education compliance. Licensees will be required to complete a continuing education log form prior to license renewal and to submit supporting materials upon request.

7.5 ~~Special Request~~ Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

7.6 Self-directed Activities: For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors ~~may not include~~ will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

7.6.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.

Statutory Authority: 24 Del. C. §205(12).

8.0 Inactive Status

8.1 A licensee may, upon written request to the Board, place his/her license on inactive status.

8.2 A licensee who has been granted inactive status and who wishes to re-enter the practice of landscape architecture, shall submit a written request to the Board along with a pro-rated renewal fee and proof of completion of twenty (20) hours of continuing education during the period of inactive status.

8.3 Licensees on inactive status shall renew their inactive status by notification to the Division of Professional Regulation at the time of biennial license renewal.

Statutory Authority: 24 Del. C. §210(c).

9.0 Disciplinary Proceedings and Hearings

9.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 *Del. C*. §8807(h)(1)-(3).

9.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

9.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

9.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

9.1.4 If a hearing before the Board has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 *Del. C.* Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

9.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 *Del.C.* §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 *Del.C.* §§213 and 215; 29 *Del.C.* §§10111, 10122 and 10131

9.2 Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 Del.C. §213.

Statutory authority: 24 *Del.C*. §§205(7)(8); 213, 214, 215.

10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such

person making such report will not be liable when such reports are made in good faith and without malice.

10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

10.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

10.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DIVISION OF PROFESSIONAL REGULATION
BOARD OF MASSAGE & BODYWORK

24 DE Admin. Code 5300
Statutory Authority: 24 Delaware Code, Section 5306(1) (24 **Del.C.** 5306(1))

In Re: |
Adoption of Rules and |
Regulations |

Order Adopting Rules and Regulations

AND NBoard of NOW, this 4th day of January, 2001, in accordance with 29 Del. C. §10118 and for the reasons stated hereinafter, the Board of Massage and Bodywork of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

Nature of the Proceedings

Pursuant to its authority under 24 Del. C. §§5306(1), the Board proposes to adopt changes and additions to its existing Rules and Regulations, relating to the requirements of the 100-hour course required for certification as a massage and bodywork technician; procedures for timely completion of applications; CPR certification and the calculation of credit hours for continuing education. Notice of the public hearing on the Board's proposed rule amendments was published in the Delaware *Register of Regulations* on November 1, 2000 and in two Delaware newspapers of general circulation, all in accordance with 29 Del. C. §10115. The public hearing was held as noticed on December 7, 2000, and oral and written comments were received into evidence. The Board deliberated and voted on the proposed rule amendments following the public hearing at the December 7, 2000

meeting, voting unanimously to adopt the rule amendments. This is the Board's Decision and Order ADOPTING the rule amendments as proposed.

Evidence and Information Submitted at Public Hearing

The Board received three written comments for the December 7, 2000 public hearing in response to the notice of intention to adopt the proposed rule amendments. While the majority of the comments received did not address the specific rule revisions at issue before the Board on December 7, 2000, the comments were submitted for the public hearing and were treated as written comments by the Board for purposes of the hearing record. The Board separately considered certain written comments as requests for regulation making at the December 7, 2000 regular meeting following the public hearing.

Barbra Esher, President of the American Organization for Bodywork Therapies of Asia, submitted a letter dated December 2, 2000, suggesting that the Board revise its rules to designate the Bodywork therapy examination administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) as an alternate examination for licensure, which applicants could take in lieu of the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination. The written comment from Ms. Esher did not address the published proposed rule changes being considered at the December 7, 2000 hearing.

Sally Hacking, Legislative Consultant, submitted a fax to the Board, dated December 5, 2000, attaching a letter from an Assistant Attorney General in Maryland to Maryland Senator Paula Hollinger, addressing the practice of Shiatsu and Reflexology in the Maryland regulatory scheme. Ms. Hacking though thought that this information might assist the Delaware Board. The written comment from Ms. Hacking did not address the published proposed rule changes being considered at the December 7, 2000 hearing.

Suzanne Macuga Brandt, of the Delaware School of Shiatsu and Massage Therapy, Inc., submitted a letter to the Board dated December 7, 2000, stating that the Board's proposed rule requiring the 100-hour course to be taken at one school was a good step towards insuring that certified technicians were adequately trained. Ms. Brandt further suggested that the required number of continuing education hours for technicians should be increased in order to assure competency. Ms. Brandt also stated her support for the addition of the NCCAOM examination as an option. Aside from the comment about the 100-hour course, the written comment from Ms. Hacking did not address the published proposed rule changes being considered at the December 7, 2000 hearing.

The Board received oral comments from the public at the December 7, 2000 public hearing as follows:

Dean Hutcherson stated that he was present in support of Ms. Esher's comments regarding the NCCAOM examination and would answer any questions from the Board in this regard. Mr. Hutcherson had no comments regarding the proposed rule changes at issue at the hearing.

Suzanne Macuga Brandt stated that the proposed rules were a step in the right direction. She expressed her concern with improving the competency of certified massage technicians. She stated that she would like to see the amount of continuing education for technicians raised from 12 to 24 hours and she would support the approval of the NCCAOM examination as an option.

Findings of Fact and Conclusions

As outlined in the preceding section, the public was given the required notice of the Board's intention to amend its rules and regulations and was offered an adequate opportunity to provide the Board with comments on the proposed regulations. The Board concludes that its consideration of the proposed rules and regulations is within the Board's general authority to promulgate regulations under 24 Del. C. §5306(1). Specific statutory authority for the Board's adoption of continuing education standards is found at 24 Del. C. §5306(7).

The Board finds that adoption of the proposed rules and regulations is necessary to comply with and enforce 24 Del.C. Chapter 53, and for the full and effective performance of the Board's duties under that chapter. The Board finds that the revised rules clarify the law and will better assist applicants and licensees to understand their responsibilities under the Board's law. The Board also finds that adopting the regulations as proposed is in the best interest of the citizens of the State of Delaware, particularly those persons who are the direct recipients of services regulated by the Board. The Board therefore unanimously voted to adopt the revised rules and regulations as published.

Order

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Massage and Bodywork, **IT IS HEREBY ORDERED THAT:**

1. The revisions to Rules and Regulations as published in the *Register of Regulations* on November 1, 2000 are *approved and adopted* in the exact text attached hereto as Exhibit "A".

2. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 Del. C. §10118(e).

3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

Allan Angel, President, Public Member
Phyllis E. Mikell, Vice-President, Professional Member
Daniel P. Stokes, Secretary
Carla Arcaro, Professional Member
Patricia A. Beetschen, Professional Member
Vivian Cebrick, Public Member
Katherine J. Marshall, Public Member

Board of Massage and Bodywork

1.0 Definitions and General Definitions

1.1 The term "500 hours of supervised in-class study" as referenced in 24 **Del.C.** §5308(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that is substantially the same as referenced in 24 **Del.C.** § 5308(a)(1) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500 hour requirement.

1.2 The term a "100-hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 100 hour course which includes hands-on technique and theory, and anatomy, physiology, and contraindications as they relate to massage and bodywork.

1.2.1 The 100 hour course must be a unified, introductory training program in massage and bodywork, including training in the subjects set forth in Rule 1.2. The entire 100 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

1.3 The "practice of massage and bodywork" includes, but is not limited to, the following modalities:

Acupressure
Chair Massage
Craniosacral Therapy
Deep Tissue Massage Therapy
Healing Touch
Joint Mobilization
Lymph Drainage Therapy
Manual Lymphatic Drainage
Massage Therapy
Myofascial Release Therapy
Neuromuscular Therapy
Orthobionomy
Process Acupressure
Reflexology
Rolfing
Shiatsu
Swedish Massage Therapy
Trager
Visceral Manipulation

1.4 The practice of the following modalities does not constitute the "practice of massage and bodywork":

Alexander Technique
Aroma therapy
Feldenkrais
Hellerwork
Polarity Therapy
Reiki
Shamanic Techniques
Therapeutic Touch

3 DE Reg. 1516 (5/1/00)

2.0 Filing of Application for Licensure as Massage/ Bodywork Therapist

2.1 A person seeking licensure as a massage/bodywork therapist must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of a current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** §5308(3); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** §5311.

2.2 In addition to the application and materials described in 2.1 of this Rule, an applicant for licensure as a massage/bodywork therapist shall have (1) each school or approved program of massage or bodywork where the applicant completed the hours of study required by 24 **Del.C.** §5308(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed; and (2) Assessment Systems, Incorporated or its predecessor, submit to the Board verification of the applicant's score on the written examination described in Rule 3.0 herein.

2.3 The Board shall not consider an application for licensure as a massage/bodywork therapist until all items

specified in 2.1 and 2.2 of this Rule are submitted to the Board's office.

2.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

2.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

2.4 Renewal. Applicants for renewal of a massage/ bodywork therapist license shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. License holders shall be required to maintain current CPR certification throughout the biennial licensure period.

3.0 Examination

The Board designates the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") as the written examination to be taken by all persons applying for licensure as a massage/bodywork therapist. The Board will accept as a passing score on the exam the passing score established by the NCBTMB.

4.0 Application for Certification as Massage Technician

4.1 A person seeking certification as a massage technician must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** §5309(a)(2); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** §5311.

4.2 In addition to the application and materials described in 4.1 of this Rule, an applicant for certification as a massage technician shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 **Del.C.** §5309(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.3 The Board shall not consider an application for certification as a massage technician until all items specified in 4.1 and 4.2 of this Rule are submitted to the Board's office.

3 DE Reg. 1516 (5/1/00)

4.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

4.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

4.4 Renewal. Applicants for renewal of a massage technician certificate shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. Certificate holders shall be required to maintain current CPR certification throughout the biennial licensure period.

5.0 Expired License or Certificate

An expired license as a massage/bodywork therapist or expired certificate as a massage technician may be reinstated within ninety (90) days after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation.

6.0 Continuing Education

6.1 *Hours required*. For license or certification periods beginning September 1, 2000 and thereafter, each massage/ bodywork therapist shall complete twenty-four (24) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Each massage technician shall complete twelve (12) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education is a condition of renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

6.1.1 Calculation of Hours. For academic course work, correspondence courses or seminar/workshop instruction, one (1) hour of acceptable continuing education shall mean 50 minutes of actual instruction. One (1) academic semester hour shall be equivalent to fifteen (15) continuing education hours; one (1) academic quarter hour shall be equivalent to ten (10) continuing education hours.

6.2 *Proration*. Candidates for renewal who were first licensed or certified twelve (12) months or less before the date of renewal are exempt from the continuing education requirement for the period in which they were first licensed or certified.

6.3 *Content.*

6.3.1 Except as provided in Rule 6.3.2, continuing

education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge.

6.3.2 No more than 25% of the continuing education hours required in any licensing period may be earned in any combination of the following areas and methods:

6.3.2.1 Courses in modalities other than massage/bodywork therapy

6.3.2.2 Personal growth and self-improvement courses

6.3.2.3 Business and management courses

6.3.2.4 Courses taught by correspondence or mail

6.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer

6.4 *Board approval.*

6.4.1 "Acceptable continuing education" shall include any continuing education programs meeting the requirements of Rule 6.3 and offered or approved by the following organizations:

6.4.1.1 NCBTMB

6.4.1.2 American Massage Therapy Association

6.4.1.3 Association of Oriental Bodywork Therapists of America

6.4.1.4 Association of Bodywork and Massage Practitioners

6.4.1.5 Delaware Nurses Association

6.4.2 Other continuing education programs or providers may apply for pre-approval of continuing education hours by submitting a written request to the Board which includes the program agenda, syllabus and time spent on each topic, the names and resumes of the presenters and the number of hours for which approval is requested. The Board reserves the right to approve less than the number of hours requested.

6.4.3 *Self-directed activity:* The Board may, upon request, review and approve credit for self-directed activities, including, but not limited to, teaching, research, preparation and/or presentation of professional papers and articles. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.4.4 The Board may award additional continuing education credits, on an hour for hour basis, to continuing education instructors for the first-time preparation and presentation of an approved continuing education course for other practitioners, to a maximum of 6 additional hours. (e.g. an instructor presenting a 8 hour course for the first time may receive up to 6 additional credit hours for preparation of the course). This provision remains subject to the limitations of Rule 6.3.2.

6.5 *Reporting.*

6.5.1 For license or certification periods beginning September 1, 2000 and thereafter, each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality.

6.5.2 If a continuing education program has already been approved by the Board, the candidate for renewal must demonstrate, at the Board's request, the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.5.3 If a continuing education program has not already been approved by the Board, the candidate for renewal must give the Board, at the Board's request, all of the materials required in Rule 6.4.2 and demonstrate the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.6 *Hardship.* A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing or certification period for which it is made. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception. The licensee may not practice until reinstatement of the license.

3 DE Reg. 1516 (5/1/00)

7.0 Scope of Practice

Licensed massage/bodywork therapist and certified massage technicians shall perform only the massage and bodywork activities and techniques for which they have been trained as stated in their certificates, diplomas or transcripts from the school or program of massage therapy where trained.

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

8.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without

malice.

8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

8.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

8.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

8.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DEPARTMENT OF EDUCATION

14 DE Admin. Code
Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. 122(d))

Regulatory Implementing Order
255 Definitions Public School and Private School

I. Summary of the Evidence and Information Submitted

The Secretary of Education approves the amendment to the regulation Definitions Public School and Private School, page 11.1 in the *Handbook for Personnel Administration in Delaware School Districts.* The amendments to the definition of public school add a reference to charter schools and change the words “supported entirely” to “supported primarily”. The definition of private school is unchanged. Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 28, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Facts

The Secretary finds that it is necessary to amend this regulation because the definition of public school has changed and the regulation needs to reflect that change.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.* Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section 122, on January 4, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations.*

IT IS SO ORDERED this 4th day of January, 2001.
Department of Education
Valerie A Woodruff, Secretary of Education

255 Definitions of Public School and Private School

1.0 Public School – A public school shall mean a school or Charter School having any or all of grades kindergarten through twelve, supported ~~entirely~~ primarily from public

funds and under the supervision of public school administrators. It also shall include the agencies of states and cities which administer the public funds.

2.0 Private School – A private school shall mean a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised and shall be interpreted further to include an accredited and/or approved college or university.

Regulatory Implementing Order

401 Major Capital Improvement Programs

I. Summary of the Evidence and Information Submitted

The Secretary of Education approves the amendment to the regulation 401 Major Capital Improvement Programs. The regulation was amended by adding 1.1 to read as follows "the Secretary of Education shall annually review the current cost per square foot for construction and make needed adjustments as required". This addition makes it clear that the Secretary of Education can adjust the cost per square foot when appropriate. Also, a new 10.0 on air conditioning is added to reflect Section 132 of the 2001 Bond Bill that requires the inclusion of air conditioning in all Certificates of Necessity issued after July 2000, for new construction and major renovation/rehabilitation. The existing 10.0, Administration of the New School becomes 11.0.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 28, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Facts

The Secretary finds that it is necessary to amend this regulation because the changes were needed to reflect current practice and the requirements of the 2001 Bond Bill.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.* Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section 122, on January 4, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations.*

IT IS SO ORDERED this 4th day of January, 2001.

Department of Education

Valerie A Woodruff, Secretary of Education

401 Major Capital Improvement Programs

1.0 Major Capital Improvement Programs are projects in excess of $250,000.

1.1 The Secretary of Education shall annually review the current cost per square foot for construction and make needed adjustments as required.

2.0 Procedures for Approval of a Site for School Construction

2.1 Local school districts shall contact the Department of Education for a site review when they propose to purchase a site for school purposes. All prospective sites shall be reviewed at one time. It is preferable that at least four (4) sites be considered.

2.2 The Department of Education will forward all prospective sites to the following agencies for their review and comments. The Department of Education will consolidate the responses of the other agencies in order to review and rank the prospective sites and list all reasons for approval or rejection. The Department shall then notify the school district concerning their final decision.

2.2.1 State Planning Coordination Office

2.2.2 The Budget Office

2.2.3 The Department of Natural Resources and Environmental Control

2.2.4 The Department of Agriculture

2.2.5 The Department of Transportation

2.2.6 The Local Planning Agency having jurisdiction

3.0 Educational Specifications, Schematic Plans, Preliminary Plans, and Final Plan Approvals

3.1 Educational Specifications are defined as a document which presents to an architect what is required of an educational facility to house and implement the

educational philosophy and institutional program in an effective way.

3.1.1 Educational Specifications shall be approved by the local school board and the Department of Education. The Department will require ten (10) working days for completion of the review and approval process.

3.2 All Schematic Plans shall be approved by the local school board and the Department of Education and these approved plans should be sent to the county or city planning office for information purposes only.

3.3 All Preliminary Plans shall be approved by the local school board and the Department of Education.

3.4 All final plans shall be approved by the local school board and the Department of Education.

3.5 The local school district must involve the following groups in reviewing these plans prior to the final approval.

3.5.1 Fire Marshal to review the plans for fire safety.

3.5.2 Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.

3.5.3 Division of Facilities Management, Chief of Engineering & Operations for compliance with building codes.

3.5.4 Division of Highways for review of the Site Plan showing entrances and exits.

3.5.5 Architectural Accessibility Board for access for persons with disabilities.

4.0 Certificates of Necessity

4.1 The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.

4.2 Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum as it must be quoted in the advertisement for the referendum and shall be issued only at the written request of the local school district.

5.0 Notification, Start of Construction, Completion of Construction and Certificate of Occupancy

5.1 The school district shall submit to the Department of Education and the State Budget Director a construction schedule, showing start dates, intermediate stages and final completion dates.

5.2 The school district shall notify the Department of Education, the State Budget Director and the Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the building as complete.

5.3 The school district shall notify the Department of Education, the State Auditor, and the State Budget Director upon approval of the Certificate of Occupancy.

5.4 Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation or addition to an existing facility.

6.0 Purchase Orders: All purchase orders for any major capital improvement project shall be approved by both the Department of Education and the Director of Capital Budget and Special Projects prior to submission to the Division of Accounting.

7.0 Change Orders

7.1 Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is to correct design omissions, faults of unforeseen circumstances which arise during the construction process.

7.2 All Change Orders must be agreed upon by the architect, the school district and the contractor and shall be forwarded to the Department of Education.

7.2.1 Submission of a Change Order must include the following documents: Completed purchase order as applicable; Local Board of Education minutes identifying and approving the changes; Completed AIA document G701; Correspondence which gives a breakdown in materials, mark-up and other expenses; and, if not contained in any of the preceding, an explanation of need plus any drawings needed to explain the requested change.

8.0 Transfer of Funds between Projects

8.1 The transfer of funds between projects during the bidding and construction process shall have the written approval of the Department of Education. Acceptability of the transfer of funds will meet the following criteria:

8.1.1 No project may have more than 10% of its funding moved to another project. For example - no more than $10,000 could be transferred from a $100,000 project to any other project.

8.1.2 No project may have more than 10% added to its initial funding. For example -no more than $10,000 would be transferred from all other projects to a project originally budgeted at $100,000.

9.0 Educational Technology: All school buildings being constructed or renovated under the Major Capital Improvement Program shall include, in the project, wiring for technology that meets the Delaware Center for Educational Technology standards appropriate to the building type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds.

10.0 Air Conditioning: All school buildings with

Certificates of Necessity issued after July 1, 2000 for new school construction and/or major renovation/rehabilitation shall require the inclusion of air conditioning unless otherwise waived by the Secretary of Education.

~~10.0~~

11.0 Administration of the New School: The principle administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary/benefits may be paid from Major Capital Improvement Programs.

Regulatory Implementing Order

710 Teacher Work Day

I. Summary of the Evidence and Information Submitted

The Secretary of Education approves the amendments to regulation 710 Teacher Work Day. Section 358 of the Epilogue to the FY 2001 Budget requires that "the department develop rules and regulations consistent with the hours per day with respect to the inclusion or exclusion of lunch plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required". The existing regulation which defined the teacher workday has been amended to include the other types of employees as well as the requirements in the Epilogue and has been renamed, Public School Employees Work Day. A clause from the Epilogue concerning local contracts has also been added.

Notice of the proposed amendment to the regulation was published in the News Journal and the Delaware State News on November 28, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

Mr. George Bauder, Director of Governmental Relations and Research for the Delaware State Education Association spoke at the December 21, 2000 State Board meeting concerning the amendments to the regulation. Mr. Bauder's first concern was that the language from the Epilogue to the 2001 Budget on local contracts be added to the regulation; this addition had already been made in response to a telephone call from Mr. Bauder. He also expressed concerns that statements 5, 9 and 10 on the Impact Analysis were inaccurate. Mr. Bauder contended that counter to the responses to items 5, 9 and 10, the proposed amendments do not preserve the local authority of boards and schools, there should be a less burdensome way to address the issue and the amendments do have an impact on district costs.

Mr. Bauder's comments were accepted as having merit but the amendments to the regulation are required by the Epilogue to the 2001 Budget and his concerns about the impact of the regulations need to be addressed legislatively.

II. Findings of Facts

The Secretary finds that it is necessary to amend these regulations because the Epilogue to the 2001 Budget required that the regulations be amended.

III. Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 *Del. C.* Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 Del. C. Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the Regulations of the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section 122, on January 4, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations.*

IT IS SO ORDERED this 4th day of January, 2001.

Department of Education

Valerie A Woodruff, Secretary of Education

710 Public School Employee[s] Workday

1.0 **[Absent an existing collective bargaining agreement to the contrary, district employees who work less than the specified time shall have their annual salary adjusted accordingly. Upon ratification of a new or extension of an existing collective bargaining agreement, the local district shall establish hours and days worked that are consistent with those specified below. Otherwise, effective ~~Effective~~]** July 1, 2001 a workday for public school employees shall be defined as follows:

1.1 Teacher - minimum of 7 1/2 hours, inclusive of 1/2 hour for lunch, plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school. (14 *Del. C.*, Section 1305 defines the number of teacher workdays per year and 14 *Del. C.*, Section 1328 defines the duty free period.)

1.2 Aide/Paraprofessional - minimum of 7 1/2 hours

inclusive of 1/2 hour for lunch.

1.3 Custodian - minimum of 8 hours inclusive of 1/2 hour for lunch.

1.4 Administrator - minimum of 7 1/2 hours exclusive of lunch plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school.

1.5 Food Service Manager - minimum of 7 hours exclusive of lunch.

1.6 Secretary - minimum of 7 1/2 hours exclusive of lunch.

Regulatory Implementing Order

885 Policy for the Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System

I. Summary of the Evidence and Information Submitted

The Secretary of Education approves amending the regulations Policy for the Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System found on pages A-57 and A-58 of the *Handbook for K-12 Education*. The regulations have been reformatted in the style of the other DOE regulations but the content of the regulations has not been changed except to change should to shall whenever it appears. Notice of the proposed amended regulations was published in the News Journal and the Delaware State News on November 28, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Facts

The Secretary finds that it is necessary to amend these regulations in order to adjust the format and to emphasize the required nature of the regulations by using the word "shall".

III. Decision to Readopt the Regulations

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 *Del. C.* Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section 122, on January 4, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 4th day of January, 2001.
Department of Education
Valerie A Woodruff, Secretary of Education

885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System

This policy was developed with the assistance of the Department of Natural Resources and Environmental Control, the Delaware Solid Waste Authority, the Bureau of Environmental Health, Delaware Department of Transportation, and the Advisory Committee on Science/ Environmental Education.

1.0 The storage of all chemicals shall conform to the specifications stated in Safety First: Guidelines for Safety in the Science or Science Related Classrooms.

2.0 All laboratories and science storage in the Delaware public schools shall be inventoried each year during the month of March. The inventory of chemicals both hazardous and non-hazardous should contain the following information:

2.1 who may handle the chemical and/or use it;
2.2 the name of the chemical;
2.3 the amount on hand;
2.4 the location where the chemical is stored;
2.5 the date purchased; and
2.6 the date discarded.

3.0 A list of the chemical shall be kept by the school principal.

4.0 Each district shall prepare a list of surplus chemicals and send a copy to the Education Associate, Science/ Environmental Education by April 15 of each year. These lists will be duplicated and disseminated to school districts so that they may negotiate, trade or exchange their surplus chemicals.

5.0 Disposal of surplus non-hazardous chemicals shall be carried out within the school district in accordance with procedures outlined in the Flinn Chemical Catalog/ Reference Manual, using trained staff. Direct any questions

regarding these procedures to the Education Associate for Science/Environmental Education.

6.0 Each district shall prepare a list of Transportable Surplus Hazardous chemicals and submit it to the Education Associate for Science/Environmental Education by May 15 of each year. These Transportable Surplus Hazardous chemicals, from all districts, will be brought to a central facility by district personnel. The location of this facility and date of aggregation will be announced annually by the Education Associate for Science/Environmental Education. Arrangements will be made for a licensed waste hauler to take the chemicals to a proper waste facility for disposal. Cost of disposal will be prorated among the districts and will be based upon the weight of the hazardous materials.

7.0 Non-transportable hazardous chemicals such as diethyl ether, picric acid, benzoyl peroxide and other materials listed in Safety First: Guidelines for Safety in the Science or Science Related Classrooms, must be disposed of in a prompt manner through the use of a licensed waste hauler. It is the school district's responsibility to contact a licensed waste hauler and to pay the cost for removal and disposal.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Statutory Authority: 29 Delaware Code, Chapter 100 (29 **Del.C.** Ch. 100)

Secretary's Order No.: 2001-A-0001

RE: FOIA Regulations
Date of Issuance: January 11, 2001
Effective Date: February 12, 2001

I. Background

Under the authority granted to public bodies under 29 Del. C. Chapter 100, the Department developed a new FOIA regulatory package and conducted two workshops to solicit public input. This effort was necessitated by a growing demand for access to public records, which is threatening to overwhelm existing staff resources. Therefore, these proposed regulations attempted to maximize public access while offsetting expenses through a fee structure to cover administrative and copying costs, and through a more orderly and streamlined process.

During the public hearing on October 26, 2000, and the post-hearing comment period, it became apparent that a number of individuals and public interest organizations had objections to this proposal, especially with respect to the anticipated burden of the costs and the open-ended time frames for responses associated with FOIA inquiries. At the request of Alan Muller, the post-hearing record was left open originally until November 26, 2000, and was later extended to November 29, 2000, at Alan's request, after an error regarding the closing appeared in the newspaper. Following the hearing, the various comments were assembled, summarized and responded to in an effort to harmonize the interests of all parties, including the public, non-profit environmental groups, commercial enterprises, and the Department. Proper notice of the hearing was provided as required by law.

II. Findings

The conclusions and recommendations reflected in the Department's Response Document, dated December 21, 2000 (attached hereto) are expressly adopted as findings and incorporated herein. In addition, the recommendation of the Hearing Officer regarding the independence of the HWDR from this FOIA program is also adopted as a finding.

III. Order

In view of the above findings, it is hereby ordered that the proposed FOIA regulations be amended consistent with the Department's Response Document and the Hearing Officer's Memorandum (attached hereto), and further, that the revised package be promulgated in final form in accordance with the customary procedure.

IV. Reasons

This regulation as amended, based on public comment, would appear to address the major issues raised in the record, insofar as it endeavors to afford citizens ready access to records at a reasonable cost and within an expeditious time frame, while allowing the Department to manage its limited staff resources in a efficient manner.

Nicholas A. DiPasquale, Secretary

FOIA REGULATION

1. Purpose

The purpose of this regulation is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Natural Resources and Environmental Control ("the Department") pursuant to 29 **Del.C.** Chapter 100, the Freedom of Information Act ("FOIA"). It is the Department's goal in establishing this regulation to maximize the amount of information available to the public, establish a reasonable fee structure for copying

public records, and to streamline procedures used to disseminate this information.

This regulation applies to the Department in dealing with requests from the public for information as set forth in the Freedom of Information Act. This regulation does not apply to the Department in its normal course of business with Federal, State, or local agencies, nor to private parties (corporate or individual) with whom the Department is conducting business (permit, contractual agreement, licenses, etc.), provided the public records are germane to the business being conducted. **[Requests made pursuant to the Hazardous Waste Disclosure Regulation ("HWDR") shall remain independent of this regulation in order to maintain EPA authorization for the Hazardous Waste program.]**

[A new and integral part of the FOIA regulation is a procedure outlined to address the confidential treatment of information submitted to the Department. It is important to understand that this confidentiality procedure is a necessary part of the FOIA regulation in that any information submitted to the Department is subject to public review unless deemed to be confidential by the Secretary in accordance with the criteria and procedures established in this regulation.]

It is the intent of the Department, as well as the State of Delaware, that public business be performed in an open and public manner so that the citizens will have the opportunity to be advised of the performance of Department officials and of their decisions. In accordance with Delaware's FOIA laws, the public has the right to "reasonable access" to public records. FOIA provides that it shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. All requests for information made pursuant to FOIA, shall be processed in the manner prescribed below.

2. Definitions

~~["Citizen of the State" means a citizen of the State of Delaware; one who resides/domiciles, owns property or pays taxes in Delaware or has a business address in the State of Delaware; one who has a current Delaware driver's license; or one who is incorporated within the State of Delaware.]~~

["Requestor" shall mean any individual, organization or business that submits a request for information under the Delaware Freedom of Information Act.]

"Confidential information" means information determined by the Secretary to constitute a trade secret, or commercial or financial information which is of a **~~[privileged or]~~** confidential nature.

"Department" means the Department of Natural Resources & Environmental Control.

"Responsible Official" means:

For a Corporation: a President, Vice-President, Secretary, or Treasurer of the corporation or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.

For a Partnership or Sole Proprietorship: a general partner or the proprietor, respectively, or the delegation of authority to a representative approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.

For a Municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.

"Secretary" means the Secretary of the Department of Natural Resources & Environmental Control or the Secretary's designee.

"Trade Secret" means a formula, pattern, device or compilation of information which may be used to obtain competitive advantage over others.

3. Availability of Records

3.1 Access

~~[3.1.a Public records shall be open to review and reproduction by any citizen of the State of Delaware. The Department may require verification of citizenry before considering the request to provide access to public records. If the requestor does not submit the verification upon the Department's request, the request may be denied.]~~

[3.1.a]

~~[3.1.b]~~ The Department will provide reasonable access and facilities for reviewing public records during regular business hours.

[3.1.b]~~[3.1.c]~~ The Department shall make all requested records available for review by requestor unless such records or portions of records are determined by the Secretary to be confidential in accordance with Section 6 of this regulation or otherwise exempted from disclosure as records deemed non-public pursuant to 29 **Del.C.** §10002(d).

[3.1.c]~~[3.1.d]~~ The Department reserves the right to deny any request in part or in full which does not comply with the Form of Request procedures pursuant to Section 4.1 of this regulation and/or the provisions of the Freedom of Information Act, as amended.

3.2 Department Records Review

3.2.a Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed

non-public are removed.

3.2.b Upon request, the Department will provide a log of records which may have been deemed non-public. The log will include the following information:

(1) **[T]**~~[t]~~he document's author,

(2) **[T]**~~[t]~~he addressee,

(3) **[T]**~~[t]~~he date of the document,

(4) **[T]**~~[t]~~he title of the document or a brief explanation of the document's contents, and

(5) **[T]**~~[t]~~he statutory exemption.

3.2.c The types of records deemed non-public are as contained in 29 **Del. C.** §10002(d).

3.2.d Departmental regulations, brochures, pamphlets, informational bulletins, and other such information are not subject to this regulation.

4. Record Request and Response Procedures

4.1 Form of Request

4.1.a Requests for access to records shall be made in writing and shall adequately describe the records sought in sufficient detail to enable the Department to locate the records with reasonable effort. **[The Department shall make every reasonable effort to assist the requestor in identifying the record being sought.]** The request may be denied in part or in full and returned to the requestor for the following reasons:

(1) The request does not adequately describe the records;

(2) The request requires the Department to perform research or to assemble information **[that has]** not **[been]** ~~[previously]~~ compiledor

(3) Reasons set forth in Section ~~[3.1.d.]~~**[3.1.c]** or as addressed in other areas of this regulation not specified here.

[4.2 Department Response to Requests]

[4.2.a.][The Department shall make every reasonable effort to determine within twenty (20) business days after the receipt of a request whether it can fulfill the request. The actual disclosure of records shall follow promptly thereafter.]

[4.2.b.][If the Department denies a request in whole or in part, the Department shall indicate to the requestor the reasons for the denial.]

[4.3]~~[4.2]~~ Reproduction of Records

[4.3.a]~~[4.2.a]~~ The copying of any requested public records may be performed by a Department employee and may be provided to the requestor as follows:

(1) If 25 pages or less are requested to be copied, the Department may, if time and personnel are available, make the copies at the time of the review. If personnel are not available, the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.

(2) If over 25 pages are requested to be copied the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.

(3) If over ~~[100]~~**[250]** pages are requested to be copied, the requestor may be required to bring in both copier and personnel to make the desired copies.

~~[(5)]~~ **[(4)]**Fragmentation of requests**[, in order to circumvent the 250 page limit,]** shall not be allowed.

[5]~~[(4)]~~ The Department shall have discretion based on circumstances involved to make decisions regarding copying.

5. Fees

5.1 Administrative Fees:

5.1.a Charges for administrative fees include:

(1) Staff time associated with processing FOIA requests;

(2) Locating and reviewing files;

(3) Monitoring file reviews;

(4) Generating computer records (electronic or print-outs); and

(5) Preparing logs of records deemed non-public.

5.1.b Calculation of Administrative Charges: Administrative charges will be calculated as follows:

(1) Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly paygrade rate (pro-rated for quarter hour increments) of the **[personnel]**~~[employee(s)]~~ performing the service. Administrative charges will be in addition to any copying charges.

(2) Appointment Rescheduling/Cancellation – Requestors that do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Department in preparing the requested records. The Department will prepare an itemized invoice of these charges and mail to the requestor for payment.

5.2 Photocopying Fees - The following are charges for photocopies of public records made by Department personnel:

5.2.a Standard Sized, Black and White Copies

The charge for copying standard sized, black and white public records shall be $0.10 per printed page (i.e. single-sided copies are $0.10 and double-sided copies are $0.20). This charge applies to copies on the following standard paper sizes:

(1) 8.5" x 11";

(2) 8.5" x 14"; and

(3) 11" x 17"

5.2.b Oversized Copies/Printouts

The charge for copying oversized public records (including,

but not limited to: blueprints, engineering drawings, GIS print-outs, and maps) shall be as follows:

(1) 24" x 26"- $2.00 each;

(2) 24" x 36" - $3.00 each;

(3) 30" x 42" - $5.00 each; and

(4) all copies larger than 30" x 42" shall be calculated at the rate of $0.60 per square foot.

5.2.c Color Copies/Printouts

The charge for color copies or color printouts shall be as follows:

(1) 8.5" x 11" - $1.00 per page;

(2) 8.5" x 14" - $1.50 per page;

(3) 11" x 17" - $2.00 per page; and

(4) all color copies larger than 11" x 17" (including, but not limited to: blueprints, engineering drawings, photographic imagery, GIS print-outs, and maps) shall be calculated at the rate of $2.50 per square foot.

5.2.d Microfilm and/or Microfiche Printouts

Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at $0.15 per printed page.

5.2.e Electronically Generated Records

Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.

(1) In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.

5.2.f Other Copying Fees

The Department, at its discretion, may arrange to have records copied by an outside contractor if the Department does not have the resources or equipment to copy such records. In this instance, the requestor will be liable for payment of these costs.

[5.3 Exemptions]

[5.3.a.][The administrative charge shall be waived for individuals making a FOIA request to the Department who are not deriving income or other forms of compensation from the use of the information obtained through the FOIA request. To qualify for this exemption, individuals must provide a signed affidavit accompanying the FOIA request, stating that they are not deriving income or other forms of compensation from the use of information obtained through FOIA.]

[5.3.b.][The administrative charge shall be waived for not-for-profit organizations working in the public interest on the condition that such organizations provide, along with their FOIA request, proof of tax-exempt status and a signed affidavit from an officer or the governing body of the organization which indicates that the requestor is authorized to request the information on behalf of the organization.]

[5.3.c.][Individuals and not-for-profit organizations that qualify under 5.3.a or 5.3.b shall also be granted a waiver for copying fees of $25.00 or less. For those requests exceeding $25.00 in copying fees, charges will be assessed pursuant to Section 5.2 of this regulation.]

~~[5.3]~~**[5.4]** Payment

~~[5.3.a] [For those requests with a combined total of copy and administrative charges of $15.00 or less, the Department will waive the charges in their entirety. For those requests exceeding $15.00, no charges will be waived and the Department will expect payment in full as described below.]~~

~~[5.3.b]~~**[5.4.a]** Payment for copies and/or administrative charges will be due at the time copies are released to the requestor. The Department reserves the right to refuse to make copies for requestors who have outstanding balances.

~~[5.3.c]~~ **[5.4.b]** The Department may require pre-payment of copying and administrative charges prior to mailing copies of requested records and/or in preparing logs of records deemed non-public.

~~[5.3.d]~~ **[5.4.c]** Department personnel will maintain a receipt register and, upon request, provide the requestor with a receipt when payment is received.

6. Requests for Confidentiality

A person may request that certain records or portions of records submitted to the Department be held confidential. Certain information may be determined confidential if its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained.

The following section sets forth procedures and criteria by which the Department will determine confidentiality of records or portions of records.

6.1 Procedure

6.1.a In order for the Department to make a determination that information submitted is of a confidential nature, and therefore to be afforded confidential status, a request must be made in writing to the Secretary at the time the record is submitted. The request shall provide substantiation for the allegation that the information should be treated as confidential. The request shall contain the following information:

(1) The measures taken to guard against undesired disclosure of the information to others;

(2) The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

(3) Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful

effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and

(4) Verification that significant effort or money has been expended in developing the information.

6.1.b The following information shall be submitted:

(1) Two public versions of the entire package of information that is submitted for determination, with alleged confidential information redacted (this version will be made available for public review). The public versions shall correspond page for page with the confidential versions, with the confidential portions having been redacted;

(2) Two confidential versions of the entire package of information that is submitted for determination, that includes the alleged confidential information (this version will be used internally for technical review); and

(3) Certification through a separate, notarized affidavit that the information is either trade secret, or commercial/financial information that is of a ~~[privileged or]~~ confidential nature. The affidavit will be signed by the Responsible Official.

6.1.c The burden lies with the party asserting the claim of confidentiality. A unilateral assertion that a record is confidential is insufficient evidence to support the Secretary in making a determination of confidentiality pursuant to this privilege.

6.1.d After a final determination of confidentiality has been issued by the Secretary, any further submissions containing the same confidential information shall be deemed to be confidential based on the prior determination if the Department determines that:

(1) **[T]**~~[t]~~he Responsible Official notified the Department in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and

(2) **[T]**~~[t]~~he later submission identifies with particularity the prior confidentiality determination; and

(3) **[T]**~~[t]~~he notice to the Department met the requirements of Section 6.1.b. above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and

(4) **[T]**~~[t]~~he later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.

6.2 Criteria

6.2.a The Secretary may determine that the information submitted is entitled to confidential treatment if all of the following criteria are met:

(1) Reasonable measures to protect the confidentiality of the information and an intention to continue to take such measures have been satisfactorily shown;

(2) The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent;

(3) No statute specifically requires disclosure of the information;

(4) A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and

(5) Verification that significant effort or money has been expended in developing the information.

6.3 Final Determination

The Secretary will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Secretary's determination.

6.3.a If the Secretary determines that disclosure of the information would violate 29 **Del.C.** §10002(d)(2), the information will be deemed confidential ~~[indefinitely.]~~ **[until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify the Department in writing of such changes.]**

6.3.b If the Secretary finds that the information is not entitled to confidential treatment, the information will be considered public.

6.4 Defense of Secretary's Determination

6.4.a Verification of Information

There will be instances in which the Secretary may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The Secretary relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.

6.4.b Information Determined Confidential

If the Secretary makes a confidentiality determination that certain information is entitled to confidential treatment, and the Department is sued by a requestor for disclosure of that information, the Department will:

(1) Notify each affected party of the suit;

(2) Call upon each affected party to furnish assistance where necessary in preparation of the Department's defense; **[and]**

(3) Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.

DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION
Statutory Authority: 7 Delaware Code, Section 6010 (7 **Del.C.** §6010)

Secretary's Order No.: 2001-A-0002

RE: Amendments to Low Enhanced Inspection and Maintenance Program (Regulation No. 31) and Motor Vehicle Emission Inspection Program (Regulation No. 26)

Date of Issuance: January 12, 2001

Effective Date of the Amendment: February 12, 2001

I. Background

On January 3, 2001, a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of this hearing was to receive public comment on the proposed amendments to Regulations 31 and 26 of the Regulations Governing the Control of Air Pollution. These provisions involve minor revisions to Delaware's Vehicle Inspection and Maintenance Program, including a proposal in Regulation 31 to exempt up to 14,000 newer model year vehicles (6 – 8 years old) from exhaust and evaporative emissions testing when waiting lines at inspection stations are too long. After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated January 12, 2001, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for those proposed amendments to Regulations No. 31 and 26, including reasoned responses to the various comments and has, where necessary, proposed minor changes to satisfy EPA concerns. In addition, the record will show that the following findings have been made:

1. Proper notice of the hearing was provided as required by law.

2. There is no need to specify how the 14,000 vehicle annual cap would be distributed, nor is there any reason to further describe which vehicles it applies to beyond what is already contained in the amendments to Regulation No. 31. However, it is appropriate to add a definition of "model year exemption" to indicate when the exemption will begin.

3. The implementation date of this SIP revision is an appropriate revision to Section 13(k).

4. AQM's additional information on the specific model and accompanying inputs and assumptions is sufficient to address EPA questions on those issues.

5. AQM's rationale, based on established pass/fail data, for creating the "clean screen" exemption is well founded and does not operate unfairly for reasons set forth in AQM's response on this issue.

III. Order

It is hereby ordered that the proposed amendments to Regulation Nos. 31 and 26, including those revisions suggested by AQM, be promulgated in final form in accordance with the customary statutory procedure.

IV. Reasons

These amendments will update the Department's I & M program with minor changes, and provide a reasonable method for minimizing waiting lines at inspection stations without compromising Air Quality goals, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale, Secretary

~~(08/13/98)~~ (/ /01)
Section 1 Applicability and General Provisions

1.1 Except as provided in Section 4 of this regulation, the standards, requirements and procedures set forth in this regulation are applicable to all motor vehicles, model years 1968 and newer with the exception of the five newest model years, titled and registered within Sussex County and as specified by the Department, including any motor vehicles owned or operated by the federal, state and local governments and their agencies.

~~(08/13/98)~~ (/ /01)
Section 2 Definitions

DIVISION: The Division of Motor Vehicles in the Department of Public Safety of the State of Delaware.

WAIVER: An exemption issued to a motor vehicle that cannot comply with the applicable emissions standard and cannot be repaired for reasonable cost.

DEPARTMENT: The Department of Natural Resources and Environmental Control of the State of Delaware.

EMISSIONS: Products of combustion discharged into the atmosphere from the tailpipe of a motor vehicle engine.

EMISSIONS INSPECTION AREA: The emissions inspection area will constitute the entire State effective April 1, 1990.

EMISSIONS STANDARD(S): The maximum concentration of either hydrocarbon (HC) or carbon monoxide (C0), or both, allowed in the emissions from the tailpipe of a motor vehicle as established by the Secretary of the Department of Natural Resources and Environmental Control or his designee in Technical Memorandum #2 entitled "Motor Vehicle Inspection and Maintenance Program Emission Limit Determination" dated 12/29/87.

FAILED MOTOR VEHICLE: Any motor vehicle which does not comply with applicable emission standards during the initial test or any retest.

~~FLEET INSPECTION STATION: A facility approved by the Department to conduct emissions inspections of the motor vehicles of a qualified fleet as determined by the Department.~~

MODEL YEAR: The year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

MOTOR VEHICLE: Includes every vehicle, as defined in 21 Del.Code, Section 101, which is selfpropelled, except farm tractors and offhighway vehicles.

MOTOR VEHICLE OFFICER: A person who has completed an approved emissions inspection equipment training program and is employed by an official inspection station.

NEW MOTOR VEHICLE: A motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin.

OFFICIAL INSPECTION STATION: The Motor Vehicle Safety Inspection Stations in Wilmington, New Castle, Dover and Georgetown, Delaware, operated by the Division.

REASONABLE COST: The actual cost of parts and labor which is necessary to cause the failed motor vehicle to comply with applicable emissions standards or which contributes toward compliance. It shall not include the cost of those repairs determined by the Division to be necessary due to alteration or removal of any part of the emission control system of the motor vehicle, or due to any damage resulting from the use of improper fuel in the failed motor vehicle.

REGISTERED GROSS VEHICLE WEIGHT(G.V.W.): The vehicle gross weight designated by the Division on the vehicle registration card which is the total weight of the vehicle and its maximum allowable load.

VEHICLE: Means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks and excepting offhighway vehicles.

(05/09/85)

Section 3 Registration Requirement

3.1 Effective January 1, 1983, no motor vehicle that is subject to this regulation may be granted registration in the State of Delaware unless the motor vehicle is in compliance with the applicable emissions standards, regardless of its pass/fail status of other tests normally performed at the official inspection station.

~~(02/08/95)~~ (/ /01)

Section 4 Exemptions

4.1 The following motor vehicles are exempt from the provisions of this regulation:

A. All farm vehicles not required by law to be registered

B. All historic vehicles, kit cars or antique vehicles displaying antique vehicle registration plates.

C. All motor vehicles with a registered G.V.W. over 8,500 pounds.

D. All motorcycles.

E. All vehicles that are registered in Delaware, but are not operated in Delaware consistent with established procedures of the Division.

~~F. All vehicles that obtain power by a means other than gasoline internal combustion. (Example: diesel, electric, propane, etc.)~~

F. All vehicles powered solely by diesel or solely by electricity generated from solar cells and/or stored in batteries.

4.2 Any exemption issued to a vehicle under this Section will not have an expiration date and will expire only upon a change in the vehicle status for which exemption was initially granted.

(07/06/82)

Section 5 Enforcement

5.1 Enforcement shall be in accordance with the provisions of 7 Del. C., Chapter 67.

~~(6/18/98)~~ (/ / 01)

Section 6 Compliance, Waivers and Extensions of Time

6.1 Compliance with applicable emissions standards shall be determined at an official inspection station ~~or at a fleet inspection station~~. The idle test procedure prescribed by the Department in Technical Memorandum #1 entitled "Motor Vehicle Inspection and Maintenance Program Vehicle Test Procedure and Machine Calibration", dated 6/9/82, shall be the official test procedure. A pass/fail printout from the emission testing equipment given to the driver will serve as the driver's record of the test results. Vehicles shall be pre-inspected prior to the emission inspection, and shall be prohibited from testing should any unsafe conditions be found. These unsafe conditions include, but are not limited to significant exhaust leaks, and significant fluid leaks. The Division and the Department shall not be responsible for major vehicle component failures during the test, of parts which were deficient or excessively worn prior to the start of the test.

A. Any motor vehicle shall be deemed to be in compliance with Section 3.1 if the test results are equal to or less than the emissions standards applicable to the motor vehicle.

B. Except as provided in Section 6.1 C, any motor vehicle shall be deemed to be in noncompliance with Section 3.1 if the test results are greater than the emissions standards applicable to the motor vehicle.

C. Any motor vehicle which fails its initial emissions test shall be deemed to be in compliance with Section 3.1 if not later than the registration expiration date, the motor vehicle either (1) is repaired at reasonable cost and is in compliance with applicable emissions standards as determined by an emissions retest at an Official Inspection Station, or (2) is granted a waiver pursuant to Section 6.2, or (3) is granted an extension of time not to exceed one month.

D. Whenever the owner of a failed motor vehicle determines to the satisfaction of the Division that it cannot be repaired at reasonable cost, the owner may be granted a waiver provided the owner makes application to the Division prior to the registration expiration date or by such other time as may be specified by the Division.

E. Vehicles powered solely by a "clean fuel" such as compressed natural gas, propane, alcohol and similar non-gasoline fuels shall be required to report for inspection to the same emission levels as gasoline powered cars until standards for clean fuel vehicles become available and are adopted by the State.

F. Vehicles able to be powered by more than one fuel, such as compressed natural gas and/or gasoline, must be tested and pass emissions standards for all fuels when such standards have become adopted by the Department.

6.2 Waiver issuance criteria

A. Waivers shall be issued only after a vehicle has failed a retest performed after all qualifying repairs have been completed, ~~and a minimum of 10% improvement (reduction) in hydrocarbons (HC) and carbon monoxide (CO) has resulted from those repairs.~~

B. Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in Section 6.2 E of this regulation. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

C. Waivers shall not be issued to vehicles for tamperingrelated repairs. The cost of tamperingrelated repairs shall not be applicable to the minimum expenditure in Section 6.2 F of this regulation. An exemption for tamperingrelated repairs may be issued if it can be verified that the part in question or one similar to it is no longer available for sale.

Repairs shall be appropriate to the cause of the test failure, and a visual check shall be made to determine if repairs were actually made if, given the nature of the repair, it can be visually confirmed. Receipts shall be submitted for review to further verify that qualifying repairs were performed.

D. A minimum of $75 for pre81 vehicles and $200 for 1981 and later vehicles shall be spent on related repairs in order to qualify for a waiver. This minimum cost should not be construed as an amount which must be spent as a condition of compliance after an initial failure. This cost relates only to the minimum cost which must be incurred when determining the eligibility of granting a waiver. In addition, this regulation does not prevent the vehicle owner from performing self-repairs.

6.3 The Division shall be responsible for specifying any forms or procedures to be followed in making applications pursuant to Section 6.2.

6.4 Waivers issued pursuant to this regulation are valid until the date of current registration expiration.

6.5 Quality control of waiver issuance.

A. The program shall include methods of informing vehicle owners or lessors of potential warranty coverage, and ways to obtain warranty repairs.

B. The program shall insure that repair receipts are authentic and cannot be revised or reused.

C. The program shall insure that waivers are only valid for one test cycle.

(07/06/82)

Section 7 Inspection Facility Requirements

7.1 Motor Vehicle Officers employed by the Division shall meet the requirements specified in this regulation.
7.2 Test equipment used by the Division shall be a type approved by the Department and testing procedures shall be conducted in accordance with the provisions of this regulation.
7.3 No person employed by the Division to test motor vehicle emissions shall engage in or have an interest in the operation of repair facilities located in this State; perform emission related repairs for compensation; or recommend repair facilities to owners or operators of vehicles being tested.

(07/06/82)
Section 8 Certification of Motor Vehicle Officers

8.1 A person may not perform the duties of a motor vehicle officer for testing motor vehicle emissions or operating emission testing equipment to determine the compliance or noncompliance of a motor vehicle as required by this regulation at an official inspection station unless that person has applied for and has received certification in accordance with the provisions of this Section.
8.2 To become certified, a person shall successfully complete a training course for this purpose approved by the Division.

~~(08/13/98)~~ (/ /)
Section 9 Calibration and Test Procedures and Approved Equipment

9.1 All emissions testing for the purpose of determining compliance with emissions standards shall be performed using equipment approved by the Department and calibration and test procedures as provided in this regulation.

9.2 Calibration ~~and test procedures~~: Reserved.

9.3 Test Procedures: See Technical Memorandum #1

(/ / 01)
TECHNICAL MEMORANDUM #1
~~**Reserved**~~

DELAWARE DIVISION OF MOTOR VEHICLES
VEHICLE EXHAUST EMISSIONS TEST

1.0 PURPOSE:
To describe the details of the DMV exhaust emissions test for HC and CO using DE '95 Inspection system composed of exhaust emissions and pressure test analyzers manufactured by Environmental Systems Products, Inc., E. Granby, CT (ESP)

2.0 APPLICABILITY:
Applicable to all gasoline (or alternate fueled) vehicles presented for inspection (regular renewal) in Delaware.

3.0 ASSOCIATED MATERIALS:
3.1 ESP Lane Operator's Manual, Version #2 (1997)
3.2 DMV 9701 Gas Calibration
3.3 ESP DW6 HT202561 (Rev. L 06/27/95)
3.4 Delaware exhaust emissions specification limits
3.5 ESP BAR 90 Certification for analyzer bench
3.6 ESP exhaust emissions measurement system P/N ESP 10364-2

4.0 PROCEDURE: (The referenced equipment is located at Step #1 of the DMV Inspection process)
4.1 The lane analyzer has successfully passed the calibration procedure(s) noted in Sections 2.1 - 2.2 of the ESP Lane Operator's Manual and DMV9701.
4.2 The Certified DMV Technician has verified that the vehicle presented is a viable candidate for an exhaust emissions analysis using DE '95 equipment.
4.3 The DMV Technician verifies that the following criteria are satisfied prior to emissions analysis.
4.3.1 - Analyzer is "clean"; a HC hang-up condition exists when HC reading is greater than 40 PPM and the analyzer "locks-out" until the purge indicates "clean".
4.3.2 - After the Technician inserts the exhaust pipe probe (a) insertion, to a minimum of 10 inches, the resultant sample dilution (CO+CO2) must exceed 6.0%. The analyzer indicates the presence of a failure condition (CO + CO2<6.0%) and indicates "test voided". If the (CO + CO2) condition is not satisfied, the subject vehicle FAILS the Delaware Emissions Test.
4.4 When those conditions indicated in 4.3 are satisfied, the analyzer begins a timed emissions test. The following sequence prevails:
4.4.1 The test sequence is:
4.4.1.1 The internal timer starts; the analyzer "collects" samples for 15 seconds at a rate of 2 samples per second;
4.4.1.2 At the 15 second interval, the analyzer compares the accumulated data to the applicable DE emissions specification for Hydrocarbon(s) HC and Carbon Monoxide CO;
4.4.1.3 Should the analyzer determine that the accumulated data does not exceed specifications for both components, it stops testing and indicates that the vehicle has passed emissions testing;
4.4.1.4 If the above analysis indicates that the applicable specifications limits are exceeded, sampling continues at the prescribed rate for an additional 15 seconds;
4.4.1.5 During this additional 15 second

interval the analyzer continually compares the resultant data to the applicable DE specification. If, during this time, the HC & CO data are within specification, sampling ceases and a PASS indication is indicated; If, at the end of a 30 second sampling, either or both the HC and CO data exceed specification, testing is terminated and a FAILURE is noted. An immediate exhaust emissions retest is provided to all vehicles failing their initial emissions test. Subsequent "retests" shall only be performed after a properly completed "DMV VEHICLE EMISSIONS REPAIR FORM" is presented

(a) Normally, the vehicle driver has been requested to "fast idle" the vehicle for 30 seconds prior to entering the inspection lane, however, the Technician does not verify this condition.

(Revised 12/29/87)

TECHNICAL MEMORANDUM #2
MOTOR VEHICLE INSPECTION AND MAINTENANCE
PROGRAM EMISSION LIMIT DETERMINATION

The five vehicle age groups have different allowable emission rates in the idle mode due to the sophistication of the emission control equipment installed by the manufacturer. The only exception being the pre1968 age group which had no pollution control apparatus, saved for a few vehicles with positive crankcase ventilation (PCV) valves. Installation of PCV valves was virtually a voluntary measure by auto manufacturers.

During the time period March 1 through June 30, 1982, data was being gathered by a mandatory emission inspection with voluntary repair, at the two vehicle safety inspection lanes in New Castle County. The Sun Model CEA3023 Computer Emission Analyzer (hereafter called the analyzer) has the ability to store, on conventional data cassettes, all of the input required and the results of a test on every vehicle tested. This is to include date, time, vehicle age group, vehicle registration number, hydrocarbon (HC) and carbon monoxide (CO) emission limits for the particular vehicle age group and the actual HC and CO emissions from the tested vehicle. A paper printout of this information is given to the driver upon being tested. Test procedures were consistent with those described in Appendix B to Technical Memorandum #1.

During the voluntary emission program, the HC and CO emission limits programmed into the analyzer were, with one exception, the same as those used by the State of New Jersey in its I & M program. Using these limits or "cut points" for each vehicle type gave a very good frame of reference to analyze the limits applicable to Delaware.

In general, about 25% of the vehicles tested during that voluntary program failed to pass the New Jersey standards.

Emission limits for each age group and the failure rate as a percent are shown in Table 1.

Table 1

	HC(1)	
pre 1968	1400	18%
1968-1970	700	22%
1971-1974	500	20%
1975-1979	300	29%
1980 +	100	15%

Notes

(1) Hydrocarbon (HC) emissions expressed as parts per million (ppm) of nonmethane HC

(2) The New Jersey standards for 1980 and later models are 300 ppm of HC

The rate of emission reduction required by the I & M program adoption must be at least 35% reduction of total HC emissions from tailpipe at the end of 1987. The 35% is defined as the difference in emissions of HC between the vehicle fleet not having I & M and that having I & M, in the urbanized portion of the ozone nonattainment area. Since the mechanics of testing only those vehicles registered to an address within the "urbanized"(1) area would be difficult at best, the entire county was included in the calculations for reductions.(2) The types of vehicles to be tested for emissions were broadened to include the two classes of light duty trucks, those under 6,000 pounds G. V. W. and those in the 6,000 to 8,500 pound G.V.W. class. These two measures reduced the estimated failure rate from the 20% of the urbanized auto and station wagon fleet, which is the target rate to accomplish the 35% reduction in the emissions, down to 15%.

Attached as Appendix A to this Technical Memorandum is an April 16, 1982, letter from the I & M staff at EPA's Ann Arbor office. This letter details their evaluation of a 10% stringency factor on the three LD classes of vehicles in NCC to provide at least 35% reduction in tailpipe emissions. Following up the EPA analysis is a similar analysis for the Delawarespecific data. With a 15% stringency factor the results show that a 39.7% reduction in HC will be realized when the same 1,083 factor for "entire county inspection" is applied. This is obviously a reduction in tailpipe HC emissions adequate to meet the EPA requirements.

The selection of cut points for each vehicle class was accomplished by computer storage and retrieval of the data. For each vehicle age group, the frequency of each emission reading was determined and the appropriate percentile selected as the cut point for that particular age group. For simplicity and reduced computer storage requirements each individual reading was grouped in sets of 5 ppm, in the case of HC, and in sets of 0.05%, in the case of CO.

Light duty trucks (pickups and vans) have different levels of emission controls than those of autos. Age groups

of the two light duty gasoline truck classes LDGT1[3] and LDGT2[4] had to be fit into one of the auto age group levels of emission control. This determination was made by utilizing Table 7 of the January, 1981, EPA document entitled "Recommendations Regarding the Selection of Idle Emission Inspection Cutpoints for Inspection and Maintenance Programs". The final result of this exercise is shown in Table 2, and this table represents the cutpoints adopted in the 1982 S.I.P. revision. Since the County of New Castle is nonattainment for ozone which is affected by HC, the rates shown for CO will be recorded, but failure of CO limits will not affect registration of the vehicle.

(1) The urbanized area as defined by the U.S. Bureau of the Census.

(2) This expanded the potential vehicle fleet by a factor of 1.083 which is the ratio of total NCC population to the urbanized area population.

(3) Truck with GVW less than 6,000 pounds

(4) Truck with GVW greater than 6,000 but less than 8,500 pounds

Table 2

LDGV	LDGT1	LDGT2	HC
pre 1968	pre 1968	pre 1970	1600 ppm
1968-1971	1968-1970	1970-1972	1100 ppm
1972-1974	1971-1974	1973-1978	800 ppm
1975-1979	1975 & later	1979 & later	600 ppm
1980 & later			235 ppm*

*The emission limit of 235 ppm for 1980+ vehicles is the "warranty" emission limit of 220 ppm plus the accuracy of the testing equipment (+/ 15 ppm)

REVISION NUMBER 1 5/9/85

The following changes are made effective July 1, 1985, and consist of revisions to existing Table 2 of the approved 1982 Ozone SIP Revision

Table 2 (As Revised)

LGV	LDGT	HC
1968-1970	1970-1972	1100 ppm
1971-1974	1973-1978	800 ppm
1975-1979	1979-1983	500 ppm
1980		275 ppm
1981 & later	1984 & later	220 ppm

Whenever the Department determines that the cutpoints used during 1985 or any subsequent year do not provide the minimal required hydrocarbon reduction, the following cutpoints will become effective on the first day of a new calendar year.

Table 2

LDGV	LDGT	HC
1968-1970	1970-1982	1000 ppm
1971-1974	1973-1978	700 ppm
1975-1979	1979-1983	450 ppm
1980		275 ppm
1981 & later	1984 & late	220 ppm

This determination shall be based on vehicle test data from the first ten months of the past year. Public notice prominently placed in the Wilmington newspapers will announce details of the changes and the circumstances which caused the adjustments to be made.

REVISION NUMBER 2 12/29/87

The following changes are made effective January 1, 1988, and consist of revisions to existing Table 2 of the approved 1982 Ozone SIP Revision.

Table 2 (As Revised)

LDGV	LDGT	HC
1968-1970	1970-1972	900 ppm
1971-1974	1973-1978	600 ppm
1975-1979	1979-1983	400 ppm
1980		220 ppm
1981 & later	1981 & later	220 ppm

Whenever the Department determines that the cutpoints used during 1988 or any subsequent year do not provide the minimal required hydrocarbon reduction, the following cutpoints will become effective on the first day of a new calendar year.

Table 2 (As Revised)

LDGV	LDGT	HC
1968-1970	1970-1972	800 ppm
1971-1974	1973-1978	500 ppm
1975-1979	1979-1983	350 ppm
1980		220 ppm
1981 & later	1981 & later	220 ppm

This determination shall be based on vehicle test data from the first ten months of the past year. Public notice prominently placed in the Wilmington newspapers will

announce details of the changes and the circumstances which caused the adjustments to be made.

A. The following changes are made effective January 31, l990, and will be retained indefinitely unless circumstances occur which will be described in Part B.

TABLE 2

Group	Auto/ Sta. Wag.	Pickup/van Under 8501#	Hydrocarbon Limit	Carbon Dioxide Limit
1	'68-'70	'70-'72	900 ppm	9.00
2	'7l-'74	73-'78	600 ppm	6.00
3	'75-'79	'79-'83	400 ppm	4.00
4	'80	(NONE)	220 ppm	2.00
5	'8l +	‘84 +	220 ppml	.20

B. Whenever the Department determines that the cutpoints proposed in Part A do not provide the minimal required hydrocarbon reduction, the following cutpoints will become effective on the first day of calendar quarter (i.e. January, April, July or October).

TABLE 2

Group	Auto/ Sta. Wag.	Pickup/van Under 8501#	Hydrocarbon limit	Carbon monoxide Limit (%)
l	'68-'70	'70-'72	800 ppm	8.00
2	'7l-'74	'73-'78	500 ppm	5.00
3	'75-'79	'79-'83	350 ppm	3.50
4	'80	(NONE)	220 ppm	2.00
5	'8l PLUS	'84 PLUS	220 ppml	1.20

DIVISION OF AIR & WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

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

Secretary’s Order No.: 2001-A-0002

RE: Amendments to Low Enhanced Inspection and Maintenance Program (Regulation No. 31) and Motor Vehicle Emission Inspection Program (Regulation No. 26)

Date of Issuance: January 12, 2001

Effective Date of the Amendment: February 12, 2001

I. Background

On January 3, 2001, a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of this hearing was to receive public comment on the proposed amendments to Regulations 31 and 26 of the Regulations Governing the Control of Air Pollution. These provisions involve minor revisions to Delaware’s Vehicle Inspection and Maintenance Program, including a proposal in Regulation 31 to exempt up to 14,000 newer model year vehicles (6 – 8 years old) from exhaust and evaporative emissions testing when waiting lines at inspection stations are too long. After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated January 12, 2001, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for those proposed amendments to Regulations No. 31 and 26, including reasoned responses to the various comments and has, where necessary, proposed minor changes to satisfy EPA concerns. In addition, the record will show that the following findings have been made:

1. Proper notice of the hearing was provided as required by law.

2. There is no need to specify how the 14,000 vehicle annual cap would be distributed, nor is there any reason to further describe which vehicles it applies to beyond what is already contained in the amendments to Regulation No. 31. However, it is appropriate to add a definition of “model year exemption” to indicate when the exemption will begin.

3. The implementation date of this SIP revision is an appropriate revision to Section 13(k).

4. AQM’s additional information on the specific model and accompanying inputs and assumptions is sufficient to address EPA questions on those issues.

5. AQM’s rationale, based on established pass/fail data, for creating the “clean screen” exemption is well founded and does not operate unfairly for reasons set forth in AQM’s response on this issue.

III. Order

It is hereby ordered that the proposed amendments to Regulation Nos. 31 and 26, including those revisions suggested by AQM, be promulgated in final form in accordance with the customary statutory procedure.

IV. Reasons

These amendments will update the Department's I & M program with minor changes, and provide a reasonable method for minimizing waiting lines at inspection stations without compromising Air Quality goals, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale, Secretary

Regulation No. 31
Low Enhanced Inspection And Maintenance Program
Proposed Sip Revision

08/13/98

Section 1 - Applicability.

(a) This program shall be known as the "Low enhanced Inspection and Maintenance Program" or "LEIM Program", and shall be identified as such in the balance of this regulation.

(b) This regulation shall apply to New Castle and Kent Counties.

(c) This regulation shall apply to all vehicles registered in the following postal ZIP codes:

19701	19702	19703	19706	19707	19708
19709	19710	19711	19712	19713	19714
19715	19716	19717	19718	19720	19730
19731	19732	19733	19734	19735	19936
19703	19938	19800	19801	19802	19803
19804	19805	19806	19807	19808	19809
19810	19850	19890	19894	19896	19897
19898	19899	19901	19902	19903	19904
19934	19936	19938	19942	19943	19946
19952	19953	19954	19955	19961	19962
19963*	19964	19977	19979	19980	

* Note: If vehicles registered in Sussex County and with this ZIP code, this regulation is not applicable.

(d) The legal authority for implementation of the LEIM Program is contained in 7 Del.C. Chapter 60, §6010(a). Appendix 1(d) contains the letter from the State of Delaware, Secretary of the Department to EPA Regional Administrator, W. Michael McCabe committing to continue the I/M program through the enforcement of this regulation out to the attainment year and remain in effect until the applicable area is redesignated to attainment status and a Maintenance Plan is approved by the EPA. 7 **Del.C.** Chapter 60, §6010(a) does not have a sunset date.

(e) Requirements after attainment.

This LEIM program shall remain in effect if the area is redesignated to attainment status, until approval of a Maintenance Plan, under Section 175A of the Clean Air Act, which demonstrates that the area can maintain the relevant standard for the maintenance period (10 years) without benefit of the emission reductions attributable to the continuation of the LEIM program.

(f) Definitions

Alternative Fuel Vehicle: Any vehicle capable of operating on one or more fuels, none of which are gasoline, and which is subject to emission testing to the same stringency as a similar gasoline fueled vehicle.

Certified Repair Technician: Automotive repair technician certified jointly by the College (or other training agencies or training companies approved by the Department) and the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles as having passed a recognized course in emission repair. (See Appendix 7 (a))

Certified Manufacturer Repair Technician: Automotive repair technician certified by the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles, as trained in doing emission repairs on vehicles of a specific manufacturer. (See Appendix 7 (a))

College: The Delaware Technical and Community College

Compliance Rate: The percentage of vehicles out of the total number required to be inspected in any given year that have completed the inspection process to the point of receiving a final certificate of compliance or a waiver.

Director: The Director of the Division of Motor Vehicles in the Department of Public Safety.

Division: The Division of Motor Vehicles in the Department of Public Safety of the State of Delaware.

Department: The Department of Natural Resources and Environmental Control of the State of Delaware.

Emissions: Products of combustion and fuel evaporation discharged into the atmosphere from the tailpipe, fuel system or any emission control component of a motor vehicle.

Emissions Inspection Area: The emissions inspection area shall constitute the entire counties of New Castle and Kent.

Emissions Standard(s): The maximum concentration of hydrocarbons (HC), carbon monoxide (CO) or oxides of nitrogen (NO_X), or any combination thereof, allowed in the emissions from a motor vehicle as established by the Secretary, as described in this regulation.

Failed Motor Vehicle: Any motor vehicle which does not comply with applicable exhaust emission standards, evaporative system function check requirements and emission control device inspection requirements during the initial test or any retest.

Flexible Fuel Vehicle: Any vehicle capable of operating on more than one fuel type, one of which includes gasoline, which must be tested to program standards for gasoline. This is in contrast to alternative fuel vehicles.

Going Concern: An individual or business with a

primary, full time interest in the repair of motor vehicles.

GPM: Grams per mile (grams of emissions per mile of travel).

Manufacturer's Gross Vehicle Weight:The vehicle gross weight as designated by the manufacturer as the total weight of the vehicle and its maximum allowable load.

Model Year: The year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

Motor Vehicle: Includes every vehicle, as defined in 21 **Del.Code**, Section 101, which is self-propelled, except farm tractors, off-highway vehicles, motorcycles and mopeds.

Motor Vehicle Technician:A person who has completed an approved emissions inspection equipment training program and is employed or under contract with the State of Delaware.

[New Model Year Exemption: An exemption of a designated new model year of an applicable vehicle from any or all of the requirements in this regulation. The exemption shall begin on the first day of October of the calendar year, which will be the anniversary date for calculating the applicability of a vehicle for a new model year exemption. For example, a 1997 model year vehicle titled in Delaware in August of 1996 will have an anniversary date of October 1, 1996 and thus does not lose its five model year exemption status until October 1, 2001.]

New Motor Vehicle: A motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin, unregistered vehicle title.

Official Inspection Station:All official Motor Vehicle Inspection Stations located in New Castle and Kent counties, operated by, or under the auspices of, the Division.

Operator: An employee or contractor of the State of Delaware performing any function related to motor vehicle inspections in the State.

Performance Standard: The complete matrix of emission factors derived from the analysis of the model program as defined in 40 CFR Part 51 Subpart S, by using EPA's computerized Mobile5a emission factor model. This matrix of emission factors is dependent upon various speeds, pollutants and evaluation years.

PFI:The Plan for Implementation of Regulation No. 31, which can be also considered to be the technical support document for that regulation.

Reasonable Cost: The actual cost of parts and labor which is necessary to cause the failed motor vehicle to comply with applicable emissions standards or which contributes towards compliance. It shall not include the cost of those repairs determined by the Division to be necessary due to the alteration or removal of any part of the emission control system of the motor vehicle, or due to any damage resulting from the use of improper fuel in the failed motor vehicle.

Registration Fraud: Any attempt by a vehicle owner or operator to circumvent the requirements to properly and legally register any motor vehicle in the State of Delaware.

Secretary: The Secretary of the Department of Natural Resources and Environmental Control.

Stringency Rate: The tailpipe emission test failure rate expected in an I/M program among pre-1981 model year passenger cars or pre-1984 light-duty trucks.

Vehicle Type:EPA classification of motor vehicles by weight class which includes the terms light duty and heavy duty vehicle.

Waiver: An exemption issued to a motor vehicle that cannot comply with the applicable exhaust emissions standard and cannot be repaired for a reasonable cost.

Waiver Rate: The number of vehicles receiving waivers expressed as a percentage of vehicles failing the initial exhaust emission test.

08/13/98

Section 2 -Low Enhanced I/M Performance Standard.

(a) On-road testing:

The performance standard shall include on-road testing of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraph (a) of Section 3. The requirements are contained in Section 12 of this regulation.

(b) On-board diagnostics (OBD): [Reserved]

06/11/99

Section 3 - Network Type And Program Evaluation.

(a) The LEIM Program shall be a test-only, centralized system operated in New Castle and Kent Counties by the State of Delaware's Division of Motor Vehicles.

(1) Network type:
Centralized testing.

(2) Start date:
January 1, 1995

(3) Test frequency:
Biennial testing.

(4) Model year coverage:
Idle and two-speed idle test of all covered vehicles: Model years 1968 and newer for light duty vehicles and model years 1970 and newer for light duty trucks with the exception of the five most recent model years.

(5) Vehicle type coverage:
Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) Exhaust emission test type:

(i) Idle test of all covered vehicles: Model years 1968 through 1980 for light duty vehicles and model years 1970 through 1980 for light duty trucks according to the requirements found in Appendix 6 (a).

(ii) Two-speed idle test (vehicle engine at idle and 2500 revolutions per minute (rpm) of all covered vehicles model years 1981 and newer according to the requirements found in Appendix 6 (a).

(7) Emission standards:

(Emissions limits according to model year may be found in Appendix 3 (a) (7))

Maximum exhaust dilution measured at no less than 6% CO plus carbon dioxide (CO_2) on all tested vehicles (as described in Appendix B of the EPA Rule).

(8) Emission control device inspections:

Visual inspection of the catalyst on all 1975 and later model year vehicles with the exception of new motor vehicles registered in Delaware.

(9) Evaporative system function checks:

Evaporative system integrity (pressure) test on 1975 and later model year vehicles with the exception of the five most recent model years.

(10) Stringency:

A 20% emission test failure rate among pre-1981 model year vehicles.

(11) Waiver rate:

A 3% rate, as a percentage of failed vehicles.

(12) Compliance rate:

A 96% compliance rate.

(13) Evaluation date:

Low enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO_X shall be the same as for ozone..

(b) On-board diagnostics (OBD): [Reserved]

(c) Program Evaluation

(1) Program evaluation shall be used in determining actual emission reductions achieved from the LEIM program for the purposes of satisfying the requirements of sections 182(g)(1) and 182(g)(2) of the Clean Air Act, relating to reductions in emissions and compliance demonstration.

(2) Transient mass emission test procedure: A randomly selected number of subject vehicles that are due to be tested according to the requirements of this regulation will be required to undergo, in addition to the required tests, an alternative test porcedure to provide information for the purpose of evaluating the overall effectiveness of the Low Enhanced Inspection and Maintenance Program. The test is referred to as the VMAS^{TM} method. See Appendix 3 (c) (2).

06/11/99

Section 4 - Test Frequency And Convenience.

(a) The LEIM Program shall be operated on a biennial frequency, which requires an inspection of each subject vehicle at least once every two years, regardless of any change in vehicle status, at an official inspection station. New vehicles must be presented for LEIM program testing not more than 60 months after initial titling.

(b) This system of inspections and registration renewals allows the additional benefit of coupling both enforcement systems together. Local, County and State police shall continue to enforce registration requirements, which shall require inspection in order to come into compliance . Requirements of inspection of motor vehicles before receiving a vehicle registration is found in the Delaware Criminal and Traffic manual Title 21 Chapter 21. Violations of registration provisions and the resulting penalties are found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. One 60 day extension shall be available to allow testing and repair.(See Appendix 4 (a) for the citations)

(c) Stations shall be open to the public at hours designed for maximum public convenience. These hours shall equal a minimum of 42 hours per week. Stations shall remain open continuously through the designated hours, and every vehicle presented for inspection during these hours shall receive a test prior to the daily closing of the station. Testing hours shall be Monday and Tuesday: 8:00 am to 4:30 pm, Wednesday: 12 noon to 8 pm, Thursday and Friday 8:00 am to 4:30 pm. These hours may be subject to change by the State. Official inspection stations shall adhere to regular, extended testing hours and shall test any subject vehicle presented for a test during its test period.

~~(06/11/99)~~ (/ /01)

Section 5 - Vehicle Coverage.

(a) Subject Vehicles

The LEIM program is based on coverage of all 1968 and later model year, gasoline powered, light duty vehicles and 1970 and later model year light duty trucks up to 8,500 pounds GVWR (with the exception of the five most recent model years). The following is the complete description of the LEIM program:

Vehicles registered or required to be registered within the emission inspection area, and fleets primarily operated within the emissions inspection area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles, which are as follows: (See Appendix 5 (a) for DMV Out of State Renewals)

(1) All vehicles titled/registered in Delaware from

model year 1968 light duty vehicles and 1970 and later model year light duty trucks and whose vehicle type are subject to the applicable test schedule.

(2) All subject fleet vehicles shall be inspected at an official inspection station.

(3) Subject vehicles which are registered in the program area but are primarily operated in another LEIM area shall be tested, either in the area of primary operation, or in the area of registration. Alternate schedules may be established to permit convenient testing of these vehicles (e.g., vehicles belonging to students away at college should be rescheduled for testing during a visit home).

(4) Vehicles which are operated on Federal installations located within an emission inspection shall be tested, regardless of whether the vehicles are registered in the emission inspection jurisdiction. This requirement applies to all employee-owned or leased vehicles (including vehicles owned, leased, or operated by civilian and military personnel on Federal installations) as well as agency-owned or operated vehicles, except tactical military vehicles, operated on the installation. This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year. In areas without test fees collected in the lane, arrangements shall be made by the installation with the LEIM program for reimbursement of the costs of tests provided for agency vehicles, at the discretion of the Director. The installation manager shall provide documentation of proof of compliance to the Director. The documentation shall include a list of subject vehicles and shall be updated periodically, as determined by the Director, but no less frequently than each inspection cycle. The installation shall use one of the following methods to establish proof of compliance:

(i) Presentation of a valid certificate of compliance from the LEIM program, from any other LEIM program at least as stringent as the LEIM program described herein, or from any program deemed acceptable by the Director.

(ii) Presentation of proof of vehicle registration within the geographic area covered by the LEIM program, except for any Inspection and Maintenance program whose enforcement is not through registration denial.

(iii) Another method approved by the Director.

(5) Vehicles powered solely by a "clean fuel" such as compressed natural gas, propane, alcohol and similar non-gasoline fuels shall be required to report for inspection to the same emission levels as gasoline powered cars until standards for clean fuel vehicles become available and are adopted by the State.

(6) Vehicles able to be powered by more than one fuel, such as compressed natural gas and/or gasoline, must be tested and pass emissions standards for all fuels when such standards have become adopted by the Department..

(b) Exemptions

The following motor vehicles are exempt from the provisions of this regulation:

(1) Vehicles manufactured and registered as Kit Cars

(2) Tactical military vehicles used exclusively for military field operations.

(3) All motor vehicles with a manufacturer's gross vehicle weight over 8,500 pounds.

(4) All motorcycles and mopeds

(5) All vehicles powered solely by electricity generated from solar cells and/or stored in batteries.

(6) Non-road sources, or vehicles not operated on public roads

(7) Vehicles powered solely by Diesel fuel.

(c) Any exemption from inspection requirements issued to a vehicle under this Section shall not have an expiration date and shall expire only upon a change in the vehicle status for which the exemption was initially granted.

(d) Fleet owners are required to have all non-exempted vehicles under their control inspected at an official inspection station during regular station hours.

(e) Vehicles shall be pre-inspected prior to the emission inspection, and shall be prohibited from testing should any unsafe conditions be found. These unsafe conditions include, but are not limited to significant exhaust leaks, and significant fluid leaks. The Division and the Department shall not be responsible for major vehicle component failures during the test, of parts which were deficient or excessively worn prior to the start of the test.

(f) ~~Clean Screening: Clean screening exemptions will be determined by use of a Law Emitter Profile model that identifies expected low emitting vehicles based on historical test data. Exemption criteria is based on vehicle types (make, model, model year, and engine type) Low Emitter Profile modeling database will be updated annually to account for changing vehicle emissions test performance. Vehicle types (name of manufacturer, model, model year and engine type) that are subject to this regulation and have met clean emissions criteria developed by the Division of Motor Vehicles, may be exempt from the two speed idle exhaust emissions test and the evaporative emissions test (except for a fuel cap pressure test) if warranted by queue conditions at the inspection lanes. Each Delaware inspection lane shall independently control clean screen activation. Clean screen mode shall occur when the inspection lane queue exceeds 60 minutes. The Lane Manager (or designee) must advise inspection personnel to activate the process. Once a queue reduction to less than 60 minutes takes place, reversion to the normal testing protocol shall occur. Vehicles that are subject to this regulation and have met Low Emitter Profiling criteria, may be exempt from the two speed idle exhaust emissions test and the evaporative emissions test.~~

~~All subject vehicles will receive a fuel cap pressure test. Vehicle exemptions will be distributed according to profiled model year percentages in order to prevent inadvertent skewing of model year exemption. Clean Screening will occur when motorist wait times exceed 60 minutes. Wait times will be determined by queue lengths that surpass lane markers that indicate expected wait time of 60 minutes or more. The Lane Manager (or designee) is responsible for advising inspection personnel to activate the clean screening exemption process. Once a reduction in queue length to that representing a motorist wait time of less than 60 minutes takes place, reversion to the normal testing protocol shall occur. Each Delaware inspection lane shall independently control clean screen activation. The Division of Motor Vehicles will cap, on an annual basis, the number of vehicles which may be exempted through clean screening by model year in order to prevent failure to meet expected emission reductions. If the specified number of vehicles clean screened for an individual model year equals the annual cap of emissions for that individual model year, no more vehicles for that model year will be exempt. The maximum allowable number of vehicles to be clean screened will be re-evaluated annually, coinciding with the LEP database update, and lowered as appropriate so that emission reduction targets continue to be achieved. (See Appendix 5(f) Clean Screening Vehicle Exemption)~~

New Model Year Clean Screen: Clean Screening exemptions will be determined for model years of vehicles six to eight years old that may be exempt from the two speed idle exhaust emissions test and the evaporative emissions test (except for a fuel cap pressure test) if warranted by queue conditions at the inspection lanes. Each Delaware inspection lane shall independently control clean screen activation. Clean screen mode shall occur when the inspection lane queue exceeds 60 minutes. The Lane Manager (or designee) must advise inspection personnel to activate the process. Once a queue reduction to less than 60 minutes takes place, reversion to the normal testing protocol shall occur. Wait times will be determined by queue lengths that surpass lane markers that indicate expected wait time of 60 minutes or more. The Lane Manager (or designee) is responsible for advising inspection personnel to activate the clean screening exemption process. Once a reduction in queue length to that representing a motorist wait time of less than 60 minutes takes place, reversion to the normal testing protocol shall occur. Each Delaware inspection lane shall independently control clean screen activation. The Division of Motor Vehicles will cap, on an annual basis, the number of vehicles which may be exempted through clean screening by model year in order to prevent failure to meet expected emission reductions. The first year of implementation will have an annual cap of 14,000 vehicles. If the specified number of vehicles clean screened for an individual model year equals the annual cap of emissions for that individual model year, no more vehicles for that model year will be exempt. The maximum allowable number of vehicles to be clean screened will be re-evaluated annually. **[For additional details on New Model Year Clean Screen see Appendix 5 (f)]**

06/11/99

Section 6 -Test Procedures And Standards.

(a) Test procedure requirements. (The test procedure use to perform this test shall conform to the requirements shown in Appendix 6 (a)).

(1) Initial tests (i.e., those occurring for the first time in a test cycle) shall be performed without repair or adjustment at the inspection facility, prior to the test.

(2) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition or unsafe conditions.

(3) Tests involving measurements shall be performed with equipment that has been calibrated according to the quality control procedures established by the Department

(4) Vehicles shall be rejected from testing, as covered in this section, if the exhaust system is missing or leaking, or if the vehicle is in an unsafe condition for testing.

(5) After an initial failure of any portion of any emission test in the LEIM program, all vehicles shall be retested without repairs being performed. This retest shall be indicated on the records as the second chance test. After failure of the second chance test, prior to any subsequent retests, proof of appropriate repairs must be submitted indicating the type of repairs and parts installed (if any). This shall be done by completing the "Vehicle Emissions Repair Report Form" (Appendix 6 (a) (5) which will be distributed to anyone failing the emissions test.)

(6) Idle testing using BAR 90 emission analyzers (analyzers that have been certified by the California Bureau of Automotive Repair) shall be performed on all 1968 through current (minus five years) model year vehicles in New Castle and Kent Counties.

(7) Emission control device inspection.

Visual emission control device checks shall be performed through direct observation or through indirect observation using a mirror. These inspections shall include a determination as to whether each subject device is present.

(8) Evaporative System Integrity Test. Vehicles shall fail the evaporative system integrity test(s) if the system(s) cannot maintain the equivalent pressure of eight inches of water using USEPA approved fast pass methodology. Additionally, vehicles shall fail evaporative system integrity testing if the canister is missing or obviously disconnected, the hoses are crimped off, or the fuel cap is missing. Evaporative system integrity test procedure is found in See Appendix 6 (a) (8) .

(9) On-board diagnostic checks.

[Reserved]

(b) Test standards

(1) Emissions standards.

HC, CO, CO+CO_2 (or CO_2 alone), emission standards shall be applicable to all vehicles subject to the LEIM program and repairs shall be required for failure of any standard regardless of the attainment status of the area.

(i) Steady-state short tests.

Appropriate model program standards shall be used in idle testing of vehicles from model years 1968 light duty vehicles and model years 1970 light duty trucks and newer.

(2) Visual equipment inspection standards performed by the Motor Vehicle Technician.

(i) Vehicles shall fail visual inspections of subject emission control devices if such devices are part of the original certified configuration and are found to be missing, modified, disconnected, or improperly connected.

(3) On-board diagnostics test standards.

[Reserved].

(c) Applicability.

In general, section 203(a)(3)(A) of the Clean Air Act prohibits altering a vehicle's configuration such that it changes from a certified to a non-certified configuration. In the inspection process, vehicles that have been altered from their original certified configuration are to be tested by the Motor Vehicle Technician in the same manner as other subject vehicles.

(1) Vehicles with engines of a model year older than the chassis model year shall be required to pass the standards commensurate with the chassis model year.

(2) Vehicles that have been switched from an engine of one fuel type to another fuel type that is subject to the LEIM program (e.g., from a diesel engine to a gasoline engine) shall be subject to the test procedures and standards for the current fuel type, and to the requirements of paragraph (c)(1) of this section.

(3) Vehicles that are switched to a fuel type for which there is no certified configuration shall be tested according to the most stringent emission standards established for that vehicle type and model year. Emission control device requirements may be waived if the Division determines that the alternatively fueled vehicle configuration would meet the new vehicle standards for that model year without such devices.

(4) Vehicles converted to run on alternate fuels, frequently called a dual-fuel vehicle, shall be tested and required to pass the most stringent standard for each fuel type.

(5) Mixing vehicle classes (e.g., light-duty with heavy-duty) and certification types (e.g., California with Federal) within a single vehicle configuration shall be considered tampering.

08/13/98

Section 7 - Waivers And Compliance Via Diagnostic Inspection.

(a) Waiver issuance criteria.

(1) Motorists shall expend a reasonable cost, as defined in Section 1 of this Regulation in order to qualify for a waiver. Effective January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County, in order to qualify for waiver repairs on any 1981 or later model year vehicle shall be performed by a certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation, and must have been appropriate to correct the emission failure. Repairs of primary emission control components may be performed by non-technicians (e.g., owners) to apply toward the waiver limit. The waiver would apply to the cost of parts for the repair or replacement of the following list of emission control component systems: Air induction system (air filter, oxygen sensor), catalytic converter system (convertor, preheat catalyst), thermal reactor, EGR system (valve, passage/hose, sensor) PCV System, air injection system (air pump, check valve), ignition system (distributor, ignition wires, coil, spark plugs). The cost of any hoses, gaskets, belts, clamps, brackets or other emission accessories directly associated with these components may also be applied to the waiver limit.

(2) Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in paragraph (a)(4) of this section. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

(3) Receipts shall be submitted for review to further verify that qualifying repairs were performed.

(4) A minimum expenditure for repairs of $75 for pre-81 model year vehicles or a minimum expenditure of $200 for 1981 model year and newer vehicles shall be spent in order to qualify for a waiver. The minimum repair cost for 1981 and newer vehicles shall increase to $450 starting January 1, 2000. For each subsequent year, the $450 minimum expenditure shall be adjusted in January of that year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index for 1989.

(5) The issuance of a waiver applies only to those vehicles failing an exhaust emission tests. No waivers are granted to vehicles failing the evaporative emission integrity test.

(6) Waivers shall be issued by the Division Director only after:

(i) a vehicle has failed a retest for only the

exhaust emissions portions of the program, performed after all qualifying repairs have been completed;

(ii) and a minimum of 10% improvement (reduction) in hydrocarbons (HC) and carbon monoxide (CO) has resulted from those repairs. This requirement [Section 7 (a) (6) (ii)] will cease to be in effect starting January 1, 2000.

(7) Qualifying repairs include repairs of primary emission control components performed within 90 days of the test date.

(8) Waivers issued pursuant to this regulation are valid until the date of current registration expiration.

(9) Waivers will not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in paragraph (a)(4) of this section. The Director will issue exemptions for tampering-related repairs if it can be verified that the part in question or one similar to it is no longer available for sale

(b) Compliance via diagnostic inspection.

Vehicles subject to an emission test at the cutpoints shown in Appendix 3 (a)(7) of Regulation 31 may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by a Delaware Certified Emission Repair Technician shows that no additional emission-related repairs are needed.

(c) (1) In order to meet the requirements of the EPA Rule, the State commits to maintaining a waiver rate equal to or less than 3% of the failed vehicles.

(2) The Secretary shall take corrective action to lower the waiver rate should the actual rate reported to EPA be above 3%.

(3) Actions to achieve the 3% waiver rate, if required, shall include measures such as not issuing waivers on vehicles less than 6 years old, raising minimum expenditure rates, and limiting waivers to once every four years. If the waiver rate cannot be lowered to levels committed to in the SIP, or if the State chooses not to implement measures to do so, then the Secretary shall revise the I/M emission reduction projections in the SIP and shall implement other LEIM program changes needed to ensure the performance standard is met.

08/13/98

Section 8 - Motorist Compliance Enforcement.

(a) Registration denial.

Registration denial enforcement (See Appendix 8 (a), the Systems Requirement Definition for the Registration Denial process) is defined as rejecting an application for initial registration or re-registration of a used vehicle (i.e., a vehicle being registered after the initial retail sale and associated registration) unless the vehicle has complied with the LEIM program requirement prior to granting the application. This enforcement is the express responsibility of the Division with the assistance of police agencies for on road inspection and verification. The law governing the registration of motor vehicles is found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. Pursuant to section 207(g)(3) of the Act, nothing in this section shall be construed to require that new vehicles shall receive emission testing prior to initial retail sale. In designing its enforcement program, the Director shall:

(1) Provide an external, readily visible means of determining vehicle compliance with the registration requirement to facilitate enforcement of the LEIM program. This shall be in the form of a window sticker and tag sticker which clearly indicate the vehicles compliance status and next inspection date;

(2) Adopt a schedule of biennial testing that clearly determines when a vehicle shall have to be inspected to comply prior to (re)registration;

(3) Design a registration denial system which features the electronic transfer of information from the inspection lanes to the Division's Data Base, and monitors the following information:

(i) Expiration date of the registration;

(ii) Unambiguous vehicle identification information; and

(iii) Whether the vehicle received either a waiver or a certificate of compliance, and;

(iv) The Division's unique windshield certificate identification number to verify authenticity; and

(v) The Division shall finally check the inspection data base to ensure all program requirements have been met before issuing a vehicle registration.

(4) Ensure that evidence of testing is available and checked for validity at the time of a new registration of a used vehicle or registration renewal.

(5) Prevent owners or lessors from avoiding testing through manipulation of the title or registration system; title transfers do not re-start the clock on the inspection cycle.

(6) Limit and track the use of time extensions of the registration requirement to only one 60 day extension per vehicle to prevent repeated extensions.

(b) (1) (i) Owners of subject vehicles must provide valid proof of having received a passing test or a waiver to the Director’s representative in order to receive registration from the Division.

(ii) State and local enforcement branches, such as police agencies, as part of this program, shall cite motorist who do not visibly display evidence of compliance with the registration and inspection requirements.

(iii) Fleet and all other registered applicable vehicle compliance shall be assured through the regular enforcement mechanisms concurrent with registration

renewal, on-road testing and parking lot observation. Fleets shall be inspected at official inspection stations.

(iv) Federal fleet compliance shall be assured through the cooperation of the federal fleet managers as well as also being subject to regular enforcement operations of the Division.

08/13/98

Section 9 - Enforcement Against Operators And Motor Vehicle Technicians.

(a) Imposition of penalties

The State of Delaware shall continue to operate the LEIM program using State of Delaware Employees for all functions. Should enforcement actions be required for violations of program requirements, the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action, and, the State of Delaware Merit Rules, shall be adhered to in all matters. Applicable provisions of these documents are found in Appendix 9 (a).

(b) Legal authority.

(1) The Director shall have the authority to temporarily suspend station Motor Vehicle Technicians' certificates immediately upon finding a violation or upon finding the Motor Vehicle Technician administered emission tests with equipment which had a known failure and that directly affects emission reduction benefits, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8 Disciplinary Action.

(2) The Director shall have the authority to impose disciplinary action against the station manager or the Motor Vehicle Technician, even if the manager had no direct knowledge of the violation but was found to be careless in oversight of motor vehicle technicians or has a history of violations, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, and the State of Delaware Merit Rules. The lane manager shall be held fully responsible for performance of the motor vehicle technician in the course of duty.

08/13/98

Section 10 - Improving Repair Effectiveness.

A prerequisite for a retest shall be a completed repair form that indicates which repairs were performed. (See Section 6 (a) (5) of this Regulation).

08/13/98

Section 11 - Compliance With Recall Notices.

[Reserved]

08/13/98

Section 12 - On-Road Testing.

(a) Periodic random Delaware registered vehicle pullovers on Delaware highways will occur without prior notice to the public for on-road vehicle exhaust emission testing.

(b) Vehicles identified by the on-road testing portion of the LEIM program shall be notified of the requirement for an out-of-cycle emission retest , and shall have 30 days from the date of the notice to appear for inspection. Vehicles not appearing for a retest shall be out of compliance, and be liable for penalties under Title 21 of Delaware Criminal and Traffic Law Manual and the Division will take action to suspend the vehicle registration.

06/11/99

Section 13 - Implementation Deadlines.

All requirements related to the LEIM program shall be effective ten days after the Secretary's order has been signed and published in the State Register except for the following provisions that have been amended to this regulation:

	Date of Implementation
(a) Five year new model year exemption from the idle and two speed idle tests	September 1, 1999
(b) Two-speed idle test (vehicle at idle and 2500 rpm) of all covered vehicles model years 1981 and newer	November 1, 1999
(c) **[~~Clean Screen exemptions.~~**	**~~January 1, 2000~~]**
(d) Program Evaluation using VMAS^{TM} test procedure.	January 1, 2000

APPENDIX 1(d)

Commitment to Extend the I/M Program to the Attainment Date Letter from Secretary Tulou to EPA Regional Administrator, W. Michael McCabe

June 1, 1998

Mr. W. Michael McCabe
Regional Administrator
EPA, Region III
841 Chestnut Building
Philadelphia, PA 19107

Dear Mr. McCabe:

This correspondence is to address one of the cited deficiencies published in the May 19, 1997 EPA rulemaking, concerning Delaware's Inspection and Maintenance regulation. I understand that this letter will address the following deficiency:

Provide a statement from an authorized official that the

authority to implement Delaware's I/M program as stated above will continue through the attainment date . . .

The Delaware I/M regulation has no sunset provision and there is nothing in the Delaware statute that requires our regulations to have a sunset date nor to be reauthorized in order to continue beyond a sunset date.

We fully expect, barring the repeal of 7 Del. Chapter 67, the Delaware I/M regulation will be implemented to the full extent of the law through the attainment date and most likely through the maintenance period when that occurs.

Please feel free to contact Darryl Tyler, Program Administrator of the Air Quality Management Section at (302) 739-4791, if you should have any questions.

Sincerely,
Christophe A. G. Tulou, Secretary

APPENDIX 3(a)(7)
EXHAUST EMISSION LIMITS ACCORDING TO MODEL YEAR

Group	Auto/Station Wagons (passenger vehicles)	Pickup/Van under 8501#	HC Limit (ppm)	CO Limit %
1	1968-70	1970-72	900	9.00
2	1971-74	1973-78	600	6.00
3	1975-79	1979-8	400	4.00
4	1980	(none)	220	2.00
5	1981 +	1984 +	220	1.20

APPENDIX 3(c)(2)
VMAS™ TEST PROCEDURES

General Requirements

(1) Test Parameters. The following information shall be determined for the vehicle being tested and used to automatically select the dynamometer inertia, power absorption settings, and evaporative emission test parameters.

(i) Model Year
(ii) Manufacturer
(iii) Model name
(iv) Body style
(v) Number of cylinders
(vi) Engine displacement

Alternative computerized methods of selecting dynamometer test conditions, such as VIN de-coding, may be used.

(2) Ambient Conditions. The ambient temperature, absolute humidity, and barometric pressure shall be recorded continuously during the transient test, or as a single set of readings if taken less than 4 minutes prior to the transient driving cycle.

(3) Restart. If shut off, the vehicle shall be restarted as soon as possible before the test and shall be running at least 30 seconds prior to the transient driving cycle.

(4) During the entire VMASTM testing procedure the vehicle shall be operated by a certified Motor Vehicle Technician (herein called inspector) and the vehicle owner or operator shall be asked to wait in a specified area during the test.

Pre-inspection and Preparation

(1) Accessories. All accessories (air conditioning, heat, defogger, radio, automatic traction control if switchable, etc.) shall be turned off by the inspector, if necessary.

(2) Traction Control and Four-Wheel Drive (4WD). Vehicles with traction control systems that cannot be turned off shall not be tested on two wheel drive dynamometers. Vehicles with 4WD that cannot be turned off shall only be tested on 4WD dynamometers. If the 4WD function can be disabled, then 4WD vehicles may be tested on two wheel drive dynamometers.

(3) Leaks. The vehicle shall be inspected for exhaust leaks. Audio assessment while blocking exhaust flow, or measurement of carbon dioxide or other gases, shall be acceptable. Vehicles with leaking exhaust systems shall be rejected from testing.

(4) Operating Temperature. The vehicle temperature gauge, if equipped and operating, shall be checked to assess temperature. If the temperature gauge indicates that the engine is well below (less than 180(F) normal operating temperature, the vehicle shall not be fast-failed and shall get a second-chance emission test if it fails the initial test for any criteria exhaust component. Vehicles in overheated condition shall be rejected from testing.

(5) Tire Condition. Vehicles shall be rejected from testing if tire cords, bubbles, cuts, or other damage are visible. Vehicles shall be rejected that have space-saver spare tires on the drive axle. Vehicles may be rejected if they do not have reasonably sized tires. Vehicle tires shall be visually checked for adequate pressure level. Drive wheel tires that appear low shall be inflated to approximately 30 psi, or to tire side wall pressure, or manufacturer's recommendation. The tires of vehicles being tested for the purposes of program evaluation under the Code of Federal Regulations Title 40 §51.353(c) shall have their tires inflated to tire side wall pressure.

(6) Ambient Background. [RESERVED]

(7) Sample System Purge. [RESERVED]

Equipment Positioning and Settings

(1) Purge Equipment. If an evaporative system flow meter purge test is to be performed:

(i) The purge flow meter shall be connected in series between the evaporative canister and the engine.

(ii) All hoses disconnected for the test shall be reconnected after a purge flow test is performed.

(2) Roll Rotation. The vehicle shall be maneuvered onto the dynamometer with the drive wheels positioned on the dynamometer rolls. Prior to test initiation, the rolls shall be rotated until the vehicle laterally stabilizes on the dynamometer. Drive wheel tires shall be dried if necessary to prevent slippage during the initial acceleration.

(3) Cooling System. The use of a cooling system is optional when testing at temperatures below 50(F). Furthermore, the hood may be opened at the state's discretion. If a cooling system is in use, testing shall not begin until the cooling system is positioned and activated. The cooling system shall be positioned to direct air to the vehicle cooling system, but shall not be directed at the catalytic converter.

(4) Vehicle Restraint. Testing shall not begin until the vehicle is restrained. Any restraint system shall meet the requirements of the Code of Federal Regulations Title 40, §85.2226(a)(5)(vii). The parking brake shall be set for front wheel drive vehicles prior to the start of the test. The parking brake need not be set for vehicles that release the parking brake automatically when the transmission is put in gear.

(5) Dynamometer Settings. Dynamometer power absorption and inertia weight settings shall be automatically chosen from an EPA-supplied electronic look-up table which will be referenced based upon the vehicle identification information obtained in Code of Federal Regulations Title 40, §85.2221(a)(1). Vehicles not listed shall be tested using default power absorption and inertia settings in the latest version of the EPA I/M Look-up Table, as posted on EPA's web site: www.epa.gov/orcdizux/im.htm

(6) Exhaust Collection System. The exhaust collection system shall be positioned to insure complete capture of the entire exhaust stream from the tailpipe during the transient driving cycle. The system shall meet the requirements of §85.2226(b)(2) in the Code of Federal Regulations Title 40,.

Vehicle Conditioning

(1) Queuing Time. Not applicable

(2) Program Evaluation. Vehicles being tested for the purpose of program evaluation under Section 3 (c) (2) shall receive two full VMAS emission tests (i.e., a full 240 seconds each). Results from both tests and the test order shall be separately recorded in the test record. Emission scores and results provided to the motorist may be from either test.

(3) Discretionary Preconditioning.

(i) Any vehicle may be preconditioned by maneuvering the vehicle on to the dynamometer and driving the 94 to 239 second segment of the transient cycle in § 85.2221(e)(1) Code of Federal Regulations Title 40,. This method has been demonstrated to adequately precondition the vast majority of vehicles (SAE 962091). Other preconditioning cycles may be developed and used if approved by the Administrator of the USEPA.

(4) Second-Chance Purge Testing. Not applicable

Vehicle Emission Test Sequence

(1) Transient Driving Cycle. The vehicle shall be driven over the following cycle:

~~[Table A]~~

Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)
0	0.0	40	17.7	80	32.2	120	18.1	160	33.5	200	56.7
1	0.0	41	19.8	81	32.4	121	18.6	161	36.2	201	56.7
2	0.0	42	21.6	82	32.2	122	20.0	162	37.3	202	56.3
3	0.0	43	23.2	83	31.7	123	20.7	163	39.3	203	56.0
4	0.0	44	24.2	84	28.6	124	21.7	164	40.5	204	55.0
5	3.0	45	24.6	85	25.1	125	22.4	165	42.1	205	53.4
6	5.9	46	24.9	86	21.6	126	22.5	166	43.5	206	51.6
7	8.6	47	25.0	87	18.1	127	22.1	167	45.1	207	51.8
8	11.5	48	25.7	88	14.6	128	21.5	168	46.0	208	52.1
9	14.3	49	26.1	89	11.1	129	20.9	169	46.8	209	52.5
10	16.9	50	26.7	90	7.6	130	20.4	170	47.5	210	53.0
11	17.3	51	27.5	91	4.1	131	19.8	171	47.5	211	53.5
12	18.1	52	28.6	92	0.6	132	17.0	172	47.3	212	54.0
13	20.7	53	29.3	93	0.0	133	17.1	173	47.2	213	54.9
14	21.7	54	29.8	94	0.0	134	15.8	174	47.2	214	55.4
15	22.4	55	30.1	95	0.0	135	15.8	175	47.4	215	55.6
16	22.5	56	30.4	96	0.0	136	17.7	176	47.9	216	56.0
17	22.1	57	30.7	97	0.0	137	19.8	177	48.5	217	56.0
18	21.5	58	30.7	98	3.3	138	21.6	178	49.1	218	55.8
19	20.9	59	30.5	99	6.6	139	22.2	179	49.5	219	55.2
20	20.4	60	30.4	100	9.9	140	24.5	180	50.0	220	54.5
21	19.8	61	30.3	101	13.2	141	24.7	181	50.6	221	53.6
22	17.0	62	30.4	102	16.5	142	24.8	182	51.0	222	52.5
23	14.9	63	30.8	103	19.8	143	24.7	183	51.5	223	51.5
24	14.9	64	30.4	104	22.2	144	24.6	184	52.2	224	50.5
25	15.2	65	29.9	105	24.3	145	24.6	185	53.2	225	48.0
26	15.5	66	29.5	106	25.8	146	25.1	186	54.1	226	44.5
27	16.0	67	29.8	107	26.4	147	25.6	187	54.6	227	41.0
28	17.1	68	30.3	108	25.7	148	25.7	188	54.9	228	37.5
29	19.1	69	30.7	109	25.1	149	25.4	189	55.0	229	34.0
30	21.1	70	30.9	110	24.7	150	24.9	190	54.9	230	30.5
31	22.7	71	31.0	111	25.2	151	25.0	191	54.6	231	27.0
32	22.9	72	30.9	112	25.4	152	25.4	192	54.6	232	23.5
33	22.7	73	30.4	113	27.2	153	26.0	193	54.8	233	20.0
34	22.6	74	29.8	114	26.5	154	26.0	194	55.1	234	16.5
35	21.3	75	29.9	115	24.0	155	25.7	195	55.5	235	13.0
36	19.0	76	30.2	116	22.7	156	26.1	196	55.7	236	9.5
37	17.1	77	30.7	117	19.4	157	26.7	197	56.1	237	6.0
38	15.8	78	31.2	118	17.7	158	27.3	198	56.3	238	2.5
39	15.8	79	31.8	119	17.2	159	30.5	199	56.6	239	0.0

(2) Driving Trace. The inspector shall follow an electronic, visual depiction of the time/speed relationship of the transient driving cycle (hereinafter, the trace). The visual depiction of the trace shall be of sufficient magnification and adequate detail to allow accurate tracking by the inspector/ driver and shall permit anticipation of upcoming speed changes. The trace shall also clearly indicate gear shifts as specified in paragraph (3) and Table B below.

(3) Shift Schedule. To identify gear changes for manual shift vehicles, the driving display presented to the inspector/driver shall be designed according to the following shift schedule and prominently display visual cues where the inspector/driver is required to change gears:

~~[Table B]~~

Shift Sequence (gear)	Speed (miles per hour)	Approximate Cycle Time (seconds)
1 - 2	15	9.3
2 - 3	25	47.0
De-clutch	15	87.9
1 - 2	15	101.6
2 - 3	25	105.5
3 - 2	17.2	119.0
2 - 3	25	145.8
3 - 4	40	163.6
4 - 5	45	167.0
5 - 6	50	180.0
De-clutch	15	234.5

Gear shifts shall occur at the points in the driving cycle where the specified speeds are obtained. For vehicles with fewer than six forward gears the same schedule shall be followed with shifts above the highest gear disregarded.

Automatic shift vehicles with overdrive or fuel economy drive modes shall be driven in those modes.

(4) Speed Excursion Limits. Speed excursion limits shall apply as follows:

(i) The upper limit is 2 mph higher than the highest point on the trace within 1 second of the given time.

(ii) The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time.

(iii) Vehicle speed excursions beyond tolerance limits given in items a. and b. above are acceptable provided that each such excursion is not more than 2 seconds in duration.

(iv) Speeds lower than those prescribed during accelerations are acceptable provided the vehicle is operated at maximum available power during such accelerations until the vehicle speed is within the excursion limits.

(v) [Reserved : Criteria that shall allow limited excursions of speed higher than the prescribed upper limit in paragraphs (i) through (iii)]

(vi) A transient emissions test shall be void and the vehicle retested if the speed excursion limits prescribed by paragraphs (i) through (iii) are exceeded, except in the event that computer algorithms, developed by the Department, determine that the conditions of paragraphs (v) and (vi) are applicable. Tests may be aborted if the speed excursion limits are exceeded.

APPENDIX 4(a)
SECTIONS FROM DELAWARE CRIMINAL AND TRAFFIC LAW MANUAL

For Non-compliance Of Vehicle Registration
21 **Del.C.** 21, §§ 2115, 2116
§ 2115

"No person shall:

(l) Operate or, being the owner of any motor vehicle, trailer or semitrailer, knowingly permit the operation upon a highway of any motor vehicle, trailer or semitrailer which is not registered or which does not have attached thereto and displayed thereon the number plate or plates assigned thereto by the Department and unexpired registration plate or plates, subject to the exemptions allowed in this title, or under temporary or limited permits as otherwise provided by this title;

(2) Display or cause or permit to be displayed or have in possession any registration card, number plate or registration plate, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered;

(3) Lend to, or knowingly permit the use by, one not entitled thereto any registration card, number plate or registration plate issued to the person so lending or permitting the use thereof;

(4) Fail or refuse to surrender to the Department upon demand any registration card, number plate or registration plate which has been suspended, canceled or revoked as provided in this title;

(5) Use a false or fictitious name or address in any application for the registration or inspection of any vehicle, or for any renewal or duplicate thereof, or for any certificate or transfer of title, or knowingly make a false statement, knowingly conceal a material fact or otherwise commit a fraud in any such application;

(6) Drive or move or, being the owner, cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or which is equipped in any manner in violation of this title, but the provisions of this title with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as herein made applicable;

(7) Own or operate any qualified motor vehicle as defined under the International Registration Plan, as authorized in Chapter 4 of this title, not properly displaying an apportioned plate with required registration credentials, or operate a qualified motor vehicle without having in that person's possession a trip permit registration as authorized in §2103(6) of this title. Any person who violates this subsection shall, for the first offense, be fined not less than $115 nor more than $345, and for each subsequent offense

not less than $345 nor more than $575. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less, which fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the gross weight at the time of the offense or the maximum legal limit for such vehicle.

(8) Do any act forbidden or fail to perform any act required under this chapter. (36 Del. Laws, c. 10, § 25; 40 Del. Laws, c. 38, § 10; Code 1935, § 5563; 43 Del. Laws, c. 244, § 14; 21 Del. C. 1953, § 2115; 49 Del. Laws, c. 220, § 21; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 202, § 2.)

Revisor's note.—Section 3 of 70 Del. Laws, c. 202, effective July 10, 1995, provides: "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable."

Effect of amendments.—70 Del. Laws, c. 202, effective July 10, 1995, inserted present (7) and redesignated former (7) as (8)."

§ 2116

"(a) Whoever violates this chapter shall, for the first offense, be fined not less than $10 nor more than $100 or be imprisoned not less than 30 days nor more than 90 days o; both. For each subsequent like offense, the person shall be fined not less than $50 nor more than $200 or imprisoned not less than 90 days nor more than 6 months or both, in addition to which any person, being the operator or owner of any vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle and any load thereon shall be fined at a rate double that which is set forth in this subsection and be imprisoned as provided herein or both. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less; which fine shall be suspended, if within 5 days of the offense the court is presented with a valid registration card for the gross weight at the time of the offense for the maximum legal limit for such vehicle.

(b)(1) Notwithstanding the provisions of subsection (a) of this section, whoever violates §2115(1)(5) of this title shall, for the first offense, be fined not less than $50 nor more than $200, be imprisoned not less than 30 days nor more than 90 days, or be penalized by both fine and imprisonment. For each subsequent like offense, such person shall be fined not less than $100 nor more than $300, be imprisoned not less than 90 days nor more than 6 months, or be penalized by both fine and imprisonment.

(2) Any owner or operator of a vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle, and any load thereon, and who violates § 2115(1)(5) of this title, shall be fined at a rate double that which is set forth in this subsection, or be imprisoned as provided herein, or be both fined and imprisoned. In addition, such person shall also be fined an amount which is equal to the costs of registering the vehicle either at its gross weight at the time of the offense, or at the maximum legal limit, whichever is less. Such fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the actual gross weight of the vehicle at the time of the offense.

(c) This section shall not apply to violations for which a specific punishment is set forth elsewhere in this chapter.

(d) For any violation of the registration provisions of § 2102 or § 2115 of this subchapter and in absence of any traffic offenses relating to driver impairment' the violator's copy of the traffic summons shall act as that violator's authority to drive the vehicle involved by the most direct route from the place of arrest to either the violator's residence or the violator's current place of abode. (36 Del. Laws, c. 10, § 32; 37 Del. Laws, c. 10, §§ 10, 11; Code 1935, § 5570; 21 Del. C. 1953, § 2116; 59 Del. Laws, c. 332, §§ 1, 2; 64 Del. Laws, c. 207, § 2; 69 Del. Laws, c. 307, §§ 1, 3, 4.)."

APPENDIX 5(a)
DIVISION OF MOTOR VEHICLES POLICY ON OUT-OF-STATE RENEWALS

The following is the Division's policy for accomplishing a registration renewal on a vehicle located outside the State of Delaware when the vehicle owner is unable to return the vehicle for inspection prior to the renewal date. Vehicles located within a 200 mile radius of a Division of Motor Vehicles facility will be inspected at a division inspection station prior to renewal. All other vehicles may be renewed by accomplishing the following procedures:

(1) Refer all inquiries on out-of-state renewal to the Dover Correspondence Office (739-3147). Normally, customers will be provided the out-of-state renewal package by the Dover Administrative Office Correspondence Section. Lane locations may provide the renewal package to walk-in customers, but the completed paperwork must be mailed to Dover for processing.

(2) When all documents are completed and the vehicle has passed inspection, copies of the Application for Out-of-State Registration and the inspection report (MV Form 210(a) will be provided to Dover Lane (Tom Kersey) and DNREC Air Quality Section (Phil Wheeler).

(3) Tom Kersey or his designated representative will load the inspection information on the MV210(a) form into the computer system. The MV210(a) form will be saved for

two years by the Dover lane.

(4) When the inspection information has been loaded, Tom Kersey will send a Vehicle Inspection Report to Dover Correspondence, the renewal can be completed and the registration card and plate sticker can be mailed to the customer.

(5) All documents will be saved by the Registration Correspondence Section for two years.

(6) Random audit procedures: Correspondents prior to renewing selected vehicles will call the inspection station and inspector shown on the MV210(a) form. One out of every ten vehicles will be selected to verify the vehicle was inspected. The verification will be conducted prior to sending copies to DNREC and Dover lane. Indicate on the bottom of Page 2 of the form the date and time of verification and the name of the person performing the verification. Sandy Tracy will be in charge of the verification and selection process.

APPENDIX 5(f)
[New Model Year Clean Screen]

[BACKGROUND -

Delaware's revised I/M State Implementation Plan (SIP) commits the State to implementing a clean screen program to help reduce lines during peak inspection periods. Delaware previously enacted a provision to use the low emitter profile model (LEP) to clean screen vehicles at the lanes during peak inspection periods. During off-peak periods, all vehicles that show up for inspection would be tested. Currently, however, the LEP clean screen program has not been implemented, and long lines are a problem during certain times. The main reason for not implementing the LEP clean screen program is the complexity of integrating the LEP program into the existing information system. The low emitter profile has been replaced in this regulation with a new model year clean screen exemption that will in effect exempt during one calendar year, approximately another 9,200 vehicles from the major portion of the emissions testing program. This provision will reduce inspection volume by about 18% when it's activated.

It is important to note that the vehicle ages under this provision will be six, seven and eight model years old according to the definition in model year exemption in Section 1 (f) . Under the low emitter profile a clear distribution of exemptions of each model year was defined by the regulation. The provisions of Section 5 (f) does not require a definite distribution of any one of the six, seven or eight years old model years to be exempt. . It is expected that, because it will be a random arrival of vehicles into the lanes, the number of each model year exempted will be proportional in number to the actual fleet size of each applicable model year . That is, the distribution should be no more than 24% of the number of vehicles in each model year when considering the cap of 14,000 vehicle years being eligible to be clean screened.]

[EMISSION IMPACTS OF NEW MODEL YEAR CLEAN SCREEN -

Restricting clean screen to only the above vehicles cannot result in greater emissions than including all the clean screen candidates identified by the LEP. To further confirm that this approach would not cause problems with compliance with Delaware's revised I/M SIP, the exemptions were modeled with MOBILE5b. Unlike the use of Radian's LEP model, this approach does not need to be modeled with the Clean Screen Credit Utility. This alternative option - expanding model year exemptions during peak periods - would have less impact on the emission reduction credits for Delaware's I/M program than the LEP Clean Screen program presented in Delaware's I/M SIP that has already been approved by EPA. Table 1 presents the impact of the alternative clean screen program, assuming it's in operation for 24% of the inspections. As shown, on-demand model year exemptions would provide more emission reductions than the program Delaware has committed to in its SIP.]

[Table 1.
Estimated Impact of New Model Year Clean Screen Program

Scenario	MOBILE5b Emission Factor (grams/mile) 1999 Evaluation Year		
	Exhaust	**Evap**	**Total**
No IM	**0.928**	**0.781**	**1.709**
Existing 5 model year exemption, TSI + pressure	**0.759**	**0.679**	**1.438**
8 model year exemption TSI + pressure	**0.796**	**0.704**	**1.532**
New Model Year Clean Screen – 8 model years TSI + pressure –24% of the time when needed to reduce the volume at the inspection lanes.	**0.768**	**0.685**	**1.453**

TSI - Two speed idle test]

~~CLEAN SCREENING VEHICLE EXEMPTION~~

~~BACKGROUND ON CLEAN SCREENING~~

~~Delaware plans to implement a clean screen program that combines the use of the low emitter profile model (LEP) with an expansion of model year exemptions from 3 year old and newer vehicles to 5 year old and newer vehicles. The LEP model uses data from Arizona's IM240 program to predict whether a vehicle will pass the test. Analysis of data from applying the LEP to Colorado's fleet indicate that up to half of the vehicles can be exempted without greatly impacting the emission benefits of the program. The model only requires an accurate vehicle identification number (VIN) to project emission characteristics.~~

~~The LEP would be used primarily a lane management tool to increase throughput during peak periods. Under this scenario, the LEP would be used only during peak periods to clean screen vehicles more than 5 years old. Vehicles flagged as clean screen candidates would receive the gas cap test and the safety inspection, but would be exempted from the exhaust emission and pressure test when in clean screen mode. Delaware expects that "clean screening" would be activated less than 40% of the time. During off peak periods, all vehicles more than 5 years old would receive exhaust emission and tank pressure tests along with the gas cap and safety test. Figure one and Table A show the possible percentages of vehicle model years that would be exempt under clean screening if queue conditions warranted.~~

~~Table A~~
~~Percent of Vehicles Eligible for Clean Screen When in Clean Screen Mode~~

~~Vehicle Age~~	~~Observed Clean Screen %~~	~~Assumed Clean Screen %~~
~~1~~	~~99.00%~~	~~100%~~
~~2~~	~~98.83%~~	~~100%~~
~~3~~	~~99.00%~~	~~99.00%~~
~~4~~	~~91.59%~~	~~88.00%~~
~~5~~	~~75.50%~~	~~77.00%~~
~~6~~	~~58.74%~~	~~66.00%~~
~~7~~	~~70.20%~~	~~55.00%~~
~~8~~	~~45.48%~~	~~44.00%~~
~~9~~	~~23.08%~~	~~33.00%~~
~~10~~	~~23.62%~~	~~22.00%~~
~~11~~	~~10.17%~~	~~11.00%~~
~~12 and older~~	~~0.65%~~	~~0.00%~~

~~[1]Based on Arizona IM240 data~~

~~The Division of Motor Vehicles will determine when and if any applicable vehicles are exempt under the clean screen program. Typically, applicable vehicles will be exempt if queue conditions result in a wait time at the lane of 60 minutes or more. However, there are factors in the program that will automatically prevent the clean screen exemption from being implemented. Specifically, a budget of the total number of the applicable vehicles that can be exempt under clean screen will be established for any one calendar year and therefore if that budget is exceeded, the clean screen exemption will not apply even when wait times are 60 minutes or longer.~~

~~Vehicle Type~~	~~Model Year~~	~~Make~~	~~Engine Size~~
~~Passenger~~	~~86~~	~~ACURA~~	~~2.5~~
~~Passenger~~	~~87~~	~~ACURA~~	~~2.5~~
~~Passenger~~	~~87~~	~~ACURA~~	~~2.7~~
~~Passenger~~	~~88~~	~~ACURA~~	~~2.7~~
~~Passenger~~	~~89~~	~~ACURA~~	~~2.7~~
~~Passenger~~	~~90~~	~~ACURA~~	~~1.8~~
~~Passenger~~	~~90~~	~~ACURA~~	~~2.7~~
~~Passenger~~	~~91~~	~~ACURA~~	~~3.2~~
~~Passenger~~	~~91~~	~~ACURA~~	~~3~~
~~Passenger~~	~~91~~	~~ACURA~~	~~1.8~~
~~Passenger~~	~~92~~	~~ACURA~~	~~1.8~~
~~Passenger~~	~~92~~	~~ACURA~~	~~2.5~~
~~Passenger~~	~~92~~	~~ACURA~~	~~3.2~~
~~Passenger~~	~~93~~	~~ACURA~~	~~2.5~~
~~Passenger~~	~~93~~	~~ACURA~~	~~3.2~~
~~Passenger~~	~~93~~	~~ACURA~~	~~1.8~~
~~Passenger~~	~~94~~	~~ACURA~~	~~2.5~~
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~~Passenger~~	~~95~~	~~ACURA~~	~~3.2~~
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~~Passenger~~	~~92~~	~~AUDI~~	~~2.8~~
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~~Passenger~~	~~87~~	~~BMW~~	~~2.7~~
~~Passenger~~	~~88~~	~~BMW~~	~~2.5~~
~~Passenger~~	~~88~~	~~BMW~~	~~2.7~~
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~~Passenger~~	~~91~~	~~BMW~~	~~1.8~~
~~Passenger~~	~~92~~	~~BMW~~	~~2.5~~
~~Passenger~~	~~92~~	~~BMW~~	~~3.5~~
~~Passenger~~	~~92~~	~~BMW~~	~~1.8~~

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Passenger	93	BMW	2.5
Passenger	94	BMW	2.5
Passenger	94	BMW	4
Passenger	94	BMW	1.8
Passenger	95	BMW	2.5
Passenger	95	BMW	3
Passenger	95	BMW	4
Passenger	95	BMW	1.8
Passenger	87	BUICK	3.8
Passenger	87	BUICK	3
Passenger	88	BUICK	3
Passenger	88	BUICK	3.8
Passenger	89	BUICK	3.3
Passenger	89	BUICK	3.8
Passenger	89	BUICK	2.8
Passenger	90	BUICK	3.1
Passenger	90	BUICK	3.8
Passenger	90	BUICK	3.3
Passenger	90	BUICK	5
Passenger	91	BUICK	2.5
Passenger	91	BUICK	3.8
Passenger	91	BUICK	3.3
Passenger	92	BUICK	3.3
Passenger	92	BUICK	2.3
Passenger	92	BUICK	3.8
Passenger	92	BUICK	5.7
Passenger	93	BUICK	5.7
Passenger	93	BUICK	3.3
Passenger	93	BUICK	3.1
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Passenger	94	BUICK	2.2
Passenger	94	BUICK	3.1
Passenger	94	BUICK	3.8
Passenger	94	BUICK	5.7
Passenger	94	BUICK	2.3
Passenger	95	BUICK	2.3
Passenger	95	BUICK	3.1
Passenger	95	BUICK	2.2
Passenger	95	BUICK	5.7
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Passenger	89	CADIL	4.5
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Passenger	92	CADIL	4.9
Passenger	93	CADIL	5.7
Passenger	93	CADIL	4.9
Passenger	94	CADIL	4.9

Passenger	94	CADIL	5.7
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Passenger	95	CADIL	4.9
Passenger	90	CHEVR	1.6
Passenger	90	CHEVR	5.7
Passenger	90	CHEVR	2.2
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Passenger	95	CHEVR	1.6
Passenger	95	CHEVR	4.3
Passenger	95	CHEVR	3.4
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Passenger	95	CHEVR	3.8
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Passenger	92	CHRYS	3.8

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Passenger	92	FORD	5.8
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Passenger	92	FORD	1.9
Passenger	93	FORD	5
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Passenger	94	FORD	2.3
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Passenger	94	FORD	1.9
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Passenger	95	FORD	3.8
Passenger	95	FORD	2.5
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Passenger	95	FORD	5.8
Passenger	95	FORD	3.8
Passenger	95	FORD	1.9
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Passenger	92	GMC	5.7
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Passenger	93	GMC	5.7
Passenger	94	GMC	3.8

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Passenger	95	HONDA	1.5
Passenger	95	HONDA	1.6
Passenger	92	HYUND	3
Passenger	93	HYUND	1.5
Passenger	93	HYUND	3

Passenger	93	HYUND	1.5
Passenger	94	HYUND	1.5
Passenger	94	HYUND	1.5
Passenger	94	HYUND	1.6
Passenger	95	HYUND	2
Passenger	95	HYUND	1.6
Passenger	95	HYUND	1.5
Passenger	95	HYUND	1.8
Passenger	95	HYUND	3
Passenger	90	INFIN	3
Passenger	90	INFIN	4.5
Passenger	91	INFIN	4.5
Passenger	91	INFIN	2
Passenger	92	INFIN	4.5
Passenger	92	INFIN	2
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Passenger	94	LEXUS	3
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Passenger	95	LEXUS	4
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Passenger	89	LINCO	3.8

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Passenger	91	LINCO	3.8
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Passenger	92	LINCO	4.6
Passenger	92	LINCO	3.8
Passenger	93	LINCO	3.8
Passenger	93	LINCO	4.6
Passenger	94	LINCO	3.8
Passenger	94	LINCO	4.6
Passenger	95	LINCO	4.6
Passenger	87	MAZDA	2
Passenger	88	MAZDA	1.3
Passenger	88	MAZDA	2.2
Passenger	89	MAZDA	2.2
Passenger	89	MAZDA	3
Passenger	89	MAZDA	1.6
Passenger	90	MAZDA	1.6
Passenger	90	MAZDA	2.2
Passenger	90	MAZDA	2.2
Passenger	90	MAZDA	1.8
Passenger	91	MAZDA	1.6
Passenger	91	MAZDA	2.6
Passenger	91	MAZDA	2.2
Passenger	91	MAZDA	3
Passenger	91	MAZDA	4
Passenger	92	MAZDA	3
Passenger	92	MAZDA	1.6
Passenger	92	MAZDA	1.8
Passenger	92	MAZDA	2.2
Passenger	92	MAZDA	4
Passenger	93	MAZDA	2
Passenger	93	MAZDA	1.6
Passenger	93	MAZDA	4
Passenger	93	MAZDA	3
Passenger	93	MAZDA	1.8
Passenger	93	MAZDA	2.5
Passenger	94	MAZDA	2
Passenger	94	MAZDA	1.6
Passenger	94	MAZDA	2.5
Passenger	94	MAZDA	3
Passenger	94	MAZDA	4
Passenger	94	MAZDA	1.8
Passenger	95	MAZDA	2.5
Passenger	95	MAZDA	1.8
Passenger	95	MAZDA	2.3
Passenger	95	MAZDA	1.5
Passenger	95	MAZDA	2
Passenger	95	MAZDA	2.5
Passenger	86	MERCE	5.6
Passenger	87	MERCE	5.6
Passenger	87	MERCE	3
Passenger	87	MERCE	4.2
Passenger	88	MERCE	4.2

Passenger	88	MERCE	5.6
Passenger	89	MERCE	2.6
Passenger	89	MERCE	3
Passenger	89	MERCE	4.2
Passenger	89	MERCE	5.6
Passenger	90	MERCE	5.6
Passenger	90	MERCE	4.2
Passenger	90	MERCE	3
Passenger	90	MERCE	2.6
Passenger	91	MERCE	2.3
Passenger	91	MERCE	3
Passenger	91	MERCE	5.6
Passenger	91	MERCE	4.2
Passenger	91	MERCE	2.6
Passenger	92	MERCE	2.3
Passenger	92	MERCE	3
Passenger	92	MERCE	2.6
Passenger	93	MERCE	3.2
Passenger	93	MERCE	2.8
Passenger	93	MERCE	2.6
Passenger	93	MERCE	2.3
Passenger	95	MERCE	3.2
Passenger	95	MERCE	2.2
Passenger	95	MERCE	2.8
Passenger	89	MERCU	3.8
Passenger	89	MERCU	2.3
Passenger	89	MERCU	3
Passenger	90	MERCU	3.8
Passenger	90	MERCU	3
Passenger	90	MERCU	5
Passenger	90	MERCU	2.3
Passenger	91	MERCU	1.9
Passenger	91	MERCU	3.8
Passenger	91	MERCU	2.3
Passenger	91	MERCU	3
Passenger	92	MERCU	1.9
Passenger	92	MERCU	2.3
Passenger	92	MERCU	1.6
Passenger	92	MERCU	3
Passenger	92	MERCU	3.8
Passenger	92	MERCU	4.6
Passenger	93	MERCU	1.6
Passenger	93	MERCU	1.9
Passenger	93	MERCU	3.8
Passenger	93	MERCU	3
Passenger	93	MERCU	4.6
Passenger	93	MERCU	2.3
Passenger	94	MERCU	4.6
Passenger	94	MERCU	2.3
Passenger	94	MERCU	3
Passenger	94	MERCU	3.8
Passenger	94	MERCU	1.9
Passenger	94	MERCU	1.6
Passenger	95	MERCU	2.5

Passenger	95	MERCU	2
Passenger	95	MERCU	3
Passenger	95	MERCU	4.6
Passenger	95	MERCU	3.8
Passenger	95	MERCU	1.9
Passenger	90	MITSU	2
Passenger	91	MITSU	1.8
Passenger	92	MITSU	2
Passenger	92	MITSU	2.4
Passenger	92	MITSU	1.5
Passenger	92	MITSU	1.8
Passenger	92	MITSU	1.8
Passenger	92	MITSU	3
Passenger	93	MITSU	1.5
Passenger	93	MITSU	1.8
Passenger	93	MITSU	2
Passenger	93	MITSU	3
Passenger	93	MITSU	3
Passenger	94	MITSU	3
Passenger	94	MITSU	3
Passenger	94	MITSU	2.4
Passenger	94	MITSU	1.8
Passenger	94	MITSU	2
Passenger	94	MITSU	1.5
Passenger	95	MITSU	1.5
Passenger	95	MITSU	2
Passenger	95	MITSU	1.8
Passenger	95	MITSU	3
Passenger	95	MITSU	3
Passenger	95	MITSU	2.4
Passenger	88	NISSA	3
Passenger	89	NISSA	3
Passenger	89	NISSA	3
Passenger	90	NISSA	3
Passenger	90	NISSA	2.4
Passenger	90	NISSA	3
Passenger	91	NISSA	3
Passenger	91	NISSA	2.4
Passenger	91	NISSA	1.6
Passenger	91	NISSA	3
Passenger	91	NISSA	2
Passenger	92	NISSA	3
Passenger	92	NISSA	2
Passenger	92	NISSA	1.6
Passenger	92	NISSA	2.4
Passenger	93	NISSA	2
Passenger	93	NISSA	1.6
Passenger	93	NISSA	2.4
Passenger	93	NISSA	3
Passenger	93	NISSA	3
Passenger	94	NISSA	3
Passenger	94	NISSA	3
Passenger	94	NISSA	2.4
Passenger	94	NISSA	2

Passenger	94	NISSA	1.6
Passenger	95	NISSA	3
Passenger	95	NISSA	2.4
Passenger	95	NISSA	3
Passenger	87	OLDSM	3.8
Passenger	88	OLDSM	3.8
Passenger	88	OLDSM	3
Passenger	89	OLDSM	3.3
Passenger	89	OLDSM	3.8
Passenger	90	OLDSM	3.3
Passenger	90	OLDSM	3.8
Passenger	91	OLDSM	3.8
Passenger	91	OLDSM	3.3
Passenger	92	OLDSM	2.3
Passenger	92	OLDSM	3.3
Passenger	92	OLDSM	3.8
Passenger	93	OLDSM	3.4
Passenger	93	OLDSM	3.8
Passenger	93	OLDSM	3.3
Passenger	93	OLDSM	2.3
Passenger	94	OLDSM	2.3
Passenger	94	OLDSM	3.1
Passenger	94	OLDSM	2.2
Passenger	94	OLDSM	3.8
Passenger	94	OLDSM	3.4
Passenger	95	OLDSM	3.1
Passenger	95	OLDSM	3.8
Passenger	95	OLDSM	4
Passenger	95	OLDSM	2.3
Passenger	95	OLDSM	3.4
Passenger	87	PLYMO	5.2
Passenger	87	PLYMO	3
Passenger	89	PLYMO	2.5
Passenger	89	PLYMO	2.5
Passenger	90	PLYMO	2.5
Passenger	90	PLYMO	3.3
Passenger	90	PLYMO	2.5
Passenger	92	PLYMO	3
Passenger	92	PLYMO	3
Passenger	92	PLYMO	3.3
Passenger	92	PLYMO	1.8
Passenger	93	PLYMO	2.5
Passenger	93	PLYMO	3
Passenger	93	PLYMO	3.3
Passenger	93	PLYMO	3
Passenger	93	PLYMO	2
Passenger	93	PLYMO	2.2
Passenger	93	PLYMO	1.8
Passenger	93	PLYMO	2.5
Passenger	93	PLYMO	1.5
Passenger	94	PLYMO	3
Passenger	94	PLYMO	3
Passenger	94	PLYMO	3.8
Passenger	94	PLYMO	2.5

Passenger	94	PLYMO	2.2
Passenger	94	PLYMO	2.5
Passenger	94	PLYMO	3.3
Passenger	95	PLYMO	3
Passenger	95	PLYMO	2.5
Passenger	95	PLYMO	3
Passenger	95	PLYMO	3.8
Passenger	95	PLYMO	2.5
Passenger	95	PLYMO	3.3
Passenger	95	PLYMO	2
Passenger	88	PONTI	3.8
Passenger	89	PONTI	1.6
Passenger	89	PONTI	5.7
Passenger	89	PONTI	3.8
Passenger	89	PONTI	3.1
Passenger	89	PONTI	2
Passenger	90	PONTI	1.6
Passenger	90	PONTI	3.8
Passenger	90	PONTI	2
Passenger	90	PONTI	5
Passenger	91	PONTI	1.6
Passenger	91	PONTI	3.8
Passenger	91	PONTI	2
Passenger	92	PONTI	3.3
Passenger	92	PONTI	3.4
Passenger	92	PONTI	3.8
Passenger	92	PONTI	2.3
Passenger	92	PONTI	2
Passenger	93	PONTI	3.8
Passenger	93	PONTI	2.3
Passenger	93	PONTI	3.4
Passenger	93	PONTI	2
Passenger	93	PONTI	3.3
Passenger	94	PONTI	3.1
Passenger	94	PONTI	3.1
Passenger	94	PONTI	3.8
Passenger	94	PONTI	3.4
Passenger	94	PONTI	3.4
Passenger	94	PONTI	2.3
Passenger	94	PONTI	2
Passenger	94	PONTI	5.7
Passenger	95	PONTI	3.1
Passenger	95	PONTI	2.2
Passenger	95	PONTI	3.4
Passenger	95	PONTI	2.3
Passenger	95	PONTI	3.4
Passenger	95	PONTI	5.7
Passenger	95	PONTI	3.8
Passenger	84	PORSC	3.2
Passenger	86	PORSC	3.2
Passenger	88	PORSC	3.2
Passenger	90	PORSC	3.6
Passenger	91	PORSC	3.6
Passenger	95	PORSC	3.6

Passenger	91	SAAB	2.1
Passenger	91	SAAB	2.3
Passenger	92	SAAB	2.1
Passenger	95	SAAB	2.3
Passenger	93	SATUR	1.9
Passenger	94	SATUR	1.9
Passenger	95	SATUR	1.9
Passenger	88	SUBAR	1.8
Passenger	88	SUBAR	1.8
Passenger	89	SUBAR	1.8
Passenger	90	SUBAR	1.8
Passenger	90	SUBAR	2.2
Passenger	91	SUBAR	1.8
Passenger	91	SUBAR	2.2
Passenger	92	SUBAR	2.2
Passenger	92	SUBAR	1.8
Passenger	93	SUBAR	1.8
Passenger	93	SUBAR	2.2
Passenger	94	SUBAR	2.2
Passenger	89	SUZUK	1.3
Passenger	90	SUZUK	1.3
Passenger	91	SUZUK	1.6
Passenger	92	SUZUK	1.6
Passenger	93	SUZUK	1.6
Passenger	93	SUZUK	1.3
Passenger	94	SUZUK	1.6
Passenger	94	SUZUK	1.3
Passenger	83	TOYOT	2.3
Passenger	85	TOYOT	2
Passenger	86	TOYOT	2
Passenger	86	TOYOT	2.2
Passenger	87	TOYOT	2
Passenger	87	TOYOT	2.2
Passenger	88	TOYOT	2
Passenger	88	TOYOT	2.2
Passenger	88	TOYOT	4
Passenger	88	TOYOT	1.6
Passenger	88	TOYOT	3
Passenger	88	TOYOT	2.5
Passenger	89	TOYOT	2.5
Passenger	89	TOYOT	2.2
Passenger	89	TOYOT	1.6
Passenger	89	TOYOT	2
Passenger	89	TOYOT	2
Passenger	89	TOYOT	3
Passenger	89	TOYOT	4
Passenger	89	TOYOT	3
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Passenger	90	TOYOT	3
Passenger	90	TOYOT	2
Passenger	90	TOYOT	2.4
Passenger	90	TOYOT	2.2
Passenger	90	TOYOT	3
Passenger	90	TOYOT	1.5

Passenger	90	TOYOT	2.5
Passenger	91	TOYOT	2.5
Passenger	91	TOYOT	2.2
Passenger	91	TOYOT	2.2
Passenger	91	TOYOT	2.4
Passenger	91	TOYOT	3
Passenger	91	TOYOT	1.6
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Passenger	92	TOYOT	1.6
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Passenger	92	TOYOT	2
Passenger	92	TOYOT	1.5
Passenger	93	TOYOT	3
Passenger	93	TOYOT	1.5
Passenger	93	TOYOT	2
Passenger	93	TOYOT	1.8
Passenger	93	TOYOT	3
Passenger	93	TOYOT	2.4
Passenger	93	TOYOT	2.2
Passenger	93	TOYOT	2.2
Passenger	93	TOYOT	1.6
Passenger	94	TOYOT	1.6
Passenger	94	TOYOT	1.8
Passenger	94	TOYOT	3
Passenger	94	TOYOT	3
Passenger	94	TOYOT	2.2
Passenger	94	TOYOT	2.4
Passenger	94	TOYOT	1.5
Passenger	95	TOYOT	2.2
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Passenger	95	TOYOT	3
Passenger	95	TOYOT	1.8
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Passenger	85	VOLKS	2
Passenger	87	VOLKS	2
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Passenger	93	VOLKS	2
Passenger	93	VOLKS	1.8
Passenger	94	VOLKS	1.8
Passenger	95	VOLKS	1.8
Passenger	95	VOLKS	2
Passenger	89	VOLVO	2.3
Passenger	90	VOLVO	2.3
Passenger	91	VOLVO	2.3
Passenger	92	VOLVO	2.3
Passenger	93	VOLVO	2.3
Passenger	93	VOLVO	2.4
Passenger	94	VOLVO	2.4

Passenger	94	VOLVO	2.3
Passenger	94	VOLVO	2.9
Passenger	95	VOLVO	2.9
Passenger	95	VOLVO	2.3
Passenger	95	VOLVO	2.4
Truck	90	CHEVR	5.7
Truck	92	CHEVR	2.5
Truck	92	CHEVR	2.8
Truck	93	CHEVR	5.7
Truck	93	CHEVR	2.8
Truck	93	CHEVR	2.5
Truck	94	CHEVR	5.7
Truck	94	CHEVR	4.3
Truck	94	CHEVR	4.3
Truck	94	CHEVR	2.2
Truck	94	CHEVR	5
Truck	95	CHEVR	2.2
Truck	95	CHEVR	4.3
Truck	95	CHEVR	7.4
Truck	95	CHEVR	5
Truck	95	CHEVR	4.3
Truck	95	CHEVR	5.7
Truck	82	DODGE	5.2
Truck	85	DODGE	2.5
Truck	89	DODGE	2.5
Truck	89	DODGE	5.9
Truck	90	DODGE	5.9
Truck	90	DODGE	2.5
Truck	91	DODGE	2.5
Truck	92	DODGE	2.4
Truck	92	DODGE	2.5
Truck	93	DODGE	2.5
Truck	93	DODGE	3
Truck	94	DODGE	3.3
Truck	94	DODGE	5.2
Truck	94	DODGE	5.9
Truck	94	DODGE	2.5
Truck	95	DODGE	3.9
Truck	95	DODGE	5.9
Truck	95	DODGE	5.2
Truck	95	DODGE	2.5
Truck	89	FORD	2.9
Truck	90	FORD	4
Truck	90	FORD	2.3
Truck	90	FORD	2.9
Truck	91	FORD	2.9
Truck	91	FORD	4
Truck	91	FORD	3
Truck	91	FORD	2.3
Truck	92	FORD	4
Truck	92	FORD	2.3
Truck	92	FORD	3
Truck	93	FORD	2.3
Truck	93	FORD	5.8

Truck	93	FORD	5
Truck	93	FORD	4.9
Truck	93	FORD	4
Truck	93	FORD	3
Truck	94	FORD	5.8
Truck	94	FORD	2.3
Truck	94	FORD	4.9
Truck	94	FORD	4
Truck	94	FORD	3
Truck	94	FORD	5
Truck	95	FORD	4.9
Truck	95	FORD	2.3
Truck	95	FORD	5
Truck	95	FORD	4
Truck	95	FORD	3
Truck	95	FORD	5.8
Truck	90	GMC	5.7
Truck	90	GMC	2.5
Truck	93	GMC	5.7
Truck	94	GMC	4.3
Truck	94	GMC	2.2
Truck	94	GMC	5.7
Truck	94	GMC	4.3
Truck	95	GMC	5.7
Truck	95	GMC	5
Truck	95	GMC	2.2
Truck	95	GMC	4.3
Truck	95	GMC	4.3
Truck	90	ISUZU	2.6
Truck	92	ISUZU	2.3
Truck	92	ISUZU	2.6
Truck	93	ISUZU	2.3
Truck	94	ISUZU	2.3
Truck	95	ISUZU	2.3
Truck	90	JEEP	4
Truck	91	JEEP	4
Truck	92	JEEP	4
Truck	93	JEEP	4
Truck	94	JEEP	4
Truck	94	JEEP	2.5
Truck	95	JEEP	4
Truck	95	JEEP	2.5
Truck	90	MAZDA	2.2
Truck	91	MAZDA	2.6
Truck	91	MAZDA	2.2
Truck	92	MAZDA	2.6
Truck	92	MAZDA	2.2
Truck	93	MAZDA	2.2
Truck	94	MAZDA	2.3
Truck	94	MAZDA	3
Truck	94	MAZDA	4
Truck	95	MAZDA	2.3
Truck	87	MITSU	2.6
Truck	92	MITSU	2.4

~~Truck~~	~~93~~	~~MITSU~~	~~2.4~~
~~Truck~~	~~87~~	~~NISSA~~	~~2.4~~
~~Truck~~	~~87~~	~~NISSA~~	~~3~~
~~Truck~~	~~88~~	~~NISSA~~	~~2.4~~
~~Truck~~	~~89~~	~~NISSA~~	~~2.4~~
~~Truck~~	~~89~~	~~NISSA~~	~~3~~
~~Truck~~	~~90~~	~~NISSA~~	~~3~~
~~Truck~~	~~90~~	~~NISSA~~	~~2.4~~
~~Truck~~	~~91~~	~~NISSA~~	~~3~~
~~Truck~~	~~91~~	~~NISSA~~	~~2.4~~
~~Truck~~	~~92~~	~~NISSA~~	~~2.4~~
~~Truck~~	~~92~~	~~NISSA~~	~~3~~
~~Truck~~	~~93~~	~~NISSA~~	~~2.4~~
~~Truck~~	~~93~~	~~NISSA~~	~~3~~
~~Truck~~	~~94~~	~~NISSA~~	~~2.4~~
~~Truck~~	~~94~~	~~NISSA~~	~~3~~
~~Truck~~	~~95~~	~~NISSA~~	~~3~~
~~Truck~~	~~95~~	~~NISSA~~	~~2.4~~
~~Truck~~	~~90~~	~~SUZUK~~	~~1.3~~
~~Truck~~	~~84~~	~~TOYOT~~	~~2~~
~~Truck~~	~~86~~	~~TOYOT~~	~~2.2~~
~~Truck~~	~~86~~	~~TOYOT~~	~~2.3~~
~~Truck~~	~~87~~	~~TOYOT~~	~~2.3~~
~~Truck~~	~~87~~	~~TOYOT~~	~~2.2~~
~~Truck~~	~~88~~	~~TOYOT~~	~~2.3~~
~~Truck~~	~~88~~	~~TOYOT~~	~~3~~
~~Truck~~	~~89~~	~~TOYOT~~	~~2.3~~
~~Truck~~	~~89~~	~~TOYOT~~	~~2.2~~
~~Truck~~	~~89~~	~~TOYOT~~	~~3~~
~~Truck~~	~~90~~	~~TOYOT~~	~~3~~
~~Truck~~	~~90~~	~~TOYOT~~	~~2.4~~
~~Truck~~	~~91~~	~~TOYOT~~	~~2.4~~
~~Truck~~	~~91~~	~~TOYOT~~	~~3~~
~~Truck~~	~~92~~	~~TOYOT~~	~~3~~
~~Truck~~	~~92~~	~~TOYOT~~	~~2.4~~
~~Truck~~	~~93~~	~~TOYOT~~	~~2.4~~
~~Truck~~	~~93~~	~~TOYOT~~	~~3~~
~~Truck~~	~~94~~	~~TOYOT~~	~~3~~
~~Truck~~	~~94~~	~~TOYOT~~	~~2.7~~
~~Truck~~	~~94~~	~~TOYOT~~	~~2.4~~
~~Truck~~	~~95~~	~~TOYOT~~	~~2.7~~
~~Truck~~	~~95~~	~~TOYOT~~	~~2.4~~
~~Truck~~	~~95~~	~~TOYOT~~	~~3~~

~~1 Based on Arizona IM240 data~~

APPENDIX 6(a)
IDLE EMISSIONS TEST PROCEDURES

The on-site test inspection of motor vehicles uses the ESP FICS 4000 - Bar 90 computerized Emission Analyzer which will require minimal time to complete the inspection procedure.

GENERAL TEST PROCEDURES

1. If the inspection technician observes a vehicle having coolant, oil, excess smoke or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted the vehicle shall be rejected from the testing area. The inspection technician is prohibited from conducting the emissions test until the defects are corrected.

2. The vehicle transmission is to be placed in neutral gear if equipped with a manual transmission, or in park position if equipped with an automatic transmission. The hand or parking brake is to be engaged. If the parking brake is found to be defective, then wheel chocks are to be placed in front and/or behind the vehicle's tires.

3. The inspection technician advises the owner to turn off all vehicle accessories.

4. The inspection technician enters the vehicle registration number (tag) or the vehicle identification number into the BAR 90 system. This information is electronically transmitted to the Division of Motor Vehicle's database. The system will also identify for each vehicle entered into the BAR 90 system whether the vehicle is eligible for a clean screen exemption. Only under certain conditions determined by the vehicle services chief or his designee will those vehicles eligible for the clean screen exemption be excuse from any exhaust emissions test for the current two year test cycle. In no case shall the number of vehicles exempt in any one calendar year, under the clean screen procedures, exceed 40% of the total number of vehicles subject to the requirements of Regulation 31. The clean screen procedures or methodology is described in Appendix Y.

5. If the vehicle registration number is in the database, the following information will be transmitted to and verified by the inspection technician:

   a. Vehicle make
   b. Vehicle Year
   c. Vehicle Model
   d. Vehicle Body Style
   e. Vehicle fuel type and
   f. other related information

6. The inspection technician will verify this information and verify the last five characters of the Vehicle Identification Number (VIN) prior to beginning the emission test.

7. If the vehicle's identification number is not on the database, the R.L. Polk VIN Package shall be automatically accessed. This VIN package will return the following information to the inspection technician who, in turn will verify the returned information:

   a. Vehicle make
   b. Vehicle Year
   c. Vehicle Model
   d. Vehicle Body Style

e. Vehicle fuel type

8. The DMV System will identify and require an emission inspection on all eligible vehicles meeting the State's criteria for an emission inspection. Once the vehicle information has been verified and accepted, the system will prompt the inspection technician to place the analyzer test probe into the tailpipe. The technician connects the tachometer lead to the vehicle's spark plug and verifies that the idle RPM is within the specified range. If the RPM exceeds the allowed range the vehicle is rejected and not tested. The technician will insert the probe at least 8 inches into the exhaust pipe. Genuine dual exhaust vehicles will be tested with a dual exhaust probe. Once the probe has been placed into the exhaust pipe the test will begin. The test process is completely automatic, including the pass/fail decision.

9. If the vehicle has been identified as requiring a completed Vehicle Inspection Repair (VIRR) Report Form prior to reinspection, the inspection technician will review the form for completeness and, if applicable, record into the system the Certified Emission Repair Technician's (CERT) number or Certified Manufacturer's Repair Technician (CMRT) number before the retest.

TWO SPEED IDLE TEST PROCEDURES

1. Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will be analyzed at a rate of two times per second. The measured value for pass/fail determinations will be a simple running average of the measurements taken over five seconds.

2. Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in Appendix 3 (a)(7) and the measured value for HC and CO. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

3. Void test conditions. The test will immediately end and any exhaust gas measurements will be voided if the measured concentration of CO plus CO_2 (CO+ CO_2) falls below six percent of the total concentration of CO plus CO_2 or the vehicle's engine stalls at any time during the test sequence.

4. Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with dual exhaust systems will be sampled accordingly.

5. The test will be immediately terminated upon reaching the overall maximum test time.

6. Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(i) The first-chance test will consist of an idle mode followed by a high-speed mode.

(ii) The second-chance high-speed mode, as described will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(i) The vehicle will be tested in as-received condition with the transmission in neutral or park, the parking brake actuated (or chocked) and all accessories turned off. The engine shall appear to and is assumed to be at normal operating temperature.

(ii) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe(s) will be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension will be used.

(iv) The measured concentration of CO plus CO_2 (CO + CO_2) will be greater than or equal to 6% of the total concentration.

(c) First-chance test and second-chance high-speed mode. The test timer will start (tt=0) when the conditions specified above are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds (tt=390). The first-chance test will consist of an idle mode following immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.

(d) First-chance idle mode. The mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The maximum idle mode length will be 30 seconds (mt=30) elapsed time. The pass/ fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the mode terminated as follows:

(i) The vehicle will pass the idle mode and the mode will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less or equal to the applicable standards listed in Appendix 3 (a)(7)

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of d (i) are not satisfied within an elapsed time of 30 seconds (mt=30).

(iii) The vehicle may fail the first-chance and

second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(e) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes, and follows immediately upon termination of the first-chance idle mode. The mode timer will reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-speed mode length will be determined as described under paragraphs (e) (i) and (ii) below. The maximum high-speed mode length will be 180 seconds (mt=180) elapsed time.

(i) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180).

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have elapsed (mt=40).

(III) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7). (V)The vehicle will fail the high-speed mode and the test will be terminated if neither paragraphs (e) (i) (A) (III) or (e) (i) (A) (IV), above, are not satisfied by an elapsed time of 180 seconds (mt=180).

(B) A pass or fail determination will be made for vehicles that failed the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off it necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(III) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 60 seconds (mt=60) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither paragraphs (e) (i) (B) (I), (e) (i) (B) (III) or e (i) (B) (IV), above, is satisfied by an elapsed time of 180 seconds (mt=180).

(ii) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in paragraph (e) (i), above, will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode, to determine whether the high-speed mode should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no

high speed idle mode test will be performed.

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high-speed mode and the test will be terminated if neither the provisions of paragraphs (e) (ii)(A)(I) or (e) (ii)(A)(II), above, is satisfied.

(B) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values are less than or equal to the applicable standards listed Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high speed mode and test will be terminated if neither the provisions of paragraphs (e) (ii)(B)(I) or (e) (ii)(B)(II) is satisfied.

(f) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero (mt=0) and a second chance idle mode will commence. The second-chance idle mode will have an overall maximum mode time of 30 seconds (mt=30). The test will consist on an idle mode only.

(i) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in paragraph (f) (iii) below. The maximum second-chance idle mode length will be 30 seconds (mt=30) elapsed time.

(iii) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) The vehicle will pass the second-chance idle mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle will pass the second-chance idle mode and the test will be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (f)(iii)(A), above, are not satisfied and the measured values during the time period between 25 and 30 seconds (mt=25-30) are less than or equal to the applicable short test standards listed Appendix 3 (a)(7).

(C) The vehicle will fail the second-chance idle mode and the test will be terminated if neither of the provisions of paragraphs (f) (iii)(A) or (f)(iii)(B), above are satisfied by an elapsed time of 30 seconds (mt=30).

SINGLE SPEED IDLE TEST
From 40 CFR 51 Appendix B to Subpart S -- Test Procedures

(I) Idle Test

(a) General requirements

(1) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in Appendix C to this subpart, and the measured value for HC and CO as described in paragraph (I)(a)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous measured values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) Void test conditions. The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO2 falls

below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) Test sequence.

(1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of an idle mode.

(ii) The second-chance test as described under paragraph (I)(d) of this appendix shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO2 shall be greater than or equal to six percent.

(c) First-chance test. The test timer shall start (tt=0) when the conditions specified in paragraph (I)(b)(2) of this appendix are met. The first-chance test shall have an overall maximum test time of 145 seconds (tt=145). The first-chance test shall consist of an idle mode only.

(1) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum mode length shall be determined as described under paragraph (I)(c)(2) of this appendix. The maximum mode length shall be 90 seconds elapsed time (mt=90).

(2) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(i) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (I)(c)(2)(i) of this appendix are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iii) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iv) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(c)(2)(i), (ii) and (iii) of this appendix is satisfied by an elapsed time of 90 seconds (mt=90). Alternatively, the vehicle may be failed if the provisions of paragraphs (I)(c)(2)(i) and (ii) of this appendix are not met within an elapsed time of 30 seconds.

(v) Optional. The vehicle may fail the first-chance test and the second-chance test shall be omitted if no exhaust gas concentration lower than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(d) Second-chance test. If the vehicle fails the first-chance test, the test timer shall reset to zero (tt=0) and a second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 425 seconds (tt=425). The test shall consist of a preconditioning mode followed immediately by an idle mode.

(1) Preconditioning mode. The mode timer shall start (mt=0) when the engine speed is between 2200 and 2800 rpm. The mode shall continue for an elapsed time of 180 seconds (mt=180). If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) Idle mode.

(i) Ford Motor Company and Honda vehicles. The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes shall be shut off for not more than 10 seconds and restarted. This procedure may also be used for 1988-1989 Ford Motor Company vehicles but should not be used for other vehicles. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (I)(d)(2)(iii) of this appendix. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail

determination shall be made for the vehicle and the idle mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (I)(d)(2)(iii)(A) of this appendix are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards described in paragraph (I)(a)(2) of this appendix.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(d)(2)(iii)(A), (d)(2)(iii)(B), and (d)(2)(iii)(C) of this appendix

(E) Are satisfied by an elapsed time of 90 seconds (mt=90)

APPENDIX 6(a)(5)
Vehicle Emission Repair Report Form

This document may be reviewed during normal business hours (8:30 am – 4 pm) Monday through Friday at the Air Quality Management Section Office, 156 South State Street, Dover. For more information call Philip Wheeler at 302/739-4791

APPENDIX 6(a)(8)
EVAPORATIVE SYSTEM INTEGRITY (PRESSURE) TEST

ESP Alternative Pressure Test

The EPA has defined an evaporative pressure test that involves removing hoses from the charcoal canister. An alternative, less intrusive test technique has been developed by ESP. The EPA pressure test is performed by removing the gas tank fuel vapor vent line from the charcoal canister and pressurizing the gas tank through this line with nitrogen gas. The pressure in the gas tank is then monitored for two minutes and if the pressure drops below a specified level, the vehicle is failed. The canister is often difficult to access and the vent hoses difficult to remove and replace. The alternative test consists of pressurizing the gas tank from the gas tank filler neck instead of the canister. The gas cap is removed and replaced by a gas cap adapter through which the fuel tank is filled with nitrogen gas. The vent hose is clamped at the canister, the gas tank is pressurized and the pressure in the tank monitored for two minutes. Clamping the hose rather than removing it is less likely to lead to breakage or hoses left disconnected, reducing the liability arising from the test procedure. The gas cap is tested on a test rig where the gas cap can be pressurized on its own. Removing the gas cap and pressurizing the tank from the filler neck has the following advantages:

Half of the leaks in the gas tank occur in the gas cap. On those vehicles where the canister and vent lines are inaccessible, 50% of the emissions reduction available from the evaporative system integrity check can be achieved by just testing the gas cap.

Testing the gas cap separately allows leaking gas caps to be identified. The customer can be recommended to replace the gas cap rather than pay to have a repair station isolate the cause of the leak.

The test is less intrusive as the vapor line to the charcoal canister is clamped off rather than removed. On some vehicles the vapor line can be reached even when the canister:, itself is inaccessible. The gas tank can be more rapidly pressurized through the large filler neck opening than from the canister as the vapor line to the tank typically has a narrow orifice in the line. This is particularly important when pressurizing the large vapor space in nearly empty gas tanks. The more rapid pressure test potentially increases the throughput of the lane. The ESP method will result in a 50% time saving in the fill time or approximately 30 seconds. The 30 second time saving in the multi-position lane will result in a lane throughput increase of one to two vehicles per hour.

The ESP Alternative Pressure Test is a more accurate test because it compensates for the volume of vapor space. During the development of this technique, ESP discovered that differences in fuel level in the gas tank can result in an order of magnitude change in test results. ESP's alternative approach is designed to compensate for the pressure drop change of the vapor space condition. Without the ESP method of testing, it is expected that errors of omission and commission will result. The variability of the test results derived from the EPA prescribed method will result in problems such as, customer complaints for "Ping-Pong" effects and general public dissatisfaction with the program. To further reduce the problem of ping-ponging, ESP has developed a pressure drop table for repair stations, that will enable the repair technicians to perform the pressure test with a much higher degree of correlation to the centralized test.

APPENDIX 7(a)
EMISSION REPAIR TECHNICIAN CERTIFICATION PROCESS

Effective January 1, 1997 for vehicles registered in New

Castle County and July 1, 1997 for vehicles registered in Kent County, in order to qualify for waiver repairs on any 1981 or later model year vehicle shall be performed by a certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation. The cost of such repairs must total no less than $200. Under the policy developed by the Department, a Certified Emission Repair Technician may be certified as trained to do repairs on all makes of vehicles or vehicles of a specific manufacturer. Auto repair technicians seeking to become certified under Regulation 31 have the following options in attaining the certification:

1. All those applying for certification can "test out" and gain certification without further emission repair training as provided by the College or Auto Manufacturer or other training organization. The "test out" process is administered by the College as follows:

- Applicants without L1 ASE (Automobile Service Excellence) certification must first take the Fundamental Inspection Repair System Training final exam. Those achieving a score of 75% or better are eligible to take the Delaware Emission Education Program certification exam.
- Applicants achieving a score of 75% or better on the certification exam will become certified on all makes of vehicles. Applicants with L1 ASE certification can test out by taking the Delaware Emission Education Program certification exam ONLY.

2. The testing procedure discussed above will determined what, if any, training is needed for applicants seeking certification.

- Technicians scoring below 75% on the Fundamental Inspection Repair System Training final exam must take a 60 hour fundamental emission repair training course provided by the College.
- Those completing the 60 hour program and scoring 75% or better on the final exam can advance into a 40 hour class which is the next level of training, or attempt to test out and take the certification exam, scoring 75% or better to become certified.
- Technicians scoring below 75% on the Delaware Emission Education Program certification exam must take a 40 hour emission repair training course provided by the College and then score 75% or better on the final exam to become certified.

3. Technicians who are L1 ASE certified and who have approved manufacturer's emission repair training will be certified for each make of vehicle of each manufacturer that the technician was trained to do emission repairs. The procedure for certification is as follows:

- The Department will evaluate each of the manufacturers OEM Emissions Path to determine if it meets a reasonable minimum standard. This evaluation must contain proof that the manufacturers course work clearly covers the Delaware I/M regulation (e.g. waiver process, etc.)
- Candidate manufacturer technician submits: His/her transcript from the manufacturer on courses taken and passed and; Proof of ASE L1 certification to the Department.
- Candidate manufacturer technician takes and passes a Delaware-specific short test which is intended to test the candidate on the Delaware regulation, any specifics on waivers that should be known, and general questions on vehicle repair.
- The Department and the Division issues manufacturing-specific certification with clearly marked authority on the certificate.

APPENDIX 8 (a)
Registration Denial System Requirements Definition
April 30, 1997

Prepared by: Barry W. Pugh and
Edited by: Cheryl Roe - DMV

Version 1.1
Section I , Management Summary

Goals and Objectives

Improved Customer Service, Convenience and Control:

1. Implement Bar Coding interface to the Title and Registration function.
2. Design an interface between Registration Renewal and Titles to the Registration Denial system that will enable the State of Delaware to obtain an improved rating though Cleaner Air.
3. Design a Temporary tag tracking system.
4. Design an automated Waiver/Override system.
5. Design a Repair Facility and Repair Technician tracking system.
6. Design improved data inquiry capabilities and distribute to necessary customers.

Improved Personnel Training and System On-Line Help:

1. On-Line Help Training within each of the applications.
2. On-Line Training through specialized system testing.

3. Improved Operating Procedures.

Improved System Security and Flexibility:

1. System Security

· Override system parameter changes based on functionality.

· Override system parameter changes based on specific fields.

· Improved tracking of transactions, personnel and dates.

· Improved reporting to DMV management.

1. Provide additional facilities for trouble shooting and problem investigation capabilities.

Flexibility and Responsiveness to External Requirements:

1. Ability to create and maintain the registration denial tables.

2. Maintain tracking history information for the following functions:

- Temporary and Window Sticker inventory
- Temporary Tag history
- Window Sticker history
- Vehicle Inspection history
- Lane Inspector history
- Waiver history
- Override history
- Repair Facility and Repair Technical history
- Registration Notices
- External Agency history
- Audit request history

Improved Business Control Over the System:

1. Operators:

- Tighter control over the issuance of registration notices, vehicle inspections, registration renewal, title and registration denial, temporary tags and waivers.
- Improved controls over the issuance of window stickers.
- Better customer service through the offering of inspection overrides and the tracking of external agency vehicle inspections.
- Provide for the tracking of Certification of all Lane Inspectors and the Re-Certification.

1. Transactions:

- Add on-line Waiver, Override, Vehicle Inspections, Temporary tags and Window Stickers.

1. Auditing:

- Reduction of the number of vehicles being renewed without an inspection.
- Reduction of the number of multiple temporary tags being issued to the same vehicle owners.
- Identification of missing temporary tags and window stickers from DMV inventory.
- Decrease the number of false inspection readings.
- Decrease the number of external agency vehicles traveling the Delaware highways without receiving vehicle inspections.
- Increase inspection accountability through more accurate vehicle inspection testing.
- Increase reporting accuracy to the Environmental Protection Agency.

Improved System Functionality:

1. Title and Registration Denial:

- Improved editing on title and registration application.
- Design interface between vehicle inspections, temporary tags and waivers.

1. Linkage to mainframe MVALS database:

- Information transfer from vehicle inspection database.
- Information transfer from temporary tags, window stickers and the title and registration database.
- Information transfer of registration denial data to DNREC and EPA.
- Control the issuance of temporary tags though lot range controls.
- Control the temporary tag inventory through the delivery and distribution of temporary tags.

1. Bar Code interface on title and registration cards.

2. Automation and change to reports:

- Provide on-line tracking of inspectors by location, date and time.
- Provide an inventory control system enabling the Division to review temporary tags and window stickers.
- Provide Title and Registration clerks the ability to review active and historical inspection results on-line.
- Provide an interface to the Title and Registration application to effectively associate a vehicle inspection with a specific registration and deny access until the vehicle has been successfully approved.
- Provide inspector information of a specific registration in association with a vehicle inspection.
- Provide on-line reporting activity by specific

testing, location, time and inspector on a weekly, monthly and fiscal basis.
- Provide the ability to track vehicle repairs and associate them with the proper vehicle registration.
- Track overrides that are associated with a vehicle inspection.
- Provide on-line access to inspection results data to the Department of Natural Resources and Environmental Control.
- Provide the ability to select specific inspection information and print specific analysis reports.
- Provide the ability to create on-line reports to EPA on a weekly, monthly and fiscal basis.
- Provide customers with notification of inspection 90 days prior to the expiration date.

1. External Agency Vehicle Identification
- Provide the ability to identify/track external agency vehicles being operated in Delaware.
- Provide the ability to ensure the external agency vehicles have complied with the Federal standards.
- Provide the ability to automatically send and receive vehicle inspection information.
- Provide the ability to report inspection result to the Environmental Protection Agency.

Project Scope

This document does not include portions of the project already in progress or being addressed by other selected DMV vendors such as Environmental Systems Products, Inc. (ESP). It centers on the mainframe application development and maintenance that must be completed to support the requirements of the project. It assumes the vehicle inspection information to be correct and residing in the databases already established for the Registration Denial project and that ESP has provided OIS with complete and detailed technical documentation of the database content, data manipulation, calculations and report specifications. The State Implementation Plan (SIP) for the Enhanced Inspection and Maintenance Program prepared by the Delaware Department of Natural Resources and Environmental Control (DNREC) is the basis of this scope. The SIP is scheduled to be submitted to the Federal Environmental Protection Agency (EPA) in January 1997 for review and approval. This scope most certainly will be subject to change based upon the EPA review and their findings.

Background:

Motor vehicle inspection and maintenance programs are an integral part of the effort to reduce mobile source air pollution. Of all highway vehicles it appears that, passenger cars and light trucks emit most of the vehicle-related pollutants. Although progress has been made in the reduction of these pollutants, the continuous increase in vehicle miles traveled on the highways has offset much of the technological progress thus far. Under the Clear Air Act, the Federal Environmental Protection Agency is attempting to achieve major emission reductions from these transportation sources. Until the development and commercialization of cleaner burning engines and fuels are successful, the main source of air pollution reduction will come from the proper maintenance of the vehicles during customer use.

To put the inspection program in perspective, it is important to understand that today's motor vehicles are totally dependent upon properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly. Since these emissions may not be noticeable and the subsequent malfunctions do not necessarily affect vehicle drive ability, it is difficult to detect which vehicles fall into this category. The new inspection equipment and programming provided by Environmental System Products (ESP) will capture that important data and record it on the mainframe for access by the registration renewal and vehicle titling programs. Those systems will verify the results and permit vehicles passing the inspection tests to proceed through the DMV system without change. Failing vehicles will require repair and re-testing until they pass or receive a vehicle waiver from DMV management.

Project Scope:

DMV has suggested that the project be designed and implemented in phases. Phasing the project installation makes a great deal of sense since many of the components of the entire project are still not totally defined. DMV's recommendation is:

Phase I:
- Create database images to store the ESP information.
- Test ESP system and database content.
- Analyze database content and verify accuracy.
- Install Phase I into production and begin accumulating EPA information.

Phase II:
- Design, code and test Registration Renewal Denial.
- Design, code and test a new (summary) Vehicle Waiver system.
- Design, code and test a new Inspection Results Override system.
- Design, code and test new rules for Registration and Title Denial.
- Design, code and test a new temporary tag

extension tracking system.
- Design, code and test preliminary DMV management reports.
- Test on-line access to MVALS by DNREC personnel at their site locations.
- Add bar coding to the registration card print.
- Implement Phase II into production.

Phase III:
- Design, code and test Title Denial.
- Design, code and test inspection results database "time remaining" routines for:
- Registration Renewal Denial.
- Registration Renewal Notices.
- Title Denial.
- Add bar coding to the Title form.
- Implement Phase III into production.

Phase IV:
- Design, code and test reporting for DNREC and EPA auditing.
- Test on-line access to MVALS reports by DNREC personnel at their site locations.
- Design. code and test a new inventory control system for window stickers.
- Implement Phase IV into production.

Phase V:
- Design, code and test DAFB vehicle tracking system.
- Design, code and test Federal vehicle tracking system. (PV, PO, etc.)
- Implement Phase V into production.

Phase VI:
- Design, code and test a new Certified Repair Technicians system.
- Design, code and test a new Certified Lane Technicians system.
- Design, code and test a new (detail) Waiver system.
- Create special files and/or downloads and reports to assist the DAFB in their conversion efforts.
- Design, code and test the identification and reporting of covert vehicles.

Phase I:

The Registration Denial project centers around an automated vehicle inspection system (installed by ESP) and subsequent customer permission to title or renew a registration in the State of Delaware. The new ESP system will replace the need to issue inspection cards and the associated manual inspection card tracking systems currently in place. Instead, the new system will record the information results and data of a physical vehicle inspection in databases locally on the lane PC server and remotely at OIS on the IBM mainframe. The mainframe databases will be the final residence of the data and those databases will be used for all system decisions and reporting. That database information will be used by the MVALS programs to determine if the vehicle is in compliance with Federal and Delaware codes and laws governing legal vehicle registration. If the vehicle passes all of the inspection tests, it becomes eligible to legally travel Delaware roadways. Inspection results are related to the vehicle and applicable for 2 years.

The inspection results database and supporting databases must be mapped back to the reporting requirements of DMV management, DNREC and EPA in this phase to be absolutely positive all of the informational contents are present. Inconsistencies in the mapping may require modifications to the ESP data capture.

Phase II:

The vehicle will be rejected by MVALS if it does not pass all the inspection criteria. In this case, a temporary (60 day) tag may be issued to give the customer time to correct the detected problems with the vehicle. The design will incorporate tracking and reporting on the temporary tags after the time of issuance. When a vehicle is rejected, the customer may elect to repair the deficiency and attempt to pass the inspection again. Vehicle repairs may be made by a Certified Technician or by the customer. If the vehicle continues to fail the inspection but does not decrease measured emissions by set percentage guidelines, DMV may elect to issue an inspection waiver based upon established rules, limitations and customer expenditure amounts. A vehicle summary of waiver expenditure information for this inspection period must be recorded and tracked in a new database by vehicle. This new database must be read during the registration renewal process, for all failing vehicles, to be sure a current record exists prior to allowing the vehicle to be legally registered. A vehicle waiver overrides the most recent inspection result. It is related to a vehicle and effective for 2 years. The waiver and inspection results databases must be accessible to DNREC personnel for inquires using MVALS.

At times DMV management may elect to override the results of an inspection and permit the vehicle legal registration without further inspections by the lane technicians. The system must permit management to override the vehicle inspection result record with a passing grade. When an override is granted, the system must record the new (overridden) information and track who, when and why the override was given. The new record will be stored in the inspection results database along with information about the operator, date and time. An override reason must be supplied before the record is written to the database. Override capability and permissible override categories must be controlled by an external means to permit DMV

management to modify who can override inspection results and what can be modified.

Upon a successful inspection or if the results were overridden or a waiver is issued, a registration renewal card containing a PDF417 bar code and a new window sticker will be issued (when implemented) upon payment of fees by the customer.

Phase III:

When a vehicle is titled in the State of Delaware, it must also comply with safety and emission tests prior to becoming registered. The titling system must be modified to access the new inspection results database to make the appropriate decisions. Vehicle titling must be modified to parallel the upgrades installed into the registration renewal system. It must apply all of the same rules, waiver conditions and override capabilities. A title containing a PDF417 bar code and a new window sticker will be issued (when implemented) upon payment of fees by the customer.

After a vehicle has been renewed or titled and successfully passed inspection, or granted a waiver, the customer has the option to choose a renewal period of 6 months, 1 year or 2 years. Since inspection results and waivers are valid for 2 years, the system must determine the amount of time remaining on the inspection based upon the renewal period chosen by the customer. This algorithm must be incorporated in the registration renewal, registration renewal notification and title systems.

Phase IV:

DMV management, DNREC and the Federal EPA require reports to be generated from the data captured on the inspection results database. DMV management requires specific counts of vehicles, the types of tests that are performed and the results and percentages of the testing. They will also require management reports and online inquires to monitor the inspection system performance, database contents and results. DNREC and the Federal EPA reporting requirements are normally completed on an annual arrangement and require reports concerning; the numbers and types of tests, vehicle breakdowns by make and year, first test and re-test results, information about the testing facilities and the results of both covert and overt audits.

DNREC must be permitted access to the inspection results and waiver databases through an on-line function that will be created within the MVALS application. This function will allow DNREC to review the inspection results and (summary) waiver information on all vehicles. To insure DMV is in compliance with the Federal regulations, DNREC will be given the capability to order printed reports on-line from MVALS concerning the inspection results and waiver information.

Tracking and re-calling certified lane technicians is definitely going to be another new responsibility of the Division. DMV must track all State inspectors requiring testing and re-certification in order to comply with the new Federal EPA regulations. Reports on this activity must be submitted to the Federal EPA on an annual basis.

Phase V:

In addition to the normal vehicle registration activity occurring for Delaware citizens, with the new EPA requirements, DMV must inspect approximately 10,000 additional vehicles owned by; the (non-military) Federal Government, the military and military personnel from the Dover Air Force base (DAFB). The majority of these vehicle inspections will be on personally owned vehicles (POV) from the DAFB. The DAFB presents a unique opportunity to DMV because POV's are normally not registered in Delaware. Delaware does not require out of state vehicles to be inspected. However, with the new federal regulations, DMV is required to ensure that vehicles residing within the jurisdiction are in compliance with the state-regulated inspection program. This now includes all non-military Federally owned vehicles and vehicles stationed at federal military sites throughout the state even if they are not registered in Delaware. Notifying, tracking and re-calling (test failures) POV's will require cooperation and coordination with DAFB motor pool and security personnel. Additional software and databases may be required to assist in a successful implementation.

Phase VI:

As stated previously, the State Implementation Plan (SIP) for the Enhanced Inspection and Maintenance Program prepared by the Delaware Department of Natural Resources and Environmental Control (DNREC) is the basis of this scope. The SIP is scheduled to be submitted to the Federal EPA in January 1997 for review and approval. This phase is subject to change based upon the EPA review and their findings. The following tasks are not definite requirements but may become so after the EPA has made their final decision.

Certified repair technician information is currently being gathered and retained by the Delaware Technical Community College. DMV would like access to the information to enable them to incorporate the data into the motor vehicle inspection reports that will be produced on failed inspections. Tracking reports will include the number of vehicles passing and failing by Certified Technician and the repairs performed by the technician on each vehicle. DMV may require the information to be downloaded from DTCC or if that is not possible, they may have need to maintain the information in duplicity.

When a vehicle is titled or renewed in the State of Delaware, the Division must comply with the security requirements established by the EPA. It requires the Division to track and report all stickers issued to vehicles

that have passed the inspection program. It will be necessary to track a history of these documents when being issued, re-issued and/or replaced.

In Phase II, summary waiver information is going to be stored in a new database to assist in tracking vehicle waivers that are issued. It is planned that DNREC will retain the detail backup paperwork and copies necessary to comply with the Federal regulations. If DNREC requires DMV to record the details of a waiver, the system must be modified to comply. Waiver details would include recording the place of purchase, the line items purchased for repair and the individual amounts of each.

If additional programming or design support is required to assist the DAFB or other Federal agencies in meeting their schedules and requirements, DMV may supply resources to assist in the effort. The agencies requiring assistance may require reports, file downloads and programming expertise to expeditiously complete their commitment.

DNREC is currently handling all assignments and identification of covert vehicles. If they require assistance in this effort or require DMV to specially track them in the MVALS system, additional design and programming will be required. Reports on the activity of the covert vehicles would also be required.

Exclusions:

Not included in the scope of this project are:

- Data capture, recording, tracking and reporting of repair facilities.
- Special demarcation of Kent and Sussex county boundaries.
- Design or software programming to handle identification of covert and overt vehicles.
- Purchase of software for bar code printing.
- Covert vehicle identification and reporting issues.
- Vehicle manufacture notification requirements.

I accept this Project Scope as written and agree on the contents within.

Approved by:
Michael Shahan, Director of Motor Vehicles
Approved by:
Jack Eanes, DMV Chief of Vehicle Service
Approved by:
Cheryal Roe, DMV Systems Administrator
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Management Overview

Background

Motor vehicle inspection and maintenance programs are an integral part of the effort to reduce mobile-source air pollution. Of all highway vehicles, it appears that passenger cars and light trucks emit most of the vehicle-related pollutants. Although progress has been made in the reduction of these pollutants, the continuous increase in vehicle miles traveled on the highways has offset much of the technological progress thus far. Under the Clear Air Act, the Federal Environmental Protection Agency (EPA) is attempting to achieve major emission reductions from these transportation sources. Until the automotive manufacturers develop and commercialize cleaner-burning engines and fuels, the main source of air pollution reduction will derive from the proper maintenance of the vehicles during customer use. The contents of this System Requirement Definition are subject to change based upon EPA review of the Delaware State Implementation Plan (SIP) and their findings.

To put the inspection program in perspective, it is important to understand that today's motor vehicles are totally dependent upon properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly. Since these emissions may not be noticeable and the subsequent malfunctions do not necessarily affect vehicle performance, it is difficult to detect which vehicles fall into this category. The new inspection equipment and programming provided by Environmental System Products (ESP) will capture that important inspection data and record it on the mainframe for access by the registration renewal and vehicle titling programs. Those systems will verify the results and permit vehicles passing the inspection tests to proceed through the DMV titling and registration systems without change. Failing vehicles will require repair and re-testing until they pass inspection or receive a vehicle waiver from DMV management. All subsequent action, beginning with the initial inspection test – such as re-test inspection results, waivers, and overrides – will be recorded by the system.

The Project Scope document refers to six implementation phases within the development process of this project. Those six phases translate into six high-level requirement specifications categories. It is important to understand that the six requirement categories do not all directly relate to the six installation phases. Part or all of each requirement category will be implemented to establish the six-phase approach for implementation. The categories defined in the System Requirements Definition document are:

1. System Control - This section of the requirements document encompasses system rule file maintenance, new temporary tag and window sticker inventory file

maintenance, and certified lane technician maintenance. All of the functions within this design category must be implemented before the system can become operational.

2. Vehicle Inspection - This corresponds to Phase I of the Project Scope and must be implemented in its entirety before other components may be installed that depend on the Inspection Result data produced. The requirements document refers to, but does not detail, the client/server system developed by ESP. Since this document was developed after the ESP design, it only addresses utilization of the data produced. Additional information regarding the design of the system can be located in the ESP design document.

3. Vehicle Registration - The requirements described under this section cover registration renewal, vehicle titling, temporary tag distribution, window sticker distribution, inspection result verification/handling, and vehicle repair tracking. All of the components in this section must be implemented before the system can go online. Registration renewal will be the first section to be implemented, with the title section to follow. To support either section, temporary tag distribution, window sticker distribution, and inspection result overrides and waivers must be installed. The certified repair facility and technician tracking components may be installed after the system becomes operational.

4. External Agency - External agencies are vehicles that are not registered with the State of Delaware. Examples of these are: Dover Air Force Base motor pools and civilian vehicles; Postal Service vehicles; Reserved Armed Forces vehicles; etc. Identification of these vehicles will not be as straightforward as the vehicles registered in Delaware because DMV does not keep records for them today. The Clean Air Act requires those vehicles to comply with the EPA emission standards as long as they continue to operate in Delaware. This section addresses the requirements and how to accomplish them. As each agency is introduced to the system, new program components may be required. Each agency may be processed differently than the previous, based upon their technical capabilities. DMV will strive to develop a standardized approach and demand adherence from all external agencies. The components described in this section are required before introducing the first external agency to the system.

5. Audit Reporting - Requirements for three auditing techniques have been identified: standard auditing reports and functions; special auditing functions; and auditing as required by DNREC. Auditing the system on a periodic basis – daily, weekly, etc. – is considered a standard procedure. Reports and screens will be programmed to run automatically for all of the standard auditing procedures. Special audits and DNREC (overt and covert) audits will be discussed and will permit flexibility in selection and formatting of the information. Registration Denial data transfer to local PCs will also be an option.

6. Information Inquiry - The components in this section represent additional inquiry functions required to view the new information. Three separate areas have been defined as requiring access to the information: DMV, the State Police, and DNREC. Each will share many of the same inquiry components with "information blocks" applied when information is required by one agency and not the other. System rules will be developed to control the information selection and screen displays. Portions of this section will be required as the initial system is installed. Advanced inquiry facilities will be identified and included as the detail system specifications are developed.

The following paragraphs supply additional detail in reference to the above system requirement categories. If more detail is required, please refer to Section II - Data Requirements and Section III - Process Requirements located later in this document.

System Control

The requirements described in this section are designed to keep the inventory files and system rules updated and in control of the system. Currently there are five separate processes defined:

1. The Registration Denial Rule Maintenance process will permit DMV management to maintain all of the associated rules concerning the Registration Denial system. Rules pertain to system variables that actually "drive" the system decision-making process. Externalizing the rules permits more flexibility and better overall control of the system by DMV.

2. A Temporary Tag Inventory maintenance system will be developed to control the acquisition and distribution of all temporary tags. The maintenance system will allow control of and accounting for each temporary tag distributed by DMV. Control begins when new inventory is received. It will be tracked until the vehicle to which the tag was assigned is purged from the DMV files. The inventory and temporary tag history files will be closely related.

3. A Window Sticker inventory control system will permit similar control (as in the case of temporary tags) over the window stickers issued by DMV. The maintenance system will allow control of and accounting for each window sticker distributed by DMV. A vehicle window sticker history file will be incorporated with the present DMV title file.

4. The Certified Lane Technician maintenance system will allow DMV to track and record information about their lane technician employees. Information such as certification test results, re-certification results, and demographic data will be retained and reported.

5. The last new maintenance system planned will track Certified Repair Facilities and associated Certified Repair Technicians. The system will permit maintenance

and reporting of repair facilities employing certified repair technicians and their certification test results.

Vehicle Inspection

This section describes the physical vehicle inspection that normally occurs for every registered vehicle in Delaware. The process is completed prior to a vehicle being titled, and then (normally) every 2 years after for registration renewals. The entire process occurs at the inspection lane(s) and is conducted at various checkpoints within. The ESP system controls the events that occur during the inspection process and helps ensure that each station checkpoint records the appropriate results. The results of each checkpoint test will be recorded and stored in the ESP station manager computer and then transmitted to the OIS mainframe in Dover, Delaware, for permanent storage and retention. ESP handles all pass and fail parameters, anti-tampering verification and recording, permissible limits of the test, and calculating the 10% reduction in emission gases from the initial inspection for waiver processing. ESP also issues the final pass or fail grade for the vehicle.

Vehicle Registration

The normal DMV administrative "life cycle" of a vehicle is described in this section. It begins when the vehicle is purchased and titled in the State of Delaware. Under normal circumstances, a vehicle will undergo an inspection to initiate this process. However, most new vehicles purchased in the state are exempt from an initial inspection. During the vehicle "life cycle," it may be issued a temporary tag, window sticker, or a waiver for emissions; or the inspection test results may be overridden by DMV management. As the next vehicle-registration renewal period nears, a registration renewal notice is printed and sent to the customer. That notice prompts the owner to bring the vehicle to DMV for an inspection and registration renewal. The process (Notice, Inspection, Renewal) continues as long as the vehicle ownership does not change and the vehicle remains in Delaware. The major new portions of the Vehicle Registration component for Registration Denial are:

Temporary Tags -

Once a vehicle is issued a temporary tag, the paperwork flows into DMV for recordkeeping. A clerk will enter the temporary tag information into the computer using a new temporary tag data-entry program. The program will complete a stolen vehicle check as is currently done while adding a title. A record will be added to the Temporary Tag History file for that (X) tag number. That record will then be available for inquiry by DMV and law enforcement. It can be found by entering the VIN or the (X) temporary tag number. The record will remain linked to the vehicle by VIN until the vehicle is purged from the DMV files. As the record is being recorded in the Temporary Tag History file, the temporary tag number will be consumed from the Temporary Tag Inventory file. Temporary tags are not tracked by today's system and will be valuable new information for DMV and law enforcement agencies. The introduction of this system will be completely new to DMV.

Window Stickers -

After a vehicle is titled or renewed, it will be assigned a new window sticker. The current processes will be modified to assign the next available window sticker to the vehicle from the clerk's inventory. As a safety precaution the clerk must enter the window sticker number, and the program will verify the number against the available window stickers in the clerk's inventory. If the number is not found, a window sticker override will be permitted. A reason for the override must be supplied by the clerk. The program will consume the window sticker from the clerk's inventory and add the information to the Window Sticker History file. The Window Sticker History will remain on the DMV files for a minimum of one inspection cycle. Replacement window sticker issuance and fee collection will be made available on the Cash Collection miscellaneous menu. Window sticker inventories, distribution, and tracking are new processes to DMV.

Title Vehicle -

Vehicle titling is required by law, and all vehicles owned by Delaware residents traveling the highways must be titled. The title function encompasses several functions today, such as adding, correcting, and transferring titles. All of the functions used by the title section will be affected by the changes being made for the Registration Denial project. Titling can only occur after the vehicle has passed all of the inspection tests required of the particular vehicle class. There are a few exceptions, such as the fact that a vehicle may be permitted an override (and pass) of a failed test by DMV management. Or, a vehicle may receive a waiver if it meets the vehicle repair expense limits and obtains a ten percent emission reduction measured from the initial test. A window sticker must also be issued to the vehicle.

The Correct Title function permits the title clerk to correct information on the Title file that may have been entered incorrectly during the title add function. New features must be included in the program to calculate the remaining time left on an inspection and restrict expiration date modification to the last day of that inspection. Additionally, extensions beyond that inspection date will not be permitted by the program without another inspection. The program will require the capability to assign a new window sticker without regard to inspection dates, although the Correct Title function for a tag change will not issue a new

window sticker. The window sticker stays with the vehicle in all cases.

The Transfer Title function permits the title clerk to transfer vehicle title and associated information from one owner to another. Transfers occur anytime vehicle ownership changes for any reason. Expiration dates cannot be transferred to another vehicle. In all cases, a vehicle expiration date remains with the vehicle, not the tag.

The introduction of inspection result verification and handling, window sticker inventories and distribution, waivers, and overrides are new concepts that will be introduced to DMV with the installation of this system.

Waiver Process -

This process allows a clerk, or DMV management, to store vehicle waiver repair information into the system for a specific vehicle. The system will record the waiver information and retain links to the Inspection Results, Title, and Certified Technician files. Those linked files will be used for tracking and reporting the effectiveness of repair technicians and the waiver information permitted by DMV. The waiver information will be validated by the Title and Registration Renewal systems. When present and within the confines of the rules set by DMV, the vehicle will be permitted to proceed through the system without a passing inspection record. Waivers may be entered directly from the Titles and Registration Renewal screens or through an administrative function. The repair facility and repair technician information completing the vehicle repairs must be present in their respective files before a waiver can be entered. The repair facility and technician information may only be modified by DMV supervisors and above. Recording and verifying this information via computer is a completely new function to DMV.

Override Function -

This function will be used by DMV management (and selected supervisors) and permit them to perform four major functions against the Inspection Result file. It will allow:

1. Adding an Inspection Result record to the file. This will only be permitted when the ESP system is down and vehicle inspections revert back to the Bar 84 technique. This function will be extremely secure and verified each time a new entry is attempted.

2. Modification of the Inspection Result content. This is the function normally known as an override. The function will be restricted to particular DMV personnel, and even those permitted will have data-level restrictions. Overrides will be permitted on a case-by-case level and normally restricted to only safety item failures.

3. Transferring Inspection Results from one registration to another. This option will be used when the lane technician makes a mistake while entering the vehicle identification information. When a mistake has been made, the inspection results will be logged under the wrong registration. The customer will not be permitted to continue through the process unless the mistake is rectified. The system will track the transfer (from and to) information and create another record for the proper vehicle. The original inspection record will not be included in any statistical reporting.

4. Deleting individual Inspection Result records from the file. This is a very rarely used, but required, function to delete an inspection result record from the file. This option will be used when an inspection result record was created (Option #1 above) under the wrong registration. The record will be marked for deletion, but it will not be physically deleted from the file until the proper authorization is given by DMV management. This function will be highly secured and available only to those that absolutely require the function.

Daily auditing reports will be produced by the system and distributed to DMV management for all of the above functions. All of the functions listed above are completely new to DMV.

Renewal Notice -

This process will be modified to produce additional customer notices for one-year renewal and State Police inspection requests. It will examine the Titles and Inspection Results files to identify the vehicles whose registrations are about to expire. It will determine if the vehicle requires an inspection or just a registration renewal. It will also find vehicles that have been requested to report to DMV for a special inspection by the State Police. While processing the selected records, it will determine if a vehicle must receive an inspection or if the current inspection is valid for the vehicle registration renewal. Vehicles that have been inspected within the last year may renew their registration for one additional year without another inspection. All the requirements of the owner to obtain a registration renewal will be printed on the renewal notice. The two-year inspection rule applies in all cases and will be printed on the notice. The reporting changes are modifications to the current process. Adding a maintenance program to update vehicles stopped by the State Police is a new requirement of DMV.

Registration Renewal -

The registration renewal process will be modified to verify the inspection results file before permitting a renewal. As in the title process, a renewal will only occur after the vehicle has passed all of the inspection tests required for a particular vehicle class, or it was permitted an override (and pass) of a failed inspection, or a waiver was issued. A waiver requires proof of repair expenses and a ten percent emission reduction from the initial inspection before a renewal may be

issued. The renewal process updates the current title record in the Title file. Once the title record is updated, the system prints a 2-D bar code on the updated registration card and issues the next available window sticker from the clerk's inventory. If the vehicle does not pass the inspection, a temporary tag will be issued, without a window sticker, by the registration clerk. Temporary tag issuance will be accessible through the renewal screen. As with the title functions, inspection result verification and handling, window sticker and temporary tag inventories, waivers, and overrides are new concepts to the registration clerks.

External Agency (Unregistered Vehicles)

This process is designed to permit DMV to identify and test vehicles stationed in Delaware that are owned by external agencies and not registered in Delaware (such as those owned by the DAFB, the postal service, and other federal motor pools). Those vehicles must be identified and tested to be sure they are in compliance with the federal emission standards. It is the responsibility of the individual agency to perform the follow-up to ensure that all vehicles are, and remain, in compliance. The system design for this function will incorporate:

- automatically receiving and loading the vehicle and owner information into a database that will be used by ESP;
- using the information to inspect and test the vehicle (ESP);
- recording the test results and subsequent re-test results;
- providing the Inspection Results data to the external agency in either a report or an online inquiry so that notices may be forwarded by the agency;
- and reporting vehicles inspected and statistical information.

The introduction of this system will be completely new to DMV.

Audit Reporting

This process will match the Title, Inspection Result, and at times the Vehicle Audit Information files and create reports about the information. Specific calculations and formats will be determined as the design process continues. External rules will be used to control the processing. All of the following components are new to DMV:

Standard Audit Reports - The reports will be standard reports that will run unattended periodically and produce the necessary reporting and audit information. The reports will be designed in conjunction with DMV management to support the information required by DNREC and the EPA. Some of the reports will be written as part of the Phase II installation since EPA will require reports before the system will be fully installed.

Specialized Audit Reports - The reports will be specialized (by data selection, not report format or content) processes that will run to produce the necessary reporting and audit information. Special reports may be produced from the Inspection Result, Repair Facility, Technician, Waiver, and inventory files. All reports will be designed with DMV management to support any special requirements of DNREC and the EPA.

Covert Audit Reports - These reports, like the specialized reports, will be specific processes (by data selection, not report format or content) that will run to produce the necessary reporting and audit information. An automated process will be created to allow DNREC the ability to access and report the contents of the Title and Inspection Result files. The audit function is a direct responsibility of DNREC. Additional functionality will be created as DNREC defines the requirements. All reports will be designed with DNREC management in support of the information they require.

Information Inquiry

There will be a great deal of new information created by the Registration Denial system. That new information will be accessible by DMV, the State Police, and DNREC, and they will require new systems to permit online inquiries into the data. Modifications will also be required to current systems to provide access to the data without writing new inquiry systems. Access to allow specific personnel permission to view the information will be granted based on security levels and new rules set up in the system. Changes include modification to the current Delaware State Police (CICS) processes to permit inquiry and viewing of the new data captured by DMV. The current DMV inquiry systems will be modified to access the new data and display the information for the requester.

APPENDIX 9 (a)
ENFORCEMENT AGAINST OPERATORS AND INSPECTORS

Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action. (Subject to change as the result of future union negotiations)

ARTICLE 8 DISCIPLINARY ACTION

8.1 The Employer agrees that any disciplinary action up to and including dismissal shall be taken only for just cause.

8.2 Employee suspensions shall not exceed 30 calendar

days except under the following circumstances: a court action is pending in the matter which led to the suspension; as a result of an arbitration award; or as a result of a grievance settlement involving a dismissal action where arbitration is pending.

8.3 Monetary fines shall not be imposed as a disciplinary measure.

8.4 Prior to the implementation of a dismissal action, employees shall be notified in writing that such action is being considered and provided the reasons for the proposed action.

8.41 Employees shall be entitled to a pre-termination hearing, provided they submit a written request for such hearing to the Division Director and State Deputy Director for Labor Relations within 5 work days of receiving the above referenced notification. The employee may be suspended without pay during this period.

8.42 The pretermination hearing shall be held within a reasonable time after the employee has requested such hearing in compliance with 8.41.

8.43 Pretermination hearings shall be informal meetings for the purpose of providing employees an opportunity to respond to the proposed action, and offer any reasons why dismissal may not be justified or too severe a penalty.

8.44 Prior to implementing a suspension without pay, the Employer shall follow the notification requirements set forth in 8.4.

8.5 Employees shall be entitled to a presuspension meeting with the Employer prior to the implementation of the suspension, provided they make a written request for such meeting to the Division Director within 5 working days after receiving the notice.

8.51 The presuspension meeting shall be held within a reasonable time after the employee has requested such meeting in compliance with 8.5.

8.52 The pre-suspension meeting shall be an informal meeting for the purpose of providing employees an opportunity to respond to the proposed action, and offer any reasons why the proposed suspension may not be justified or too severe a penalty.

8.6 Employees may be accompanied by a Union representative at any meeting/hearing held under this Article.

8.7 Any employee failure to comply with the requirements set forth in 9.41 and 9.5 shall be treated as a waiver of any rights set forth in this Article.

8.8 Disciplinary documentation shall not be cited by the Employer in any action involving a similar subsequent offense after 2 years, except if employees raise their past work record as a defense or mitigating factor.

State of Delaware Merit Rules

CHAPTER 15 EMPLOYEE ACCOUNTABILITY

15.1 Employees shall be held accountable for their conduct. Measures up to and including dismissal shall be taken only for just cause. "Just cause.' means that management has sufficient reasons for imposing accountability. Just cause requires:

- showing that the employee has committed the charged offense;
- offering specified due process rights specified in this chapter; and
- imposing a penalty appropriate to the circumstances.

15.2 Employees shall receive a written reprimand where appropriate based on specified misconduct, or where a verbal reprimand has not produced the desired improvement.

15.3 Prior to finalizing a dismissal, suspension, fine or demotion action, the employee shal1 be notified in writing that such action is being proposed and provided the reasons for the proposed action.

15.4 Employees shall receive written notice of their entitlement to a predecision meeting in dismissal, demotion for just cause, fines and suspension cases. If employees desire such a meeting, they shall submit a written request for a meeting to their Agency's designated personnel representative within 15 calendar days from the date of notice. employees may be suspended without pay during this period provided that a management representative has first reviewed with the employee the basis for the action and provides an opportunity for response. Where employees' continued presence in the workplace would jeopardize others' safety, security, or the public confidence, they may be removed immediately from the workplace without loss of pay.

15.5 The predecision meeting shall be held within a reasonable time not to exceed 15 calendar days after the employee has requested the meeting in compliance with 15.4.

15.6 Predecision meetings shall be informal meetings to provide employees an opportunity to respond to the proposed action, and offer any reasons why the proposed penalty may not be justified or is too severe.

15.7 Fines of not more than 10 days pay may be imposed, provided they do not cause employees to be paid less than the federal minimum wage as set forth in the Fair Labor Standards Act.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER 84

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE

RE: REALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2000

WHEREAS, pursuant to 29 Del. C. §5091, the State's private activity bond volume cap ("Volume Cap") for the year 2000 under §103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

WHEREAS, pursuant to Executive Order Number Seventy-Three, $75,000,000 of the Volume Cap for the year 2000 which had been allocated to the State of Delaware was further suballocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, the allocation of the Volume Cap in Executive Order Number Seventy-three is subject to modification by further Executive Order;

WHEREAS, the State's Volume Cap for the years 2000 and 2001 is allocated among the various State and local government issuers by 29 Del. C. §5091(a); and

WHEREAS, Kent County has reassigned $15,000,000 of its unallocated Volume Cap for the year 2000 to the State of Delaware; and

WHEREAS, Sussex County has reassigned $4,700,000 of its unallocated Volume Cap for the year 2000 to the State of Delaware; and

WHEREAS, the City of Wilmington has reassigned $18,750,000 of its unallocated Volume Cap for the year 2000 to the State of Delaware; and

WHEREAS, the Delaware Economic Development Authority has reassigned $37,500,000 of its unallocated Volume Cap for the year 2000 to the Delaware State Housing Authority; and

WHEREAS, pursuant to 29 Del. C. §5091(b), the State's Volume Cap for the year 2001 is to be suballocated by the Governor among the Delaware State Housing Authority, the Delaware Economic Development Authority and other governmental issuers within the State; and

WHEREAS, the Acting Secretary of Finance recommends that: (i) the $38,450,000 unallocated Volume Cap for 2000 reassigned to the State of Delaware by other issuers be suballocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) the $37,500,000 of unallocated Volume Cap reassigned by the Delaware Economic Development Authority be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur with the recommendations of the Secretary of Finance.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The $38,450,000 of unallocated Volume Cap for 2000 that has been reassigned by other issuers to the State of Delaware and the $37,500,000 of unallocated Volume Cap for 2000 that has been reassigned by the Delaware Economic Development Authority, is hereby reassigned to the Delaware State Housing Authority for carry forward use, in addition to the $37,500,000 previously sub-allocated to the Delaware State Housing Authority for the year 2000 under Executive Order Seventy-Three, for a total carry forward amount of $113,450,000.

2, The aforesaid suballocations have been made with due regard to actions taken by other persons in reliance upon previous suballocations to bond issuers.

Approved this 28th day of December, 2000

Thomas R. Carper, Governor

Attest:
Edward J. Freel, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER ONE

WHEREAS vacancies exist in the offices of Secretary of Administrative Services, State Budget Director, Secretary of Children, Youth, and their Families, Director of the Delaware State Housing Authority, Secretary of Finance. Secretary of Health and Social Services, Secretary of Labor, Director of Personnel, Secretary of Public Safety, Secretary of State, and Secretary of Transportation, and

WHEREAS it is important to the efficient functioning of state government that these positions be filled as soon as

possible,

I, Ruth Ann Minner, pursuant to the authority vested in me under Article III, Section 9 of the Delaware Constitution, declare that I shall grant Commissions on this date to the following persons to serve at my pleasure in the indicated offices, said Commissions to be effective until such time as those persons are confirmed by the Delaware State Senate or the expiration of the next session of the Delaware State Senate, whichever shall occur first:

Secretary of Administrative Services: GloriaW. Homer
State Budget Director: Peter M. Ross
Secretary of Children, Youth and their Families:
Cari DeSantis
Secretary of Finance: DavidW. Singleton
Secretary of Health and Social Services:
Vincent P. Meconi
Director, Delaware State Housing Authority:
Saundra Ross Johnson
Secretary of Labor: Harold E. Stafford
Director of Personnel: Lisa L. Blunt-Bradley
Secretary of Public Safety: James L. Ford, Jr.
Secretary of State: Harriet N. Smith Windsor
Secretary of Transportation: Nathan Hayward, III

It is further ORDERED that I shall submit the names of these appointees to the Delaware State Senate for confirmation under Article III, Section 9 of the Delaware Constitution when the Senate returns from its recess.

RUTH ANN MINNER,
Governor

Attest:
Sabrina Derrickson Hill, Acting Secretary of State

Date: 1/3/01

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER TWO

WHEREAS Delaware's Office of Information Services was originally created in an effort to improve the quality of information technology services provided to Delaware state government, and

WHEREAS there is a consensus that the present organization and mission of the Office of Information Services have not created the desired results, and

WHEREAS it is important that an independent group examine means by which the state can reorganize the Office of Information Services in order to ensure that the office fulfills its original purpose,

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER on this Fourth Day of January, 2001:

1. The Governor's Information Services Task Force is hereby created for the purpose of recommending statutory and organizational changes in the Office of Information Services and in the management of information and information technology in the state government as a whole, with the goal of improving the quality of information technology services enjoyed by Delaware state government.

2. The Task Force shall consist of eight members, who shall be selected as follows:

a. One representative of the Delaware House of Representatives and one representative of the Delaware State Senate.

b. The State Treasurer, who shall (with his consent) serve as chairman of the Task Force.

c. Four public members with experience in the field of information technology, who shall be appointed by the Governor.

d. A representative of a state government agency that uses information technology services, who shall be appointed by the Governor.

3. Staff support for the Task Force shall be provided by the Office of Information Systems and, with the consent of the State Treasurer, the State Treasurer's staff. Staff of the Office of Information Systems are instructed to comply with any request made by the Task Force or its chairman.

4. The Task Force shall provide recommendations and proposed legislation to the Governor no later than June 1. 2001.

5. The Task Force is directed to consider any manner in which the management of information and information technology services might be improved, and include within its recommendations the statutory mandate of OIS, the organizational structure of OIS, the tasks assigned to or assumed by OIS, the management of technology and information by state agencies and the division of such efforts between OIS and such agencies, and the outsourcing of information technology functions.

RUTH ANN MINNER, Governor

Attest:
Dr. Harriet Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER NUMBER THREE

WHEREAS Delaware has managed to maintain a strong economy for years by carefully managing its resources and constantly refining its practices to attract industries that will be profitable in the future; and

WHEREAS many Delawareans have reaped direct personal benefits from this strong economy, such as improved job opportunities and rising personal income; and

WHEREAS the state has benefited broadly from this strong economy, in that it has enjoyed strong revenue growth, expanded state services, and reduced unemployment; and

WHEREAS the United States economy has become more volatile in the past several years, with industries ascending and receding faster than ever before; and

WHEREAS Delaware enjoys a strategic advantage over other states in this dynamic economic environment, because of its close-knit business, government, and educational communities and its resultant ability to adjust quickly to new opportunities; and

WHEREAS it is important that Delaware's state government have a mechanism in place to anticipate future business opportunities and recommend forward-looking adjustments to the Governor to ensure that the groundwork is laid for those opportunities; and

WHEREAS it is also important that Delaware's state government have a mechanism to ensure that it is taking necessary steps to retain existing desirable businesses; and

WHEREAS the existence of such a mechanism is especially important at a time when some large employers in Delaware are contemplating a reduction in operations, due to factors external to Delaware;

I, Ruth Ann Minner, Governor of the State of Delaware, hereby ORDER on this Fifth Day of January, 2001:

1. The Strategic Economic Council is created for the purpose of advising the Governor on steps that should be taken to attract quality economic growth to Delaware, and for the purpose of advising the Governor on steps that should be taken to retain and strengthen Delaware's existing economic assets.

2. The Council shall consist of 22 members, to be selected as follows:

a. Two members who are to be professors from the University of Delaware or Delaware State University, to be appointed by the Governor.

b. One member of the Delaware State Chamber of Commerce, to be appointed by the Govemor.

c. One member of a county or local chamber of commerce from each of Delaware's three counties, to be appointed by the Governor.

d. One representative of organized labor, to be appointed by the Governor.

e. One representative of Delaware's financial services sector, to be appointed by the Govemor.

f. One representative of Delaware's life sciences sector, to be appointed by the Governor.

g. One representative of Delaware's agricultural sector, to be appointed by the Governor.

h. One representative of Delaware's information technology sector, to be appointed by the Governor.

i. One representative of Delaware's chemical industry sector, to be appointed by the Governor.

j. One representative from a Delaware environmental advocacy organization.

k. One member to be appointed by the House of Representatives and one member to be appointed by the Senate.

l. The State Treasurer.

m. The State Finance Secretary.

n. The director of the Delaware Economic Development Office.

o. The Lieutenant Governor.

p. One member of the Governor's staff, to be appointed by the Governor.

q. Two at-large members to be appointed by the Governor.

3. The Governor shall select one of the Strategic Economic Council's members to serve as its chair. Appointees to the Council shall serve at the pleasure of the Governor.

4. Members of the Council shall receive no compensation.

5. Staff support for the Council shall be provided by the Delaware Economic Development Office.

6. The Council shall meet every other month, at a time and location to be determined by the chairman. By the end of its second meeting, the Council shall adopt and make public procedures for the conduct of its affairs which are consistent with this Executive Order.

7. Any member of the Council who has any direct financial interest in any specific matter being discussed by the Council shall disclose such interest, but members of the Council shall not otherwise be considered state employees, state officers, or honorary state officials under 29 Del.C. §5804 merely by their service on the Council.

8. The Council may create subcommittees as it sees fit to address specific issues within its purview.

9. Following each meeting, the Council shall report its activities to the Governor, and shall make specific recommendations as to the following:

a. Steps that Delaware should take at the state, county, and local levels to recruit specific desirable

industries and business sectors to the state.

b. Steps that Delaware should take at the state, county, and local levels to retain specific existing desirable industries in the state.

c. Proposed legislation or executive action that should be undertaken to achieve goals listed in subsections (a) or (b) of this paragraph.

d. To the extent that there are differences of opinion on the Council regarding any recommendations, those differences of opinion shall be accurately described in the Council's report.

10. The Council's meetings shall be open to the public, provided that the Council may meet in executive session for purposes deemed appropriate by 29 Del. C. § 10001 et. seg:, including but not limited to discussion of documents containing confidential or privileged commercial or financial information. Similarly, documents produced by the Council shall be considered public record except to the extent that such documents are excluded from that definition by 29 Del.C. §10002(d), including but not limited to documents containing commercial or financial information which is of a privileged or confidential nature.

Ruth Ann Minner, Governor

Attest:
Dr. Harriet N. Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER FOUR

WHEREAS, under Article IV of the Delaware Constitution and Title 10 of the Delaware Code, the Governor appoints, by and with the consent of the State Senate, the Chief Justice and Associate Justices of the Delaware Supreme Court, the Chancellor and Vice Chancellors of the Court of Chancery, the President Judge and Associate Judges of the Superior Court, the Chief Judge and Associate Judges of the Family Court, the Chief Judge and other Judges of the Court of Common Pleas, and the Chief Magistrate of the Justice of the Peace Courts (collectively ` judges"); and

WHEREAS the State of Delaware has received national recognition for the quality and impartiality of its judiciary; and

WHEREAS this recognition results from the State's long-standing commitment to a bipartisan judiciary composed of judges of high integrity, independence and excellent legal abilities; and

WHEREAS for over twenty years, Governors of the State of Delaware have been assisted in their search for highly qualified judicial nominees by a Judicial Nominating Commission composed of distinguished attorneys and laypersons; and

I, RUTH ANN MANNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby ORDER:

1. The Judicial Nominating Commission is continued to assist the Governor regarding all appointments of judges as defined above.

2. The Commission shall consist of nine members. Eight members shall be appointed by the Governor in the manner prescribed in this Order. The ninth member shall, with the consent of the Governor, be appointed by the President of the Delaware State Bar Association. Four of the Governor's appointees shall be members of the Bar of the Supreme Court of Delaware. The remaining four gubernatorial appointees shall be persons who are not members of the bar in any state. The members of the Commission shall reflect the broad diversity of the citizenry of Delaware.

3. Except as otherwise provided in this Order, all members of the Commission shall serve three year terms at the pleasure of the Governor and may be reappointed. In making her initial eight appointments under this Order, the Governor shall designate two appointees to serve full three year terms, three appointees to serve two year terms, and three appointees to serve one year terms, all at the pleasure of the Governor. Any subsequent appointment upon the expiration of any term shall be for three years at the pleasure of the Governor. In the event a member for any reason does not complete his term, his replacement shall be appointed for the balance of the uncompleted term, at the pleasure of the Governor.

4. No member of the Commission shall hold elective constitutional office during the member's term on the Commission. No more than five members of the Commission shall be registered members of the same political party at the time of their appointment. Members of the Commission shall receive no compensation but shall be reimbursed for customary and usual expenses directly incurred in the performance of their duties.

5. The Governor shall designate one member of the Commission to serve as Chairperson. The Commission shall adopt and make public procedures and standards for the conduct of its affairs, consistent with this Order. Unless and until new procedures and standards are adopted by the Commission, the existing procedures and standards of the Judicial Nominating Commission appointed by Governor Carper shall govern, so long as they are consistent with this Order. Except as otherwise provided in this Order, the Commission shall act by majority vote.

6. All records and deliberations with respect to persons under consideration as nominees or prospective nominees shall be held in confidence by the Commission and shall be disclosed only at the direction of the Governor and only to the Governor or her designee. To the extent deemed appropriate by the Governor or her designee, however, the Chairman or the Delaware State Bar Association's appointee to the Commission may disclose certain records and deliberations of the Commission to the Delaware State Bar Association's Committee on Judicial Appointments, provided such disclosure shall be held in confidence by that Committee and disclosed to no one outside that Committee. The Judicial Nominating Commission is established by the Governor solely to assist her in the exercise of her discretion regarding judicial appointments, and the creation of the Commission and its adoption of rules, procedures and standards in no way waives any privilege attaching to the source and substance of any advice or information provided to the Governor in this regard, nor waives any privilege attaching to the records, investigations and deliberations of the Commission regarding the performance of its duties under this Executive Order. The records, investigations, and deliberations of the Commission, along with all internal communications and communications with the Governor and her designees, are intended to be protected by the executive privilege.

7. All vacancies in any judicial offices filled by judges, as that term is defined above, shall be filled in the following manner. The Governor will notify the Chairman of the Commission of the occurrence, or expected occurrence, of the vacancy which the Governor intends to fill. Following the notice from the Governor, and in accordance ,vith its own rules and procedures, the Commission shall submit to the Governor within sixty days a list for such vacancy of not less than three qualified persons willing to accept the offce; provided, however, that the Commission may recommend fewer than three prospective nominees for such vacancy if, because of the small number of prospective nominees appropriate for recommendation at that time, or because of the existence of more than one offce to be filled, a majority of the entire membership concludes that it should be permitted to submit a list containing fewer than three qualified persons for such office. The Governor may refuse to nominate a person from the list submitted and may require the Commission within thirty days, to submit a supplementary list of no fewer than three other qualified persons willing to accept the office, subject to the same provisions governing the original list. The Governor may then nominate a person from the original or the supplementary list. The Governor shall not call upon the Commission for more than one supplementary list unless a majority of the members of the Delaware State Senate decline to give their consent to the Governor's nomination from the original or first supplementary list. If the Senate fails to confirm the Governor's nomination, then the Governor may direct the Commission to submit within thirty days a supplementary of not less than three qualified persons willing to accept the office, subject to the same provisions governing the original list. The time limits for action by the Commission may be lengthened or shortened at any time by direction of the Governor.

8. The Governor shall only nominate a person from either the original list or a supplementary list to fill a vacancy created by a judge as defined above; provided, however, whenever there is a vacancy or prospective vacancy in the office of Chief Justice, Chancellor, President Judge of Superior Court, Resident Judge of Superior Court, Chief Judge of Family Court, or Chief Judge of the Court of Common Pleas, and the list of prospective nominees submitted by the Judicial Nominating Commission for such vacancy includes the incumbent, and the Governor elects to appoint a state judge of a constitutional or statutory court other than the incumbent to fill such vacancy, then the Governor also may elect; without further submission to or from the Commission, to appoint the incumbent, or any other person whose name appears on a list submitted by the Commission for such vacancy, to the derivative vacancy which will be created by the appointment of such other state judge.

9. In considering persons to submit to the Governor as prospective nominees, the Commission shall seek men and women of the highest caliber, who by intellect, work ethic, temperament, integrity and ability demonstrate the capacity and commitment to sensibly, intelligibly, promptly, impartially, and independently interpret the laws and administer justice. The Commission shall seek the best qualified persons available at the time for the particular vacancy at issue.10. If an applicant is not submitted by the Commission to the Governor as a prospective nominee, such action indicates merely that the Commission has determined not to recommend such applicant for the vacancy existing at that time and shall not reflect adversely on such applicant's qualifications and/or opportunity for future consideration for judicial appointment.

11. Sitting judges who apply to be reappointed shall not be denied recommendation by the Commission except upon the affirmative vote of at least two thirds of the members.

12. No member of the Commission shall be considered as a prospective nominee so long as he or she is a Commission member.

13. If any member of the Commission is an attorney for, or client, partner, employer, employee or relative of any applicant, then such member shall disclose the relationship to the Commission and shall not participate in the deliberations of the Commission concerning that applicant.

14. Executive Order No. Three issued by Governor Carper is hereby rescinded.

Ruth Ann Minner, Governor

Attest:
Dr. Harriet N. Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER NUMBER FIVE

WHEREAS, the State of Delaware has maintained a reputation for fiscal prudence and budgetary restraint, even during times of economic hardship; and

WHEREAS, a bipartisan commitment to balanced budgets and sound financial planning has fostered this reputation and must be continued; and

WHEREAS, this bipartisan commitment has been reflected in Delaware's constitutional limitation on state government expenditures, its elimination of short-term borrowing and its statutory limits on the State's indebtedness; and

WHEREAS, this bipartisan commitment has been strengthened and reinforced by the availability of credible, nonpartisan and expert projections of the State's revenues and expenditures and of important national and state economic trends; and

WHEREAS, these important functions have been provided by the Delaware Economic and Financial Advisory Council ("DEFAC"), which was created in 1977 by Governor DuPont: and

WHEREAS, DEFAC has provided a sound basis upon which to make determinations regarding the State's operating and capital budgets; and

WHEREAS, DEFAC can aid in the important effort of integrating the policymaking and financial planning functions of state government so that the long-term fiscal implications of administrative, budgetary and legislative alternatives are considered before those alternatives are adopted as state policy; and

WHEREAS, DEFAC's effectiveness can be enhanced by formalizing its authority to project the revenues and expenditures from the Transportation Trust Fund, and by requiring DEFAC to produce a longer-term revenue and expenditure forecast once a year for use by the Governor in preparing her annual budget.

NOW, THEREFORE, I, Ruth Ann Minner, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. DEFAC is continued.

2. DEFAC shall consist of at least 25 members appointed by the Governor to serve during her pleasure. The membership of DEFAC shall broadly represent both the public and private sectors of the State's economy. The Governor shall designate a Chairperson of DEFAC from among its members.

3. DEFAC shall:

(a) Meet on a regular basis as determined by the Chairperson;

(b) Serve in a general advisory capacity to the Governor and the Department of Finance;

(c) Advise the Governor and the Secretary of Finance of the overall financial condition of the State of Delaware;

(d) Advise the Governor and Secretary of Finance of current and projected economic conditions and trends, particularly as they affect the State of Delaware;

(e) Submit to the Governor, Secretary of Finance, the Controller General and the General Assembly, not later than the 25th day of September, December, March, April and May, and the 20th day of June, estimates as follows:

(1) General Fund and Transportation Trust Fund revenue by major categories for the current fiscal year;

(2) General Fund and Transportation Fund revenue by major categories for the succeeding two fiscal years;

(3) General Fund and Transportation Fund expenditures for the current fiscal year;

(4) General Fund and Transportation Fund expenditures for the succeeding two fiscal years;

(f) Submit to the Governor, the Secretary of Finance, the Controller General and the General Assembly, not later that the lst day of October, estimates as follows;

(1) General Fund and Transportation Fund revenue by major categories for the current fiscal year and the succeeding four fiscal years;

(2) General Fund and Transportation Trust Fund expenditures for the current fiscal year and the succeeding four fiscal years;

(g) Advise the Governor and the Secretary for Finance on the tax policy of the State;

(h) Perform the responsibilities imposed upon it by the Delaware Code with respect to statutory limits on the State of Delaware's indebtedness, and otherwise advise the Governor and the Secretary of Finance on the issuance of debt by the State of Delaware; and

(i) Undertake an education process for itself and for the public at large concerning the financial condition of the State of Delaware and the issues involved therein.

4. The DEFAC estimates required by subparagraph (3)(e) of this Executive Order shall constitute the Governor's revenue estimates in compliance with Section 6534, Title 29 of the Delaware Code.

5. All state agencies shall cooperate in providing data and assistance to DEFAC including, but not limited to,

statistics, reports, projections and testimony, as requested by the Chairperson of DEFAC and approved by the Secretary of Finance.

6. Upon request of the Chairperson of DEFAC, the Department of Finance and such other state agencies as deemed appropriate by the Secretary of Finance, shall provide such staff and financial support to the activities of DEFAC as are approved by the Secretary of Finance.

7. Executive Order Number Two issued by Governor Carper is hereby rescinded.

Ruth Ann Minner, Governor

ATTESTED:
Dr. Harriet N. Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER SIX

WHEREAS Delaware has a special responsibility to children who, for one reason or another, are cared for by people who are not their legal parents; and

WHEREAS Delaware does not have enough foster families to meet the demand placed upon its foster care system; and

WHEREAS recruiting quality foster families and retaining the quality foster families that already exist will be a critical challenge for the state in coming years, given the increased number of children who will enter foster care due to new federal laws; and

WHEREAS the state should also try to ensure that qualified blood relatives are not precluded by financial reasons from caring for children who would otherwise enter foster care;

I, Ruth Ann Minner, on this Eleventh Day of January, 2001, hereby ORDER:

1. The Governor's Foster Care Task Force is created, for the purpose of providing the Governor with immediate advice on the recruitment and retention of foster families and on the involvement of blood relatives in foster care.

2. The Task Force shall consist of eight members, who shall be selected as follows:

a. One representative of the Delaware House of Representatives and one representative of the Delaware State Senate.

b. The chair of the Child Protection Accountability Commission

c. The Secretary of Services for Children, Youth, and their Families, or her designee.

d. Two past or present foster parents, to be appointed by the Governor and to serve at the pleasure of the Governor.

e. Two at-large members with knowledge of Delaware's foster care system, to be appointed by the Governor and serve at the pleasure of the Governor.

f. A representative of the Governor's office, to be appointed by the Governor.

3. Staff support for the Task Force shall be provided by the Department of Children, Youth and their Families.

4. The Governor shall select one of the Task Force's members to serve as its chair.

5. Within 120 days after the Task Force's formation, it shall Provide written recommendations to the Governor. The Task Force's written recommendations shall encompass the following subjects:

a. Steps that the state should take to recruit quality foster families.

b. Steps that the state should take to retain existing quality foster families.

c. Steps that the state should take to improve the quality of life of children currently living in foster care.

d. Steps that the state should take to eliminate financial barriers to blood relatives caring for children who would otherwise enter foster care.

Ruth Ann Minner, Governor

ATTESTED:
Dr. Harriet N. Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER SEVEN

WHEREAS the safety of at-risk children in Delaware is one of the top priorities of the Governor's office; and

WHEREAS front-line workers responsible for child safety should not receive conflicting messages with respect to their mission; and

WHEREAS the Delaware General Assembly has attempted to clarify the mission of front-line child protection workers through legislation; and

WHEREAS the Division of Family Services, in the course of fulfilling its mission to protect children, interacts with a variety of other state and local agencies who desire to know the Division's precise mission;

I, Ruth Ann Minner, on this Eleventh Day of January, 2001, hereby ORDER:

1. Within 45 days of this order, the Secretary of the Department of Children, Youth and their Families shall provide to all employees of that Department a succinct statement of policy of this administration regarding child safety. That statement shall explicitly state and emphasize that it is the policy of this administration that efforts to preserve the family of an abused or neglected child should be taken only when reasonable and credible assurance has been given that an abused or neglected child will not be subject to further abuse or neglect.

2. Copies of the statement of policy referred to in paragraph 1 of this order shall be distributed to all members of the Child Protection Accountability Commission, in order to ensure that all other state and local agencies are aware of the state's policy with respect to child safety.

Ruth Ann Minner, Governor

Attest:
Dr. Harriet N. Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER EIGHT

WHEREAS, it is important that representatives of the Governor's office be subject to the same rigorous ethical standards as other state employees; and

WHEREAS, it is also important that Delawareans have prompt and easy access information regarding gifts that high-level executive branch officials may receive;

I, Ruth Ann Minner, Governor of the State of Delaware, hereby ORDER on this Eighteenth Day of January 2001:

1. All cabinet level officials, division directors, and executive department staff persons holding equivalent rank, shall comply with the applicable ethics requirements outlined in Title 29, Chapter 58 of the Delaware Code.

2. With respect to gift disclosures as required in 29 Del. C. §5813(a)(4)(e), cabinet level officials, division directors, and executive department staff persons holding equivalent rank shall report such gifts on the first day of April, July, October, and January to the Office of the Governor. Those gifts will be posted on the Governor's website within ten business days after receipt thereof.

3. Executive Order Numbers 5 and 19, dated May 10, 1993 and March 11, 1994, are hereby repealed.

Ruth Ann Minner, Governor

Attest:
Harriet N. Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER NINE

WHEREAS, the potential to reduce costs, improve the quality of state services, and streamline the collection of state revenue via the Internet has not yet been fully recognized in Delaware; and

WHEREAS, a common set of technical and policy standards for Internet access to state agencies is needed to ensure that Delaware state agencies use the Internet in an effective and consistent fashion; and

WHEREAS, the State of Delaware has made significant progress in implementing Internet applications and content to enhance the level of service and information provided to Delawareans; and

WHEREAS, despite this success, many important state services are still not available via the Internet;and

WHEREAS, a prior steering committee established to study e-government in Delaware has recommended the formation of a standing coordinating body for e-government to acomplish these goals.

I, Ruth Ann Minner, Governor of the State of Delaware, hereby ORDER on this 22nd day of January, 2001:

1. The Electronic Government Steering Committee (hereinafter referred to as the Committee) shall coordinate the provision of services and information by Delaware state agencies on the Internet.

2. The Committee's membership shall be as follows:
   a. The Secretary of State, or her designee.
   b. The State Finance Secretary, or his designee.
   c. The State Budget Director, or hisdesignee.
   d. The Executive Director of the Office of Information Services.
   e. The Delaware State Treasurer.
   f. A representative of the Office of the Governor.
   g. A representative of the Delaware judiciary.
   h. A representative of the Delaware House of Representatives.
   i. A representative of the Delaware State Senate.
   j. Such other persons as the Governor may deem appropriate.

3. The Chair of the Committee shall be selected by the Governor, and shall serve as chair at the pleasure of the

Governor.

4. The Committee shall have the following duties and responsibilities:

a. To promulgate a comprehensive, uniform set of standards for state agencies dealing with the issues of technology architecture, privacy, accessibility, and content with respect to Internet-based technologies. Agencies shall adhere to the standards developed by the Committee in implementing new Internet content and applications.

b. To review and approve all substantive changes to state agency uses of or presence on the Internet.

c. To review the current funding structure for state Internet content and applications and to make recommendations to the Governor regarding changes to this structure to support future efforts to enhance services or information exchange via the Internet. Such recommendations shall include, but not be limited to:

i. With the consent of the General Assembly, distribution of any budgetary funds allocated by the General Assembly and Governor for the purpose of creating or enhancing the Internet presence of state agencies.

ii. With the consent of the General Assembly, identification of a dedicated revenue source to support future e-government projects by state agencies and to be appropriated to the steering committee in accordance with its responsibilities set forth in (iii) and (iv) below.

iii. Development of a funding application process to be used by agencies undertaking e-government projects and to be overseen by the Committee.

iv. Development of a review process to be used by the Committee in evaluating agency applications for funding.

v. Making recommendations to the Governor and General Assembly to eliminate the so-called "Digital Divide" and create greater access to the Internet for Delawareans.

vi. Providing the Governor and General Assembly with policy directions regarding state agency use of the Internet.

vii. Providing an annual report no later than November 1 of each year outlining the Committee's activities and recommending future action.

5. The Committee shall be a public body subject to the provisions of the Freedom of Information Act.

Ruth Ann Minner, Governor

Attest:
Harriet N. Smith Windsor, Secretary of State

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Funeral Services	Mr. William J. Doherty, II	12/22/03
Juvenile Justice Advisory Group	Mr. Brian F. Gimlet	Pleasure of the Governor
Neighborhood Assistance Act Advisory Council	Ms Robin A. Roberts	Pleasure of the Governor
State Board of Electrical Examiners	Ms. Shirley S. Good	12/20/03

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB15

December 9, 1999

Mr. Albert G. Porach
220 E. Park Place
Newark, DE 19711

Re: Freedom of Information Act
Complaint Against City of Newark

Dear Mr. Porach:

Our Office received your Freedom of Information Act ("FOIA") complaint on November 18, 1999. You allege that the City of Newark ("the City") violated the open meeting requirements of FOIA by holding a meeting on November 17, 1999 to discus public business which was not open to the public. According to your complaint, those present at the meeting were several members of the City Planning Department, the Chairman of the City's Parking Committee, and representatives of F.R. Harris, Inc., a private consultant.

By letter dated November 29, 1999, we asked the City to respond to your complaint within ten days. That same day, we received the City's response (which had crossed in the mail with our letter).

The City denies that the meeting on November 17, 1999 was of a "steering committee" of the City Parking Committee. According to the City, the purpose of the meeting was to bring "officials of the City, the state and WILMAPCO" together to meet with representatives from "the selected engineering consultant [F.R. Harris] for the first time" to "review the letter of award with the consultants and to review their technical proposal in detail." In addition to the Harris representatives, there were six persons present: Cathy Dennis, of the Delaware Transit Corporation; Arthur Amick, Chair of the Newark Parking Committee; Carol Houck, Assistant Administrator of the City; Maureen Feeney Roser, Assistant Planning Director and City Parking Manager; Roy Lopata, City Planning Director; and Heather Ehrlich of WILMAPCO.

FOIA requires that "[e]very meeting of all public bodies shall be open to the public" except those closed for executive session for a purpose authorized by law. 29 Del. C. Section 10004(a). The Act defines a "public body" to include any "committee, ad hoc committee, special committee, temporary committee, advisory board [or] subcommittee" of any public body. The legal questions here are: (1) whether this group of individuals from four different organizations amounted to a "public body" for purposes of FOIA; and (2) if not, whether the four representatives from the City who were present at that meeting constituted an "ad hoc committee" or "subcommittee" of the City.

We do not believe that this was the kind of meeting of a "public body" that is controlled by FOIA. Comprised of individuals from four different organizations, the group as a whole cannot be viewed as a single statutory body, as contemplated by the open .meeting law. It is important to note that the City's representatives were City employees, not members of the Council. As employees fulfilling the duties of their employment, they do not constitute an ad hoc committee or subcommittee of the City that would require a finding that they constitute a public body as that term is defined in 29 Del. C. §10002.

In The Advertiser Co. v. Wallis, Ala. Supr., 493 So.2d 1365 (1986), the Commissioner of Mental Health met with officials from other executive branch departments and union representatives to discuss contract negotiations to avert. a strike. In an unrelated meeting, officials from the Alabama Medicaid Agency met with hospital officials to discuss a recent audit of expenditures. A local newspaper sued, claiming that both meetings should have been open to the public. The Alabama Supreme Court disagreed. "[W]e find that the entities to which the Sunshine Law applies are only those governed by a group of individuals who sit as a deliberative body to set policy regarding the public matters with which the entity is entrusted." 493 So.2d at 1369. See also SJL of Montana Associates Ltd. Partnership v. City of Billings, Mont. Supr., 867 P.2d 1084 (1993) (FOIA did not apply to a meeting between a city engineer and the public safety works director with a contractor to discuss construction delays on a municipal street project).

That does not mean, however, that every "joint" meeting of public officials from different public bodies is outside the scope of FOIA. The issue can only be decided on a case-by-case basis, depending on the facts presented. This office will continue to closely scrutinize such instances to assure that public bodies do not circumvent the clear mandate of public access to their meetings.

Nor does the presence of four City officials from the executive branch turn the meeting on November 17, 1999 into a "subcommittee" or "ad hoc committee" of the City. The courts in other states by and large have excluded from the scope of the open meeting laws meetings between executive officers and their subordinates. .See, e.g., City of Sunrise v. News & Sentinel Co., Fla. App., 542 So.2d 1354 (1989) (meeting of mayor and city transportation director to discuss employee disciplinary matters); Cape Publications, Inc. v. City of Palm Bay, Fla. App., 473 So.2d 222 (1985) (meeting between city manager and personnel director to discuss criteria for recruitment of new chief of police). We find the underlying policy reasons persuasive. "Securing government accountability at the decisional level is one thing. Adversely affecting administrative efficiency at the non-decisional level is quite another thing. It is

inconceivable that the salutary goal of letting the 'sunshine' in on meetings of 'public governmental bodies' envisioned the elimination of all intermediate layers of ozone to the extent of crippling or impeding the day-today efficiency of purely administrative functions." Tribune Publishing Co. v. Curators of the University of Missouri, Mo. App., 661 S.W.2d 575, 584 (1983):

"As the City points out, "any of the 'work product' generated as a result of the transit study project will be given a thorough public airing at meetings and/or workshops." Moreover, the consultant "must present status reports on progress at public meetings." The public, therefore, will have input and be involved before any decisions are made by the City to take actions affecting the public based on the consultant's recommendations.

For the foregoing reasons, we find that the City did not violate the open meeting requirements of FOIA by meeting with representatives from other organizations on November 17, 1999 to discuss the Harris consulting contract.

Very truly yours,
W. Michael Tupman, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB16

December 17, 1999

Mr. Robert E. Brown
1024 Walnut Street
Wilmington, DE 19801

Dear Mr. Brown:

This will acknowledge your hand delivery on December 14, 1999, of an undated Freedom of Information Complaint against the Delaware Department of Transportation and the City of Wilmington with respect to a project which you allege has violated 17 Del. C. § 1313 and 22 Del. C. 303-305.

As a matter of law, this office cannot consider any complaint against the Delaware Department of Transportation. Under 29 Del. C. §10005 (f) no complaint against a department of state government which the Attorney General is obliged to represent shall be the subject of a complaint filed by any citizen under 29 Del. C. §10005 (e).

With respect to the city of Wilmington, you have not alleged a specific meeting to which you were denied access nor have you alleged that there are any documents to which you have been refused access for purposes of inspection and photocopying. You verbally stated to me that you were denied access to meetings which did not occur under 17 Del. C. §1313 because no notices were sent out as required for a road closure. However, the provisions of 17 Del. C. §1313 apply to Superior Court proceedings for the vacation or abandonment of a public road and not to a public meeting of a public body as the same is defined in the Freedom of Information Act. Likewise, the provisions of Title 22 that you cite relate to municipal zoning regulations and the promulgation and enforcement of those regulations. 29 Del. C. §10005(a) prohibits consideration of any complaint not filed within six months of the date of the alleged violation. You have not identified any meeting during the six months prior to your complaint to which you have been denied access.

Under the Freedom of Information Act, the jurisdiction of the Attorney General is limited to the determination of whether a citizen has been denied access to public records or to meetings that were in fact conducted but either not properly noticed or not conducted in an open manner as required by Delaware law. If a municipal agency failed to conduct a meeting required by law, a citizen affected by that action may pursue any appropriate legal remedy provided for by the particular statute involved, in this case the zoning or road closure statutes which you referenced in your complaint letter. The Department of Justice has no jurisdiction to enforce Title 17 or Title 22 actions against a municipality on behalf of a private citizen. *See* 29 Del. C. §2504.

Since you have not articulated either in your letter or in our meeting of December 14, 1999 that a violation of the Freedom of Information Act has or is about to occur, your request for relief under the Freedom of Information Act is hereby denied.

Very truly yours,

Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
No. 99-IB17

December 22, 1999

Ms. Sharon Yealey
P.O. Box 151
Townsend, DE 19734-0151

RE: FOIA Complaint/Town of Townsend

Dear Ms. Yealey:

On October 27,1999, you filed a Freedom of Information Complaint with our office against the Town of Townsend alleging two violations, one dealing with the declaration of a trick or treat night and the other relating to mandatory trash collection. The issue relating to the trick or treat night was addressed previously in my letter of October 29, 1999.

By my aforesaid letter of October 27, 1999, I requested that the Town Council respond to your complaint that the Town had came to a resolution relating to mandatory trash collection without proper public notice. Specifically, I asked ". . . whether the agenda contained a notice that the issue would be discussed and voted upon at the Council meeting. If the Council believes that the issue was not one that required agenda notice, please explain the basis for that belief.

By letter of November 22, 1999, the Town Council, through its attorney, notified me that "[t]he Town has not taken an official action on that issue. They will be holding a public hearing and then taking official Council action. It is my understanding that they do intend to make trash collection mandatory." In a subsequent letter, I requested that the Town Council provide me with the agenda and minutes for the meeting of October 6, 1999. I received the Town Council's reply including the minutes and agenda for October 6, 1999, on December 14, 1999.

Under new business on the agenda, the Council included item IX. (C) "Mandatory Trash Collection For All Residents." The agenda was properly posted in accordance with 29 De1.C. §10004.

The minutes show that there was a full discussion of the issue of mandatory trash collection and that upon motion made and passed by a majority of the Council, mandatory collection was adopted and procedures established to have the mandatory trash collection commence on January 1, 2000. A copy of the agenda and Council minutes are enclosed.

Since the only Freedom of Information Act issue presented to this office by your complaint was whether there was adequate legal notice for any Town action relating to mandatory trash collection, we find that the agenda and minutes meet all of the requirements set by the Freedom of Information Act. Having found no violation occurred, no further action will be taken upon your complaint of October 27, 1999.

Very Truly Yours,
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
N0.00-IB01

January 6, 2000

The Honorable Valerie A. Woodruff
Acting Secretary
Department of Education
P. O. Box 1402
Dover, DE 19903

Dear Acting Secretary Woodruff

On June 17, 1999, then Secretary of Education, Iris T. Metts, Ed.D., requested a formal Opinion of the Attorney General. Specifically, Dr. Metts asked whether a member of the Christina School Board is eligible to retain his or her board seat if he or she moves from the nominating district from which they were elected to another nominating district within the school district? We apologize for the delay in responding to your request, but there are some peculiarities in the law about which we wished to be certain. For the reasons set forth below, we conclude that a member of the Christina School District Board of Education does not forfeit his or her seat by moving from one nominating district to another.

Candidates for election to the Christina School District Board of Education are nominated from seven nominating districts, but elected at large by all of the voters in the school district. Fourteen *Del.* C. Sec. 1066(e)(5) provides that a nominee for election "must be a resident of the nominating district in which his or her predecessor resides." The General Assembly also specifically addressed the forfeiture of a school board member's seat as a result of a change in residence. Fourteen *Del. C.* Sec. 1054(a) requires that "[i]f any school board member ceases to be a resident of the reorganized school district, he shall cease to be a member of its school board."

Accordingly, the existing statutory scheme provides a system where a candidate runs from a nominating district, but forfeits his/her seat only upon a change of residence from one reorganized school district to another. The statutory reference to "reorganized school district" cannot be interpreted to include a "nominating district." First, "reorganized school district" is defined by 14 *Del.* C. Sec. 1002 (2) to mean "a school district which is constituted and established in accordance with this chapter ...." Further, it is settled Delaware law that one cannot engage in the interpretation of a statute that is clear and unambiguous. *Matter of Surcharge Classification 0133 By Delaware Compensation Rating Bureau, Inc.,* Del. Super., 655 A.2d

295 (1994), affirmed, Del. Supr. 655 A.2d 309 (1995); *Williams v. Dyer*, Del. Super., C.A. No. 91C-11-010, Graves, J. (Aug. 12, 1992); *Hutton v. Phillips*, Del. Super., 70 A.2d 15 (1949). Where the meaning of the statute is clear, one is limited to the application of the literal meaning of the words. *Matter of Surcharge Classification*, supra at p. 303 (quoting *Coastal Barge Corp. v. Coastal Zone Indus. Control Board*, Del. Supr., 492 A2d 1242, 1246 (1985). There is no ambiguity in 14 *Del. C.* Sec. 1054 (a). Finally, in another subsection of Section 1066, the legislature specifically provided that "[a]ny vacancy on a board of education shall be filled according to Section 1054 of this title." 14 *Del. C.* Section 1066 (e)(8). Accordingly, it is difficult to argue that the legislature was unaware of the provisions of Sec. 1054 (a). While the result is an anomaly, the statutes do not require that a board member elected from one nominating district forfeit his/her seat upon moving to another nominating district within the same school district. It can be argued that this peculiar result is unintended since district voters are not permitted to "vote for more than 1 person who resides in each nominating district." 14 *Del. C.* Sec. 1066 (e)(7). Nevertheless, we cannot speculate as to the intent of the legislature given the clear and unambiguous provisions of Sec. 1054 (a).

It should be noted that Section 1066 (e) has been repealed effective January 1, 2002. 71 Del. Laws, c. 491. Thereafter, district board elections in the Christina School District will be controlled by 14 *Del. C.* Sec. 1066A. That section provides that "a nominee must be a resident of the nominating district for the seat he or she seeks," but is silent on the issue of forfeiture. 14 *Del. C.* Sec. 1066A (a)(4). Therefore, absent legislative action, Sec. 1054 (a) will continue to govern the issue of forfeiture.

Because members of the legislature have also inquired about this issue, we have copied some members of the General Assembly on this matter.

Very truly yours,
John B. Hindman, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB02

January 10, 2000

Mr. Peter Kostyshyn
1127 Brandywine Boulevard
Bellafonte, DE 19809

RE: Freedom of Information Act Complaint Against Town of Bellafonte

Dear Mr. Kostyshyn:

On November 30, 1999, this Office received a complaint from you under the Freedom of Information Act ("FOIA") against the Town of Bellafonte ("the Town"). By letter dated December 8, 1999, we asked the Town to respond to your complaint within ten days. By letter dated December 18, 1999, we received the Town's response together with supporting documents.

Your complaint alleges that the Town denied a request for access to public records first made on August 7, 1998 and renewed several times since. The Town acknowledges that on August 7, 1998 you requested access to "all the town records past and current." The Town, however, no longer had possession of records prior to 1970; those records had been sent to the State Archives in Dover. Although the Town was no longer the custodian of those records, the Town's secretary called the State Archives and obtained a list of the documents located there.

As for the more recent documents, the Town explains that you were not provided with more immediate access because the records were stored in unorganized boxes and you asked that they be organized first. The Town states that you were then "contacted with a list of days and times in which the records could be reviewed." Although thirty different hours were proposed over the course of January 1998, apparently you did not avail yourself of that opportunity to inspect the records. The Town then resolved to open the Town Hall on Thursday, February 11, 1999 from 6:30 to 8:30 p.m. to allow the public to view Town records and to make a copying machine available.

FOIA requires that "[a]ll public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body." 29 *Del. C.* Section 10003(a). Since the Town is no longer the custodian of pre-1970 records, it did not violate FOIA by not making available those documents for your inspection and copying. You will have to go to the State Archives in Dover to inspect those records.

The thrust of your complaint appears to be that the

Town did not make the records available to you during "regular business hours." The minutes of the January 11, 1999 meeting of the Town Commissioners reflect that you said the hours proposed for inspection were "inconvenient" for you. The 30 hours in January 1999 when the documents were available, however, included some weekdays, weekends, mornings and afternoons, as well as evenings. The Town cannot be liable for your failure or refusal to avail yourself of any of those times, or the special date of February 11, 1999, set aside for public viewing and copying of the Town records.

We determine that the Town provided you with reasonable access to the public records you requested to inspect and that no violation of FOIA occurred.

Very truly yours,
W. Michael Tupman, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB03

February 2, 2000

Mr. John T. Wells
101 Hilltop Road
Wilmington, DE 19809

RE: Freedom of Information Act Complaints Against Brandywine School District

Dear Mr. Wells:

On December 16, 1999, this Office received two complaints from you under the Freedom of Information Act ("FOIA") against the Brandywine School District (the "School District"). You alleged that the School District violated FOIA by: (1) charging you $7.50 for access to public records; and (2) by failing to provide you with documents you requested regarding an audit investigation by this Office.

By letter dated December 20, 2000, we sent copies of your complaints to the School District and asked for their response within ten days. The School District asked for an extension of time until January 3, 2000, which we granted. By letter dated January 5, 2000, we asked the School District for additional information, which we received on January 14, 2000.

The School District confirmed that it did not have a formal policy for charging the cost of processing FOIA requests at the time of your requests, and has agreed not to charge you $7.50. If you already paid that amount, then you are entitled to a refund.

Your second complaint is that the School District did not provide you with "all correspondence the Board or any district employee received from the Attorney General's office on the findings that the Auditors of Accounts referred to them for review." The School District responds that there were no "communications from the Attorney General's Office to the District pertaining to the audit." According to the School District, "the only communications from the Attorney General's Office pertaining to the audit were directed to District employees. Copies of such documents are not located in the District files." Since the School District is not the custodian of the records you are seeking, it does not have any obligation under FOIA to produce records that it does not have.

In conclusion, we determine that the School District may have violated the public records law by charging you for access to public records, but that the School District has remediated any violation. We determine that the School District did not violate FOIA with respect to the audit records you requested because the School District is not the custodian of those records.

Very truly yours,
W. Michael Tubman, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB04

February 18, 2000

The Honorable Bruce C. Ennis
House of Representatives
Legislative Hall
Dover, Delaware 19901 D580C

RE: Interpretation of 9 Del. C. §4104(c)

Dear Representative Ennis:

You have asked for an opinion of whether 9 Del. C. §4104(c) prohibits the President and Vice-President of the

Levy Court of Kent County from receiving compensation above the amount established by ordinance pursuant to 9 Del. C. §4104(a). You have described the additional compensation as a bonus from Kent County for performing duties not undertaken by the other Commissioners, but which are nonetheless undertaken in the course of the performance of those official duties. In your inquiry, you note that this statute has been revised several times and that the original language has been modified over time. You ask whether the Code Revisors acted in excess of their statutory authority in revising the statute in 1953 when the words "or further" were dropped. You also ask whether 9 Del. C. §4104(c) is a true and correct statement of the law.

Your initial inquiry is whether the Code Revisors exceeded their authority in changing some of the language during the revision of the Delaware Code in 1953. Specifically, you write that it appears that the words "or further" were removed from the Code without express authorization to do so, noting that the relevant section had formerly read as follows:

> `...and the said Levy Court Commissioners shall not be entitled to have or receive any other or further compensation for any services done or performed by them, or any of them, in the said office of Levy Court Commissioner." (Emphasis added.) Section 1189 of the 1935 Code (governing the Levy Court of Kent County)

Your concern is whether elimination of the phrase "or further" in the later revision of the statute manifested a Legislative intent to allow "further" compensation to Levy Court Commissioners under certain circumstances. To answer your question, it is helpful to review the legislative history of the section in question.

Section 1189 of the 1935 Code was amended by the General Assembly in 1945 by 45 Del. Laws, c. 122, §1 which provided that the Levy Court Commissioners "shall not be entitled to have or receive any other or further compensation for any services done or performed by them, or any of them, in the said office of Levy Court Commissioner.

In 1949, by 47 De1. Laws, c. 377 ("An Act Providing for the Appointment of a Commission to Revise the Public Laws of the State of Delaware and Codify and Arrange the same; Appropriation for Expense Thereof), the General Assembly provided for the creation of the Revised Code Commission with authority to revise the public laws of the State of Delaware and codify and arrange them. Id. §1. While this Commission was not authorized to "omit, amend, change or vary the meaning of any existing law" (Id. §4), it was authorized "to reject superfluous words, to condense into as concise and comprehensive form as is consistent with a full, clear and exact expression of the will of the Legislature, all circuitous, tautological and ambiguous phraseology..." Id. §5.

In 1951, the General Assembly amended chapter 377 and reaffirmed that while the Commission was not authorized to "omit, amend, change or vary the meaning of any existing law," it was authorized to rewrite statutes in simple, direct and clear language. It also provided that "incongruities shall be resolved by the Commission in such manner as to effectuate the true legislative intent." Id. §10.

The omission of the words "or further" first appeared by House Bill 9 of the 117th General Assembly. This bill consisted of the entire 1953 code and, due to its length of approximately 5,000 pages, its publication in the session laws was expressly exempted by 49 Del. Laws, c. 3.

Section 1189 of the 1935 Code was codified into 9 Del. C. §309 by House Bill 9, and §309(d) provided that "the Levy Court Commissioners shall not receive from any county any other compensation for services performed by them, or any of them, in the office of Levy Court Commissioner." The revision note to the 1953 code merely states the new 9 Del. C. §309 "consolidates sections 1152, 1189 and 1199 of Code 1935."

Therefore, given that the Code Revisors were authorized to eliminate redundant language and to rewrite statutes in simple, direct and clear language, it must be concluded that the Revisors found the phrase "or further" in the compensation clause to have been redundant in that it came within the plain meaning of the word "other." In fact, this interpretation is supported by the definition in BLACK'S LAW DICTIONARY 1101 (6th ed. 1990), which defines "other" as "different or distinct from that already mentioned; additional, or further." Moreover, the elimination of the words "or further" does not affect the original import of the provision, which was to limit compensation to the Levy Court Commissioners to that provided by statute. The General Assembly's enactment of 9 Del. C. §309 into law made it the law of the land.

9 Del. C. §309 was the predecessor to the present 9 Del. C. §4104 (Salaries of elected officials of the county governing body) which provides as follows:

(a) In Kent County each of the elected officials of the county governing body shall receive a salary in an amount to be set by ordinance of the Kent County Levy Court.

(b) The salaries of the officials shall be paid in equal semimonthly installments in Kent County by warrants according to the form prescribed by the county government.

(c) Such officials shall not receive any other compensation for services performed by them, or any of them, in the office of elected official.

The legal analysis depends upon the application of principles of statutory construction. It is settled Delaware law that where the meaning of the statute is clear, one is limited to the application of the literal meaning of the words. Coastal Barge Core. v. Coastal Zone Industrial Control

Board, Del.Supr., 492 A.2d 1242, 1246 (1985); Matter of Surcharge Classification 0133 By Delaware Rating Bureau. Inc., Del.Super., 655 A.2d 295 (1994), aff'd. Del.Supr. 655 A.2d 309 (1995). In considering application of this principle, the Superior Court has set forth a framework in which to examine and interpret the provisions of a statute:

> The foundational rule of statutory construction is that a court must give a statute its plain meaning if the statutory language is clear and unambiguous. That is, the court is "bound to give effect to the literal meaning without consulting other indicia of intent or meaning when the meaning of the statutory text itself is 'plain' or 'clear and unambiguous." This rule makes it necessary first to determine whether a statute has a plain meaning or is ambiguous in order to know whether other indicia of intent or meaning should be considered.

Bestemps v. Gibbs, Super.Ct., C.A. No. 98A-04-003, Barron, J. (October 22, 1998) at 2 (citations omitted).

"Before resort can be made to the usual secondary sources of statutory construction, a Court under our law must at least find ambiguity as to the legislative intent . . . in the language of the statute itself." Townshend v. Liberty Mutual Insurance Co., Super. Ct., C.A. No. 96C-10-180-WTQ, Quillen, J. (May 22, 1998) at 3.

A reading of the plain language of Subsection (c) indicates that Levy Commissioners are to receive no compensation for their official duties other than that compensation specified in Subsection (a). Therefore, bonuses for any duties taken in the course of the performance of their official duties as Levy Court Commissioners would be prohibited.

Application of the above principles of statutory interpretation leads this office to the conclusion that the Code Revisors' elimination of the words Or further" in the 1953 code revision was authorized by statute and that 9 Del. C. §4104 (c) prohibits the President and Vice-President of the Levy Court of Kent County from receiving additional compensation, in the form of yearly bonuses, above the amount established by ordinance to 9 Del. C. §4104(a0>

Should you have any additional questions or comments, please do not hesitate to contact this office.

Very truly yours,
Ilona M. Kirshon, Deputy Attorney General

APPROVED
Michael J. Rich ,State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB05

February 18, 2000

Ms. M. Denise Tolliver
109 Gardengate Road
Camden, DE 19934

RE: Freedom of Information Act Complaint Against Red Clay Consolidated School District

Dear Ms. Tolliver:

On January 31, 2000, this Office received your complaint under the Freedom of Information Act (FOIA) against the Red Clay Consolidated School District. By letter dated February 4, 2000, we asked the School District to respond to your complaint. By letter dated February 15, 2000, the School District responded arguing that your complaint about a violation of the open meeting law was time-barred because the meeting occurred in November 1998, more than six months ago. The School District also provided us with a copy of a letter dated August 25, 1999 to you enclosing a copy of the minutes for the executive session held on December 16, 1998 (copy enclosed). Your claim that the School District denied you access to the "executive session minutes dated December 16, 1998" therefore is moot.

FOIA provides that a citizen complaining of a violation of the open meeting law has a right to challenge the validity "of any action of a public body by filing suit within 60 days of the citizen's learning of such action but in no event later than 6 months after the date of the action." 29 Del. C. Section 10005(a). This Office in the past has declined to pursue any FOIA complaint where the act complained of took place more than six months prior to the date of the complaint. Since the meeting that is the subject of your complaint occurred more than six months ago, we will not take any further action with regard to your complaint.

Very truly yours,
W . Michael Tupman, Deputy Attorney General

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB06

March 8, 2000

Mr. Thomas J. Cook
State Election Commissioner
32 W. Loockerman Street, Suite M-101
Dover, DE 19901

RE: Felony Conviction Information

Dear Mr. Cook:

By letter dated November 29, 1999, you asked for an opinion of the Attorney General whether "the Department of Elections, under the 'Freedom of Information Act,' can release" felony conviction information which the Department receives from the Superior Court to "cross check on the voter registration system." Your letter was prompted by a request from Samuel L. Guy, Esquire for "a copy of the database of the list of felons used by the State of Delaware Elections Commissioner . . . to check against when a person attempts to register to vote."

You have provided us with a sample computer print-out of the felony conviction data you receive from the Superior Court. You have also informed us that your office "does not generate this data, but simply transcribes it into a database for use with our voter registration system."

The Delaware Freedom of Information Act, 29 *Del.* C. Chapter 100 ("FOIA"), provides that "[a]11 public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body." 29 *Del. C.* §10003(a). The Act defines "public record" broadly to include "information of any kind owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected by any public body, relating in any way to public business, or in any way of the public interest, or in any way related to public purposes, regardless of the form or characteristic by which such information is stored, recorded or reproduced." 29 *Del.* C. § 10002(d).'

Beyond the application of FOIA, 15 *Del.* C. §1305 requires the respective county Departments of Elections, in addition to maintaining the voter registration record, to assure that "[t]he registration records shall, during normal business hours of each department, be open to the inspection of anyone desiring to examine the same, without fee or reward. Anyone desiring to do so may be permitted to make copies of partial copies thereof."

Under *15 Del.* C. § 1703, the Prothonotary shall,

> [w]hen a person is convicted of a crime deemed by law a felony, notify immediately the *department of the county* in which the person is a resident and the *State Election Commissioner.* Such notifications shall include a full, complete and accurate copy of the record of the name, present residence and last previous residence, date of birth and Social Security number if available of each individual of voting age who has been convicted of a felony. (emphasis added)

Note, however, that there are fourteen categories of documents that are exempt from the public record definition. See 29 Del. C. § 10002(d)(1-14).

Since the Prothonotary is required to transmit the foregoing information to the office of the Election Commissioner and the appropriate county Department of Elections, we need not consider or discuss the applicability of FOIA to the judiciary. These independent statutory provisions clearly require the official public record to be maintained in the county Department of Election's office and available for public view.

One might question whether the information which the Prothonotary is required to transmit to the Commissioner and the county Department of Elections is a criminal record and therefore an exclusion from FOIA under 29 *Del. C.* §10002(d)(4). To the extent the specific information required to be transmitted by the Prothonotary 15 *Del. C. §§* 1305 and 1703 to the Commissioner and Boards is criminal record information, that information is part of the Superior Court's public record and that specific information remains public once it is transmitted in accordance with the law.

Nevertheless, FOIA does protect information which, if disclosed, would constitute an invasion of person privacy. 29 *Del. C.* §10002(d)(1). The information required by §1703 consists of an alphabetized list of names with home addresses, followed by date of birth, social security number, date of sentence, charge, disposition date, disposition, and case number. The question then becomes whether disclosure of any of this information "would constitute an invasion of personal privacy" under state or federal law. Of the information required to be transmitted by the Prothonotary to the Commissioner and county Department of Elections, the only information that, if disclosed, would constitute an invasion of personal privacy is the person's social security number.

While there are specific prohibitions against the disclosure of tax, criminal and drivers' records, Delaware has no significant line of cases addressing whether the release of a person's social security number constitutes an invasion of privacy that would be prohibited under FOIA. Accordingly, we look to other jurisdictions for guidance. The federal FOIA statute, 5 U.S.C. §552(b), exempts from disclosure information specifically exempted by other statutes as well

as personnel, medical and similar files "the disclosure of which would constitute a clearly unwarranted invasion of privacy." Id. The federal courts have consistently ruled that disclosure of a person's address and/or social security number is unwarranted in circumstances where that information is not germane to the request. *See generally, Sheet Metal Workers Inter. Assn, Local Union No. 19 v. U. S. Dept. of Veterans Affairs,* 135 F.3d 891 (3rd Cir. 1993); *Oliva v. U.S.,* 756 F.Supp 105 (E.D. N.Y. 1991); *Swisher v. Dept.of the Air Force,* 495 F.Supp. 337 (W.D. Mo. 1980). While disclosure of a person's address may be considered an invasion of personal privacy under certain circumstances, the public availability of a voter's address is essential to the right of a citizen to challenge a voter's qualifications under Delaware law. 15 Del. C. § 4941. Delaware law does provide a measure of privacy for individual voters' records by permitting individual voters to petition the Superior Court to have his or her residential address be kept confidential upon a showing of legitimate need and lawful purpose. 15 Del. C. § 1303.

In conclusion, it is our opinion that a citizen seeking access to the felony conviction information maintained in the Commissioner's office or any county Department of Elections is entitled to see all of the record except for the individual's social security number and subject to any other confidentiality order pursuant to Delaware law. That information is not necessary for a citizen to examine the Commissioner's or county's Department of Elections' use of the felony conviction data from the Superior Court. The social security number should be redacted before disclosure of the other information in this database is provided to the requestor.

Very truly yours,
Michael J . Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB07

April 28, 2000

Ms. Elizabeth Harris
Rt. 2 Box 235
Greenwood, DE 19950

Mr. Milton F. Morozowich
R.D. 2, Box 166
Bridgeville, DE 19933

Ms. Regina Warnick
22745 South DuPont Highway
Greenwood, DE 19950

Mr. Daniel J. Kramer
RD #2 Box 275
Greenwood, DE 19950

RE: Freedom of Information Act Complaints Against Woodbridge School District

Dear Citizens:

On March 21, 2000, our Office received a complaint from Ms. Harris and Ms. Warnick alleging that a committee of the Woodbridge Board of Education (the "Board") violated the open meeting requirements of the Freedom of Information Act, 29 Del. C. Chapter 100 ("FOIA") when the committee met on March 14, 2000 to discuss a referendum without notice to the public. On March 28, 2000, our Office received a complaint from Mr. Kramer alleging that the Board violated FOIA when it amended the agenda for its meeting on March 21, 2000 to include the referendum. On April 10, 2000, our Office received a FOIA complaint from Mr. Morozowich also alleging FOIA violations with respect to the March 14 and 21 meetings.

By letters dated March 23 and 29, 2000, our Office asked the Board to respond to the complaints. We received the Board's response, together with supporting documentation, on April 11, 2000.

Ms. Harris and Ms. Warnick allege that three members (a quorum) of the Board attended a meeting of the "Raider Committee" on March 14, 2000, where there was discussion about a recently failed referendum and whether to hold a second referendum. They claim this was a meeting of a "public body" covered by the open meeting law, yet it was not noticed to the public as required by FOIA. On a somewhat different theory, Mr. Morozowich alleges that the Raider Committee is a public body because it is a committee "authorized" by the Board, yet "[o]nly committee members are/have been notified of scheduled meetings."

Mr. Kramer's complaint alleges that the Board failed to include the referendum issue in the agenda for the March 21, 2000 meeting. Mr. Morozowich further alleges that the Board violated FOIA by amending the agenda during the meeting itself to include the referendum.

The Board does not dispute that the Raider Committee is a "public body" for purposes of FOIA since it "was originally appointed by the Board" and three of the Raider Committee members are also members (and constitute a quorum) of the Board. The Board takes the position, however, that the March 14 meeting of the Raider Committee was not a "public meeting" as defined by FOIA because the Committee "had no authority to approve the holding of a second referendum." The committee is subject to the notice and agenda requirements of FOIA irrespective of its authority to advise or vote on matters which affect the public. *See* 29 Del. C. Section 10002(a) which makes FOIA applicable to a public body and any committee created by the public body.

The Board also takes the position that the Raider Committee does not have to give seven days' notice of its

meetings because it does not meet "regularly." The Board contends that the Raider Committee is only subject to the notice provisions for "special" meetings, which can be posted twenty-four hours before the meeting. According to the Board, the Chair of the Raider Committee (Mr. Harold A. Sheets, Jr.) sent a memorandum dated March 8, 2000 to other committee members informing them of the meeting on March 14, 2000 to discuss "several options that may be helpful to us for future action." In addition, according to the Board's response, "an article appeared in the local media, approximately one week prior to the meeting, indicating that a meeting would be held." The Board did not provide our office with a copy of that article.

In response to Mr. Kramer's complaint, the Board takes the position that FOIA permits a public body to amend the agenda to include additional items "which arise at the time of the pubic body's meeting." The minutes of the March 21, 2000 meeting reflect that a motion was made to amend the agenda to add "Referendum Sanctioning" to the public business to be discussed.

On April 26, 2000, James D. Griffin, Esquire, attorney for the Board, sent a letter to this office providing copies of a two documents. The first was an Amended Tentative Agenda, posted on April 17, 2000 at 9:00 a.m. for a regular meeting of the Board to be held on April 17, 2000 at 6:00 p.m. The notice did not contain an explanation of why there was a delay in posting the additions to the agenda as required by 29 Del. C. Section 10004(e)(5). Mr. Griffin's letter of April 26, 2000 included the following language:

> I enclose a copy of the Agenda for the April 17 meeting that was posted on April 7th and amended on April 17 to add the item relating to the referendum under IX.G. As you are aware, Under Section 10004(e)(2)"the agenda shall be subject to change to include additional items ... which arise at the time of the public body's meeting." Since this was a regular meeting of the Board, I believe the Board could have amended the Agenda at the beginning of the meeting and was not strictly required to amend the Agenda that had been posted on April 7, 2000.

The second inclusion was an abstract of the final minutes from the meting of March 21, 2000 reflecting the decision to proceed with a referendum relating to the issuance of school bonds and an increase in the tax rate for the district. The minutes abstract included a statement in opposition to the referendum motion by Mr. Morozowich, a member of the Board.

On April 27, 2000, Mr. Griffin provided, by telefax, a notice from the Board dated April 27, 2000 at 12:00 Noon for a Special Board Meeting to be held on May 4, 2000 at 5:00 p.m. The single item of business in the notice is an "Action to re-approve Referendum."

The complaints raise four legal issues for determination by our Office: First, whether the meeting of the Raider Committee on March 14 was a "public meeting" to discuss "public business," as defined by FOIA; Second, whether the form of notice used for the March 14 and April 17 meetings satisfied the public notice requirements of FOIA; Third, whether the Board properly amended the agenda at its March 21, 2000 meeting to include the referendum issue; Fourth, whether the notice of a meeting for May 4, 2000 sufficiently cures any violations with respect to the prior notices or meetings for which complaints have been filed.

1. March 14. 2000 Meeting - Public Business

FOIA defines a "meeting" as "the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on "public business." 29 Del. C. Section 1000(2)(e). The statute defines "public business" as "any matter over which the public body has supervision, control, jurisdiction or advisory power." Id. Section 10002(b).

The Board characterizes the Raider Committee as a "community-based advisory committee to the Board which has considered various issues pertaining to the Woodbridge School District and has made recommendations to the Board concerning those issues." According to the Board, "[o]n March 14, the Raider Committee was considering what changes should be made in the referendum proposal in order to improve the chance of successful passage of a second referendum." If the Committee reached a consensus, as it did, the Committee would then "conve[y] its thoughts to the Board in the form of a recommendation." The Raider Committee had "advisory power" to make a recommendation to the School District about a second referendum. The meeting of the Committee on March 14, 2000 therefore involved the discussion of "public business" and triggered the public notice requirements of FOIA.

The Board suggests that FOIA does not apply so long as the public body does not take any formal action. The Chancery Court, however, "has rejected the notion that the open meetings requirements of FOIA apply only `to meetings where formal action' is taken." The News-Journal Co. v. McLaughlin, Del. Ch., 377 A.2d 358, 362 (1977) as cited by the this office in Att'yGen. Op. 97-IB22 (Nov. 24, 1997). Otherwise, "there would be no remedy to deter Board members from privately meeting for discussion, investigation or deliberation about public business so long as the Board reached no formal decision at that private meeting." Levy v. Board of Education of Cape Henlopen School District, Del. Ch., C.A. No. 1447 (Oct. 1, 1990) (Chandler, V.C.). The open meeting laws cover "factfinding, deliberations and discussions, all of which surely influence the public entity's final decision." Id. FOIA "recognizes that policy decisions by public entities cannot realistically be

understood as isolated instances of collective choice, but are best understood as a decisional process based on inquiry, deliberation and consensus building." Id.

By letter dated March 15, 2000, the Superintendent, Dr. Carson wrote: "Pending Board approval on Tuesday, March 21, 2000, the Woodbridge School District will be requesting another Referendum to be scheduled on May 6, 2000." The documents submitted as a result of this complaint lead to the conclusion that the Board vote on March 21, 2000 was a mere formality since a majority of the Board had already decided to vote in favor of a second referendum at the Raider meeting held on March 14, 2000.

We find that the Raider Committee is a "public body" for purposes of FOIA, and that it discussed "public business" at its meeting on March 14, 2000. We now turn to whether the Committee gave the notice required by law for that meeting.

2. March 14, 2000 Meeting - Public Notice

FOIA provides that "[a]11 public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof." 29 Del. C. Section 10004(e). The Board contends that the seven-day notice requirement only applies to "regular" meetings of a public body, and that the "Raider Committee does not hold regular meetings, but meets on the call of the Chair, who is Harold Sheets, Jr." We disagree with this construction of the term "regular" in the open meeting law.

Like the open meeting laws in other states, Delaware's FOIA has different notice requirements for regular and special meetings. "Regular meetings are those which are held at prescheduled intervals. Such meetings would include, for example, monthly or annual meetings." Katterhenrich v. Federal Hocking Local School District Board of Education, Ohio App., 700 N.E.2d 626, 631 (1997). "One would expect regular meetings to be scheduled well in advance as in the case *sub judice*, where the board's regular meetings are scheduled each year at a January organizational meeting." Id. at 632. "Special meetings, on the other hand, typically called to address some particular matter or matters of immediate concern, one could well expect to be scheduled on much shorter notice, perhaps only a day or so ahead of time, depending on the exigencies of the situation." Id. *See also*, Att'y Gen. Off. 99-IB 11 (Jun 25, 1999).

The documents submitted by the Board show that on December 17, 1999 the Raider Committee posted notice of its next five meetings for January 10, January 24, and February 7, 21, and 28. It is apparent that the Raider Committee met regularly since its formation in 1997, though not necessarily on a strict periodic schedule. The committee posted public notice for some, but not all, of its meetings during that time. However, for the March 14, 2000 meeting, the committee only gave notice of the meeting to Committee members. No public notice was provided. With no date set for a second referendum prior to March 14, 2000, there was no exigent circumstance or compelling need for the Raider Committee to hold a "special" meeting to discuss a second referendum without meeting the seven-day notice requirement for regular meetings.

Alternatively, the Board argues that it gave notice to the public in a "memo sent to community members of the Raider Committee on March 8, advising them that the meeting would be held on Tuesday, March 14." But the Board admits that this memo was not "publicly posted," nor has the Board produced the newspaper article it claims "appeared in the local media, approximately one week prior to the meeting."

FOIA requires notice of meetings by "conspicuous posting of said notice at the *principal office* of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, ..." 29 Del. C. Section 10004(e)(4) (emphasis added). The Board's documents show that the only notice of the March 14, 2000 Raider Committee meeting was a memorandum dated March 8, 2000 to members of the committee, but not the public at large. We find that the Raider Committee failed to post a conspicuous notice of its meeting on March 14, 2000 at the offices of the Woodbridge School District and was therefore in violation of 29 Del. C. Section 10004(e)(4).

3. March 21. 2000 Meeting - Agenda

As a general rule, FOIA requires a public body to post the agenda together with the notice of the meeting seven days in advance. "[H]owever, the agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting." 29 Del. C. Section 10004(e)(2).

Our Office has previously determined that "[i]f a public body knows that an item of public interest will be addressed at a meeting, then it cannot claim, in good faith, that the issue arose at the time of the public body's meeting in order to circumvent the notice requirement of FOIA." Att'y Gen. Op. 97-IB20 (Oct. 20, 1997).

On March 14, 2000, the Board posted a "Tentative Agenda" for its meeting on March 21, 2000. The agenda included "Raider Committee - Mr. Harold Sheets, Jr." The Board knew that the Raider Committee was meeting on March 14 to discuss a second referendum before making a recommendation to the Board. Dr. Carson's letter of March 15, 2000, acknowledged the pendency of the issue as an item of Board business at least six days prior to the meeting. The referendum issue did not arise unexpectedly and no satisfactory explanation has been provided to suggest why the agenda notice did not include the referendum issue as required by law.

Our Office has recognized that discussion of noticed items in an agenda "can often segue into related public

issues, and FOIA provides flexibility to address that situation." Att'y Gen. Op. 97IB20. In this matter, the facts support a conclusion that the second referendum was clearly an issue to be separately considered at the meeting on March 21, 2000. The agenda was drafted as "tentative"' and the first order of business (after the invocation and the pledge of allegiance) was for Dr. Carson (a member of the Raider Committee) to move to add "Referendum Sanctioning" to the agenda. The Board violated the public notice requirements of FOIA by failing to include in the original agenda for the March 21, 2000 meeting a clear statement that the Board would be discussing a second referendum.

' Section 10004(e) does not contemplate the publication of a "tentative" agenda. The characterization of the agenda is immaterial insofar as compliance with Section 10004 is concerned.

3. April 17, 2000 Meeting - Agenda

Although no citizen has filed a complaint with respect to the amended agenda for the meeting of April 17, 2000, this office, on its own initiative, has concluded that the amendment posted on April 17 violated the FOIA notice requirements. The original posting on April 7, 2000 for the Board's regular meeting on April 17 did not include any notice that the referendum would be an issue before the Board. The amended agenda posted on April 17, nine hours before the meeting, included the referendum as item IX.G. Since there was no explanation on the amended agenda as to why the referendum issue could not have been included on the original agenda as required by Section 10004(e)(5), the amended notice did not provide the requisite public notice of the business to be transacted, the approval of an election for a referendum, the Board's consideration of and vote to hold a special referendum is voidable. In light of the events which occurred in the intervening time from the last referendum, and with the Board's awareness of the referendum issue at such an obviously high level, the failure to include the referendum issue on the agenda when it was posted on April 7, 2000 was a violation of Section 10004(e)(2).

4. May 4, 2000 Meeting - Agenda

We find that the April 27, 2000 notice for a special meeting of the Board for May 4, 2000 to consider and vote on the referendum issue meets the requirements of Section 10004(e) and, provided that the business conducted at the meeting on May 4, 2000, conforms to the notice, the violations relating to notice and agenda cited in this opinion will be effectively cured.

Conclusion

Based on the complaints, the Board's response, and the documents provided to us, we determine that: (1) the Raider Committee violated the notice requirements of FOIA by not giving seven days' notice to the public of its March 14, 2000 meeting; and (2) the Board violated the notice requirements of FOIA by failing to include the referendum issue in the original agenda for its March 21, 2000 meeting. Since the Raider Committee was not authorized to take any action on the referendum issue, we do not conclude that any purpose will be served by directing the Committee to meet again to discuss the issue and then advise the Board. In the future, however, we expect strict compliance by the Raider Committee (or any similar body) with the notice requirements of FOIA. The Committee must give timely and adequate notice of all of its meetings to the public (not just the members of the Committee) as required by law.

Additionally, we find the amendments to the March 21 and April 17 meetings do not comply with 29 Del. C. Section 10004(e) for the reasons stated above. The Board has noticed a special meeting for May 6, 2000 which appears to be in compliance with FOIA to reconsider and vote on the question of whether to go forward with a new referendum. A copy of that notice has been provided to this office. That is consistent with the action we would have required to remediate the agenda violations cited herein. If the business conducted at the meeting on May 4, 2000 conforms to the notice and to FOIA, the Board will have effectively cured the violation and no further action will be undertaken by this office as a result of the findings enunciated in this opinion.

Very truly yours,
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB08

May 24, 2000

Mr. Gerald A. Lechliter
44 Harborview Road
Lewes, DE 19958

Re: Freedom of Information Act Complaint Against University of Delaware

Dear Mr. Lechfter:

By letter dated February 14, 2000 (received by this Office on February 17, 2000), you alleged that the University of Delaware ("the University") had violated with Delaware Freedom of Information Act, 29 Del. C. Chapter 100 ("FOIA"), by denying your request for access to public records. By letter dated February 15, 2000, you further

alleged that the University violated FOIA by meeting in executive session to approve a land transfer without notice to the public.

By letter dated February 28, 2000, we asked the University to respond to your complaints within ten days. The University asked for an extension of time until March 15, 2000, which we granted. We received the University's response on March 20, 2000 and sent you a copy, to which you responded by letter dated March 22, 2000. We then asked the University for supplemental information, which we received on April 7, 2000.

By letter dated January 24, 2000 to the President of the University, you expressed concern about the transfer of University property to Beebe Medical Center in 1997 (72.23 acres) and the proposed transfer of almost 100 acres to New Road LLC, a private developer. You stated that a local citizens group with which you are involved, Citizens Against Town Sprawl (CATS), "has attempted to ascertain certain facts, such as purchase/selling prices and contractual provisions, in the history of the research park, and has been met by a wall of official silence from both Beebe and LID. "

By letter dated February 1, 2000, you asked the University to answer a list of 27 questions before February 23, 2000, "the date for public discussion of rezoning parcels of UD land for New Road Limited Liability Corporation to develop into an age restricted residential community."

By letter dated February 14, 2000 you made another request to add four additional questions to the list of questions enclosed with your letter of February 1, 2000.

In addition to the foregoing exchange of letters, there were several informal telephone conferences between representatives of the Department of Justice with you and also between this office and William Manning, Esquire, attorney for the University.

In its response to your complaint, the University takes the position that FOIA does not require a public body to provide information to a citizen in a question-and-answer format, but only to make public records available for inspection and copying. To the extent you have requested actual documents, the University contends that you are only entitled to records relating to the expenditure of state, but not federal, funds. According to the University, "the parcels of land in question were not acquired with state funds. The only public funds expended on these parcels were those dollars transferred to the University from the State as an economic development grant and used to pay for various infrastructure improvements." The University has verbally agreed to provide you with "copies of the agreements with the site contractors employed to perform these improvements. "

As for your allegation that the University violated the open meeting requirements of FOIA, according to the University, the full Board of Trustees never met to discuss the proposed land transfer to New Road LLC. Rather, the Executive Committee of the Board met to consider and approve that transaction.

A. Public Records

As a general rule, FOIA requires that "[a]ll public records shall be open to inspection and copying by citizens of the State during regular business hours by the custodian of the records for the appropriate public body." 29 Del. C. Section 10003(a). FOIA exempts from disclosure, however, records in the custody of the University of Delaware unless they "relat[e] to the expenditure of public funds." Id. Section 1000(2)(g). FOIA defines "public funds" as "those funds derived from the State or any political subdivision of the State." Id. Section 10002(c).

We note that your letters of January 24, February 1, and February 14, 2000 did not make a request to review specific documents. Rather, you asked for information, by talking with University officials or through a list of questions, regarding the land transfers. Like the public records laws in other states, Delaware's FOIA "does not compel the agency to provide answers to questions posed by the inquirer." Kenyon v. Garrels, Ill. App., 540 N.E.2d 595, 597 (1989). A public body has discretion to provide information to citizens in other formats, but that is a policy decision. The law only requires that public records be made available for inspection and copying.

According to your letter of March 22, 2000, the University received a federal grant of $950,000 from the Economic Development Administration to help fund the infrastructure for the Marine Research Park in Lewes. The University also received a "$450,000.00 state grant for the same purpose." Since we have no enforcement powers over documents governed by the federal FOIA, we cannot address the request insofar as it seeks documents relating to the federal grant. With respect to the University, the requirements of FOIA are not triggered by the receipt and expenditure of federal funds. As for state funds, according to the University they were used exclusively for "infrastructure improvements. " Any documents relating to the spending of state funds for those infrastructure improvements are "public records" under FOIA, and the University must make them available for inspection and copying. Because the University has offered to do so upon its receipt of this opinion, we consider that part of your FOIA complaint resolved.

B. Open Meeting

FOIA exempts the University from the open meeting requirements except for a "meeting of the full Board of Trustees." 29 Del. C. Section 10002(g). According to the University, the full Board of Trustees did not meet to discuss or consider or approve the transfer of University land to New Road LLC, but rather that decision was made by the Executive Committee of the Board. For most public bodies, the open meeting law also covers any "committee" of the public body. See Section 10002(a). While Section 10002(g)

states that the Board of Trustees is a public body, it also states that only meetings of the "*full* Board of Trustees" (emphasis added) shall be a "meeting" as that term is defined in Section 10002(e). Therefore, any meeting of a subcommittee or ad hoc committee of the full Board of Trustees is exempt from the public meeting requirements of FOIA.

For the foregoing reasons, we conclude that the University may have violated the public records requirements of FOIA by not making available documents relating to the expenditure of state funds for the Marine Research Park to you. Because the University has offered to make those documents available for your inspection and copying, the University has remediated any violation. In complying with FOIA, the University is neither required to answer particular questions you have posed nor is it required to meet with you to discuss any matters raised by your request. We conclude that the University did not violate the open meeting requirements of FOIA because the decision to approve the land transfer to New Road LLC was made, not by the full Board of Trustees, but rather by the Executive Committee of the Board. Because the Executive Committee is not a "public body" for purposes of FOIA, the Committee was not required to hold its meeting in public.

Very truly yours,
W. Michael Tupman, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
00-IB09

May 30, 2000

Shirley Horowitz
Acting Chair
State Human Relations Commission
820 North French Street, 4th Floor
Wilmington, DE 19801

Re: State of Delaware as a Party to an Equal Accommodation Complaint

Dear Commissioner Horowitz:

You have asked whether a state agency may be a party to a complaint initiated pursuant to the Delaware Equal Accommodations Law, 6 *Del. C. §§* 4500-4512. We conclude that neither the State nor State agencies are proper parties to an equal accommodation complaint under Delaware law, as the statutes are currently written, for the reasons expressed below. We observe, however, that other states have written their public accommodations statutes to include specifically State agencies and facilities.' Accordingly, we are forwarding a copy of this opinion to the Office of the Governor to pursue legislative changes necessary to include specifically the State and its agencies within the equal accommodations law.

The prohibition of discrimination found in *6 Del. C. § 4504* provides that:

> No person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of race, age, marital status, creed, color, sex, handicap or national origin, any of the accommodations, facilities, advantages or privileges thereof. (Emphasis added)

'See, e.g. Iowa *Code* § 216.2(12) (public accommodations include State or local government units that offer goods, services, or facilities); 6 *N. Y. Civ. Rts*. §47(2) (public accommodations include buildings maintained by the State or any subdivision thereof); and *W. Va. Code* 5-11-3(i) (public accommodations include the State or any subdivision thereof that offers services, goods, or facilities to the general public).

While the term "person" is not defined in the chapter, it is defined in *1 Del* C. § 302(16) as:

> "Person" and "whoever" respectively include corporations, companies, associations, firms, partnerships, societies and joint-stock companies, as well as individuals.

This definition controls "unless such construction would be inconsistent with the manifest intent of the General Assembly, or repugnant to the Code or to the context of the same statute." *1 Del.* C. §301. Because the State is not mentioned in the definitions or other provisions of Title 6, Chapter 45, there is no manifest intent that the General Assembly intended to include the State in the definition of person under the equal accommodations law.2

The purpose of interpreting a statute is "to ascertain and to give effect to the intent of the legislature." *Hudson Farms, Inc. v. McGrellis,* Del. Supr., 620 A.2d 215, 217 (1993). The statutory construction principle of *expressio unius est exclusio alterius* means that the expression of one thing is the exclusion of another. *Hickman v. Wortman*, Del. Supr., 450 A.2d 388, 391

2 The court construed the term "person" to include the state and its agencies in *Indiana State Highway Comm'n v. Indiana Civil Rights Comm'n,* Ct. App., 424 N. E.2d 1024 (1981) finding ambiguity in the Chapter which included the State in the definition of employer. No such ambiguity exists in *6 Del. C. ch. 45.*

(1982). Using this principle of statutory construction to interpret the definition of family in 10 *Del. C.* § 901(9), the Delaware Supreme Court limited the definition to the relationships specifically identified in the statute. *Walt v. State,* Del. Supr., 727 A. 2d 836, 840 (1999).

Similarly, the definition of "person" in 1 *Del. C. § 302*(16) does not include the State. Moreover, the State is specifically and separately defined in Title 1 as the State of Delaware. 1 *Del. C. § 302*(18). Since the State is excluded from the definition of "person" and is, in fact, separately defined as the State of Delaware, it is not a person, applying the statutory construction principle of *expressio unius est exclusio alterius.* Because the State is not a person, it is not a party subject to 6 *Del. C. § 4504.*

Further, the State is immune from suit absent its express consent. Del. Const. Art. 1, Sec. 9. A waiver of sovereign immunity by the State requires a clear and specific act of the General Assembly. *Turnbull v. Fink, etal.,* Del.Supr., 668 A.2d 1370 (1994). In *Turnbull,* the General Assembly expressly waived sovereign immunity by enacting a statutory scheme which permitted suit against the Delaware Transit Corporation for damages up to a $300,000.00 limitation. Conversely, there is no clear and express waiver of sovereign immunity under section 4504.

The purpose of the chapter is to prevent discrimination in places of public accommodation. 6 *Del. C.* §4501. Government agencies are not places of public accommodation under the statute.

As used in Chapter 45, "place of public accommodation" means:

> any establishment which caters to or offers goods or services or facilities to, or solicits patronage from, the general public. This definition shall apply to hotels and motels catering to the transient public, but it shall not apply to the sale or rental of houses, housing units, apartments, rooming houses or other dwellings, nor to tourist homes with less that 10 rental units catering to the transient public. *6 Del. C. §4502(1)*

The law in Delaware is very similar to its counterpart in New Mexico which states:

It is an unlawful discriminatory practice for:

> (F) any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any individual because of race... s 28-1-7(F), *N.M.S.A.* 1978
>
> "Public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment which is by its nature and use distinctly private. s 28-1-2(G),N.M.S.A. 1978

In the absence of Delaware case law, this similarity in the respective statutes enables the Delaware State Human Relations Commission to rely on the interpretations by the New Mexico courts.3 The New Mexico Supreme Court has noted that " [n]o case has been cited to support the proposition that a university is a public accommodation unless they were specifically included by statute." *Human Rights Commission of New Mexico v. Board of Regents,* N. M. Supr., 624 P. 2d 518, 520 (1981). That court further found that "[b]ased on the facts of this case," the University was "not a `public accommodation' within the meaning of the New Mexico Human Rights Act

3 In *Hallager v. Delaware Technical & Community College,* Case no. NC-PA-312-95, the Commission determined that Delaware Technical & Community College (DelTech) was not a place of public accommodation. A student alleged in her complaint that she was treated differently than white nursing students with regard to assignments, instruction, and grading. The Commission specifically found that DelTech is not a place of public accommodation with regard to its academic program. Similarly, in *Maichle v. Appoquinimink School Dist.,* Case No. NC-PA-439-98, the Commission considered a complaint about school locker placement filed by disabled student. The panel concluded that the locker assignment was within the scope of the academic program and not within the jurisdiction of the Commission.

§28-1-2(G), *N.M.S.A.* 1978, and is therefore not subject to the jurisdiction of the Human Rights Commission in this instance." *supra* at 519. The Court observed that under a different set of facts, the University may be a "public accommodation" subject to the jurisdiction of the Commission.4

In contrast to the Delaware and New Mexico laws, Article 3 of the Civil Rights Act of Michigan states:

> Except where permitted by law, a person shall not:
> (a) Deny an individual the full and equal enjoyment of the goods, services facilities, privileges, advantages, or accommodations of a place of <u>public accommodation</u> or or <u>public service</u> because of

> religion, race, color, national origin, age, sex, or marital status. (Emphasis added) MCL 37.2302(a) MSA 3.548(302)(a)

The applicable statutory definitions expressly include educational institutions and government agencies within the jurisdiction of the law:

> (a) "Place of public accommodation" means a business, or an educational, refreshment, entertainment, recreation, health or transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public...
>
> (b) "Public service" means a public facility, department, agency, board, or commission, owned operated, or managed by or on behalf of the state, a political subdivision, or an agency thereof, or a tax exempt private agency established to provide service to the public. MCL 37.2301; MSA 3.548(301)

Interpreting these provisions in *Neal v. Department of Corrections, et al.* 1998 WL

4Although the Delaware Court of Chancery dismissed a petition by the University of Delaware for declaratory judgment to determine the jurisdiction of the State Human Relations Commission, the court suggested "the issue of whether the University is a `place of public accommodation' may well be materially affected by the specific facts underlying the particular dispute before the Commission." *University of Delaware v. State of Delaware, Division of Human Relations and Sundaraj,* 1898 WL 51682 (Del. Ch.)

704168(Mich. App.) affd *sub nom. Doe and Roe v. Department of Corrections,* 2000 WL 253625 (Mich. App.), the court found the provisions, which include the state within public service, applicable to prisoners and prisons.

If the General Assembly enacted legislation making the State amenable to suit under 6 *Del. C.* Chapter 45, a complaint would necessarily allege facts to support a conclusion that the matter in dispute was one relating to the role of the state or agency in providing a public accommodation. In 1972 Kansas waived sovereign immunity when it amended its equal accommodation statute:

> The term "unlawful discriminatory practice" also means any discrimination against persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof. *Kansas Commission on Civil Rights v. Topeka Unified School District No.* 501, Kan. Supr., 755 P.2d 539 (1988)

Despite the waiver of sovereign immunity, the Kansas Supreme Court found the reasoning in *Human rights Com 'n of N.M. v. Bd of Regents, supra,* persuasive and concluded that a school was not a public accommodation under the law. Further, a regulation by the Commission purporting to cover student admissions was void because it exceeded authority of the Commission. *Kansas Commission on Civil Rights v. Topeka Unified School District No.* 5Ol , at p. 544.

To summarize, we conclude that the State and its agencies are not subject to the Delaware Equal Accommodations Law because the State is not a person under the applicable statutes. Since there is no express waiver in the equal accommodations law, the doctrine of sovereign immunity precludes a suit against the State or its agencies. Although the State is not subject to 6 *Del. C.* Chapter 45, nothing stated herein is intended to discourage the Commission from utilizing the authority in 31 *Del. C.* §3004 to reach an amicable resolution of a dispute when the State or an agency is involved.

Notwithstanding our conclusion that the State and its agencies are not subject to the Delaware Equal Accommodations Law, we recognize that other states are expressly included in their respective equal accommodations statutes. Therefore, we refer this opinion to the Office of the Governor for consideration of the policy issues involved and offer our assistance in drafting any remedial legislation that may be necessary.

If you have any further questions concerning these matters, please contact our office.

Very truly yours,
Sherry V. Hoffman, Deputy Attorney General

Michae1 J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB10

May 25, 2000

Mr. Leon O. Brittingham, Jr.
Office of Auditor of Accounts

Thomas Collins Building
Dover, DE 19901

RE: Capital School District Referendum

Dear Mr. Brittingham:

You have asked the following questions with regard to the Capital School District's March 30, 1999 referendum to issue bonds and increase the tax assessments for the purpose of making capital expenditures on major school construction projects:

1) Did the Capital School District comply with 14 Del. C. section 2004 and 14 Del. C. section 2122(g)?
2) If yes, on what did you base this conclusion?
3) If no, what actions should the Capital School District take?
4) The voters of the Capital School District voted for a referendum totaling $61,912,500; of which $20,912,300 was listed as local funds. The $718,200 was included in the $20,912,300 local share, and was not listed separately in the public notices or the newspaper advertisements or on the ballot. Does this invalidate the referendum due to the inaccuracy of the information presented to the public for a vote?
5) If the answer to number four is no, then how much of an inaccuracy would it take to invalidate the referendum?

Although we have concluded that the District violated state law in the manner in which it conducted the referendum, it is our conclusion that no remedial action is required or mandated. As a result of the referendum, the new tax to be levied will conform to the proportion required by state law. There will be no adverse affect on the residents of the District and the net result will be that the new tax will reflect the intent of the voters, a majority of which approved the referendum.

DISCUSSION

Your request was prompted by your review of the Capital School District referendum following an anonymous complaint. The record provided by the District indicates that on December 16, 1998, the Capital School District Board of Education ("Board") authorized the capital referendum. A subsequent vote by the Board on January 20, 1999 further authorized the increase in real estate tax assessments to be placed before the voters in the referendum. On March 1, 1999, all notices were posted at all the relevant school buildings and a wide variety of post offices, local government buildings and fire houses. Publication of the notices in the Delaware State News was effectuated on March 11, 18 and 25, 1999. Publication was further made in the Dover Post on March 10, 17 and 24, 1999. The vote took place on March 30, 1999 and the referendum passed by a vote of 1,683 to 1,147.

As you have indicated in your letter and attachments, the wording on the ballot as presented to the voters in the Capital School District read: "To *increase the debt service tax rate by $0.26/$100 of assessed value for major capital renovation/improvement projects.. oFor the tax increase* o *Against the tax increase"*. The notice of the special election stated that the bonds were to be issued *"to finance the cost of a school construction program which is estimated will cost $61,912,500.00 of which $20,912,300.00 is to be paid by the school district and $41,000,200.00 is to be paid by the State of Delaware."* The notice went on to list the schools and administrative buildings to have major renovations or improvements.

As you have also indicated in your letter and attachments, the Board was aware that the standard school construction formula did not cover the entire cost of renovations/improvements to the Booker T. Washington School/Administration Building Complex. At the December 16, 1998 meeting, the Board noted that there would be an added cost to the school district of approximately $750,000 to cover the additional construction costs. The actual additional cost appears to be $718,200 according to your calculations. As you have pointed out, the local share of the bond issue includes the additional $718,200 in the $20,912,300 total, and that is reflected in the tax assessment increase of $.26/$100 assessed value.

You have pointed out that 14 Del. C. section 2004 applies in school construction matters where the construction cost request exceeds the Department of Education school construction standard formula. As that provision indicates, when the costs exceed the standard formula, the voters in the school district may either authorize or limit the expenditures by referendum. This statutory section states that provisions "shall be made for the following form to appear ... on the voting machine next to the appropriate levers:

> Section I -Vote for one
> A. For a bond issue at this time
> B. Against a bond issue at this time
> Section II - Vote for one
> In the event that the majority of votes cast in Section I is for a bond issue, which bond issue would you prefer?
> A. For the bond issue in the amount of $ as recommended by the school board.
> B. For the bond issue in the amount of $ as determined from the standard formula by the Department of Education."

14 Del. C. section 2004 (in pertinent part). You further cite to 14 Del. C. section 2122(g) which provides that "[a]n election under this chapter for the purpose of authorizing a

bond issue shall be conducted by use of voting machines. *The wording on the voting machine shall include a statement of the question which accurately reflects the issue being voted for and against."* 14 Del. C. section 2122(g)(Emphasis added).

For the reasons stated below, we conclude that:

1) The Capital School District did not comply with the specific terms of 14 Del. C. section 2004 and 14 Del. C. section 2122(g).

2) This does not necessarily invalidate the March 30, 1999 referendum, however, the omission of the statutorily required form on the ballot, and the failure of the Board to include an accurate explanation of the inclusion of the additional $718,200 in the local share portion of the bond issue will require a limitation on the amount of the bond issue for the local share portion and possibly a subsequent referendum to address the oversight.

Capital investments in the school districts have historically been funded through a State appropriation which is matched by a local funding share on a 60:40 basis. The State's share is appropriated through the annual appropriations and bond authorization act. The State's share is usually conditioned on the deposit of a matching local share. 29 Del. C. section 7503.' The local school board has the authority to issue bonds under 14 Del. C. section 2102.2 The power to issue bonds is not plenary, however, as such expenditures must be approved by the voters of the district in a special referendum held for that purpose. See 14 Del. C. section 2122(a).3 Elections must be validly noticed, and the notice must be posted and published. It must also "plainly set forth the amount of bonds proposed to be issued and the purposes and reasons thereof . . . ." Section 2122(c). While the general nature of the expenditures planned must be outlined in order to make the notice legally valid, an exact itemization of the proposed expenditures is not required. McComb v. Dutton, Del. Super., 122 A. 81 (1923); Brennan v. Black, Del. Supr., 104 A.2d 777 (1954). The proceeds of the bond sale, however, must be used for the purposes specifically authorized by the referendum. Brennan, 104 A.2d at 758-9.

Except in the case of a school district for which a local share is not required by any school construction bond authorization act, the state share apportioned to a school district by such school construction bond authorization act shall not be expended unless the local share for such school district shall have been deposited with the State Treasurer not later than 2 years after the effective date of a school construction bond authorization act.

2 14 Del. C. sec. 2102.
Sec. 2102. Power of district to issue bonds.

The school board of any district may issue bonds for the purpose of carrying out any plan or program for the acquisition of lands or the acquisition or construction of buildings or for the construction of sidewalks leading to a school site as may be authorized by this title when such plan or program shall have been approved by the State Board of Education.

3 14 Del. C. sec. 2122(a).
Sec. 2122. Election to authorize bond issue; rules governing; referendum to transfer tax funds.

(a) Before any school board issues bonds under this chapter, it shall call a special election. The school board will designate the school buildings to be used as polling places and establish voting district boundaries.

Any analysis of a capital improvements referendum must focus on 14 De1.C. section 2122 which requires a school district to call a special election before issuing any bonds for acquisition or construction of school buildings. Such election follows State Board of Education approval of the "plan or program" for the acquisition or construction of schools. 14 De1.C. section 2102. Fourteen Del.C. section 2122(g) requires that the language on a ballot to authorize a bond issue "shall include a statement of the question which accurately reflects the issue being voted for and against." The statute requiring notice to the public of elections also requires that the language plainly state the "purposes and reasons" for the election. 14 Del.C. section 2122(c).

The statute which preceded the current section 2122 was interpreted by the Delaware Supreme Court in Brennan v. Black, De1.Supr., 104 A.2d 777 (1954). The earlier statute required that notices of bond elections must state "the purposes and reasons therefore ... plainly and in detail." Id. at 787 (former 14 Del.C. section 2120). The Court upheld the notice in Brennan by finding it to be in substantial compliance with the statute. Notices must be "adequate to apprise any taxpayer of the general purpose to which the revenue was to be devoted." Id. at 788. We believe that these principles also apply to disputes under existing section 2122. Delaware courts are likely to adopt the substantial compliance standard for analysis of section 2122 issues.

The ballot here, unfortunately, was not in substantial compliance with the statute. It failed to incorporate the second section of the form as required under 14 Del. C. section 2004. Due to this failure, the ballot did not adequately inform the voters of the district of the additional increase in the local share beyond what would have been required by the application of the state standard formula for school construction. This error is not a minor irregularity such as those contemplated in the Brennan or Dutton cases. Furthermore, the notices posted by the Board in this case failed to place all the issues squarely before the district's voters.

The district's construction counsel contends that the failure to include the second section of the form ballot as

required under section 2004 is not significant because it may be interpreted, as a matter of law, to be a lack of a majority vote for the bond issue recommended by the Board. This would automatically result in a bond issue authorization by the State standard formula. That interpretation of the Board's failure to comply with section 2004 might well be valid in a case where the proposed tax increase in the first section of the ballot had not included the additional construction costs in the tax increase. That was not the case here. The question posed to the district's voters specifically stated a tax increase based upon additional construction costs incorporated in the district's local share. The voters, unwittingly, approved an increase in taxes without fully realizing for what they were voting and without being informed of their options in light of the State standard formula.

The question which must be addressed under these circumstances is what effect the Board's omissions have on the referendum. This office has considered a few key factors in reaching its conclusion. Clearly, the voters approved the construction/renovation (with the corresponding increase in taxation) by a sufficient margin. In addition, but for the omissions by the Board, and by operation of law, the voters also would have approved an increased assessment at least to the extent dictated by the State standard school construction formula. Moreover, the proposed tax increase as presented on the ballot (including the undisclosed additional local share as proposed by the Board) had no practical effect on the school district's voters. To the Board's good fortune, they rounded down the proposed tax increase-in actuality $.264408 per $100 assessed value-to the $.26 per $100 assessed value as it appeared on the ballot. Had the proposed tax increase been based upon the State standard formula, your calculation indicates that the actual increase would have been $.255328 per $100 assessed value. Rounded up, the proposed tax increase would still have been $.26 per $100 assessed value. You have also determined from the Receiver of Taxes that assessments are calculated based upon the figure as presented to the district's voters. Given these circumstances, the practical effect is the same: the district's voters approved a $.26 per $100 assessed value-the rate that would have been proposed to voters to meet the construction costs as calculated using the State standard school construction formula.

There is also no indication in any of the records presented to this office that the Board's omissions were due to fraud or unfair dealings.4 Accordingly, in the absence of fraud or misconduct, and considering the above factors, this office is reluctant to recommend action that would invalidate the referendum, and by extension, the will of the majority of the district's voters. Nonetheless, the Board and school district cannot be permitted to issue bonds based upon their construction estimates even if the tax increase would cover the additional local share.5 Absent a further referendum on the increased local share or legislative action, the risk to the district's voters and the Board will remain that legal action could be undertaken by a disgruntled portion of those voters in an effort to invalidate the referendum.

4 From the record, one could infer just the opposite as the Board discussed this issue in open session during the December 16, 1998 meeting when it authorized the referendum.

5 We note that pursuant to 14 Del.C. section 2118(a), the school district is empowered to collect the rate of taxation plus an additional 10 percent for delinquencies.

In conclusion, this office would recommend that the Board take immediate action to limit its ability to issue the bonds to the amount that would be appropriate given the State standard formula. We understand that the district will, should it desire to issue the additional bonds in accordance with its own construction estimates, hold another referendum consistent with this opinion. The appropriate letter to the State Treasurer's Office will also issue from this office relating to the bond issue authorized by the March 30, 1999 referendum with the proviso that it be limited to the State standard formula for that portion of the project pertaining to the Booker T. Washington complex.

Very truly yours,
Kevin R. Slattery, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB11

July 24, 2000

Mr. Robert R. Osgood
State Council for Persons with Disabilities
Margaret M. O'Neill Building
P.O. Box 1401
Dover, DE 19903

RE: Voting By Incompetent Persons

Dear Mr. Osgood:

You have asked whether the language "idiot or insane person" as it appears in 15 Del. C. §1701 and "idiot or insane" as it appears in 15 Del. C. § 1703 is contrary to superceding law and unenforceable. These laws, part of Delaware's election code, address qualifications for voting and proscribe voting by “idiots,” and "insane persons." We

note that the language “idiot or insane person" appears in the Delaware Constitution as well as the election code. Del. Const. art. V, Section 2.' This opinion memorializes the extensive discussions and recommendations we have made to the Department of Health and Social Services and the Commissioner of Elections over the past several months. As discussed below, we conclude that §§ 1701 and 1703 are enforceable, provided that the language is interpreted to prohibit voting only by persons who have been adjudged

1 This provision reads: "...and no idiot or insane person, pauper, or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector;..."

mentally incompetent by a court of law. However, as discussed below, we recommend that each of these sections be rewritten to eliminate the phrase "idiot or insane" and to proscribe voting by persons adjudged mentally incompetent by a court of law. Our analysis is based largely on principles of statutory construction and constitutional law.

The terms "idiot" and "insane persons" are not defined in the election code. Principles of statutory construction authorize reliance upon dictionary definitions to define the meaning of these terms. *Moore v. Wilmington Housing Authority,* Del. Supr., 619 A.2d 1166, 1174 (1993). "Idiot" is not defined in Black's Law Dictionary. However, it is defined in American Heritage as follows: "[A] person of profound mental retardation having a mental age below three years and generally being unable to learn connected speech or guard against common dangers. The term belongs to a classification system no longer in use and is considered offensive."2 American Heritage Dictionary (3d ed. 1996). Black's Law Dictionary defines insanity as "more or less synonymous with mental illness or psychosis." Black's Law Dictionary 794 (6th ed. 1990). Merriam-Webster defines insanity as a “deranged state of the mind usually occurring as a specific disorder (as schizophrenia) and usually excluding mental retardation, psychoneurosis and various character disorders." Merriam-Webster Online: WWWebster Dictionary. 1997. http://www.m-w.com/dictionary.htm (18 April 2000). These definitions are consistent with the discussion in *In the Matter of Susan S.,* Del. Ch., C.M. No. 7764, Allen , C. (Feb. 8, 1996)(adopting final report of Master Kiger) at 5, which stated "While the general usage of the terms ‘lunatic’ and ‘idiot’ has been loose and coarse, the law

2 We are mindful of the definition of "mentally ill" that appears at 1 Del. C. § Section 302 (11). We do not believe this definition is significant in this analysis. It defines "mentally ill" but not "idiot."

ascribes different meanings to these words. It has traditionally distinguished between lunatics and idiots by holding that the former are people who once had the ability to reason, but lost it through ‘disease, grief or other accident,’ or ‘by visitation of God.’" *(citations omitted).* For these reasons, we conclude that the prohibition on voting by "idiots" and "insane persons" applies to persons with a mental disability. Given this interpretation, the next issue is whether the interpretation is sufficiently narrow as to be consistent with the concept of due process.

We apply the principle of statutory construction that imposes a duty to interpret the terms "idiot" and "insane" as used in Delaware's election code and Constitution so as to avoid constitutional infirmity. *Moore v. Wilmington Housing Authority,* 619A.2d at 1173 ("a court has a duty to read statutory language so as to avoid constitutional questionability and patent absurdity and to give language its reasonable and suitable meaning." *(Citations omitted)).* Indeed, we are required to interpret these terms as constitutional even if the interpretation strains the statutes that contain the terms. *Mills v. State,* Del. Supr., 256 A.2d 752, 758 (1969)("If this appears to be a strained construction of §4702(c). it is to be remembered that a strained construction of a statute is permissible to save it against constitutional attack so long as the construction is not carried ‘to the point of preventing the purpose’ of the statute." *(Citations omitted)).* Consistent with these principles, we have reviewed, and find persuasive, the relevant caselaw from jurisdictions other than Delaware that have interpreted like prohibitions on voting.

Rejecting the proposition that residency at a state school for the mentally retarded categorically disqualifies persons with mental retardation from voting, the Superior Court of New Jersey stated "...but we should say at least this much, that a mentally retarded person need not be a ‘idiot’ and a mentally ill person need not be ‘insane.’ We leave for another day the determination of where to draw the line of demarcation, beyond which disenfranchisement results." *Carroll v. Cobb,* N.J. Super., 354 A.2d 355, 360 (1976). The Supreme Court of Massachusetts, faced with a similar issue, ruled that persons with mental retardation may not be precluded from voting simply because they live at a state-operated facilities for persons with mental retardation. Recognizing its duty to interpret the statute so as to maintain its constitutionality, that court stated that "[the words ‘persons under guardianship’] could not have been intended to foreclose competent adults from exercising the franchise. We cannot read the language loosely because to do so would tend to deprive numerous persons of a basic right of citizenship." *Boyd v. Board of Registrars of Voters of Belchertown,* Mass. Supr., 334 N.E. 2d 629, 631 (1995). Finally, an Ohio trial court wrote "[f]rom my review of legal literature going back to 1800 it seems apparent that the common definition of the word ‘idiot,’ as understood in

1851 when our present constitution was in the main adopted, meant that it refers to a person who has been without understanding from his nativity, and whom the law, therefore presumes never likely to attain any. I am unable to tied anything indicating any real change in this definition to this date. Our Mr. J is clearly not an idiot. The words 'insane person', however, most commonly then as now, refer to a person who has suffered such a deprivation of reason that he is no longer capable of understanding and acting with discretion and judgment in the ordinary affairs of life." *Baker v. Keller,* Ohio Ct. Com. Pleas, 237 N.E. 2d 629, 638 (1968). Despite Mr. J's multiple hospitalizations for treatment for mental illness, Mr. J had never been adjudicated incompetent and therefore was deemed by the Court to be qualified as an elector. Id. at 640.

We agree with these courts' interpretation that the right to vote turns upon legal competence, not simply the diagnosis of mental illness or the residency of a person with mental illness. Accordingly, we conclude that the language, "idiot" and "insane persons," should be read to mean persons who have been adjudged incompetent by a court of law. We conclude that such a prohibition is enforceable.

The United States Supreme Court has characterized the right to vote as "of the most fundamental significance under our constitutional structure." *Burdick v. Takushi, 504 U.S. 428, 433 (1992)(Citations omitted).* When a state statute or constitution seriously interferes with the right to vote, the state provision is subject to strict scrutiny. *Kramer v. Union Free School District, 395 U.S. 621, 633 (1969); Harper v. Virginia Board of Election, 383 U.S. 633, 670 (1966).* Our interpretation of Delaware's election code and Constitution will cause disenfranchisement of a narrow class of Delaware residents -- persons adjudicated incompetent by a court of law. We believe that a court would apply a strict scrutiny analysis to these provisions. The provisions will be upheld only if they arc "narrowly drawn to advance a state interest of compelling importance." *Norman v, Recd, 502* U.S. 279, 289 (1992).

No courts in Delaware have addressed the constitutionality of disenfranchising persons adjudged incompetent by a court of law. However, the issue has been addressed by courts in other jurisdictions. Courts that have addressed the issue of voting by persons adjudged incompetent by a court of law have upheld the power of the state to prohibit voting by such persons. *See Miller v. State Board of Election,* N.D. Ill., No. *89 C 2444,* Parsons, J. at 2 (April 10, 1989); 1989 W L 36212 (Illinois does not prohibit voting by persons with mental incapacity but it does prohibit voting by persons who are mentally incompetent, which is consistent with federal law); *Manhattan State Citizens 'Group v. Bass,* 524 F. Supp. 1270 (discussing with approval a New York law that prohibits voting by persons adjudged incompetent but striking down a New York law that prohibits voting by persons involuntarily committed to hospitals). The interest cited by states is the interest in an electorate that has the ability to cast a rational vote. We believe that an interpretation of Delaware's election code and Constitution to prohibit voting only by persons with mental illness adjudged incompetent by a court of law is narrowly drawn to further just this interest.

There are restrictions on the power of the state to proscribe voting even by persons adjudged incompetent. First, a finding of incompetence by means other than judicial findings may be constitutionally deficient. *Manhattan* at 1275 n.11. Second, courts have ruled that a judicial order of involuntary commitment is not a judicial finding of mental incompetence and is not constitutionally sufficient when used as a ground for disenfranchisement. Id. at 1273-1275. We believe that a Delaware court would rule the same way on these issues, and interpret the statutory and constitutional provisions to be so applied.3

Although we believe that one may construe the language "idiots" and "insane" to be legally enforceable, we do not recommend leaving the language unchanged. First, the language "idiots" and "insane" is outdated, having been enacted over 100 years ago. 21 Del. Laws Ch. 36 (enacting statutory qualifications for voting). Although the language may have been acceptable terminology when the statutes were enacted, the language now is strongly pejorative and so imprecise that its interpretation requires significant legal analysis. We recommend legislative amendments to both 15 Del. C. § 1701 and § 1703 and article V of the Delaware Constitution to bring the words of these legislative enactments into comprehensible modern parlance. We recommend that both article V, Section 2 of the Delaware Constitution and 15 Del. C. §§ 1701 and 1703 be legislatively amended to replace the language "idiot," "insane," and "insane person" with the language "person adjudged incompetent by a court of law."

3. The distinction discussed in cases from other jurisdictions between the findings that support an order of commitment and the findings of incompetence exists in Delaware as well. The finding to support the commitment signed by a Delaware Superior Court Commissioner and adopted by the Delaware Superior Court is that the person being committed is unable to make a responsible decision concerning the need for treatment for his mental illness. This does not necessarily mean that such person is mentally incompetent to conduct any of his personal or business affairs. Therefore, we believe that commitment to a hospital for treatment, standing alone, does not permit disenfranchisement.

We believe this addresses the inquiry contained in your request. Please do not hesitate to contact us if you would like further assistance with this issue.

Very truly yours,
A. Ann Woolfolk, Deputy Attorney General

APPROVED BY:
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB12

June 28, 2000

Mr. Milton F. Morozowich
R.D. 2, Box 166
Bridgeville, DE 19933

RE: Freedom of Information Act Complaints Against Woodbridge School District

Dear Mr. Morozowich:

This acknowledges receipt of three separate Freedom of Information ("FOIA") complaints against the Woodbridge Board of Education ("the Board") and the Raider Committee (a committee of the Board) dated May 8, 2000 and received in our Office on May 9, 2000. Each complaint is separately described under the boldfaced headings below. In response to your complaints, I contacted James D. Griffin, Esquire, attorney for the Woodbridge Board of Education, to request copies of the agenda for the May 4, 2000 Raider Committee meeting and for the May 2, 2000 special board meeting. To complete our review, a request was made of Mr. Griffin to provide information concerning the process by which the Board receives the information about the scholarship applications and the role of the Board in selecting the final recipients. That information was faxed to our Office on May 26, 2000. Mr. Griffin sent supplemental information concerning the Mary Bailey Scholarship program by letter dated June 21, 2000.

Defective Notice and Public Comment for the Board's Special Meeting of May 4, 2000

This complaint alleges two separate violations: the first is that the public was denied an opportunity to speak at the May 4, 2000 special meeting. The second is that since the prior actions taken by the Board to approve a referendum subsequent to March 1, 2000 were void, the notice for the special board meeting for May 4, 2000 "to reconsider and re-approve the referendum issue" was invalid since the Board, in effect, was only considering the issue for the first time.

1. On the issue concerning the public's right to speak at public meetings, 29 *Del. C.* §10004 requires that a public body provide public notice of its meetings and that the public body conducts those meetings in open session (subject to the statutory right to go into executive sessions). FOIA does not address nor does it require that a public body receive public comment even though a meeting may be open to the public. Nor does FOIA require that the members of the public body discuss an issue prior to voting on the issue. The public reading of prepared statements, with or without debate, is permissible under FOIA. The Board did not violate FOIA as alleged.

2. The notice for the special meeting of the Board for May 4, 2000 contained a single agenda item for the Board: "to reconsider and reapprove the referendum." You have raised a technical issue by complaining that the public notice for the May 4, 2000 meeting violated FOIA because the Board should have provided a notice that the meeting was to *consider and approve* the referendum, not *reconsider and re-approve* the referendum. We note that the purpose of 29 *Del. C.* §10004(e) is to assure that the public receives a notice of public meeting containing a general statement of the items expected to be considered by the public body at its public meeting. It is clear from the complaints filed by yourself and others prior to May 4, 2000 and from the history of this particular issue since March 1, 2000, that the issue of a second referendum has been a substantial and frequent issue before the Board. The meeting of May 4, 2000 came about solely because of our determination that the meeting previously scheduled for April 17, 2000 failed to meet the requirements of 29 *Del. C. § 10004*(e)(5).

The purpose of the May 4th meeting, irrespective of the wording, was clearly stated on the posted agenda. The issue which you have presented is whether a semantic flaw in the wording of the notice is sufficient to substantially affect public rights under FOIA. As the Court of Chancery observed in the case of *Ianni v. Department of Elections of New Castle County,* Del. Ch., 1986 WL 9610 (August 29, 1986), Allen, C., the question to be addressed by any reviewing court or authority is whether the alleged violations of the statute "constitute technical violations not involving substantial public rights" Id. at 6. "Not every failure to comply with precision to the terms of this statute will involve substantial public rights and thus not every technical violation will support either a declaratory judgment or, more importantly injunctive relief." *Id.* Because the Board posted the notice in compliance with FOIA, and because there is no meaningful consequence to the Board's use of the words "to reconsider and re-approve the referendum issue" as opposed to the words "consider and approve," we find that there was no FOIA violation for defective notice. No substantial public right was affected by the decision of the Board to post the meeting for re-approval and reconsideration as opposed to some other wording which would have accomplished the

same purpose. The Board did not violate FOIA as alleged.

Accordingly, no action will be taken by this office on either issue presented by this particular complaint.

The Raider Committee Meeting

Your complaint stated that the notice for the Raider Committee meeting scheduled for May 4, 2000 violated FOIA because it "did not provide the requisite public notice of the specific business to be transacted." On April 19, 2000, the Board posted a public notice which read as follows:

> A MEETING OF THE RAIDER COMMITTEE WILL BE HELD ON THURSDAY, MAY 4, 2000, AT 7:00 P.M. IN THE BOARD ROOM AT THE DISTRICT CONFERENCE ROOM, 48 CHURCH STREET, BRIDGEVILLE, DELAWARE.

Although Mr. Griffin informed our Office that the only subject of the Raider Committee meeting was to assist in passage of the referendum, the meeting notice did not contain an agenda or any other notice of the business to be considered at the meeting.' 29 *Del.* C. § 10004(e)(2) requires that the notice include an agenda of the meeting. A mere notice of the meeting is insufficient under the law. The Board violated FOIA by not including an agenda for the Raider Committee meeting of May 4, 2000. The question presented is what remedy is appropriate under the circumstances. We note that your complaint concerning the Raider Committee meeting of May 4, 2000 does not itemize what particular item of public business was discussed that was not included on the agenda. Since your complaint addresses only the form of the notice, there is no basis to conclude that any substantial public rights were affected by the Committee's conduct of the meeting of May 4, 2000 or that the public was prejudiced by the Board's failure to properly post the Committee's agenda. We find only a technical violation for which no remediation is required since, based on Mr. Griffin's representation, the only item of discussion was the referendum issue which was subsequently defeated at the polls.

1 In Attorney General's Opinion IB 00-12 issued on April 27,2000, we noted that the Board agrees that the Raider Committee is a public body for purposes of F01A.

The Special Meeting of the Board on May 2, 2000

The final complaint which you filed related to the special meeting of May 2, 2000 wherein the Board went into executive session to conduct "Student Hearings." You complain that the issue of "Authorizing the Awarding of Bailey Scholarships" was not on the agenda and that there was no urgent circumstance or compelling need to hold an executive session to authorize those scholarship awards without the seven day public notice required for regular meetings. We have obtained a copy of the agenda as posted for the May 2, 2000 meeting which included, among other things, the following items of business:

III Student Hearings
IV Executive Session
  A. Personnel
  B. Student Hearings
V Action
  A. Personnel
  B. Student Hearings
  C. Mary Bailey Scholarships

Your complaint that the "Special Board Meeting . . . was scheduled for the purpose of conducting 'Student Hearings'. The issue of 'Authorizing the Awarding of Bailey Scholarships' did not arise during the course of the meeting" is belied by the notice quoted above which designates an executive session for personnel matters and a separate agenda item for action on the Bailey Scholarships. At our request, Mr. Griffin provided a copy of the agenda for the May 11,1999 meeting which included the following agenda items:

IX. Executive Session
  A. Personnel - Staffing for 1999-2000
  B. Collective Bargaining
  C. Mary Bailey Scholarships
X Approval
  A. Personnel
  B. Mary Bailey Scholarships
  C. CHOICE
  D. Field Trip Request

Unlike 1999, the agenda for the May 2, 2000 meeting did not provide public notice that the Board
would consider the Bailey Scholarship applications in the executive session.

Since the Bailey Scholarships were not considered as part of the "Student Hearings" part of the meeting under the agenda, there is no FOIA violation as you alleged. Because the Bailey Scholarships were in fact discussed in the executive session, even though not included in the agenda for May 2, 2000, we will exercise our discretion and address that matter on our own initiative.

29 Del. C. §10004(b)(9) permits the Board to go into executive session to consider "[p]ersonnel matters in which the names, competency and abilities of individual employees or students are discussed, unless the employee or student requests that such a meeting be open." Evaluating which students will be eligible to receive a scholarship is within the ambit of a personnel matter and is a proper matter to be

considered under the personnel provision for an executive session. The Board has recognized that it can consider personnel matters which relate separately to students and teachers and can provide public notice of its intention to consider them in executive session separately as it did on the agenda for May 11, 1999. In 1999 the personnel item did not stand alone on the agenda but included a reference that it related to staffing needs for the next year. The agenda item for May 2, 2000 stood alone and gave no indication of whether the matters to be considered were teacher, student, disciplinary or non-disciplinary. In light of its prior practice, the Board's failure to include an executive session notice for the review of the Bailey Scholarship applications for the May 2, 2000 special meeting was a violation of 29 *Del.* C § 10004(b)(9) by failing to provide a posted notice that the Board would consider scholarship applications as a personnel matter in executive session. The question then focuses on the nature of the violation and the appropriate remedy, if any.

Based on the information provided to this Office in response to your complaint, the Bailey Scholarship is a private trust and is administered by the Mellon Bank ("Mellon"). Mellon receives the applications, processes them and sends proposed recipients to the Board. The Board reviews the names on the list and then makes an award recommendation to Mellon of the persons who the Board believes should be the recipients of the award. Mellon then makes the final decision as to who the recipients will be and the names are subsequently announced at the high school's graduation exercises. Even though the Board's only function is to review the names submitted by Mellon and to make recommendations thereon, the process does require the Board to consider the qualifications of the applicants for the award. Since the competency of the students is an item to be considered by the Board, it is entirely appropriate for the Board to do that in executive session. The issue presented to this Office is whether the agenda correctly stated the purpose for which the Board went into executive session. Although it was entirely proper for the Board to consider the Bailey Scholarships in executive session, the Board failed to include that item on the agenda for the meeting of May 2, 2000. We find that the failure to do so is a violation of 29 *Del.* C § 10004(b)(9). We further find that the failure to do so is a technical violation and that no substantial public rights were affected by the failure to properly include that item on the agenda.

Conclusion

We find that there is no FOIA violation of notice or public comment with respect to the Board's special meeting of May 4, 2000. We find that the Board violated FOIA by failing to meet the requirements of public notice required by 29 *Del.* C. § 10004(e) with respect to the Raider Committee meeting and the notice for an executive session to consider the Bailey Scholarships. We further find that such violations were technical and did not negatively affect substantial public rights. We do not believe that any remedial action is required for these particular violations. Nevertheless, we do take this opportunity to admonish the Board for what appears to be a pattern of noncompliance and apparent disregard of the FOIA requirements for public notice.2 Without regard to intent, what is clear is that, since February, the Board has failed to appreciate the seriousness this Office ascribes to FOIA compliance and/or the possible consequences of non-compliance. The Board does not consult with its attorney before posting its agenda, a practice which would obviously be less costly and burdensome than defending such claims under 29 *Del.* C. § 10005 either before this Office or the Court of Chancery, which has awarded attorneys fees to successful plaintiffs.3 At some point, irrespective of whether the violations are merely technical and do not substantially affect public rights, a continuing pattern of violations will suggest that more formal action will have to be considered and more stringent sanctions sought to assure that the Board complies with FOIA and that the citizens of the school district are not deprived of the public notice of meetings to which they are entitled.

2 The Board follows a practice of posting a "tentative" agenda. It is noted that 29 *Del. C. §*10004(e) does not distinguish between tentative and non-tentative agenda. *See* Attorney General's Opinion 00IB07, April 28, 2000. This Office concludes that all agenda must meet the requirements of 29 *Del. C. § 10004*(e). While there is no evidence of intentional conduct on the Board's part during the last three months, a practice over time of preparing incomplete agenda, of continually amending the agenda or assuming that any changes automatically will fit into the procedure allowed under 29 *Del. C. § 10004*(e)(5) or the exception for issues arising at the time of the meeting will create an impression that such conduct is intentional and designed to avoid the duties imposed on public bodies by FOIA.

3 Turner v. City of Newark, Del. Ch., No. 15787, 1988, (May 21, 1998) Chandler, C.

Very truly yours,
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB13

June 29, 2000

The Honorable Bruce C. Ennis
House of Representatives
Legislative Hall
Dover, DE 19902 D580C

RE: Kent County Levy Court/Board of Assessment

Dear Representative Ennis:

You have asked for an opinion on whether Kent County Levy Court can, independent of an act of the General Assembly, create a new Department of Financial Services and move the Board of Assessment's staff under that new department. In addition, you have forwarded the written opinions of House Attorney Robert J. Leoni, Esquire and Senate Attorney Francis J. Murphy, Esquire who both agree that specific legislation is required to permit the Levy Court to transfer the Board of Assessment's staff to a newly created county department. Consistent with the conclusions reached by legislative counsel, and for the reasons set forth below, we agree that the Levy Court cannot transfer the staff of the Board of Assessment to a Department of Finance created by the County Government without specific statutory authority.

Both the Levy Court and the Board of Assessment are created by statute. The Levy Court, consisting of seven elected Commissioners, was created by the General Assembly as the governing body of Kent County. *9 Del. C.* Chapter 41. The powers of Levy Court include "the power to fix a tax rate upon the assessed valuation of all real property in Kent County, *subject to assessment by the County."* 9 *Del. C. § 4110(b)* (emphasis added). The power to value and assess property in Kent County is vested in a Board of Assessment, which is also a body created and authorized by statute. *9 Del. C.* Chapters 82, 83. The Board of Assessment consists of three members appointed by the Levy Court. 9 *Del. C. § 8201*(b). 9 *Del. C.* Chapter 83 was passed by the General Assembly to specifically prescribe the mechanism for valuation and assessment of property by the Board of Assessment. The Board of Assessment determines the assessed value of all property in Kent County and then reports that assessment to Levy Court for purposes of taxation. 9 *Del. C. §§* 8301, 8314. While there is certainly interaction between the two bodies, the Board of Assessment, by statute, is independent of the Levy Court. The Board of Assessment is authorized to employ its own staff. 9 Del.C. §8208. While the compensation of Board staff is fixed by Levy Court, the statute specifically provides that "[t]he duties of [Board of Assessment] employees shall be prescribed by the board of assessment which employs them. Id.

With regard to assessment valuations, 9 *Del. C.* §8316 provides that "[t]he county governing body [Levy Court] *shall have no jurisdiction over, or supervision over,* the assessment lists, nor shall it have power to change, alter or amend the same .... [T]he assessment lists, as they shall be certified by the board of assessment. . . shall be deemed to be correct by the county governing body and shall be considered by it as final and conclusive." (emphasis added).

Sections 8208 and 8316 provide strong evidence that the integral functions of the Board of Assessment are not to be controlled or regulated by Levy Court. Given the statutory mandate that Levy Court shall have no jurisdiction or supervision over valuation or assessment--the primary reason for the existence of the Board--it necessarily follows that Levy Court should have no direct jurisdiction or supervision over the internal workings and day-to-day operations of the Board Indeed, § 8208 unambiguously states that Board employees "shall" perform their duties only at the behest of the Board that employs them. Control by Levy Court over the staff of the Board of Assessment would essentially amount to control over the functions of the Board itself, an outcome prohibited by statute.

The importance of independence between a Levy Court and its Assessor was recognized as early as 1892 in a Chancery Court decision, *Biggs v. Buckingham,* Del. Ch., 23 A. 858 (1892). In that case, involving the then New Castle Levy Court and Office of Assessor, the Court held that the deletion of names from the assessment list by the Levy Court was an unlawful exercise of power. The Court explained that "[t]he powers and functions of the levy court are derived from and are clearly defined in the acts of the legislature. They are truly statutory. The levy court possesses no inherent or original powers. Its functions and powers are defined and limited by statutory law." Id. at 864. *Biggs* noted that the office of assessor was also created by law with clearly defined and precise duties. Thus, the Court found there was no authority for the levy court to change the content of the assessment lists, whose preparation was within the exclusive control of the office of the assessor.

The independence of the two bodies is logical considering their governmental roles. The Board of Assessment makes valuations for purposes of taxation but has no control over taxation; Levy Court imposes taxes but only based upon valuations which were made independently by another body. 9 *Del.* C. § 4110(b) specifically provides that the Kent County Levy Court's power of taxation is "subject to assessment by the County." Given that the Board of Assessment has been established as an independent body by the General Assembly, with the right to control its own employees and activities, it could not fall under the direct control of Levy Court or one of its departments absent specific authority from the General Assembly. The Levy

Court suggests that its establishment of a Regional Planning Commission and Board of Adjustment would similarly allow the creation of a Department of Finance encompassing the Board of Assessment. This is not the case. The General Assembly has, by statute, directly empowered Levy Court to establish the Regional Planning Commission (9 *Del. C* § 4803) and Board of Adjustment (9 *Del. C. § 4913*). No such statutory authority exists for the placement of the Board of Assessment under Levy Court's control. Rather, the statutory scheme suggests that such an arrangement would be impermissible. Indeed, it is questionable whether Levy Court would be authorized to set up a "Department of Finance" absent specific statutory authority to do so. While both New Castle County and Sussex County have an "Office of Finance" and "Department of Finance," respectively, both of these departments are created by statute with specifically enumerated powers and functions. (9 *Del. C. § §* 1371; 7004).

The government of Kent County has been granted "all powers under the Constitution of the State it would be competent for the General Assembly to grant by specific enumeration, and which are not denied by statute . . . ." 9 *Del. C. § 4110*(a). The current statutory scheme, establishing the Board of Assessment as a separate body, and the historical independence between the county government and its Board of Assessment suggest strongly that Levy Court could not bring the office of the Board of Assessment or its staff under its auspices absent specific authority to do so from the Legislature.

Very truly yours,
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB14

July 24, 2000

The Honorable Wayne A. Smith
House Majority Leader
Seventh District Representative
House of Representatives
State of Delaware
Legislative Hall
Dover, DE 19901

Re: Executive Order No. 70S-10

Dear Majority Leader Smith:

You have asked whether the implementation of Executive Order Number Seventy-one (the "Order") violates the Fourteenth Amendment of the United States Constitution as well as applicable United States Supreme Court rulings such as *Croson, Adarand*, and their progeny. Because the implementation of the Order is subject to applicable federal and/or state statutory and case law, we believe that the Order is facially valid under the Fourteenth Amendment of the United States.

The purpose of the Order is to promote diversity in the workplace and provide equal employment opportunities to all Delawareans.' The Order establishes a Building and Trade Council to implement outreach programs to promote "recruitment, education and business support practices." The Council is charged to develop a statewide strategy to coordinate public and private initiatives to support and assist the "participation of qualified women and minorities in all aspects of the building trade industry." The Council is composed of several public officials, including the Secretary of the Department of Administrative Services, the Secretary of the Department of Transportation, and a representative of the Office of the Mayor of the City of Wilmington. The Council also includes representatives of various private groups such as the Latin American Community Center, the Delaware Commission for Women, the Wilmington Branch of the N.A.A.C.P., the Delaware Contractor's Association and the Association of Builders and Contractors in Delaware. The Delaware Economic Development Office supplies staff support for the Council.

1 The entire text of the Order is attached.

The functions of the Council do not invoke the constitutional problems associated with set-aside programs that establish measurable goals. In City of *Richmond v. JA. Croson, 488* U.S. 469 (1989), the United States Supreme Court invalidated a municipal ordinance requiring that 30% of public contracts be distributed to minority-owned businesses. The Court applied a "strict scrutiny" standard of review in assessing state and local minority business enterprise programs under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. *Id.* at 493-494.

While a state or local government may initiate efforts to eliminate the effects of racial discrimination within its jurisdiction, the state or local government must have a compelling interest supported by strong evidentiary basis that remedial action is necessary to correct past discrimination. *Id.* at 491-492, 500. The remedial program established must be "narrowly tailored to remedy the effects of prior discrimination." *Id.* at 508. This Order requires that public works projects shall *"in accordance with applicable federal and state law,* attempt to maximize the participation of women and minorities in construction and professional

service firms during the course of the project."

The holding in *Croson* was expanded to the federal government in *Adarand Construction, Inc. v. Pena*, 515 U.S. 200 (1995). That decision, interpreting the Fifth Amendment to the United States Constitution, determined that a federal highway project requiring numerical goals to provide contracts to minority-owned subcontracting companies must serve a compelling government interest. The Court reasoned that all racial classification must be analyzed under the strict scrutiny standard, irrespective of whether such classifications arise in federal, state or local programs.2

The method of establishing whether minority business enterprises are justified is to conduct a disparity study to provide statistical evidence which establishes that prior discrimination has worked to either prevent or inhibit minority businesses. See *C'ontractor's Assoc. of Eastern Pennsylvania, Inc. v. City of Philadelphia,* 91 F.3 d 586 (3d Cir. 1996). Consequently, a disparity study is a prerequisite for a government-sponsored program that establishes numerical goals.

2 Unlike racially based business enterprise programs, gender based programs are subject to an intermediate level of scrutiny. *Contractor's Assoc. of Eastern Pennsylvania v. City of Philadelphia, 6* F.3d 990, 1000-1001 (3rd Cir. 1993). See also *California v. Webster, 430 U.S.* 313 (1977) (applying intermediate scrutiny to uphold federal statute that permitted women to eliminate low-earning years from retirement benefit calculation rather than men).

The power to issue executive orders must be based on either a statute or constitutional provision. *Minnesota et al v. Mille Slacs Vand of Chippewa Indians, 526 U.S. 172 (I 999).* The executive powers of the State are delegated to the Governor. Del. Const. of 1897, Art 111, § 1 ("The supreme executive powers of the State shall be vested in a Governor"). Executive orders are presumed constitutional unless "unconstitutionality clearly appears."*Strauss v. Governor,* Mich. 592 N.W.2d 53 (1999).

Here, the Order is clearly subject to applicable federal and state law in its efforts to maximize the participation of women and minorities in construction and professional services. The Delaware Procurement Act, 29 Del. C. ch. 69, is silent on gender-based or minority business enterprises.3 The Council, however, in the implementation of the Order, is required to comply with the principles of federal law established in *Croson* and *Adarand.* The language of the Order is consistent with the message of *Croson:*

> Even in the absence of evidence of discrimination, the City has at its disposal a whole array of race-neutral devices to increase the accessability of city contracting opportunities to small entrepreneurs of all races. Simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would open the public contracting market to all those who have suffered the effects of past societal discrimination or neglect. Many of the formal barriers to new entrance may be the product of bureaucratic inertia more than actual necessity and may have a disportionate effect of the opportunities open to new minority firms. Their elimination or modification would have little detrimental effect on the city's interests arid would serve to increase the opportunities available to minority business without classifying individuals on the basis of race. The city may also act to prohibit discrimination and the provision of credit or bonding by local suppliers and banks. Business as usual should not mean business pursuant to the unthinking exclusion of certain members of our society from its rewards.4

Croson 488 U.S. at 509, 510.

3 The Act does, however, contain precatory language that it is the policy of the State "to increase mutual understanding, respect, trust, and fair and equitable treatment for all persons who deal with the state procurement process." 29 Del. C. § 6901(2).

In light of the above, we conclude that the Order complies the Fourteenth Amendment of the United States Constitution on its face. Consistent with the terms of the Order that public works projects be administered in accordance with applicable federal and state law, any programs administered by the Council must comply with the applicable federal or state laws governing minority or gender-based business enterprises.

4 Under existing law, the federal government can give preferential bid consideration to minority-, women-, and veteran-owned business enterprises in the letting of government contracts. The so-called 8A program presumes specifically that socially and economicallv disadvantaged individuals include minorities. 15 U.S.C.s § 637(8)(C)(ii). Justice O'Connor, referring to the program in her *Croson* decision, did not challenge these findings or deny "that the sorry history of both private and public discrimination in this country has contributed to a lack of opportunities" for minority businesses. *Croson,* 488 U.S. at 498. The 8A program also provides that "every Federal agency, . . . is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such . . . opportunities as may be commensurate with the efficient and economical performance of the contract: . . ." 15 U.S.C. § 637(8)(E). The Order stops considerably short of such

measures.

If you have any questions, please feel free to contact our office.

Very truly yours,
Lawrence W. Lewis, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

EXECUTIVE DEPARTMENT
Dover

EXECUTIVE ORDER
NUMBER SEVENTY-ONE

TO: HEADS OF ALL STATE DEPART, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE

RE: CREATING THE GOVERNOR'S BUILDING AND TRADE COUNCIL

WHEREAS, the State of Delaware is committed to providing equal employment opportunities to all Delawareans;

WHEREAS, the State of Delaware is committed to maintaining a high quality workforce that draws upon the talents of our diverse citizens to participate in the state's economy;

WHEREAS, the building and construction trade organizations are .engaged in efforts to recruit, hire and promote qualified women and minorities in the industry;

WHEREAS, the State of Delaware has a comprehensive building and construction apprenticeship and training program operated by the state Department of Labor and financially supports building and construction education programs in the New Castle County Vocational School District, Polytech School District, Sussex County Vocational School District and the Delaware Technical and-Community College;

WHEREAS, despite these efforts, much remains to be accomplished in striving for a workforce that reflects the diversity of the state's population and labor market;

WHEREAS, the State of Delaware is committed to fostering the creation, growth and success of women and minority construction firms and professional service firms related to the construction industry;

WHEREAS, the coordinated efforts of the public and private sectors are necessary to significantly increase the participation of qualified women and minorities in all aspects of the building and trade industry; and,

WHEREAS, if the State of Delaware is to make real progress in improving the diversity of the workforce in the building and trade industry and increasing the number of women and minority construction and related personal service firms located and doing business in Delaware, it must establish and implement a practical and efficient outreach program that promotes sound recruitment, education and business support practices.

NOW, THEREFORE, I, Thomas R Carper, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby order and declare the following:

1. The Governor's Building and Trade Council (hereinafter referred to as "Council") is hereby established. The charge of the Council shall be to develop a statewide recruitment and business support strategy to ensure that public and private initiatives are coordinated and focused so as to provide the support and assistance required to significantly increase the participation of qualified women and minorities in all aspects of the building and trade industry.

2. The Council shall be composed of the following:

(i) Director of the Delaware Economic Development Office;

(ii) Secretary of the Department of Labor;

(iii) Secretary of the Department of Administrative Services;

(iv) Secretary of the Department of Transportation;

(v) A representative of the Office of the Mayor of the City of Wilmington;

(vi) A representative of the Latin American Community Center,

(vii) A representative of the Delaware Commission for Women;

(viii) A representative of the Wilmington branch of the National Association for the Advancement of Colored People (N.A.A.C.P.);

(ix) A representative of the Urban League;

(x) A representative of the Interdenominational Ministries Action Council of Delaware, Inc.;

(xi) A representative of the Delaware Contractors' Association;

(xii) A representative of the Association of Builders and Contractors;

(xiii) A representative of the Delaware Building and Trade Association; and

(xiv) A representative of the Delaware Construction Council.

3. The Delaware Economic Development Office shall supply the following:

(i) Staff support to the Council;

(ii) Communicate and coordinate the implementation of the Council's recommendations across state agencies; and,

(iii) Coordinate the activities of state agencies with the private sector.

4. The Department of Administrative Services and the Department of Transportation shall strive, through its outreach efforts and coordination with the Council and private sector, to maximize the number of qualified minorities and women as a component of the total workforce during the course a public works project.

5. Each public works project administered by the Department of Administrative Services and the Department of Transportation shall, in accordance with applicable federal and state law, attempt to maximize the participation of women and minority construction and professional service firms during the course of the project.

6. The Council shall monitor the public works projects of the Department of Administrative Services and the Department of Transportation consistent with the goals of this Order.

Approved this 7th day
of December,1999.

Thomas R. Carper, Governor

Attest, Edward J. Freel, Secretary of State

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB15

October 4, 2000

The Honorable David P. Sokola
24 Beech Hill Drive
Newark, DE 19711

The Honorable Roger P. Roy
3 Citation Court
Wilmington, DE 19808

RE: Delaware State Housing Authority Application Procedures

Dear Senator Sokola and Representative Roy:

On August 1, 2000 Representative Roy requested a legal opinion from the Department of Justice concerning the Delaware State Housing Authority's decision to deny access to a project market study for the Cynwyd Club apartments. On August 4, 2000 Senator Sokola submitted a similar request to the Department of Justice. In each of your letters, you also noted that the Delaware State Housing Authority ("DSHA") took action on the various applications for the project and you questioned whether such action was valid if the market studies were not public and should have been.

On or about August 10, 2000, DSHA, after review, made the market study for the Cynwyd apartment project available to both of you without restriction. Subsequently, on September 25, 2000, DSHA notified both of you that, in future applications for housing credits, "the market study submitted as part of the application will be made available to the public, upon request, once all of the applications are submitted." While that decision moots the first question you posed, your discussion on this subject with our office has placed the question of public accessability in a broader context, namely, the extent to which all documents submitted by an applicant are publicly accessible.

The starting point for such an analysis is 29 Del. C. § 10002(d) which defines public record as:

> information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise complied or collected by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.

Clearly, the application, and any documentation submitted by an applicant in support of the application, falls within the definition of a public record. However, Section 10002(d) provides fourteen exceptions to the definition of public documents including subsection (2) which states that "[T]rade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature" shall not be deemed public. One of the significant concerns for DSHA is the fact that the funding cycle is a several step process that takes the better part of a year from start to finish. The applicants are required to submit significant amounts of financial information not only about the applicant itself but the cost formulas that will be used to determine the cost of the project and the amount of money or tax credit sought from the DSHA. In circumstances where there is more than one applicant for a particular project, the process can be quite competitive and certain aspects of the information submitted in the application, if made public prior to the final approval of the grant, could result in the disclosure of commercial or financial information which is privileged or confidential.

Under Delaware law, a trade secret is "confidential and proprietary information" which, if it "falls into a rival's hands", will cause "serious competitive disadvantage." ID Biomedical Corp. v. TM Technologies, Inc., Del. Supr.,

1994 WL 384605, at p. 4 (July 20, 1994). "Faced with objections based on trade secret or proprietary information, courts have applied tests that look first to whether the information sought is indeed a trade secret and whether disclosure of such information will be harmful to the objecting party." MacLane Gas Co. v. Enserch Corn., Del. Ch., 1989 WL 104931, at p. 2 (Sept. 11, 1989) (Chandler, V.C.). The fact that two or more entities may be in competition for a tax credit does not necessarily cloak their submission with the protection afforded by this section of FOIA. Stated another way, it is the information, not the process which is subject to the FOIA exception.

In Opinion 77-029 (Sept. 27, 1977), this Office relied on cases under the federal FOIA trade secrets exception, which "uses language nearly identical to Delaware's Sunshine Law." Id. Commercial or financial information "'is confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. "' Id. (quoting National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974) (footnote omitted). See also United Technologies Corp v Department of Health & Human Services, 574 F. Supp. 86, 89 (D. Del. 1983).

Trade secrets "consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives an individual or business an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers."' Opinion 77-029 (Sept. 27, 1977) (quoting Restatement of Torts Section 757, comment b). The factors in determining whether information is a trade secret are: (1) the extent to which the information is known outside the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended developing the information: and (6) the ease or difficulty with which the information could properly be acquired or duplicated by others. Opinion 77-029 (citing Space Aero Products Inc. v. R.E. Darling Co., Md. App., 208 A.2d 74 (1965)).

In Opinion 87-I031(Nov. 4,1987), this Office determined that personal financial statements filed by licensees with the Alcoholic Beverage Control Commission contained confidential information and were not disclosable under FOIA. The exemption for confidential financial information was intended "'broadly to protect individuals from a wide range of embarrassing disclosures."' Id. (quoting Gregory v. FDIC, 470 F. Supp. 1329, 1334 (D.D.C. 1979), rev'd in part on other grounds, 631 F.2d 896 (D.C.Cir. 1980)). "The release of information regarding one's assets, profits and losses, stock holdings, loans and collateral" are confidential financial information. Opinion 87-I031.

The trade secrets exception comes up often in public contracts, when a losing bidder asks to see the proposal submitted by the winning bidder, as well as documents evidencing how the agency decided to award the contract. As a general rule, responses to a government agency's request for proposal "are public records subject to the provisions of the Freedom of Information Act." Computer Co. v. Division of Health & Social Services, Del. Ch., 1989 WL 108427, at p. 3 (Sept. 19, 1989) (Hartnett, V.C.). See Opinion 77-037 (Dec. 28, 1977) (bid packages are information "received by a public body" and therefore subject to FOIA, unless they contain trade secrets or confidential or privileged information, in which case they may be redacted).

In Hecht v. Agency for International Development, C.A. No. 95-263-SLR (D. Del., Dec. 8, 1996), federal contractors argued that information they submitted to the federal government was exempt from disclosure as trade secrets. The contractors sought to prevent disclosure of employee resumes, claiming that would open the door to recruitment by competitors. The federal district court found that "[t]he possibility of another company recruiting away one's employees is present in nearly every industry, . . . [and] [t]he possibility that contractors would suffer substantial harm in this manner resulting from the disclosure of their employees' biographical data appears remote." Slip. op. at 19. The contractors also sought to prevent disclosure of indirect cost rates (fringe benefits, overhead, and general and administrative costs). Although the unit prices charged to the government were not exempt from disclosure, the district court concluded that disclosure of the contractor's profit multiplier could result in an unfair competitive advantage, by enabling competing contractors "`to accurately calculate [the contractor's] future bids and its pricing structure . . . . "' Slip op. at 22 (quoting Gulf & Western Industries. Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1979)). The district court also held that information in bid proposals regarding the contractor's technical approaches need not be disclosed, because it contained details about the contractors' processes, operations, and style of work.

Accordingly, DSHA must, similar to other state agencies, work from the premise that any application and supporting documentation is presumed open to the public unless it falls within one of the Section 10002(d) exceptions of being deemed a "trade secret" or of being characterized as information of a "privileged or confidential nature." If an applicant marks a document as confidential or trade secret, the agency is not bound by that claim but is required to make its own independent determination whether the document in fact meets the statutory test of being a trade secret or

confidential financial information.

The second issue raised by your inquiry was whether the failure to produce the market study invalidated any action taken by the Council on Housing (the "Council") with respect to the applications. Traditionally, the only relief when there is a denial of access to public documents is a finding by our office or a ruling by an appropriate court that the agency will be required to make public a document previously withheld from public access. The only cure for a denial of access is the availability of access.

Actions taken by a public body in a public meeting are subject to the provisions of 29 Del. C. § 10004 relating to open meetings. The purpose of § 10004 is to assure that the business of the public body is conducted in the open and that the public be fairly informed in advance of the subject(s) to be considered at the meeting. In the context of actions taken by the Council on the Cynwyd apartment project, there is no allegation nor basis to conclude that any of the provisions of Section 10004 were violated. Accordingly, it is our conclusion that the Council's action in conducting its consideration and action on the application through July 31, 2000 were in conformity with Section 10004 and not subject to any remedial action under 29 Del. C. § 10005.

Please feel free to contact me if you have any further questions.

Very truly yours,
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB16

October 16, 2000

The Honorable Brian J. Bushweller
Secretary, Department of Public Safety
303 Transportation Circle
Dover, DE 19901 D610

RE: Opinion of the Attorney General relating to the Sheriff as a Police Officer

Dear Secretary Bushweller:

On October 13, 2000 you asked the Attorney General for an opinion regarding two issues: (1) are the sheriffs and their deputies police officers, and (2) may the sheriffs' departments affix emergency lights to their vehicles. Your inquiry was prompted by the current events in Sussex County and more specifically, a letter dated October 13, 2000 from James Todd Mumford.

Simply stated, Mr. Mumford's letter suggests that persons, specifically deputy sheriffs, who have received a certification from the Council on Police Training ("Council"), are, by that fact alone, police officers. He also contends, therefore, that they have police powers and any vehicle they operate in the course of their duties is a police vehicle and may be equipped as such. A analysis of Delaware law leads to the conclusion that, under current Delaware law, the sheriff' is not a police officer as defined in the Delaware Code. Neither is the sheriff authorized to equip the vehicles of his or her office with emergency lights.

1 For the purposes of this letter, any reference to the term "sheriff" shall mean the sheriff and deputy sheriffs.

The first question is whether the sheriff is a police officer.2 *11 Del.* C. § 1911 discusses the authority of police officers and defines a police officer as:

> [a]ny police officer holding current certification by the Council on Police Training as provided by Chapter 84 of this title and who is:
>
> (1) A member of the Delaware State Police;
>
> (2) A member of the New Castle County Police;
>
> (3) A member of the police department, bureau or force of any incorporated city or town;
>
> (4) A member of the Delaware River and Bay Authority Police;
>
> (5) A member of the Capitol Police;
>
> (6) A member of the University of Delaware Police: or
>
> (7) A law enforcement officer of the Department of Natural Resources and Environmental Control. (emphasis added)

The conjunctive word "and" imposes a two tiered requirement for a person to meet the definition of a police officer and the statute specifically delineates persons who shall exclusively have police authority. Accordingly, a person who may have the Council's certification but who is not a member of any of the specifically named police departments is not considered a police officer under Delaware law.

An analogy may be made to persons who have law, medical, accounting, engineering and similar degrees who may have the training to engage in those professions, but without the appropriate State approved license are prohibited from doing so. Any attempt on their part to engage in their respective professions without such a license would subject them to the same penalties as any other unlicenced person. The fact that the sheriff, and persons like constables, parole officers, correctional officers and the Attorney General and

her Deputy Attorneys General, may have certain law enforcement authority does not make them police officers as defined by Delaware law. That conclusion would apply even if any of those persons obtained a certification from the Council

The conclusion that the sheriff is not a police officer is reinforced by reference to 11 *Del. C.* Chapter 84 which governs the Delaware Police Training Program. The definition of a "police officer" in Section 8401(5) includes subsection b.1. which says that the term shall not include " [a] sheriff, regular deputy sheriff or constable." By excluding the sheriff from the mandatory training requirements of Chapter 84, the General Assembly recognized that the sheriff is not a police officer as otherwise defined in the Delaware Code.

2 On August 29, 1995, my office issued Opinion 95-IB27 relating to the duties of the sheriff to transport prisoners at the direction of a judge of the Family Court. While that opinion discussed the various duties of the sheriff, it did not address the question of whether a sheriff is a "police officer" or whether he is entitled to display emergency lights on his vehicles.

Neither do we find that references to other law enforcement statutes like those relating to law enforcement officers of the Department of Natural Resources and Environmental Control are helpful. *29 Del.* C. § 8003A says that DNREC officers "shall have police powers similar to those of sheriffs, constables, peace officers and other police officers" when enforcing the laws and regulations for which they were hired. That reference to other officials and police officers is for descriptive purposes and is clearly meant to describe the various duties of the DNREC officers, not to expand or define the duties of the persons to whom reference is made.

Since the sheriff is not a police officer, as defined by Delaware law, it is clear that vehicles operated by sheriffs are not police vehicles. Although the term "police vehicle" is not specifically defined in the Delaware Code, *11 Del.* C. § 4106(e) includes, as emergency vehicles, vehicles operated by police departments. Vehicles operated by the sheriff are not included anywhere in Section 4106 as it applies to emergency vehicles. While emergency vehicles are not otherwise defined, Delaware law prohibits the use of flashing lights except on emergency vehicles authorized by the Department of Public Safety. *21 Del.* C. § 4353(c). Under current Delaware law, unless the Department of Public Safety authorizes the sheriff to use emergency lights, he is not allowed to do so.

Very truly yours,
Michael J . Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB17

October 25, 2000

The Honorable Thomas J. Cook
State Election Commissioner
32 W. Loockerman Street
Dover, Delaware 19904

RE: Burris-Rochford Education Plan Mailing

Dear Commissioner Cook:

Your letter of October 23, 2000 requests the advice of the Attorney General regarding legal issues implicated in the Republican State Committee's mailing of a brochure entitled the "Burris-Rochford Education Plan." You have apparently been asked for an advisory opinion, pursuant to *15 Del.* C. § 8041, on whether the mailing constitutes a "contribution" under 15 *Del.* C. § 8002(6).' In order to respond to that request for an advisory opinion, you have asked for this office's advice regarding three questions:

(1) Do the contribution limits in *15 Del.* C. § 8010(b) violate any rights granted to the Republican State Committee under the First Amendment of the United States Constitution;

(2) Does the mailing at issue constitute an "expenditure" by a political committee, subject to the laws of Delaware as defined under *15 Del.* C. ,§ 8002(9), in light of relevant case law; and

(3) To the extent that this mailing constitutes an "expenditure" under *15 Del. C.* § 8002(9), in applicable case law, does it constitute an "independent expenditure" under *15 Del. C.* § 8023(b).

1 This office is aware that you received the request for your advisory opinion in a letter dated October 4, 2000. Fifteen *Del.* C. § 8041 prohibits the disclosure of the identity of the requestor without his or her consent.

Fifteen *Del.* C. Subchapter II imposes limitations on the amount of contributions that candidates, parties, and persons may make and accept. If the mailing were paid for through a direct contribution to the Burris/Rochford campaigns, it would, of course, be limited according to the provisions of 15 *Del.* C. §§ 8010-8012. However, because the mailing was paid for by the Republican State Committee, and not directly by the Burris/Rochford campaigns, the analysis becomes more complex.

Section 8010(b) provides that no political party may make a "contribution" that would cause the total amount of

contributions accepted to exceed specified amounts. Fifteen *Del.* C. § 8002(6) defines a "contribution" as "any advance, deposit, gift, *expenditure* or transfer, of money or any other thing of value, to or for the benefit of any candidate or political committee involved in an election . . ." (Emphasis added). Therefore, if the mailing was paid for by the Republican State Committee, in order to consider the amount paid as a "contribution" limited by Section 8010(b), it must constitute an "expenditure." An "expenditure" is defined by Section 8002(9) as "any payment made or debt incurred, by or on behalf of a candidate or political committee,2 or to assist in the election of any candidate or in connection with any election campaign." The analysis of the issue, therefore, must begin with an examination of the second question: does the mailing constitute an "expenditure" under *15 Del. C. § 8002(9)?*

2 The Republican State Committee is a "political committee" as defined *by 15 Del.* C. § 8002(12): "any organization or association whether permanent or created for the purposes of a specific campaign, which accepts contributions or makes expenditures for or against any candidate or candidates, *and includes all political parties,* political action committees and any candidate committee." (Emphasis added)

The seminal case on campaign finance law is *Buckley v. Valeo, 424 U.S. 1 (1976),* and any discussion of the law in this area must begin with the broad limitations imposed by *Buckley.* In *Buckley,* the United States Supreme Court examined constitutional challenges to several provisions of the Federal Election Campaign Act, including provisions regulating monies contributed by individuals to candidates and campaigns. *Buckley* distinguished between two types of monies spent: "contributions," which are spent to support a particular candidate in his campaign for office, and "expenditures," which are spent to advocate for a particular point of view. *Id*. at *47.*

Generally, the Court held that contributions to a particular candidate may be strictly regulated. *Id*. at 19-39. Expenditures, however, contain core political speech and implicate fundamental First Amendment issues; therefore, they may not be subjected to the same level of regulation. *Id*. at *44-45*. This broad generalization of the Court's lengthy opinion, however, is only the beginning of the analysis. The question of whether monies spent are expenditures or contributions turns on two separate inquiries: whether the monies spent were spent in coordination with a candidate and his campaign or independently, and whether the material paid for by the monies constitutes "express advocacy," or "issue advocacy."

I. Express v. Issue Advocacy

The contribution limitations examined in *Buckley* limited the amount spent by a person "relative to a clearly identified candidate . . . ." *Id*. at 39. In its examination, the Court first addressed the appellants' challenge that the statute was unconstitutionally vague. The Court noted that because the statute imposed criminal penalties for violations, the provision must be closely examined for specificity. *Id*. at 40-41. In order to save the provision's constitutionality from the attack for vagueness, the Court interpreted the statute only to regulate "express advocacy," that is, speech which expressly advocates the election or defeat of a candidate with expressed terms such as "vote for", "elect", "defeat." *Id*. at 41-45; 78-80. All other advocacy, which does not advocate for a particular fate of a candidate, has come to be described as "issue advocacy."

The Supreme Court of Delaware also supports a limited interpretation to preserve a statute's constitutionality. In *New Castle County Counsel v. State,* Del. Supr., 688 A.2d 888, 891(1997), the Court held:

> We begin our analysis of the affect of the 1996 acts by acknowledging the presumption of constitutionality which acts of the General Assembly necessarily enjoy. This presumption not only imposes upon one attacking the constitutionality of a statute the burden of demonstrating its invalidity it also requires a measure of self-restraint upon Courts sitting in review over claims of unconstitutionality. (Citations omitted).

Further, "if there are two reasonable interpretations of a statute, a court should choose the one which saves it against a constitutional attack. *New Castle County Council v. State,* Del. Super., 698 A.2d 401 (1996), *aff'd,* Del. Supr., 688 A.2d 888 (1997)(citations omitted).

In examining 15 *Del. C.* Chapter 80 in light of the standards for specificity set forth in *Buckley,* it is readily apparent that the definitions of "expenditure" and "contribution" are subject to the same objections the appellants raised to the Federal Election Campaign Act in *Buckley.* The definition of "expenditure" includes the phrase "in connection with any election campaign," and the definition of "contribution" includes the phrase "involved in an election." 15 *Del. C. ,§ 8002.* In light of *Buckley's* admonition that campaign finance acts must be narrowly construed to avoid constitutional vagueness, Section *8002's* definitions should be interpreted to apply only to express advocacy.

The mailing at issue is a brochure entitled "The Burris-Rochford Plan. Real Leadership in Education." The brochure outlines the key points in an education plan espoused by John Burris and Dennis Rochford, and exhorts the reader to "Let the legislature know that you support the John Burris and Dennis Rochford plan to make Delaware's

schools America's best." The brochure further provides the toll free number to Legislative Council.

In light of the discussion above, your second question, i.e., whether the mailing constitutes an "expenditure," subject to Title 15's limitations on campaign contributions, must be answered in the negative. Because a broader interpretation would call into question the constitutionality of 15 *Del. C.* Ch. *80,* Section *8002's* definitions of "expenditure" and "contribution" must be interpreted to apply only to "express advocacy." This mailing does not meet the admittedly strict definition of express advocacy set forth by *Buckley.* The mailing does not advocate the election or defeat of a particular candidate, and does not exhort the reader to vote for or against a particular candidate; it does not use words such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," or "reject." *Buckley,* 424 U.S. at 45 n.52.3 Because the mailing does not constitute express advocacy, it would not be considered an "expenditure" and, therefore, a "contribution," under Section 8002.

3 It is interesting to note that Section 441(d) of the Federal Election Campaign Act was amended after *Buckley* to include the express advocacy requirement, as was the *post-Buckley* amendment to Section 434(e). *See Federal Election Commission v. Central Long Island Tax Reform Immediately Committee, 616* F.2d 45, 52 n.8 (2d Cir. 1980).

II. Independent v. Coordinated Expenditures

The *Buckley* decision is clear on certain points. First, that contributions to a candidate or his campaign, spent in coordination with the campaign, are subject to regulation. *Buckley,* 424 U.S. at19-39. Second, that monies spent by an independent individual or organization, and which constitute issue advocacy, are protected by the First Amendment. *See also, e.g., Vermont Right To Life Committee v. Sorrell,* 221 F.3d 376 (2nd Cir. 2000); *Federal Election Commission v. Central Long Island Tax Reform Immediately Committee,* 616 F.2d 45 (2nd Cir. 1980).

What *Buckley* leaves unclear, however, is whether materials constituting issue advocacy by political parties, either coordinated or uncoordinated with a candidate or his campaign, are protected by the First Amendment, and are similarly unassailable.

Under the heading of "General Principles," the Court, when speaking of the Federal Election Campaign Act, stated that:

> the Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are intricate to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure (the) unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

Id. at 14 (citations omitted).

The *Buckley* court upheld contribution limits, as they only minimally impinged on free speech and serve a significant governmental interest of preventing corruption or the appearance of corruption, and struck down expenditure limitations for failure to serve a compelling state interest in preventing corruption. However, the *Buckley* court seems to have approved the banning of expenditures which could be characterized as contributions. The Court stated:

> The parties defending § 608(e)(1) contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet such controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act. Section 608(b)'s contribution ceilings rather than §608(e)(1)'s independent expenditure limitation prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions.

Id. at 46-47. The Court then struck down the ceiling on *independent* expenditures as it "fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process, it heavily burdens core First Amendment expression." *Id.* at 47-48.

The *Buckley* decision appears to assume that issue advocacy is independent advocacy, that is, advocacy undertaken by an individual other than a group, party or committee coordinated with the candidate. *See Id.* at 45-46, 79-80. However, that assumption was undercut by the Court in *Colorado Republican Federal Campaign Committee v. Federal Election Commission,* 518 U.S. 604 (1996), when the Court expressly stated that an expenditure by a political party should not be automatically assumed to be a coordinated expenditure that may be constitutionally regulated. *Id.* at 618 ("We do not see how a Constitution that grants to individuals, candidates, and ordinary political committees the right to make unlimited independent expenditures could deny the same right to political parties.")

See also Missouri Republican Party v. Lamb, 2000 WL 1277360 (8th Cir. 2000).*Colorado Republican Federal Campaign Committee,* after a string of remands, has resulted in a petition for certiorari being recently granted by the Supreme Court once again. *Colorado Republican Federal Campaign Committee v. Federal Election Commission, 96* F.3d *471 (10"* Cir. *1996), on remand, 41* F.Supp.2d *1197* (D. Colo. 1999), *aff'd,* 213 F.3d 1221 (10' Cir. 2000), *cert. granted, 2000 WL1201886* (October 10, 2000).

Independent of the United States Supreme Court's treatment of the matter, the principle that a political party can indeed make an independent expenditure has begun to take root in state case law as well. In *Washington State Republican Party v. Washington State Public Disclosure Commission,* 4 P.3d 808 (Wash. *2000),* the Washington State Supreme Court recently held that the Republican Party's expenditure of funds to purchase an issue-oriented television advertisement was not subject to the state campaign finance law's limitations.

The Court applied a *Buckley* analysis to reach the conclusion that the television advertisement constituted issue advocacy, and not express advocacy. Despite the fact that the advertisement was paid for by the Washington State Republican Party, the Court found that the expenditure was protected First Amendment speech and was beyond the scope of permissible regulation. *Id.* at 825-26. ("When a political party makes expenditures for issue advocacy, the threat of corruption posed by direct contributions to candidates is absent. By the same token, use of contributions for issue advocacy does not circumvent constitutional limitations on contributions to candidates.")

The United States Supreme Court's recent decision to review the further appeal after remand to the Tenth Circuit Court of Appeals in *Federal Election Commission v. Colorado Republican Federal Campaign Committee,* 213 F.3d 1221 (10th Cir. 2000), *cent. granted* (October 10, 2000), may provide additional guidance on the issue of monies spent by a political party on behalf of a candidate. In its decision upon remand, the Tenth Circuit held that the political party expenditure limitations of the Federal Election Campaign Act violated the Colorado Republican Party's rights under the First Amendment. The Supreme Court's decision on the constitutionality of limiting political party expenditures will directly affect a party's ability to engage in express advocacy for its candidates. Additionally, the Supreme Court's decision may speak to a political party's ability to engage in issue advocacy.

In sum, although this is a complex and somewhat unclear area of the law, after review of all the relevant case law, this office believes that the prudent course is to advise you that "issue advocacy," which is core First Amendment speech, is beyond the scope of regulation. Therefore, monies spent on issue advocacy, put forth by a party, a political committee, or an independent organization or individual, are neither "contributions" nor "expenditures" under Section 8002.

It is unfortunate that this issue was not raised in time for it to have been fully litigated in court, which would have provided a definitive answer for those whose conduct is being judged by the electorate. The Attorney General strongly recommends that, after both this election and the United State Supreme Court's resolution in *Federal Election Commission v. Colorado Republican Federal Campaign Committee,* either you or the parties propose legislative amendments to Chapter 80 that will expressly conform it to the United States Supreme Court's holdings in *Buckley* and *Colorado Republican Federal Campaign Committee.*

Should you have any questions, please do not hesitate to contact us.

Very truly yours,
Malcolm S. Cobin, Assistant State Solicitor
C. Drue Chichi, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB18

October 31, 2000

Mr. Albert G. Porach
220 E. Park Place
Newark, DE 19711

Re: Freedom of Information Act Complaint Against City of Newark

Dear Mr. Porach:

Our Office received your Freedom of Information Act ("FOIA") complaint on October 2, 2000. You allege that the City of Newark ("the City") violated the public records requirements of FOIA by failing to provide you with a written statement regarding available funding for a new power generating project by the Delaware Municipal Electric Corporation "DEMEC"). You also allege that the City violated the open meeting requirements of FOIA by holding a Council meeting on August 28, 2000 without adequate notice to the public that it might vote to participate in the new DEMEC power generating project.

By letter dated October 6, 2000, we asked the City to respond to your complaint within ten days. We received the City's response on October 17, 2000. According to the City,

the written funding statement you requested was never prepared. The City contends that it gave adequate notice to the public of the proposed generation project in the agenda for the August 28, 2000 meeting of the City Council.

A. Public Records

FOIA requires that "[a]" public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body." 29 *Del.* C. Section 10003(a). You maintain that the City charter required the City to prepare a written statement that there was a sufficient unencumbered balance from prior appropriations to pay for the generation project. The City disagrees. Our Office does not take a position on this issue of municipal law, since our jurisdiction is limited to the FOIA issues raised in your complaint.

FOIA does not require a public body to create a document that does not exist. A citizen "is entitled only to records that an agency has in fact chosen to create and retain." Att'y Gen. Op 99-IB12 (Sept. 21, 1999). Accord Att'y Gen. On., 96-IB28 (Aug. 8, 1996) ("FOIA does not require a public body to create a record where the requested record does not exist"). Because it is undisputed that the document you requested does not exist, there is no violation of FOIA by virtue of the City's denial of your request.

B. Open Meeting

FOIA requires public bodies to post a notice and the agenda "of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof." *See 29 Del. C.* Section 10004(e)(2). You do not dispute that the City posted a notice and agenda of its August 28, 2000 meeting seven days in advance. The agenda lists as Item 20-B., "Proposed DEMEC Power Generation Project." You apparently believe that the agenda did not provide the public with adequate notice that the Council might vote to authorize the City's payment for the DEMEC generation project, as opposed to merely discussing the project. We do not read the notice requirements of FOIA to require that level of specificity.

FOIA defines "agenda" as "a general statement of the major issues expected to be discussed at a public meeting." 29 *Del. C.* Section 10002(f). We find that the City gave adequate notice to the public in the agenda that the Council would be deciding whether to participate in the new DEMEC power generation project at the August 28, 2000 meeting. Our finding is reinforced by the minutes of that meeting. After the DEMEC President's presentation, there was extended discussion of such issues as cost and financing in response to questions from citizens. The public had a full and fair opportunity to air the issues before the Council voted unanimously to go forward with the new power generation project.

Conclusion

For the foregoing reasons, we find that the City did not violate the public records or open meeting requirements of FOIA as alleged in your complaint.

Very truly yours,
W. Michael Tupman, Deputy Attorney General

APPROVED
Michael J . Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB19

November 8, 2000

Mr. Milton F. Morozowich
R.D. 2, Box 166
Bridgeville, DE 19933

Re: Freedom of Information Act Complaint Against Woodbridge School District

Dear Mr. Morozowich:

On September 19, 2000, our Office received your complaint alleging that the Woodbridge School District (the "School District") violated the Freedom of Information Act, 29 Del. C. Chapter 100 ("FOIA"), by not providing you with access to public records.

By letter dated September 29, 2000, our Office asked the School District to respond to your complaint within ten days. At the request of the School District, we granted an extension of time until October 26, 2000. We received the School District's response, together with supporting documents, on October 26, 2000.

By letter dated July 28, 2000, you made a FOIA request to the School District for: (1) the approved regular meeting minutes for June 13, 2000; (2) the number of students currently enrolled in the secondary summer school program by specific subject area: and (3) the total number of board members, administrators, community members and staff who attended the SREB Conference and the Arlington Echo Workshop, with a breakdown of the costs for each event. You also asked to listen to the audio tapes of the April 22 and June 13, 2000 regular board meetings.

By letter dated August 2, 2000, the School District provided you with the June 13, 2000 minutes. The letter stated that the secondary summer school information "is being prepared by Ms. Kay Smith and will be forwarded to

you upon receipt by the District Office." The custodian of the tapes was on vacation, and the School District stated that when he returned he would "contact you regarding the listening of the two (2) audio tapes you requested."

By letter dated September 15, 2000, the School District provided you with "the documentation regarding the SREB Conference in Nashville and the Arlington Echo Staff Retreat in Annapolis. You will also find a breakdown by expense category and funding source for the SREB Program."

The School District did not provide you with the secondary summer school information you requested until October 24, 2000. We do not believe that was as timely as it should have been, but the fact remains the you received the information you requested.

As for the two audio tapes, the School District has offered to make them available. You can make arrangements to listen to them during ordinary business hours.

Conclusion

For the foregoing reasons, we conclude that the School District did not violate the public records requirements of FOIA.

Very truly yours,
W. Michael Tupman, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 00-IB20

December 11, 2000

Mr. Michael Strine
Assistant to the Secretary
Department of Finance
820 French Street
Wilmington, DE 19801

RE: ELDERLY PROPERTY TAX RELIEF AND EDUCATION EXPENSE FUND

Dear Mr. Strine:

You have asked whether the Secretary of Finance ("the Secretary") may extend the time for filing applications for property tax credits for the initial tax year under 72 Del. Laws c.256, the Elderly Property Tax Relief and Education Fund ("the ETR Fund"). For the reasons expressed below, we conclude that he may.

BACKGROUND

In August of 1999, the General Assembly created the ETR Fund to provide property tax relief to the elderly. Persons 65 years of age or older at the beginning of the tax year were granted a maximum credit of up to 50 % of the local school tax after certain adjustments, or $500.00. No credit was allowed unless a written application was filed with the county receiver of taxes or county treasurer. The counties are charged with the duty to collect local school property taxes. The legislation stipulated that for the tax year beginning after May 1, 1999, and before May 1, 2000, the initial tax year, that applications were due in accordance with rules and deadlines established by the Secretary of Finance. For subsequent tax years the applications were required to be filed no later than the date of application for similar tax exemption programs for persons 65 and over offered by the county in which the qualified property exists. The act gave the Secretary the power to promulgate rules and regulations deemed necessary to implement the credit program.

The Secretary proposed regulations adopting April 15, 2000 as the due date for applications for the credit. This date was subsequently extended to the match the end of the 1999-2000 tax year of each County. Each County's tax year begins on a different date. In New Castle County the date is July lst, in Kent County it is June 1st, and in Sussex County it is May 1st.

There was no readily available data basis that could identify property owners who were 65 years of age and eligible for the new credit. The records of the Counties could not match property owners on the rolls with qualified seniors. While various attempts were made to publicize the availability of the program and to educate those eligible for the credit about the application requirements you estimate that approximately 2 to 5% of eligible taxpayers have missed the filing deadline. You have represented that there was a great deal of confusion among the elderly about the credit program. You state that there were various processing delays in the Counties due to the volume of applications such that some applications were processed after the due date for filing for the credit and after bills for the tax year 2000-2001 were mailed out. The Secretary has continued to process applications for the credit throughout the summer. You now wish to extend the application dead line for the initial tax year until the end of the calendar year 2000, and make one more attempt to reach the elderly who are eligible for the credit.

DISCUSSION

We begin by making some observations about the General Assembly's intent as reflected in what they did and what they did not do in enacting the law.

The bill containing the new program was enacted in August of 1999, well after the tax year in each of the Counties had begun. To the extent that the counties would be put to substantial administrative trouble and expense in implementing the credit program during the current tax year, the General Assembly deemed that result preferable to delaying the program until the next tax year. The bill, recognizing the imposition that was necessarily being made upon the Counties, authorized an administrative payment to each County to offset the expense that they would be forced to incur.

The General Assembly could easily have made the program effective for the following tax year, which was to begin on or after May 1, 2000, and thereby avoided the problems and expenses related to implementing a tax credit program in midstream. In this regard the General Assembly could have also set the application due date to coincide with the application due date for similar tax exemption programs offered by the Counties as it did for subsequent years in Section 4 of the Act. The legislative decision to make the new credits available right away displays a strong desire to benefit the elderly immediately despite the attendant difficulties. It also reflects the General Assembly's conclusion that there was no legal impediment to making the credit program effective in the Counties' current tax year. To the extent that implementing the credit in that fashion could be said to have changed tax rates that had already been fixed by the counties for the then current year, it was of no legal consequence.

As noted above the General Assembly, recognizing the problems incident to current year implementation, in addition to a broad general grant of regulatory authority, specifically decided to grant authority to the Secretary to fix "the rules and deadlines" for the filing of applications rather then to arbitrarily set a date certain. This seems to be designed to give the Secretary the flexibility necessary to identify problems and set deadlines so as to maximize the success of the program. The General Assembly could have, but chose not to, cap the discretion delegated to the Secretary by fixing a date certain beyond which applications could not be received. *See, e.g. 9* Del. C. § 8133(b). The failure to limit or set an outside absolute date for the submission of applications again, in our minds, displays the strong desire to reach as many people with this remedial program as soon as possible.

We turn now to the real crux of the issue. Whether the delegation of the power in this statutory scheme to fix deadlines carries with it the inherent or implied power to extend those deadlines?

Delaware courts have long affirmed the General Assembly's power to delegate regulatory authority to administrative agencies. State v. Retowski, Del. Ct. Gen. Sess., 175 A. 325 (1934), Hoff v. State, Del. Super., 197 A. 75 (1938). An administrative agency may be given discretion as to implementation of legislative policy, but not as to the determination of legislative policy. Carroll v. Tarburton, Del. Super., 209 A.2d 86 (1965). Chief Justice Layton noted the following in Retowski about the delegation of authority (citations omitted):

> 1. It is well settled that a General Assembly, in enacting a law, complete in itself, designed to accomplish the regulation of particular matters, may expressly authorize an administrative body, within definite limits to provide rules and regulations for the complete operation and enforcement of the law within its express general purpose.
>
> 2. There are many things necessary to wise and useful legislation which cannot be known to the General Assembly and, therefore, must be determined outside the legislative hall.
>
> 3. The authority of the administrative body, acting under such grant grant of power, is limited to the making of reasonable rules and regulations within the circumference of the power granted.
>
> 4. It is difficult to define the line which separates the legislative power to make laws from administrative authority to make regulations. The question is one which has to be answered in each individual case by the judgement of the Court.

The General Assembly may enact a law exercising one or more of its legislative powers, declaring the policy of the law, fixing the principles which are to control in given cases, and. at the same time, delegate to an administrative body the power to ascertain the facts which will determine when the power exercised by the act shall take effect and be enforced. Opinion of the Justices, Del. Supr., 246 A.2d 90, 94 (1968).

Delegation can be either explicit or implicit. Justice Walsh, in an Order affirming the Superior Court wrote, "It has long been recognized that an administrative agency may exercise certain authority based upon an implied delegation from the General Assembly." Raley v. State. Del. Super., Cr. A. No. S90-07-0002, affirmed Del. Supr., 604 A.2d 418 (1991).

In the case of Atlantis I Condominium Ass. v. Bryson, Del. Supr.. 403 ;1.2d 711,713 (1979), our Supreme Court considering the issue of implied delegated power identified this overriding concern:

> In any event, the authority granted to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent or policy. An expressed legislative grant of power or authority to an administrative agency includes the grant of power to do all that is reasonably necessary to execute that power or authority.

In keeping with this canon the Delaware Courts have recognized an implied power in the Court itself to extend an execution date so that the Court could review the imposition of the death sentence, State v. Sullivan, Del. Super., IK92-O1-0192 thru196, IK92-02-0001, IK92-02-0022, (Ridgely, P.J., June 14, 1994); in the Board of Podiatry to interpret the meaning of podiatry. Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979); and in the Workmen's Compensation Board to modify or set aside compensation agreements that do not conform to the statute, Ohrt v. Kentmere Home, Del. Super., C.A. No. 96A-O1-005 RRC (1996).

Even without any clearly settled law upon which to rely, we believe that the courts would reach a similar conclusion if this question were presented as a case or controversy. The General Assembly was most insistent in requiring the credit plan to be immediately instituted. The General Assembly delegated to the Secretary the power to make rules and regulations in addition to the specific authority to set the due date in the first instance. This obviously was intended to give the Secretary the necessary flexibility to implement the credit program and to set a date that would provide a fair and adequate opportunity for all the intended beneficiaries to qualify. That it proved too difficult a task to accomplish before the beginning of the Counties' next tax year should not operate to not deny the elderly the remedial benefit sought to be extended and defeat the legislative will so obviously manifested. In such an instance the authority to extend the deadline must be implied in the authority delegated to the Secretary. Extending the deadline falls squarely within the task of determining outside of the legislative halls the facts and the limits under which legislative policy will be implemented and when that legislative power will take effect. This is precisely the function of delegation.

As you know, setting any deadline necessarily involves extinguishing the ability of a person to qualify for a right, benefit or exercise a power that is governed by the date fixed for taking the required action. Deadlines are necessary and should not be changed lightly. Deadlines for filing applications for this kind of credit are administrative necessities. But, in this case the application process was more then that, it was actually the only mechanism by which those intended to be benefitted by the program could be identified. So, in failing to fix any limit for applications in the original year of the credit program the General Assembly, in our view, was displaying little concern for the administration of the credit, or for cutting off the right to the credit. 1t was displaying a great deal of concern for actually reaching all the elderly beneficiaries through the application process. Under these facts and circumstances a final extension to the date chosen is both reasonable and within the Secretary's power.

Consistent with our conclusion we point out that in a related tax area, even where there is a fixed statutory deadline, the General Assembly has allowed the affected parties to extend the deadline. See for instance 30 Del. C. §§ 511, 531, 539, 553 and 560.

In closing we note that, in the specific delegation to the Secretary, the General Assembly used the plural word "deadlines." This may be an indication that the General Assembly believed that more then one deadline would be needed to accomplish it's objective or that an extension was contemplated. It may have simply reflected the reality that each County has a different tax year and that the Secretary might want to set a different date in each County. At any rate the use of the plural form is not inconsistent with our conclusion.

Very truly yours,
Jos. Patrick Hurley, Jr., Deputy Attorney General

APPROVED:
Michael J. Rich, State Solicitor

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Section 6010 (7 **Del.C.** §6010)

Amendments to
Addendum To
The Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area
(Januray 2000)

Final

Submitted by
State of Delaware
Department of Natural Resources and Environmental Control
Division of Air and Waste management
Air Quality Management Section

In Conjunction With
The Delaware Department of Transportation

December 2000

List of Acronyms

AQMS	DNREC's Air Quality Management Section
CAAA	Clean Air Act Amendments of 1990
CMSA	Consolidated Metropolitan Statistical Area
CO	Carbon Monoxide
DNREC	Delaware Department of Natural Resources and Environmental Control
EPA	The U.S. Environmental Protection Agency
MOBILE	EPA's Software tool for estimating on-road mobile source VOC, NOx and CO emissions factors
NAA	Nonattainment area
NAAQS	National Ambient Air Quality Standards
NOx	Oxides of Nitrogen
OTAG	Ozone Transport Assessment Group
OTR	Ozone Transport Region
SIP	State Implementation Plan
UAM	Urban Airshed Model
VOC	Volatile Organic Compounds

1. Introduction

The Clean Air Act Amendments of 1990 (CAAA) require all "serious" and above ozone nonattainment areas (NAAs) to submit their attainment demonstrations based on the photochemical grid model such as the Urban Airshed Model (UAM). Kent and New Castle Counties are the two "severe" counties for which Delaware is in nonattainment with the 1-hour ozone National Ambient Air Quality Standard (NAAQS). These two counties are part of a larger NAA - the Philadelphia Consolidated Metropolitan Statistical Area (CMSA), which has been named as the Philadelphia-Wilmington-Trenton NAA. The CAAA requires a modeled attainment demonstration for the entire Philadelphia-Wilmington-Trenton NAA, and the attainment year for the severe ozone Philadelphia-Wilmington-Trenton NAA is year 2005.

In May 1998 the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision entitled "The Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area" ("The Delaware Phase II document"). The Delaware Phase II document successfully demonstrated attainment of the 1-hour ozone NAAQS for the Delaware portion of the Philadelphia-Wilmington-Trenton ozone NAA for the July 18-20, 1991 episode with the Ozone Transport Assessment Group (OTAG) Run2 boundary conditions. In its December 16 1999 notice (64 FR 70444), EPA determined that there is a shortfall in the attainment demonstration for the Philadelphia-Wilmington-Trenton ozone NAA and identified the requirements that the states must meet in order to get their Phase II attainment demonstrations approved. In January 2000, DNREC submitted a document entitled “Addendum to the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Severe Ozone Nonattainment Area” (“The Addendum”) that lists all the EPA identified requirements and addresses how Delaware will fulfil those requirements to get the Delaware Phase II Attainment Demonstration Plan approved.

EPA has informed DNREC by letter (*Appendix 1*) that the Department must revise the Addendum to include two elements - a formal commitment to revise the on-road mobile source VOC and NOx emissions budgets within a year of the release of the MOBILE6 (an emission factor model), and a formal commitment to adopt and submit additional control measures necessary to support attainment by October 31, 2001. Both items were included in the submittal letter to the Addendum, but were not subjected to the public hearing process and this document formalizes that requirement.

The agency with direct responsibilities for preparing and submitting this document is the Delaware Department of

Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management Section, Air Quality Management Section (AQMS), under the direction of Darryl D. Tyler, Program Administrator. The working responsibility for Delaware's air quality planning falls within the Planning and Community Protection (PCP) Branch of the Air Quality Management Section of DNREC under the management of Raymond H. Malenfant, Program Manager. Raymond H. Malenfant is the project manager and chief editor of this document. Mohammed A. Majeed, Ph.D., P.E. is the principal author and Alfred R. Deramo is the quality assurance reviewer of this document.

2. Amendments to the Addendum

This document addresses the commitments that are not listed in the Addendum.

2.1 Additional Measures

In its December 16 1999 notice (64 FR 70444), EPA has declared that the Philadelphia CMSA has shortfalls in the attainment demonstrations, and identified the amount of attainment shortfalls for the CMSA for which the states need to develop additional control measures. EPA requires the states to adopt additional measures, and these measures can be adopted regionally such as in the Ozone Transport Region (OTR), or locally in individual states. Delaware hereby commits to adopt additional control measures and submit the revised SIP to EPA by October 31, 2001.

2.2 Revision of On-Road Mobile Source Emissions Budgets

EPA requires Delaware to revise the on-road mobile source VOC and NOx emissions budgets within a year of the release of the MOBILE6 (an emission factor) model. DNREC hereby commits to revise the SIP and the on-road mobile source VOC and NOx emissions budgets within a year of the release of the MOBILE6.

APPENDIX 1

Letter
From
David L. Arnold
Chief, Ozone & Mobile Sources Branch
EPA Region III Office

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF ELECTRICAL EXAMINERS

24 DE Admin. Code 1400

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(a)(1) has proposed changes to its rules and regulations to supplement the comprehensive revision that was effective April 11, 2000. The changes clarify the documentation to satisfy the statutory qualifications, the insurance requirement for employees, and the continuing education approval and compliance process. A renewal requirement for inspection agencies is included and the term "expired" is substituted for "lapse" to describe a license that was not timely renewed.

A public hearing will be held at 9:00 a.m. on March 7, 2001 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, February 15, 2001 at 1 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Delaware's A Better Chance

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS)/Division of Social Services/Delaware's A Better Chance Program is proposing to implement a policy change to the Division of Social Services Manual, Section 4005.3: Step-parent budgeting is only used to determine the financial eligibility or benefit level of a step-child when the step-child's natural parent resides in the home. Stepparent income is not used to determine financial eligibility or benefit levels when the step-child's natural parent does not reside in the home.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by February 28, 2001.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DEPARTMENT OF LABOR

COUNCIL ON APPRENTICESHIP & TRAINING

PLEASE TAKE NOTICE, pursuant to 19 Del. C. §202(a), the Department of Labor, with the advice of the Council on Apprenticeship and Training, has made proposed modifications to Sections 106.9 and 106.10 of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The modification will clarify the process for deregistration of a sponsor.

A public hearing was held on the Proposed changes on December 12, 2000 that resulted in substantive changes to the proposal previously published in the Register of Regulations, Vol. 4, Issue 5 (November 1, 2000). Those changes to the proposal appear below in boldface. The Council will hold another public hearing on March 13, 2001 at 10:00 a.m. at Buena Vista State Conference Center, 661

South DuPont Highway, New Castle, Delaware. The Council will receive and consider input from any person on the proposed changes. Written comment can be submitted at any time prior to the hearing in care of Kevin Calio at the Division of Employment & Training, Department of Labor 4425 North Market Street, P.O. Box 9828, Wilmington, DE 19809-0828. The Council will consider its recommendation to the Secretary of Labor at its regular meeting following the public hearing.

In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Kevin Calio by calling (302)761-8121.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH & WILDLIFE

REGISTER NOTICE

TITLE OF THE REGULATION:

TIDAL FINFISH REGULATIONS

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To amend Tidal Finfish Regulations in order to remain in compliance with fishery management plans, as amended and adopted by the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council and/or the U.S. Department of Commerce.

Tidal Finfish Regulation No. 4 SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASON is proposed to be amended to adjust the recreational fishing season closure dates, creel limit and/or minimum size limit in order to implement any adjustments to fishing mortality required in the Summer Flounder Fishery Management Plan.

Tidal Finfish Regulation No. 7, STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS is proposed to be amended to eliminate the commercial slot size limits of 20 inches-32 inches and in its place return to a commercial minimum size limit of 20 inches or to not amend and leave the slot size limit of 20 inches – 32 inches in place. It also is proposed to allow the transfer of striped bass tags among commercial food fishermen prior to any tags being distributed by the Department.

Tidal Finfish Regulation No. 9, BLUEFISH POSSESSION LIMITS is proposed to be amended by increasing the daily possession limit from 10 bluefish to 15 bluefish per day.

Tidal Finfish Regulation No. 10 WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS is proposed to be amended to change the 2000 dates when it was illegal to take weakfish with any gear other than hook and line in the Delaware Bay and Ocean to the corresponding calendar dates in 2001. These dates involve 35 days.

Tidal Finfish Regulation No. 14, SPANISH MACKEREL SIZE LIMIT AND CREEL LIMIT is proposed to be amended by increasing the daily possession limit from 10 Spanish mackerel per day.

POSSIBLE TERMS OF THE AGENCY ACTION:

There are no sunset dates for these regulations. However, if Delaware is found to be out of compliance with a Fishery Management Plan by the Atlantic States Marine Fisheries Commission, that particular fishery may be closed by the Secretary of the U.S. Department of Commerce.

NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover Delaware 19901, (302)739-3441. A public hearing on these proposed amendments will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover DE at 7:30 PM on Thursday January 25, 2001. The record will remain open for written comments until 4:30 PM on January 31, 2001.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** 209(a))

The Delaware General Assembly has enacted legislation that will make applications by water utilities for Certificates of Public Convenience and Necessity ("CPCN") subject to the jurisdiction of the Public Service Commission (the "Commission"). The new law is found at 72 Delaware Laws Ch. 402. Presently, water utilities file applications for CPCNs with the Department of Natural Resources and Environmental Control ("DNREC"). The transfer of jurisdiction from DNREC to the Commission will become effective July 1, 2001.

In preparation for the transfer of jurisdiction, the Commission is promulgating regulations intended to govern certain practices and procedures before the Commission relating to water utilities. In addition, certain of the regulations are being promulgated to comply with the General Assembly's directive to the Commission in 72 Delaware Laws Ch. 402, section 6 – codified at 26 Del. C. § 203C(l) – that the Commission shall establish rules

governing the revocation of a CPCN held by a water utility.

The Commission has promulgated fourteen proposed new regulations to govern water utilities. The first addresses the scope of the regulations themselves. The regulations are intended to govern certain practices and procedures before the Commission relating to water utilities. The second regulation contains definitions of terms used in the regulations.

Two regulations set forth requirements for an application for a CPCN, including requirements for a new water utility that has never before been awarded a CPCN. A related regulation addresses the review, by the Commission's Staff, of a new CPCN application for compliance with statutes, applicable Rules of the Commission, and the regulations. A second related regulation requires the Commission to cooperate with DNREC, the State Fire Marshal, the Department of Public Health and other interested state, local and federal authorities, when the application for a CPCN is under review. A third related regulation affords the Commission discretion to waive the filing requirements in the regulations.

Three of the regulations address the notice to be given landowners in the proposed service territory covered by a water utility's CPCN application, and the time limits within which affected landowners must object to the CPCN, elect to opt-out from inclusion in the proposed service territory, and/or request a public hearing. One of the three regulations governing notice contains a proposed statement to the landowners that would have to be included in the notice sent by a water utility applying for a CPCN.

One of the proposed regulations deals with the conditions the Commission may impose on the award of a CPCN to a water utility.

Two of the new regulations are designed to govern proceedings to suspend or revoke a CPCN, and identify the factors that must be present for the Commission to make a finding of good cause to suspend or revoke a CPCN.

One of the regulations confirms that CPCN proceedings before the Commission must be conducted in accordance with applicable provisions of the Delaware Administrative Procedures Act, 29 Del. C. Ch. 101, Subchapter III.

The Commission has authority to promulgate the regulations pursuant to 26 Del. C. § 209(a), 29 29 Del. C. § 10111 et seq., and 72 Delaware Laws Ch. 402.

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before March 15, 2001.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before March 15, 2001.

In addition, the Commission will conduct a public hearing concerning the proposed changes on March 28, 2001, beginning at 10:00 AM. The hearing will continue on March 29, 2001 at 10:00 AM, if necessary. The public hearing will be held at the Commission's Dover office, located at the address set forth in the preceding paragraph. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is $0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to knickerson@state.de.us.

DELAWARE RIVER BASIN COMMISSION

P.O. Box 7360 West Trenton

The Delaware River Basin Commission will meet on Wednesday, January 9, 200, in West Chester, Pennsylvania. For more information contact Pamela M. Bush at (609) 883-9500 extention 203.

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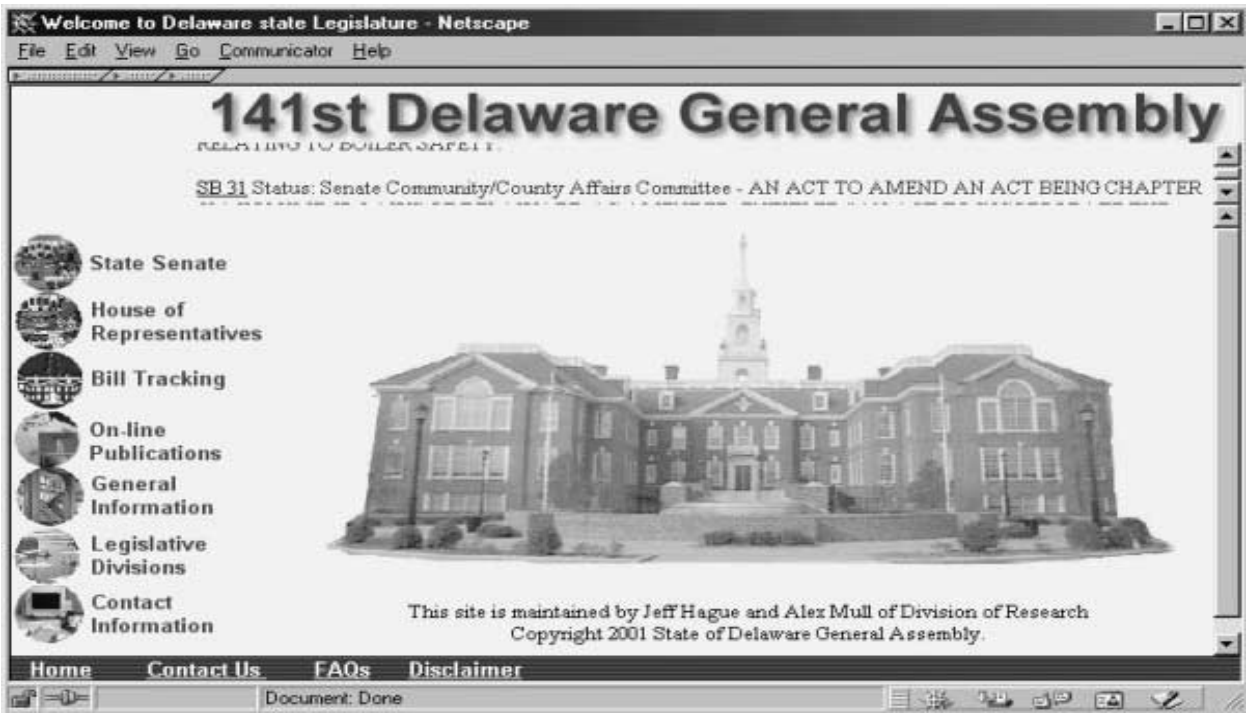

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