



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

Office of the  
Secretary

Phone: (302) 739-9000  
Fax: (302) 739-6242

**Secretary's Order No.: 2019-A-0017**

**RE:            Approving Final Regulations to Amend 7 DE Admin. Code 1140:  
                  *Delaware Low Emission Vehicle ("LEV") Program***

**Date of Issuance: April 15, 2019**

**Effective Date of the Amendment: May 11, 2019**

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

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

This Order relates to proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle ("LEV") Program*. This action is being taken by the Department to incorporate by reference the effective date of California's regulatory amendments to 13 CCR 1961.2 and 1961.3 (e.g., California's LEV III and Greenhouse Gas ("GHG") standards), thus clarifying the aforementioned "deemed to comply" provision and maintaining Delaware's GHG emissions from light-duty vehicles for model years 2021 to 2025 model year.

On August 24, 2018, the U.S. Environmental Protection Agency (“EPA”), and the National Highway Traffic Safety Administration have proposed to roll back the GHG emission standards and freeze the fuel economy standards for light-duty vehicles to the currently adopted 2020 standards for model years 2021 to 2025, through its Safer Affordable Fuel Efficient (“SAFE”) vehicles rule. If adopted, the SAFE rule would result in an estimated increase of 1,432 million metric tons of GHG emissions in the atmosphere by 2035.

In the light of this proposed rule, the California Air Resources Board amended its California Code of Regulations, Sections 1961.2 and 1961.3, to clarify that the “deemed to comply” provision embedded in California’s Advance Clean Car program is only applicable with the currently adopted Federal Standards, as last amended on October 25, 2016. The California amendments were effective as of December 12, 2018.

The “deemed to comply” provision was first adopted by California, predicating that the EPA standards are providing GHG emissions reduction equivalent to the California standards. In order to maintain the emissions stringency of the currently adopted standards, Delaware needs to clarify that the “deemed to comply” provision only holds true with the aforementioned Federal Standards. The Department believes that the currently adopted emissions standards will offer Delawareans an increased quality of life through increased economic opportunities, reduced local air pollution, and an opportunity to mitigate the effects of climate change on our coastal state.

As demonstrated in California’s final statement of reasons for its respective rulemaking, the currently adopted GHG emissions standards remain appropriate, cost-effective, and technologically feasible for model years 2021 to 2025. In order to maintain emissions standards identical to California’s standards, as required by Section 177 of the Clean Air Act (42 U.S.C. §7507), the Department needs to adopt California’s latest amendments into Delaware’s LEV provision.

On December 27, 2018, the Department enacted emergency regulation amendments to 7 DE Admin. Code 1140 (Emergency Order No. 2018-A-0072) in order to maintain the emissions stringency of the currently adopted standards, beginning with model year 2021. The Department now proposes to preserve this emissions stringency for the 2021 to 2025 model year standards with these formal Amendments, which incorporate by reference the effective date of California's amendments to 13 CCR 1961.2 and 1961.3, thus clarifying the aforementioned "deemed to comply" provision.

As noted above, the Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del. C.* Ch. 60. The Department published its initial proposed regulation Amendments in the February 1, 2019 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on February 21, 2019. Members of the public attended the aforementioned public hearing, with comment being received by the Department at that time. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on March 8, 2019, with additional comment having been received by the Department during the post-hearing phase of this formal promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

After the close of the comment period, the Department's Division of Air Quality ("DAQ") performed a thorough review of the hearing record, including all of the comments received on the proposed Amendments. At the request of the presiding Hearing Officer, a Technical Response Memorandum ("TRM") was prepared by the Department's DAQ staff to serve as a comprehensive summary of the comment received in this matter. This TRM not only provides a thorough discussion of the comment received in this matter, but also provides the DAQ's responses and recommendations concerning the same.

Hearing Officer Lisa A. Vest prepared her Report dated April 10, 2019 (“Report”), which expressly incorporated both the Department’s proposed Amendments and the aforementioned TRM into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix “A.”

### **Reasons and Conclusions**

Based on the record developed by the Department’s DAQ experts and established by the Hearing Officer’s Report, I find that the proposed regulatory amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle (“LEV”) Program*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final. I further find that the Department’s DAQ experts in the fully developed the record to support adoption of these Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle (“LEV”) Program*, pursuant to 7 Del. C. Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 Del.C. Ch. 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the public hearing held on February 21, 2019, and during the 15 days subsequent to the hearing (through March 8, 2019), before making any final decision;

4. Promulgation of the proposed Amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle ("LEV") Program*, will enable the Department to incorporate by reference the effective date of California's amendments to 13 CCR 1961.2 and 1961.3, thus clarifying the aforementioned "deemed to comply" provision and maintaining Delaware's GHG emissions from light-duty vehicles for model years 2021 to 2025 model year;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption "B5," as this regulation is required by federal law (Section 177 of the Clean Air Act, 42 U.S. Code §7507) and has already complied with the federal Regulatory Flexibility Act, 5 U.S.C. §601 et seq.;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments, are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed regulatory Amendments, as initially published in the February 1, 2019 *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit the proposed Amendments as final regulatory amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle ("LEV") Program*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



Shawn M. Garvin  
Secretary



## MEMORANDUM

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

**FROM:** Lisa A. Vest   
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** **Proposed Regulation Amendments to 7 DE Admin. Code 1140:  
*Delaware Low Emission Vehicle ("LEV") Program***

**DATE:** April 10, 2019

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### **I. Background:**

A public hearing was held on Thursday, February 21, 2019, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC," "Department"), Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments ("Amendments") to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle ("LEV") Program*. The Department's Division of Air Quality ("DAQ") is proposing this regulatory promulgation to incorporate by reference the effective date of California's regulatory amendments to 13 CCR 1961.2 and 1961.3 (e.g., California's LEV III and Greenhouse Gas ("GHG") standards), thus clarifying the aforementioned "deemed to comply" provision and maintaining Delaware's GHG emissions from light-duty vehicles for model years 2021 to 2025 model year.

On August 24, 2018, the U.S. Environmental Protection Agency ("EPA"), and the National Highway Traffic Safety Administration have proposed to roll back the GHG emission standards and freeze the fuel economy standards for light-duty vehicles to the currently adopted 2020 standards for model years 2021 to 2025, through their Safer Affordable Fuel Efficient ("SAFE") vehicles rule. If adopted, the SAFE rule would result in an estimated increase of 1,432 million metric tons of GHG emissions in the atmosphere by 2035.

In the light of this proposed rule, the California Air Resources Board amended its California Code of Regulations, Sections 1961.2 and 1961.3, to clarify that the “deemed to comply” provision embedded in California’s Advance Clean Car program is only applicable with the currently adopted Federal Standards, as last amended on October 25, 2016. The California amendments were effective as of December 12, 2018.

The “deemed to comply” provision was first adopted by California, predicating that the EPA standards are providing GHG emissions reduction equivalent to the California standards. In order to maintain the emissions stringency of the currently adopted standards, Delaware needs to clarify that the “deemed to comply” provision only holds true with the aforementioned Federal Standards. The Department believes that the currently adopted emissions standards will offer Delawareans an increased quality of life through increased economic opportunities, reduced local air pollution, and an opportunity to mitigate the effects of climate change on our coastal state.

As demonstrated in California’s final statement of reasons for their respective rulemaking, the currently adopted GHG emissions standards remain appropriate, cost-effective, and technologically feasible for model years 2021 to 2025. In order to maintain emissions standards identical to California’s standards, as required by Section 177 of the Clean Air Act (42 U.S.C. §7507), the Department needs to adopt California’s latest amendments into Delaware’s LEV provision.

On December 27, 2018, the Department enacted emergency regulation amendments to 7 DE Admin. Code 1140 (Emergency Order No. 2018-A-0072) in order to maintain the emissions stringency of the currently adopted standards, beginning with model year 2021. The Department now proposes to preserve this emissions stringency for the 2021 to 2025 model year standards with these formal Amendments, which incorporate by reference the effective date of California’s amendments to 13 CCR 1961.2 and 1961.3, thus clarifying the aforementioned “deemed to comply” provision.

As noted above, the Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del. C. Ch. 60*. The Department published its initial proposed regulation Amendments in the February 1, 2019 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on February 21, 2019. Members of the public attended the aforementioned public hearing, with comment being received by the Department at that time. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on March 8, 2019, with additional comment having been received by the Department during the post-hearing phase of this formal promulgation, which will be discussed in further detail below.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

## **II. SUMMARY OF THE PUBLIC HEARING RECORD:**

The public hearing record consists of the following documents: (1) a verbatim transcript; (2) eleven (11) documents introduced by Department staff at the public hearing held on February 21, 2019, and marked by this Hearing Officer accordingly as Department Exhibits 1-11; and (3) Technical Response Memorandum (“TRM”) provided to this Hearing Officer by Ajo Rabemiarisoa, Environmental Engineer with the Department’s DAQ, dated March 14, 2019. The Department’s person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Ms. Rabemiarisoa, developed the record with the relevant documents in the Department’s files.

As stated previously, members of the public attended the aforementioned February 21, 2019 public hearing. A total of five (5) comments were received by the Department in this matter. At the request of this Hearing Officer, a Technical Response Memorandum (“TRM”) was prepared by the Department’s DAQ staff, to (1) specifically address the concerns associated with these pending Applications, as set forth in the public comment received by the Department; and (2) offer DAQ’s conclusions and recommendations with regard to these Applications for the benefit of the hearing record generated in this matter.

Of the five comments received by the Department in this matter, four voiced strong support for this proposed promulgation. The supportive comments were received from both private citizens and the Delaware Sierra Club. The only comments suggesting that the Department not adopt the proposed Amendments at this time were received from The Association of Global Automakers. The DAQ’s TRM fully addresses and responds to the concerns of The Association of Global Automakers, offering justification for the recommendation that the Department proceed forward with this regulatory promulgation at this time.

The Department’s TRM not only provides a thorough discussion of the comment received in this matter, but also provides the Department’s responses and recommendations concerning the same. Accordingly, the Department’s proposed Amendments, along with the aforementioned TRM, are hereby expressly incorporated into the hearing record generated in this matter, and are attached hereto for the Secretary’s review as Appendices “A” and “B,” respectively.

### **III. RECOMMENDED FINDINGS AND CONCLUSIONS:**

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle (“LEV”) Program*, as noted above.

Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

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

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle ("LEV") Program*, pursuant to 7 Del. C. Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 Del.C. Ch. 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the public hearing held on February 21, 2019, and during the 15 days subsequent to the hearing (through March 8, 2019), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle ("LEV") Program*, will enable the Department to incorporate by reference the effective date of California's amendments to 13 CCR 1961.2 and 1961.3, thus clarifying the aforementioned "deemed to comply" provision and maintaining Delaware's GHG emissions from light-duty vehicles for model years 2021 to 2025 model year;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 Del.C. Ch. 104, and has selected Exemption "B5," as this regulation is required by federal law (Section 177 of the Clean Air Act, 42 U.S. Code §7507) and has already complied with the federal Regulatory Flexibility Act, 5 U.S.C. §601 et seq.;

6. The Department's proposed regulatory Amendments, as initially published in the February 1, 2019 *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed Amendments as final regulatory amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle ("LEV") Program*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



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LISA A. VEST  
Public Hearing Officer

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Attachments/Appendix:  
Appendix A: Proposed Reg. Amendments  
Appendix B: DAQ TRM (3/14/19)

# APPENDIX "A"



# PROPOSED REGULATIONS

1. A family must only report a change in monthly income that exceeds 85% of the state median income (SMI) guideline for the household size.
2. A family must report a non-temporary change that occurs in their household circumstance, including:
  - The loss of employment;
  - The completion of an education or training program; and
  - A permanent change in state residency.
3. When a family reports a non-temporary change that ends their need for child care, DSS will authorize 90 consecutive days of child care before the family's child care case is closed.
4. DSS must verify a change reported by a third party agency or person with the family.

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60, Section 6001 (7 Del.C. Ch. 60, §6001)  
7 DE Admin. Code 1140

#### REGISTER NOTICE SAN # 2019-01

#### 1140 Delaware Low Emission Vehicle Program

#### 1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 1140 Delaware Low Emission Vehicle Program

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

The Department proposes to amend 7 DE Admin. Code 1140, following California's December 12, 2018 amendments to the California Code of Regulations 1961 and 1962 pursuant to the Clean Air Act requirements stipulated in section 177 for states to adopt identical regulations.

These amendments clarify the "deemed to comply" provision to continue to hold true for the federal GHG vehicle standards adopted in 2012 for light-duty vehicles for the model years 2021-2025. If the federal GHG standards are weakened by the Environmental Protection Agency and the National Highway Traffic Safety Administration's proposed SAFE vehicles rule, the automobile manufacturers will be required to continue to meet the 2012 federal GHG vehicle standards in order to be deemed in compliance with Delaware's regulations.

#### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

#### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Chapter 60 Environmental Control. Section 6001.

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

None

#### 6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to the 7 DE Admin. Code 1140 Delaware Low Emission

Vehicle Program will open February 1, 2019. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042.

A public hearing on the proposed amendments will be held on February 21, 2019 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, March 8, 2019.

**7. PREPARED BY:**

Ajo Rabemiarisoa

Email: [Ajo.Rabemiarisoa@state.de.us](mailto:Ajo.Rabemiarisoa@state.de.us)

Phone: (302) 324-2083

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/february2019/proposed/22 DE Reg 660RFA 02-01-19.pdf](http://regulations.delaware.gov/register/february2019/proposed/22%20DE%20Reg%20660RFA%2002-01-19.pdf)

**1140 Delaware Low Emission Vehicle Program  
(Break in Continuity of Sections)**

**3/11/2018**

**3.0 Definitions**

*(Break in Continuity of Sections)*

**3/11/2018**

**5.0 New Vehicle Emission Requirements**

*(Break in Continuity of Sections)*

**3/11/2018**

**7.0 Warranty**

*(Break in Continuity Within Section)*

7.2 Each manufacturer of a vehicle subject to 2.1 of this regulation shall submit to the Department, upon request, a an Emission Warranty Information report as defined at Title 13, CCR, Section 2144.

*(Break in Continuity of Sections)*

**3/11/2018**

**10.0 Incorporation by Reference**

*(Break in Continuity Within Section)*

10.5 The following documents and sources of Title 13 of the California Code of Regulations (CCR) are incorporated by reference within this regulation:

**Table 1  
California Code of Regulations (CCR)  
Title 13  
Provisions Incorporated by Reference**

Title 13, CCR	Title	Section Amended Date
Chapter 1 Motor Vehicle Pollution Control Devices Article 1 General Provisions		
Section 1900	Definitions	As effective July 25, 2016

## PROPOSED REGULATIONS

Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
Section 1956.8(g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	<i>As effective July 25, 2016</i>
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	<i>As effective December 31, 2012</i>
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 through 2019 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<i>As effective December 31, 2012</i>
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 through 2016 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles	<i>As effective August 7, 2012</i>
Section 1961.2	Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<i>As effective <del>October 8, 2015</del> December 12, 2018</i>
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<i>As effective <del>December 31, 2012</del> December 12, 2018</i>
Section 1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	<i>As effective October 8, 2015</i>
Section 1968.1	Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<i>As effective November 27, 1999</i>
Section 1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<i>As effective July 25, 2016</i>
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	<i>As effective July 25, 2016</i>
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	<i>As effective October 8, 2015</i>
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	<i>As effective October 8, 2015</i>
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	<i>As effective November 9, 2007</i>
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles; 1979 and Subsequent Model Year Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	<i>As effective December 5, 2014</i>
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<i>As effective December 5, 2014</i>

# PROPOSED REGULATIONS

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Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<i>As effective August 7, 2012</i>
Section 2039	Emission Control System Warranty Statement	<i>As effective December 26, 1990</i>
Section 2040	Vehicle Owner Obligations	<i>As effective December 26, 1990</i>
Section 2041	Mediation; Finding of Warrantable Condition	<i>As effective December 26, 1990</i>
Section 2046	Defective Catalyst	<i>As effective February 15, 1979</i>
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing Article 1 Assembly Line Testing		
Section 2062	Assembly-line Test Procedures 1998 and Subsequent Model years	<i>As effective August 7, 2012</i>
Article 2 Enforcement of New and In-use Vehicle Standards		
Section 2101	Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action	<i>As effective November 27, 1999</i>
Section 2109	New Vehicle Recall Provisions	<i>As effective December 30, 1983</i>
Section 2110	Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model Year	<i>As effective November 27, 1999</i>
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	<i>As effective December 8, 2010</i>
Section 2112	Definitions	<i>As effective December 5, 2014</i>
Appendix A to Article 2.1		
Section 2113	Initiation and Approval of Voluntary and Influenced Recalls	<i>As effective January 26, 1995</i>
Section 2114	Voluntary and Influenced Recall Plans	<i>As effective November 27, 1999</i>
Section 2115	Eligibility for Repair	<i>As effective January 26, 1995</i>
Section 2127	Notification of Owners	<i>As effective January 26, 1995</i>
Section 2128	Repair Label	<i>As effective January 26, 1995</i>
Section 2129	Proof of Correction Certificate	<i>As effective January 26, 1995</i>
Section 2130	Capture Rates and Alternative Measures	<i>As effective November 27, 1999</i>
Section 2131	Preliminary Tests	<i>As effective January 26, 1995</i>
Section 2132	Communication with Repair Personnel	<i>As effective January 26, 1995</i>
Section 2133	Record keeping and Reporting Requirements	<i>As effective January 26, 1995</i>
Section 2135	Extension of Time	<i>As effective January 26, 1995</i>
Article 2.3 In-Use Vehicle Enforcement Test Procedures		
Section 2136	General Provisions	<i>As effective December 8, 2010</i>
Section 2137	Vehicle and Engine Selection	<i>As effective December 28, 2000</i>
Section 2138	Restorative Maintenance	<i>As effective November 27, 1999</i>
Section 2139	Testing	<i>As effective December 5, 2014</i>

# PROPOSED REGULATIONS

Section 2140	Notification of In-Use Results	<i>As effective December 5, 2014</i>
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	<i>As effective December 8, 2010</i>
Section 2142	Alternative Procedures	<i>As effective February 23, 1990</i>
Section 2143	Failure Levels Triggering Recall	<i>As effective November 27, 1999</i>
Section 2144	Emission Warranty Information Report	<i>As effective November 27, 1999</i>
Section 2145	Field Information Report	<i>As effective August 7, 2012</i>
Section 2146	Emissions Information Report	<i>As effective November 27, 1999</i>
Section 2147	Demonstration of Compliance with Emission Standards	<i>As effective December 5, 2014</i>
Section 2148	Evaluation of Need for Recall	<i>As effective November 27, 1999</i>
Section 2149	Notification of Subsequent Action	<i>As effective February 23, 1990</i>
Chapter 3 Surveillance Testing		
Section 2150	Assembly-Line Surveillance	<i>As effective December 30, 1983</i>
Section 2151	New Motor Vehicle Dealer Surveillance	<i>As effective December 30, 1983</i>
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	<i>As effective August 8, 2012</i>

3/11/2018

## 11.0 Document Availability

**\*Please Note:** As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:

**1140 Delaware Low Emission Vehicle Program**

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

### 2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 Del.C. Ch. 27)

24 DE Admin. Code 2400

### PUBLIC NOTICE

### 2400 Board of Examiners of Constables

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 Del.C. Ch. 27 proposes to amend the following adopted rules in 24 DE Admin. Code 2400 Board of Examiners of Constables: Rule 5.0 Firearms, and Rule 1.0 Licensing. If you wish to view the complete Rules, contact Ms. Ashley Hughes at 302-672-5337. Any persons wishing to present views may submit them in writing, by March 4, 2019, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903.



## **APPENDIX “B”**





**TECHNICAL RESPONSE MEMORANDUM**

To: Lisa Vest, Hearing Officer

Through: Valerie Gray *vaq* 3/14/19

From: Ajo Rabemiarisoa *ar* 3/12/2019

Re: Department's response to public comments received on the proposed amendments to 7 DE Admin. Code 1140 - *Delaware Low Emission Vehicle Program*



You presided over a public hearing on Thursday, February 21, 2019 beginning at 6:00 PM in the Auditorium at The Richardson and Robbins Building, 89 Kings Highway, Dover. The subject of the public hearing was a proposed revision to 7 DE Admin. Code 1140 - *Delaware Low Emission Program*. The Department received comments from the following:

<b>Date Received</b>	<b>Name</b>	<b>Organization</b>
February 21, 2019	Coralie Pryde	Private Citizen
February 21, 2019	Sherri Evans-Stanton	Delaware Sierra Club
March 8, 2019	Julia M. Rege	The Association of Global Automakers
<b>Comments Received at Public Hearing</b>		
February 21, 2019	Sherry Marsico	Private Citizen
February 21, 2019	Don Brill	Delaware Sierra Club

This memorandum provides a summary of the comments received and the Division of Air Quality (DAQ) response. Each comment is included verbatim as an attachment. The comments and the public hearing transcript containing comments are available on the Clean Vehicles and Fuels page of the Department website. Available: <https://dnrecwp.test.dti.state.de.us/air/mobile-sources/clean-vehicles-fuels/>

## I. Comments Received from The Association of Global Automakers

### Comment 1

The comments provided by Global Automakers suggest that Delaware should not be able to adopt the proposed amendments at this time, because the California regulations (December 12, 2018 amendments) have not yet received a waiver from the U.S. Environmental Protection Agency.

### Department Response

Pursuant to Section 177 of the Clean Air Act, Delaware may adopt California motor vehicle emission standards if “*such standards are identical to the California standards for which a waiver has been granted.*”

By adopting the proposed amendments to 7 DE Admin. Code 1140, the Department will maintain the currently adopted greenhouse gas standards for model years 2021 through 2025, as last amended on October 25, 2016, and for which a waiver has been granted. It is important to note that the California “deemed to comply” amendments do not increase nor decrease the stringency of the greenhouse gas emissions standards for California, thus (following the Global Automakers suggestion based on past EPA waiver decisions) they do not warrant the issuance of a new waiver from the Environmental Protection Agency.

California’s recent amendments serve to clarify that California’s “deemed to comply” provision holds true with the light-duty vehicle federal standards adopted in 2012 for greenhouse gas emissions, and will not hold true for weakened federal standards. Consequently, the Department’s adoption by reference of California’s “deemed to comply” amendments does not consist in a violation of Section 177 of the Clean Air Act.

### Comment 2

The comments provided by Global Automakers suggest that the pending Safer Affordable Fuel-Efficient (SAFE) rule that the federal government is currently finalizing for the light-duty vehicle fuel economy and greenhouse gas emission standards may result in a national program that sets meaningful and continued increase in vehicle efficiency standards, while also meeting the needs of America’s drivers, and negating the need for separate state regulations. In this optic, Global Automakers asks the Department to defer its adoption of California’s “deemed to comply” amendments until after the federal rulemaking is complete.

### Department Response

On February 21, 2019, officials from the White House, Department of Transportation, and Environmental Protection Agency announced that “*the Trump Administration has decided to discontinue discussions with the California Air Resources Board regarding the SAFE Vehicles Rule*”<sup>1</sup>. Although this statement does not offer details about the final greenhouse gas standards that will be implemented by the SAFE rule, it does highlight an expected discrepancy with the currently adopted California standards.

In its Technical Support Document for the proposed amendments, the Department has recognized the social, environmental and economic benefits of maintaining the currently adopted standards for model years 2021 through 2025, and has also concluded that the SAFE would result in weakened national standards, unnecessary increase in CO<sub>2</sub> emissions, and exacerbated effects of climate change. Additionally, the Department has highlighted the urgency of preserving the emissions standards for model year 2021 through an Emergency Order signed on December 27, 2018, which acknowledges the adverse effects for Delaware, if the adoption of the “deemed to comply” amendments was delayed.

For these reasons, the Division does not recommend the Department to wait until after the final federal SAFE rule has been published to proceed with the adoption of California’s “deemed to comply” amendments.

## **II. Comments Received in Support of the Proposal**

### **Comment 1**

Four out of the five comments received were in support of the Department’s proposed amendments to 7 DE Admin. Code 1140. The supporting comments highlighted that the adoption by reference of California’s amendments clarifying the “deemed to comply” provision was necessary, given the benefits to the quality of life of Delawareans, and due to the urgency of Climate Change mitigation actions.

### Department Response

The Division of Air Quality appreciates that the Delaware Sierra Club and two private citizens took the time to voice their support for the proposed amendments. The Division recommends that the Department finalizes the revisions, as proposed.

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<sup>1</sup> The White House. February 21, 2021. Joint Statement from the White House, Department of Transportation, and Environmental Protection Agency on the SAFE Vehicles Rule. Accessible online, via: <https://www.whitehouse.gov/briefings-statements/joint-statement-white-house-department-transportation-environmental-protection-agency-safe-vehicles-rule/>

