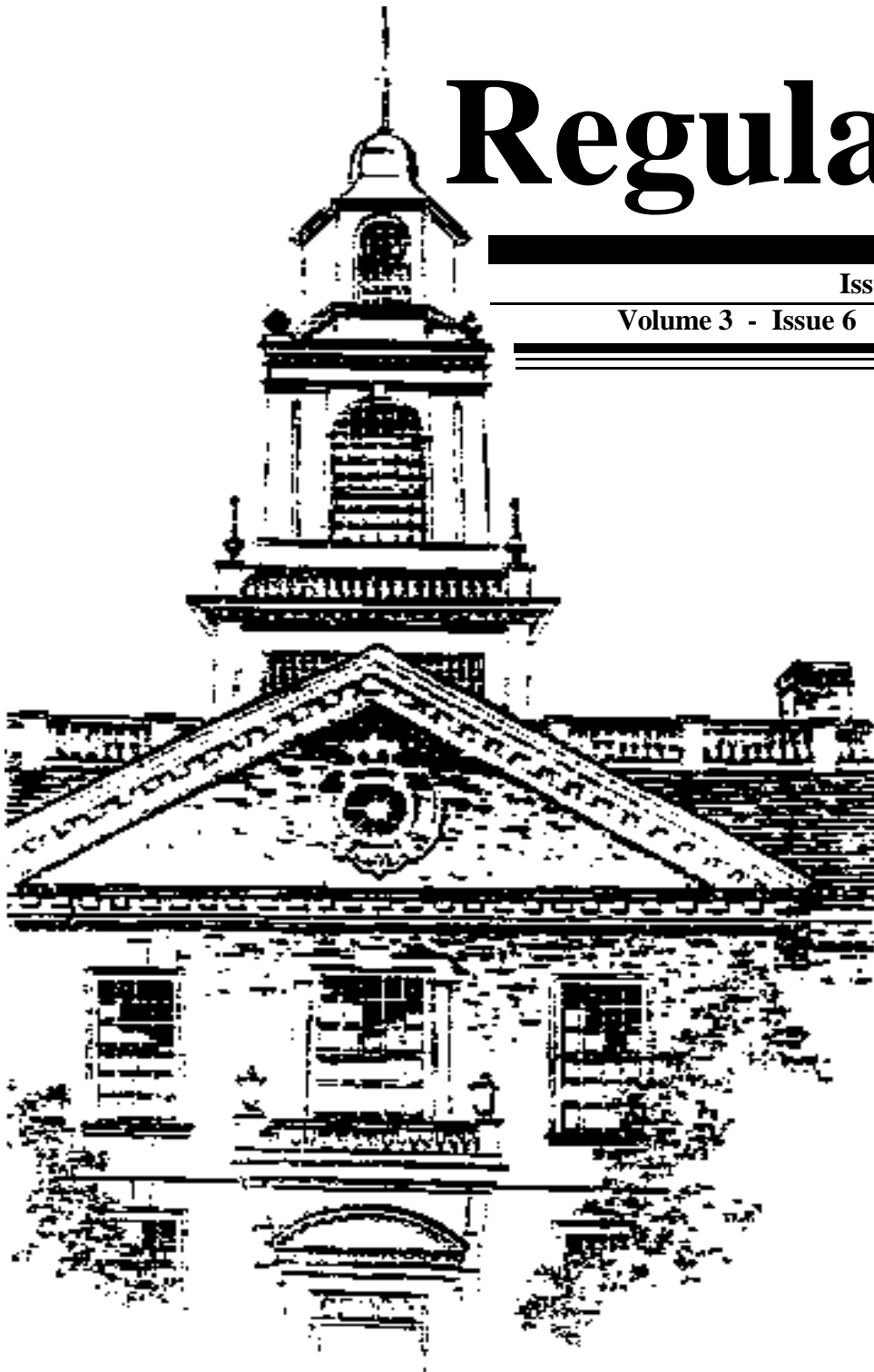

Delaware Register of Regulations



Issue Date: December 1, 1999

Volume 3 - Issue 6

Pages 677 - 831

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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 November 15, 1999.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

2 DE Reg. 1000 - 1010 (12/1/98)

Refers to Volume 2, pages 1000 - 1010 of the Delaware Register issued on December 1, 1998.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.

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Appointments & Nominations.....	3 DE Reg. 111
	3 DE Reg. 341
	3 DE Reg. 457
	3 DE Reg. 552
	3 DE Reg. 669
Public Service Commission	
Reg. Docket No. 49, Creation of a Competitive Market for Retail Electric Supply Service	3 DE Reg. 538 (Final)

The following final regulation from the Department of Education was originally to have published in the August 1, 1999 issue of the Register. Please note the effective date of the regulation is August 10, 1999.

DEPARTMENT OF EDUCATION

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

REGULATORY IMPLEMENTING ORDER**DELAWARE STUDENT TESTING PROGRAM****I. SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED**

The Acting Secretary seeks the consent of the State Board of Education to adopt new regulations on the Delaware Student Testing Program. These regulations are necessary in order to carry out the requirements of 14 Del. C., Sections 151 through 153 on the Student Testing Program. The regulations deal with the following issues: grades when students are tested and what subject areas are tested, testing all students, accommodations for special education and limited English proficient students, security and confidentiality issues and the levels of student performance on the DSTP.

Notice of the proposed regulations was published in the News Journal and the Delaware State News on June 14, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACT

The Acting Secretary finds that it is necessary to adopt these regulations because 14 Del. C., Section 152 and 153 requires the Department of Education to promulgate these regulations.

III. DECISION TO ADOPT THE REGULATIONS

For the foregoing reasons, the Acting Secretary concludes that it is necessary to adopt the regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), these new regulations hereby adopted 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 shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the document Regulations of the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on July 29, 1999. 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 29th day of July, 1999.

DEPARTMENT OF EDUCATION

Valerie Woodruff
Acting Secretary of Education

Approved this 29th day of July, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President

Mary B. Graham, Esq.
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

100.1 Delaware Student Testing Program

1.0 [General:]Assessments created pursuant to the Delaware Student Testing Program shall be administered annually, on dates specified by the Secretary of Education, to students in grades 3, 5, 8, and 10, in the content areas of reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in the content areas of social studies and science. All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

2.0 [Security and Confidentiality:]In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook,

as the same, may from time to time be amended hereafter.

2.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the affidavit provided by the Department of Education regarding test security before, during and after test administration.

2.2 Violation of the security or confidentiality of any test required by the Delaware Code and the regulations of the Department of Education shall be prohibited.

2.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials. Conduct that violates the security or confidentiality of a test is defined as any departure from the test administration procedures established by the Department of Education. Conduct of this nature may include the following acts and omissions:

2.3.1 duplicating secure examination materials;

2.3.2 disclosing the contents of any portion of a secure test;

2.3.3 providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

2.3.4 changing or altering a response or answer of an examinee to a secure test item or prompt;

2.3.5 aiding or assisting an examinee with a response or answer to a secure test item or prompt;

2.3.6 encouraging or assisting an individual to engage in the conduct described above;

2.3.7 failing to report to an appropriate authority that an individual has engaged in conduct outlined above;

2.4 Individuals who engage in the conduct prohibited in section 2.3 may be subject to disciplinary action as provided in Delaware Code for educators who engage in acts of misconduct.

3.0 [Levels of Performance:] There shall be five levels of student performance [relative to the State Content Standards] on the assessments administered pursuant to the Delaware State Testing Program. Said levels are defined and shall be determined as follows:

3.1 Distinguished Performance [Level 5]: A student's performance in the tested domain is deemed exceptional. Students in this category [will have] show[ed] mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

3.2 Exceed[s] the [Performance] Standard [Level

4]: A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the [Performance] Standard. Students in this category must ~~[demonstrate]~~ [show] mastery of the Delaware Content Standards [beyond what is expected at the grade level]. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the [Performance] Standard ~~[performance]~~ shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.3 Meets the [Performance] Standard [Level 3]: A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category ~~[must demonstrate that their level of understanding is such that they are prepared to succeed in further academic pursuits]~~ show mastery of the Delaware Content Standards beyond what is expected at the grade level.] Student performance in this range can be classified as "good." The cut points for Meets the [Performance] Standard ~~[performance]~~ shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.4 Below the [Performance] Standard [Level 2]: A student's performance in the tested domain indicates [shows] a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. ~~[Students at the upper end of this level are to be further sub-classified as Near the Standard. Students who are Near the Standard are those whose performance on the fundamental skills and knowledge articulated in the Delaware Content Standards is not yet sufficient to Meet the Standard, but the student is near the threshold in relation to the Meets the Standard category. The threshold shall be determined by the Department of Education, with the consent of the State Board of Education, using an error of measurement determined by the test data and the results from the standard setting process.]~~ Students who are Below the [Performance] Standard ~~[generally may]~~ require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the [Performance] Standard ~~[performance]~~ shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the

Standard Setting process. [Students at the upper end of this level are to be further sub-classified as Near the Performance Standard. Students who are Near the Performance Standard are those whose performance on the fundamental skills and knowledge articulated in the Delaware Content Standards is not yet sufficient to Meet the Performance Standard, but the student is near the threshold in relation to the Meets the Performance Standard category. The threshold for Near the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using an error of measurement determined by the test data and the results from the standard setting process.]

3.5 Well Below the [Performance] Standard [Level 1]: A student's performance in the tested domain indicates [shows] a performance that is clearly unsatisfactory [in terms understanding] of the fundamental skills and knowledge articulated in the Delaware Content Standards[,] ~~and is such that it can be clearly inferred that the student's grasp on the fundamental skills and knowledge articulated in the standards is well below the expectation for Meets the Standard.~~ Students who are Well Below the [Performance] Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the [Performance] Standard ~~performance~~ shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

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 NURSING**

Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 **Del.C.** 1906(1))

The Delaware Board of Nursing in accordance with 24 Del. Code, Subsection 1906(1) has proposed to revise certain sections of Articles II, V, VI, VIII, and X of the Rules and Regulations regulating the Practice of Nursing in the State of Delaware that address nursing education programs, assistance with self-administration of medications, licensure examinations, the practice of nursing as an Advanced Practice Nurse in the State of Delaware, and disciplinary proceedings.

A public hearing will be held on Wednesday, January 12, 2000 at 9:00 a.m., in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed revised section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover, DE 19904, (302) 739-4522, ext. 215 or 216. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be at the public hearing.

ARTICLE II NURSING EDUCATION PROGRAMS

SECTION 1 - DEFINITIONS

1.1 "Board" - the Delaware Board of Nursing.

1.2 "Conditional Approval" - the status granted to a program that is determined to be deficient in a specified area. When this determination is made by the Board, written notice shall be sent to the program specifying the deficient areas, and the time limit within which the deficiencies are to be corrected.

1.3 "Full Approval" - the status granted to a program that meets the requirements of the Law and the Rules and Regulations of the Board. Continuation of full approval is contingent upon annual review of the program and continuing to meet the criteria.

1.4 "Initial Approval" - authorization to admit students and enter into contractual agreements for clinical facilities. It is granted only after an application has been submitted, reviewed and a survey visit made by the Board. No students shall be admitted to the program until the institution has received written notification that initial approval has been granted. Failure to comply will delay initial approval.

1.5 "National Accrediting Agency For Nursing Education"- a national accrediting agency for nursing education that is recognized by the Council on Postsecondary Accreditation and by the U.S. Department of Education.

1.6 "Nursing education program" - as defined in 24 Del. C., Chapter 19.

SECTION 2: AUTHORITY DESIGNATED TO BOARD OF NURSING

2.1 In accordance with 24 Delaware Code, Chapter 19, the Board may:

- A. Approve curricula and develop criteria and standards for evaluating nursing education programs;
- B. Provide for surveys of such programs at such time as it may deem necessary;
- C. Approve such programs to meet the requirements of the Chapter and of the Board; and
- D. Deny or withdraw approval from nursing education programs for failure to meet prescribed curriculum or other standards. (Subsections 1906 (b), (c), (e)).

SECTION 3: PURPOSES OF APPROVAL

3.1 The state requires that nursing education programs be approved in order to:

- A. Provide for the safe practice of nursing by setting minimum requirements for the programs that prepare the licensee.
- B. Encourage self-evaluation for the improvement of a nursing education program.
- C. Provide for the public a list of nursing education programs that meet the requirements set by the Board.
- D. Assure the graduates of approved nursing programs of their eligibility to apply for admission to the licensing examination and to facilitate their licensure by endorsement in other states.

SECTION 4: PROCEDURE FOR ESTABLISHING A NURSING EDUCATION PROGRAM**PHASE I**

4.1 An administrative officer of the institution shall complete the appropriate application form and forward three copies to the Executive Director of the Board at least 12 months prior to enrollment of students.

4.2 The Board shall review the application and conduct a site visit. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

4.2:1 Alternatively, the institution desiring to establish a nursing education program may elect to have the site visit made by a Board member(s) and a nursing education consultant, the latter with special expertise in the same type of nursing education as the program. The consultant shall be from a list of qualified persons approved by the Board. Costs associated with the visit of the consultant shall be borne by the nursing education program requesting same.

4.3 The purpose of the site visit is to validate the information recorded on the application.

4.4 The site visitation team shall make a written report

to the Board.

4.5 The Board shall report to the institution within 90 days after all requirements of Phase I have been met.

PHASE II

4.6 The institution shall notify the Board of the appointment of a qualified nurse as director of the program at least nine months in advance of the anticipated enrollment of students in nursing courses.

4.7 The director shall be responsible for planning the program and providing the information required in Part II of the application form, which must be resubmitted at least three months prior to the anticipated enrollment of students.

4.8 The Board shall review the application and supporting information at a regularly scheduled meeting and determine if the program is prepared to admit students. If it is so determined, initial approval will be granted.

PHASE III

4.9 Following initial approval, the director of the program shall submit five copies of a progress report to the Board every six months. This shall be a general report of progress to date to include number of students enrolled, attrition rate, faculty credentials, curriculum design, and use of clinical facilities. After the admission of students, these reports shall continue to be submitted at six month intervals until discontinued by the Board.

4.10 The institution shall appoint other qualified nurse faculty members no less than four months in advance of enrollment of students in nursing courses to participate in determining the theoretical framework and in developing the curriculum plan and course content.

4.10:1 The program shall be developed according to criteria in accordance with Section V of these Regulations. The curriculum plan, including course descriptions, shall be submitted for Board review and approval three months in advance of enrollment of students in nursing courses.

4.11 Following the graduation of the first class, the nurse faculty shall prepare and submit five copies of a self evaluation report to the Board for review. The Board will conduct a survey visit to consider full approval of the program.

4.11:1 The Board's decision regarding approval status shall be sent in writing to the appropriate administrative officers and to the director of the nursing education program.

SECTION 5: STANDARDS FOR APPROVAL**5.1 Organization and Administration.**

5.1:1 The school shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution, by resolution of its board of control, or by the school's own charter or articles of incorporation.

5.1:2 Universities, colleges, community or junior colleges, and public schools offering programs in nursing shall be accredited by their appropriate agencies.

5.1:3 Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association.

5.1:4 Any agency or institution that is used by a nursing education program shall be authorized to conduct business in the state of Delaware, or in the state in which the agency or institution is located.

5.1:5 The authority and responsibility for the operation of the nursing education program shall be vested in a director who is duly licensed to practice professional nursing in Delaware and who is responsible to the controlling board, either directly or through appropriate administrative channels.

5.1:6 A written organization plan shall be prepared and submitted to the Board and shall indicate the lines of authority and communication of the program to the controlling body, other departments within the controlling institution, the affiliating and cooperating agencies, and to the advisory committee, if one exists.

5.1:7 Adequate funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The director of the nursing program shall be responsible for budget recommendations and administration, consistent with the established policies of the controlling agency.

5.1:8 When the program uses educational or clinical resources that are under the control of another authority, there shall be written agreements with each resource provider. Such agreements shall be developed jointly with the provider, reviewed periodically according to the policies of the program and the agency, and include provision for adequate notice of termination.

5.1:9 Clerical services shall be provided to support the program with a minimum of one full-time secretary and additional secretarial staff as needed.

5.2 Philosophy and Objectives

5.2:1 Philosophy and objectives shall be clearly stated in writing.

5.3 Faculty

5.3:1 Minimum Qualifications

A. All nursing faculty members, including the director, shall hold current licenses to practice as Registered Nurses in Delaware.

B. The director and each member of the nursing faculty shall be academically and professionally qualified for the position to which appointed. All nursing faculty members shall maintain professional competence in their area(s) of teaching responsibility through professional development activities such as nursing practice, participation in professional meetings, workshops, formal college courses,

and nursing research.

C. The director of a baccalaureate degree program shall hold an earned doctoral degree or have a specific plan for completing a doctoral degree and shall hold a degree in nursing at the Master's level or higher. The director shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

D. The director of a nursing education program shall hold a minimum of a Master's degree. The director shall hold a degree in nursing at the baccalaureate level or higher and shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

E. Each member of the nursing faculty shall hold a baccalaureate degree in nursing or a Master's in nursing. Faculty employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

F. Non-nurse members of the faculty shall hold academic and professional credentials in their field of specialization.

5.3:2 Number

The number of faculty members shall be sufficient to prepare the students for licensure, to achieve the objectives as stated in the school's application, and reasonably proportionate to:

- A. Number of students enrolled;
- B. Frequency of admissions;
- C. Education and experience of faculty members;
- D. Number and location of clinical facilities;
- and
- E. Total responsibilities of the faculty members.

5.3:3 Conditions of employment

A. Qualifications and responsibilities for faculty member positions shall be defined in writing.

B. Written personnel policies shall be consistent with the policies of the sponsoring institution.

C. Faculty assignments shall allow time for class and laboratory preparation, teaching, program evaluation, improvement of teaching methods, guidance of the students, participation in faculty organizations and committees, attendance at professional meetings, and participation in continuing education activities.

5.3:4 Functions

The principal functions of the faculty shall be to:

- A. Develop the philosophy and objectives of the nursing program;
- B. Develop, implement, evaluate and revise the curriculum;
- C. Participate in the recruitment, admission and retention of students in the nursing program;
- D. Establish criteria for promotion and completion of the program in nursing;
- E. Evaluate student achievement on the basis of established criteria;
- F. Recommend successful candidates for degree, diploma and other forms of recognition; and
- G. Participate in appropriate activities of the controlling institution.

5.3:5 Organization

- A. The nursing faculty shall attend regular meetings of the faculty for the purpose of developing, implementing and evaluating the nursing curriculum.
- B. Committees shall be established as needed.
- C. Written rules or bylaws shall govern the conduct of nursing faculty meetings and committees.
- D. Minutes of faculty and committee meetings, including action taken, shall be recorded and available for reference.
- E. Provision shall be made for nursing student membership and participation on faculty committees and in committee meetings as appropriate.
- F. Where nursing practice/education (advisory) committees are established, their functions and relationship to the board of control and to the program shall be clearly defined
- G. Written rules shall govern the activities of the nursing practice/education (advisory) committee(s) and minutes of the meetings shall be on file in the administrative office of the program.

5.4 Students

5.4:1 Admission, Promotion and Graduation

- A. Criteria
 - Policies and procedures related to the selection and admission of students are the responsibility of the individual school.
- B. Students shall be admitted on the basis of established criteria and without discrimination as to age, race, religion, sex, sexual preference, national origin, or disability.
- C. There shall be written policies for the admission and re-admission of students.
- D. Schools granting advanced standing after admission via challenge examinations, College Level Examination Program, teacher made tests or any other method shall have written criteria for granting course credit.

E. The policies for promotion, retention and graduation shall be published in the school catalogue or in other appropriate documents that are available to students.

F. All candidates in a program that requires applicants to be registered nurses must be licensed in Delaware if any clinical experiences occur in the State.

5.4:2 Services

A. There shall be written policies for student welfare as related to health, counseling and guidance, financial aid, and residence life, if offered.

B. There shall be well-defined written policies governing payment and refund of tuition and other fees.

5.5 Information

5.5:1 Annual Report

By September 1 of each year, five copies of an annual report of the nursing education program shall be sent to the Board, using the format supplied by the Board. The report will include information from August 1 of the previous year through July 31 of the current academic year.

5.5:2 School Records

A nursing education program shall maintain a system of records which shall contain all data relating to approval by any agency or body. The data shall include, but not be limited to, course outlines, minutes of faculty and committee meetings, pertinent correspondence, reports of standardized tests and survey reports. Such data shall be available to the Board representatives during the course of a site survey visit subject to applicable provisions of state and federal law.

5.5:3 Student Records

A. The school shall maintain a record for each student. Subject to applicable provisions of law, such records shall be available to Board representatives during the course of a site survey visit.

B. A final transcript for each student shall be retained in the permanent records of the school.

C. Provision shall be made for the protection of records against loss, destruction and unauthorized use.

5.5:4 School Bulletin or Catalogue

Current information about the school shall be published periodically and distributed to students, applicants for admission and to the Board. It should include a general description of the program, philosophy and objectives of the controlling institution and of the nursing programs, admission and graduation requirements, fees, expenses, and financial aid, educational facilities, living accommodations, student activities and services, curriculum plan, course descriptions, and faculty staff roster.

5.6 Curriculum

The following shall apply to nursing education programs:

5.6:1 Nursing Education Programs

A. The curriculum shall reflect the stated philosophy and objectives of the school and evidence of an organized pattern of instruction and appropriate supervised nursing practice consistent with sound educational practices and principles of learning.

B. LPN and RN programs shall provide for concurrent or correlated theory and clinical practice in the physical and/or mental health care of individuals of all ages, the nursing care of mothers and newborns, children, adults, the aged, individuals with mental health problems, and individuals in diverse settings, not necessarily in separate courses.

1. Clinical experiences shall include preventive aspects of illness, nursing care of persons with acute and chronic illnesses and rehabilitative care. Opportunities shall be provided for the student to participate in patient teaching in a variety of settings with individuals, families and other groups.

2. Concurrent and or correlated theory shall include the history of nursing, health care issues, and legal-ethical issues.

C. The RN curriculum shall provide instruction in the following fields:

1. Physical and biological sciences including content from the areas of anatomy and physiology, chemistry, microbiology, pharmacology and nutrition, which may be integrated, combined or presented as separate courses, and

2. Social and behavioral sciences including content drawn from the fields of communication theory, psychology and sociology and shall serve as a basis for the selection of learning experiences which develop abilities and skills in observation, interviewing, interpersonal relations, and problem-solving.

3. Professional nursing responsibilities.

4. Nursing research and nursing leadership in BSN programs.

D. The LPN curriculum shall provide instruction in the following fields:

1. Essential facts and principles in the biological, physical and social sciences including body structure and functions, elementary microbiology, pharmacology and nutrition, signs of emotional and mental health, human growth and development, and administration of medications.

5.7 Evaluation

5.7:1 Evaluation as a basis for curriculum revision and change in practices is a continuous process and an inherent responsibility of the faculty. The degree to which the faculty accomplishes its objectives shall be determined through evaluation of curriculum content, teaching methodologies, clinical and other learning experiences, student progress, success of graduates on the licensing examination, promotion, retention and degree of nursing

competence of the graduate.

5.8 Educational Facilities

5.8:1 Classrooms, laboratories, and conference rooms shall be adequate in number, size and type for the number of students and educational purposes for which the rooms are used.

5.8:2 Offices

A. Offices shall be available and adequate in size, number and type to provide faculty with opportunities for uninterrupted work and privacy for conferences with students.

B. Space for clerical staff, records, files and other equipment shall be adequate for the needs of the program.

5.8:3 Learning Resources

A. The library shall have recent, pertinent and sufficient holdings to meet the learning needs of students and faculty.

1. Provision shall be made for regular additions to and deletions from the library collection.

2. Library facilities and policies shall be conducive to effective use.

B. Equipment shall be available so that a multimedia approach to learning is afforded.

5.8:4 Clinical Facilities

A. The clinical facility to which the student is assigned for clinical practice is considered an integral part of the nursing program.

B. Clinical facilities shall be selected by the faculty to provide learning experiences essential to achieve the stated purposes of the program and the stated objectives for each clinical course. They may include, but are not limited to:

1. Inpatient facilities such as acute care hospitals, specialized hospitals, long term and extended care facilities.

2. Outpatient facilities such as hospital based clinics, community health centers, mental health clinics and physicians' offices.

3. Other community agencies such as hospices, health maintenance organizations, day care centers, senior centers and prisons.

C. The following criteria for clinical facility use must be met:

1. There shall be an environment in which effective learning can take place and in which the student is recognized as a learner.

2. There shall be an adequate number of qualified professional and other nursing personnel not including the student, to ensure safe care of the patient.

3. There shall be a sufficient number and variety of patients to provide adequate learning experiences.

D. Hospital facilities shall be accredited by the Joint Commission on Accreditation of Health Care

Organizations or the American Osteopathic Association. Other facilities such as specialized hospitals, long term and extended care facilities and community health agencies shall be licensed or approved by the appropriate approving authority.

E. Facilities used for clinical experience shall be approved by the Board prior to the assignment of students. Approval shall be based on information provided by the school on forms furnished by the Board. A visit by Board representatives to the clinical site may be scheduled.

F. Clinical facilities used in another state require written notification to that jurisdiction's Board of Nursing.

G. Written agreements between the school and agencies involved shall:

1. Ensure that the faculty are ultimately responsible for the students' learning experiences.

2. Provide for continuous planning for students in cooperation with the director of nursing and appropriate nursing staff of the agency.

3. Provide adequate space for the number of students and faculty to conduct educational conferences.

H. Observational experiences shall be planned in cooperation with the agency to meet stated objectives.

5.9 Program Changes

5.9:1 Program Changes Requiring Board of Nursing Prior Approval

A. Changes in the philosophy and/or objectives of the program.

B. Changes in the overall curriculum plan.

C. Changes in the administrative sponsorship of the program.

5.9:2 Procedure for Approval of Program Change

A. When a program change is contemplated, consultation from the Board is available.

B. When any program change is proposed, a written plan shall be submitted to the Board including the:

1. Description of the change

2. Rationale for the change

3. Relationship of the proposed change to the present program.

C. Three copies of these materials shall be submitted to the Board at least one month prior to the Board meeting at which time the request will be considered.

5.10 Procedure for Continuing Full Approval

5.10:1 Each nursing education program that is accredited by a Board-approved national accrediting agency for nursing education must submit a copy of the self-study document and the letter of notification of accreditation status by September following the reaccreditation visit. This is contingent on the program remaining accredited and sharing copies of all correspondence related to compliance with the

national accrediting agency's recommendations. Extraneous material will be disseminated to Board Members at the discretion of the Executive Director in consultation with the President.

5.10:2 Each nursing education program that does not have Board approved national accreditation will be re-evaluated at least every five years. Survey visits may be scheduled as determined by the Board.

A. Representative(s) of the Board will conduct a survey visit on a date mutually acceptable to the nursing program and the Board.

B. The Board shall notify the director of the nursing education program of the intended survey visit by June of the year preceding the survey visit. The Director shall coordinate an agenda for the visit with the Board and submit it to the Board office three weeks prior to the visit for distribution to the team.

C. The school shall submit five copies of a comprehensive self-evaluation report, following the format supplied by the Board, by September 1 of the survey year.

5.10:3 Interim visits may be made at any time within the five-year period either by request or as deemed necessary by the Board, with advance notice. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

5.10:4 If the Board determines that a program is not maintaining the standards of Section 5 of these Rules and Regulations, the program shall be granted conditional approval and given a reasonable period of time to correct deficiencies.

5.10:5 A failure to attain an eighty percent pass rate on the licensure examination for first time candidates as reflected in two consecutive annual reports will require presentation to the Board of a plan to identify and correct deficiencies. Progress reports will be required.

A. A program reporting five or fewer candidates in a 12 month period with a failure to attain an eighty percent pass rate as reflected in two consecutive annual reports must provide a written explanation to the Board for action.

5.10:6 Deficiencies sufficient to warrant a determination of conditional approval (probation) may include one or more of the following:

A. Failure to adhere to the school's stated philosophy and curriculum objectives.

B. Repeated violations of stated academic and/or admission policies.

C. Failure to maintain a faculty and administration of adequate size and qualifications.

D. Use of students for nursing services or other purposes that are not primarily educational.

E. Failure to provide adequate resources for cognitive learning and clinical practice.

F. Failure to admit and retain students

and/or hire and promote faculty and other personnel without discrimination as to age, race, religion, sex, sexual preference, national origin, or disability.

G. Failure to attain an eighty percent pass rate on the licensure examination for first time candidates in any three consecutive calendar years.

H. Any other deficiencies that, in the opinion of the Board, detrimentally affect the educational process.

5.10:9 7 Upon notification of conditional approval (probation), the program administrator shall submit an action plan no less than two weeks preceding the Board meeting designated in the notification. The action plan shall include identification of the deficiency(ies), proposed corrective action, and projected timeline to remediate the deficiency(ies). The program administrator will be invited to present the action plan at the designated Board meeting. The Board may approve the plan as submitted, recommend revisions, or reject the plan. The program shall submit progress reports as specified by the Board during the term of conditional approval (probation). Prior to the expiration of the probationary period, the program administrator will be invited to meet with the Board to review the status of the plan relative to remediation of the deficiency(ies). A program becomes eligible for unconditional approval when the Board is satisfied that the stated deficiency(ies) has been corrected. If satisfactory remediation has not occurred in the stated timeline, the program administrator will submit an explanation and revised plan with projected timeline. The Board may approve the plan as submitted, or with revisions, or reject the plan and propose to withdraw program approval.

5.10:7 8 A program that fails to correct these deficiencies to the satisfaction of the Board within a reasonable time shall be discontinued after a hearing in which facts regarding such deficiencies are established.

5.10:8 9 Provisions of Sections 6.1 B., C., D., and E. shall prevail for any program for which Board approval has been discontinued.

SECTION 6: TERMINATION OF A NURSING PROGRAM

6.1 The controlling institution shall:

A. Submit written notification to the Board of its intent to terminate or interrupt the nursing program.

B. Provide for the completion of the nursing program for all students currently enrolled.

C. Safeguard the quality of the educational program for these students.

D. Provide for the permanent retention of records of students and graduates.

E. Notify the Board in writing as to the location of records and where requests for records may be sent.

SECTION 7: PROCEDURE FOR ANNUAL REVIEW OF NURSING EDUCATION PROGRAMS

7.1 The Board shall review the annual reports and self-evaluation reports of the programs submitted each ~~September~~ October.

7.2 Following review of the reports from the programs, written notification of the action taken at the regularly scheduled board meeting, including any recommendations, shall be sent to the appropriate administrative officers of the school. This could include notification of the Board's intention to conduct a site visit.

7.3 Site Visits

7.3:1 For any site visit, the President shall designate the Board members who are to make the survey visits and the chair person of the survey team. At least one member of each team shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

7.3:2 The site visit may be made by a Board member(s) and a nursing education consultant, the latter with special expertise at the same level of nursing education as the program. The consultant shall be selected from a list of qualified persons submitted by the nursing program and approved by the Board. Costs associated with the hiring of the consultant shall be borne by the program.

7.3:3 The Board will indicate in advance any clinical areas they wish to visit.

7.3:4 The school shall schedule separate interviews for the visitors with:

- A. The nurse administrator of the program
- B. The faculty
- C. Representative students from each level
- D. Others as deemed appropriate by the agency or the Board.

7.3:5 The school shall have records available for visitor review, including:

- A. Committee minutes
- B. Course materials
- C. Evaluation data regarding the entire program
- D. Other materials as specified by the survey team.

(Approved 11/8/95)

(Revised 7/8/98)

ARTICLE V GUIDELINES FOR COURSES RELATED TO ASSISTANCE WITH MEDICATIONS 24 Del. Code, Subsection 1902

SECTION 1: DEFINITION

1.1 "Assistance with medications" means a situation where a designated care provider functioning in a setting authorized by Section 1921 of this Chapter, who has taken a Board approved medication training program, or a

designated care provider who is otherwise exempt from the requirement of having to take the Board approved self administration of medication training program, assists the patient in self-administration of medication other than by injection, provided that the medication is in the original container with a proper label and directions. The designated care provider may hold the container for the patient, assist with the opening of the container, and assist the patient in taking the medication.

SECTION 2: PROCEDURE FOR ADMINISTERING TRAINING COURSE

2.1 Three copies of each proposed medication training course shall be submitted to the Board for approval or advance notice made to the Board that the approved core training program will be used.

2.2 Credentials of all instructors shall be submitted to the Board for approval.

2.3 Upon completion of the course, the instructor shall submit a list of the successful students to the Board.

SECTION 3: PROVIDER QUALIFICATIONS

3.1 Upon completion of this assistance with self-administration of medications training course, the designated care provider will be able to meet the objectives as indicated in the Board approved course guidelines.

3.2 Designated care providers will be recertified as specified by the Board of Nursing.

SECTION 4: ANNUAL REPORTING

4.1 The administrator of the program shall submit an annual report to the Board of Nursing by ~~July~~ August 1 on a form provided by the Board.

4.2 The report shall indicate compliance with the guidelines as set forth in the Board approved assistance with administration of medication training program.

ARTICLE VI: REQUIREMENTS AND PROCEDURES FOR LICENSURE

SECTION 1: EXAMINATIONS

1.1 The Board declares that the National Council Licensure Examination-RN (NCLEX-RN) and the National Council Licensure Examination-PN (NCLEX-PN) are the required examinations for licensure in Delaware. The Division of Professional Regulation has the authority to review and approve the content and validity of examinations.

1.2 Up to July 1982, the passing score for professional nurse candidates was a standard score of 350 on each test of the State Board Test Pool Examination.

1.3 Effective July 1, 1982, the passing score for Registered Nurse candidates was 1600 on the NCLEX-RN and 350 on NCLEX-PN.

1.4 Effective July 1, 1988, results are reported and

recorded as pass or fail.

1.5 The candidate shall take the licensing examination within 90 calendar days following graduation from a Board approved program of professional or practical nursing and not there after without petitioning the Board for specific authorization to test after the 90 day period. Such petitions may be granted by the Board upon a showing of good cause.

1.6 To be eligible to take the examination for licensure for practical nursing, the applicant must be a graduate of a Board approved program for practical nursing. A graduate of a program for professional nursing will be denied permission to take the examination for licensure as a practical nurse.

1.7 The candidate shall file two applications for each examination.

A. The NCLEX application shall be filed with a non-refundable fee.

B. The candidate shall file a completed and notarized Delaware application for licensure by examination, along with the required fee.

C. In addition, the candidate shall file a signed official school transcript indicating the date of graduation or date degree was conferred. If this is not possible, a certifying letter from the director indicating the candidate had completed the program will be accepted until an official transcript is available.

D. The candidate shall present the admission card issued by the Board in order to be admitted to any portion of the examination.

1.8 A candidate who has been accepted but is unable to attend the scheduled examination must notify the Board prior to the starting time or during the first day of examination with a specific reason for not attending. If the reason is acceptable to the Board, (e.g. candidate is ill, death in immediate family, accident, etc.) the Delaware application for licensure by examination will be extended to the next examination date.

SECTION 2: TEMPORARY PERMITS PRIOR TO EXAMINATION

2.1 Prior to the employment starting date the candidate shall submit a notarized application for a temporary permit on a form provided by the Board.

2.2 The temporary permit is a limited license authorizing professional or practical nursing practice only at the institution employing the graduate, and only under supervision and pending the results of the examination.

2.3 Any graduate who has completed the requirements of a state board of nursing approved program of professional or practical nursing and who has filed for licensure by examination in Delaware may be employed in professional or practical nursing, working under the direct supervision of a Registered Nurse pending results of the licensing examination.

2.4 Direct supervision means supervision by a

Registered Nurse on the same assigned unit during the same time period. The term "unit" is defined as one staffed unit of a maximum of forty patients.

2.5 In order to practice nursing in Delaware with a temporary permit, a recent graduate of a state board of nursing approved program of nursing in another state must file an application for licensure before beginning to practice. If the graduate has taken, or is scheduled to take, the NCLEX Examination in the state in which the program is located, the applicant shall file an application for licensure by endorsement in Delaware.

A. Candidates must submit written documentation that they are candidates for the NCLEX in the state in which the examination is being written.

2.6 The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

2.7 Only a candidate approved to take an examination scheduled after graduation from an approved State Board of Nursing program in the United States or its territories may be issued a temporary permit to practice nursing, good until the release of the examination results.

2.8 The temporary permit shall terminate forthwith if a candidate fails to take the examination in the time prescribed. The Board will notify the candidate's employer of the termination of the permit. The candidate shall return the permit to the Board.

2.9 If extenuating circumstances exist, the candidate may apply to the Board for reissuance of a temporary permit. If the reason is acceptable, the permit may be reissued. (Refer to Section 7: Temporary Permits)

SECTION 3 TEST RESULTS

3.1 In the case of a successful candidate, the results are released in the following order: the candidate, the director of the school of nursing and the news media. In the case of the unsuccessful candidate the results are released in the following order: the candidate, the employer, and the director of the school program.

3.2 A successful candidate will receive the test results and a copy of the Law regulating the practice of nursing in Delaware, (24 Delaware Code, Chapter 19), and a certificate of registration with a permanent license number.

3.3 A letter to unsuccessful candidates will accompany the test results to advise them of their status and the procedure to be followed for re-examination.

~~3.4 A candidate taking the Practical Nursing examination for the first time in October of a renewal year will be issued a license for the next biennium with the certificate of registration.~~

3.5 4 Candidates for licensure who fail the National Council Licensure Examination may not be employed in nursing, are not permitted to practice nursing as defined in the Law, and must return the temporary permit upon receipt

of the failure notification.

3.6 5 The candidate's employer shall be notified that the temporary permit is not valid, and the candidate may not be employed in nursing until the NCLEX has been passed.

3.7 6 The applicant shall retake the examination within a one-year period following notification of failure in order to be eligible for re-examination and not there after without petitioning the Board for specific authorization to retest after the one-year period. Such petitions may be granted by the Board upon a showing of good cause to allow for further examination. There is a fee for each re-examination. Any candidate who graduated following the date of February 1982 may retake NCLEX for an unlimited number of times within a five year period from ~~writing the first exam~~ the date of graduation from an approved nursing education program. Notwithstanding the foregoing, any candidate who graduates from an approved nursing education program after April 30, 2000 may retake NCLEX an unlimited number of times within a two year period from graduation and not there after without petitioning the Board for specific authorization to retest after two year period. Such petitions may be granted by the Board upon a showing of good cause to allow further examination.

SECTION 4: REQUIREMENTS FOR APPLICANTS GRADUATING FROM FOREIGN PROGRAMS

4.1 Applicants graduating from programs outside of the United States and not licensed by the State Board Test Pool Examination or NCLEX in another state:

A. Must have been issued a certificate of licensure by the licensing agency in the state, territory, or country where the nursing program is located;

B. Must submit a certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the educational requirements of a curriculum for the preparation of professional nurses which is equivalent to the approved professional schools in Delaware;

C. Must submit official English translations of all required credentials;

D. Must, in instances when completion of a four-year high school course study or its equivalent cannot be verified, take the high school equivalence examination given by a State Department of Education;

E. Must submit evidence that the program from which applicant is a graduate meets the approved standards adopted by the Board (24 Delaware Code, Chapter 19, subsections 1910 and 1914) and Rules and Regulations: Article II -Section 5. (If the program does not include the areas specified in the above curricula, the deficiencies must be made up before the applicant is eligible to take NCLEX);

F. Are allowed one year from the date of Board review of the completed application to make up all deficiencies, including the taking of the initial examination;

G. Effective July 1, 1982, professional nurse

applicants must have passed the NCLEX examination (with a minimum standard score of 1600) and practical nurse applicants must have passed the NCLEX examination (with a minimum standard score of 350) within four examination opportunities, within a period of two years or original notification of failure.

H. Effective July 1, 1988, results are reported and recorded as pass or fail.

I. May be issued a temporary permit and may be employed in professional or practical nursing if the applicant has met all of the Board's prerequisites for taking the NCLEX in Delaware and is scheduled to do so;

J. May work only at the institution employing the applicant, under the direct supervision of a registered nurse pending results of the first licensing examination.

K. Must meet all other requirements for licensure.

4.2 All applications will be reviewed by the Board to determine if the applicant is eligible to take the NCLEX Examination or to determine if applicant's educational qualifications are as Board prescribed and may be eligible for licensure by examination.

4.3 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination from 1970 - 1979 are eligible for licensure by endorsement.

4.4 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination, first administered August 1980, are eligible for licensure by endorsement with a passing score of 400. (September 15, 1981)

4.5 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination after that examination became graded on a pass or fail basis are not eligible for licensure by endorsement and must pass the NCLEX. (June 8, 1996)

SECTION 5: LICENSURE BY ENDORSEMENT

5.1 All endorsement applicants shall:

A. Submit a completed, signed, and notarized application on a form provided by the Board.

B. Remit the required non-refundable fee.

C. Attach to the application a photocopy of a current license indicating date of expiration.

D. Provide official verification of original licensure in another jurisdiction on a form acceptable to the Board.

E. An applicant for endorsement must have completed high school or must have passed a nationally standardized test, and be otherwise qualified for licensure.

5.1:2 The Board shall request a reference on a form supplied by the Board from:

A. the applicant's immediate past employer(s) in the past six months. Such reference(s) should be given by the nursing employer, or if the immediate past employer is not a nursing professional, by the applicant's

immediate supervisor (e.g. physician, director, manager). In the case of someone engaged in solo practice or who is self-employed, the reference shall be provided by at least one professional colleague with whom the individual has most recently worked for at least six months in the past five years.

B. in the event of no previous nursing employer, the Director of the applicant's approved nursing education program. Any unsatisfactory reference shall be brought to the attention of the Board for review.

5.1:3 If the applicant has not been employed in nursing a minimum of 1000 hours in the past five years or a minimum of 400 hours of nursing practice within the previous two years, the applicant must give evidence of satisfactory completion of an approved refresher program within a two-year period before licensure by endorsement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional/practical nursing.

5.1:4 All completed applications for endorsement will be submitted to the Board for consideration of approval.

5.1:5 Issuance of a license shall be considered as notice of approval of the application.

5.1:6 All applications will be purged in accordance with Division policy.

5.2 Registered Nurses

5.2:1 The Board may issue a license to practice professional nursing as a Registered Nurse by endorsement, without a written examination, to an applicant who has been duly licensed as a Registered Nurse under the laws of another state, territory, or foreign country if, in the opinion of the Board, the applicant meets the qualifications for licensure in this state.

5.2:2 As of 1950 and thereafter, the State Board Test Pool Examination for professional nursing is the licensing examination authorized for use by all boards of nursing in jurisdictions in the United States. (In July 1982, the examination was re-titled National Council Licensure Examination-RN (NCLEX-RN). Prior to this date, examinations constructed by state boards of nursing are acceptable, providing such examinations include all of the required clinical areas: medicine, surgery, obstetrics-gynecology, pediatrics, psychiatry). Until 1953, the passing score required for each of the tests was 70%.

5.2:3 Those applicants graduating as of 1953 and thereafter are required to show evidence of clinical experience in medical nursing, surgical nursing, psychiatric nursing, nursing of children, and obstetrical nursing.

5.2:4 An applicant for licensure by endorsement must be a graduate of a State Board of Nursing approved school of nursing, and be otherwise qualified for licensure.

5.3 Licensed Practical Nurses

5.3:1 Effective October 1, 1963, waiver or equivalency licensure is not acceptable in Delaware. The Board may issue a license to practice nursing as a Licensed

Practical Nurse, without a written examination, to an applicant who has been licensed as a Practical Nurse or a person entitled to perform similar services under a different title under the laws of any state, territory or foreign country if, in the opinion of the Board, the applicant has the qualifications required for the licensing of practical nurses.

5.3:2 Candidates for licensure are required to have theory and clinical experience in medical nursing, surgical nursing, psychiatric nursing, obstetrical nursing, and nursing of children.

5.3:3 The applicant must be a graduate of a Board approved program for practical nursing.

5.3:4 A licensed practical nurse applicant for licensure by endorsement must have passed the NCLEX-PN.

5.3:5 An applicant for endorsement must be otherwise qualified for endorsement.

SECTION 6: LICENSURE: BIENNIAL RENEWAL AND REINSTATEMENT

6.1 Biennial Renewal of Licensure

6.1:1 In order to practice nursing in Delaware with or without financial compensation, Registered Nurses or Licensed Practical Nurses who are duly licensed under any provision of Chapter 19 shall renew their licenses biennially, prior to December 31 of the biennium. In the event that applicant for renewal or reinstatement of licensure has not been actively employed in professional or practical nursing in the past five years, the applicant will be required to give evidence of satisfactory completion of a professional or practical nursing refresher program within an approved agency within a two-year period to renewal before licensure will be granted, In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

A. Registered Nurses - the license shall be valid for two calendar years expiring each odd-numbered year on dates established by the Department of Administrative Services.

B. Licensed Practical Nurses - the license shall be valid for two calendar years expiring each even-numbered year on the dates established by the Department of Administrative Services.

6.1:2 The applicant shall indicate nursing employment within the past five years before the renewal application will be processed. A minimum of 1000 hours of nursing practice within the past five years or a minimum of four hundred hours of nursing practice within the past two years is required for licensure by renewal or reinstatement. Verification of completion of the practice hours will occur for a minimum of 1% of the total number of licensees with notice of the audit two months prior to the renewal in a biennium. An additional 2% will be audited within six months of renewal of licensure. See Article IX, for Mandatory Continuing Education requirements.

A. Upon receipt of such notice, the licensee must submit verification of compliance for the period being audited/verified. Verification will be done on a form supplied by the Board office that includes employer's name, title, address, telephone number, job title, and dates of employment.

B. The employer will submit the completed form directly to the Board office.

C. The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

D. An unsatisfactory verification or audit shall result in Board action.

E. Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

6.1:3 An application for renewal of license will be mailed at least 12 weeks prior to the expiration date of current licensure.

6.1:4 Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing their license by the expiration date.

6.1:5 Renewal application, along with the required fee, shall be returned to the Board office and postmarked no later than the last day of the month before the month of expiration.

6.1:6 Licenses that have lapsed may be reinstated by the Board upon satisfactory explanation by the licensee of failure to renew and after payment of a penalty fee.

6.1:7 During the month of expiration, the Board may issue a renewal certificate upon receipt of a renewal application, the documentation of nursing employment, the renewal fee and late fee.

6.2 Reinstatement of Licensure

6.2:1 Registered Nurses or Licensed Practical Nurses who fail to renew their licenses by February 28, May 31, and September 30, of the renewal period shall be considered to have lapsed licenses and shall not practice nursing in the state of Delaware. After February 28, May 31, and September 30 of the current licensing period, any requests for reinstatement of a lapsed licensed shall be presented to the Board for action. All applicants shall have a minimum of 1000 hours of nursing practice within the previous five years or a minimum of four hundred hours of nursing practice within the past two years before licensure by reinstatement will be granted. The practice of nursing can be with or without financial compensation. In the event the applicant has not been actively employed in nursing as described above, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reinstatement. In the event no refresher course is available, the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.2:2 The applicant shall file a notarized application for reinstatement of licensure. The application shall be accompanied by a satisfactory reference from a current or previous employer, renewal fee and penalty fee.

6.3 It is unprofessional conduct and a violation of Delaware Law to practice without a license. The Board may refuse a license or refuse to renew a license of a professional nurse or a practical nurse who practices without a current license.

6.4 Reinstatement Hearings

6.4:1 Hearings for consideration of reinstatement licensure may be held for those applicants who file for reinstatements more than 90 days after the renewal period and who have been practicing nursing without a current license, or who have submitted an unsatisfactory explanation for failure to renew.

6.4:2 A notice of hearing shall be sent to the Registered Nurse or Licensed Practical Nurse. The hearing shall be conducted in accordance with the Administrative Procedures Act and the Nurse Practice Act.

6.4:3 The Board shall make determination for reinstatement of licensure or shall determine that the Registered Nurse or Licensed Practical Nurse shall be subject to the penalties provided for violations of the Nurse Practice Act.

6.4:4 Upon determination that licensure shall be reinstated, the Board shall issue a license to practice nursing.

SECTION 7: TEMPORARY PERMITS

7.1 The temporary permit is a limited license authorizing professional, practical or graduate nursing practice only at the employing institution for no longer than an initial 90 day period.

7.2 Nurses who produce current evidence of licensure to practice nursing in another state and who have applied for endorsement may be issued a temporary permit to practice nursing for a maximum of 90 days, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice within the past two years.

7.3 A temporary permit to practice nursing for a maximum of 90 days may be issued to persons who have requested reinstatement of their licensure, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice in the past two years.

7.4 All applicants seeking temporary permits to practice professional, practical or graduate nursing in Delaware must:

A. Prior to employment starting date, submit a notarized application for endorsement or examination, completing the portion for a temporary permit, and indicating employer.

B. Have been employed in nursing a minimum of

1000 hours in the past five years or a minimum of four hundred hours in the past two years, if applying for reinstatement or endorsement, with current evidence of licensure from another state.

C. Have been accepted as a nurse employee in Delaware. The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

D. Have graduated from a State Board of Nursing approved program.

E. Pay a licensure fee which is not refundable.

7.5 Upon completion of all requirements, a temporary permit will be issued for no longer than 90 days with subsequent renewal periods of 60 and 30 days sequentially.

7.6 The Executive Director shall:

A. Keep a register of permits.

B. Refrain from issuing a temporary permit in any doubtful situation until further evidence is obtained or until the Board has given approval.

7.7 In the absence of the Executive Director, the President may issue a temporary permit with the same restrictions.

SECTION 8: INACTIVE STATUS

8.1 A person previously licensed by the Board and not engaged in the practice of nursing in the state of Delaware, but desiring to maintain the right to use the title Registered Nurse or Licensed Practical Nurse, may apply and be granted inactive status by the Board in accordance with these regulations.

8.2 A nurse desiring inactive status shall send a written notice to the Board with fee. Upon receipt of notice and fee the Board shall place the name of the person on an inactive status list and shall issue a certificate. The person shall not practice nursing in this state.

8.3 A licensee on inactive status shall use the appropriate title, Registered or Licensed Practical Nurse, followed by (INACTIVE).

8.4 A licensee will receive a certificate of inactive status with the term Inactive Registered Nurse or Inactive Licensed Practical Nurse printed across the top.

8.5 A notice of inactive status shall be sent to all persons on the inactive list at renewal time. To receive a certificate of inactive status, the licensee shall return the renewal notice with the fee.

8.6 All applications from persons on inactive status who decide to resume active status will be presented to the Board for review for reinstatement.

8.7 In the event the applicant has not been actively practicing nursing within the previous five years, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reactivation, or participate in an alternate Board approved method of evaluating current

knowledge in professional or practical nursing. All applicants shall have a minimum of 1000 hours of nursing within the previous five years or a minimum of four hundred hours of nursing practice within the previous two years. See Article IX, for Mandatory Continuing Education requirements.

SECTION 9: LOSS OF LICENSE, CHANGE OF NAME/ ADDRESS

9.1 If a license is lost, stolen or destroyed, the licensee shall submit a letter to the Board explaining the loss. A letter indicating the original number and expiration dates shall be issued by the Executive Director in lieu of a duplicate license.

9.2 Licensees who legally change their names and wish to change the name on the license, shall provide notarized copies of evidence, such as marriage licenses or court actions. The maiden name will be retained on the license.

9.3 Notice of change of address shall be submitted in writing within 30 days of the change. All notices from the Board will be sent to the last address provided by the licensee or applicant to the Board.

9.4 A list of license numbers of lost, stolen or otherwise destroyed licenses shall be kept on file in the Board office.

SECTION 10: REGISTER OF NURSES LICENSED IN DELAWARE

10.1 Licensure Verification

10.1:1 Following the official renewal period, the Executive Director shall request each employer or employing agency to submit to the Board by ~~February~~April 15 a list of all nurses employed. The list shall include the following information:

A. Name of employee, alphabetized by last name;

B. Classification (Registered Nurse, Licensed Practical Nurse, Advanced Practice Nurse or nurse holding temporary permit);

C. License number; and

D. Expiration date of current license or temporary permit.

10.1:2 Individuals submitting the list attest by their signatures that they viewed each current registration of licensure and advanced practice recognition.

10.1:3 The list will be checked by the Executive Director. If it is not possible to verify current licensure, the Executive Director will immediately notify the employer by letter.

10.1:4 The Executive Director shall prepare a summary of the survey to be presented to the Board.

10.2 Release of Information

10.2:1 The Executive Director may release to a citizen of Delaware the following information:

A. Whether or not the individual was or is

currently licensed,

B. Date of original licensure,

C. Under what condition license was issued (examination, endorsement, or waiver),

D. Whether license was ever suspended or revoked following a hearing.

10.2:2 Additional information may be released pursuant to the Freedom of Information Act.

ARTICLE VIII - RULES AND REGULATIONS GOVERNING THE PRACTICE OF NURSING AS AN ADVANCED PRACTICE NURSE IN THE STATE OF DELAWARE

SECTION 1: AUTHORITY

1.1 These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 Del.C., §1902(d), §1906(1), §1906(7).

SECTION 2: PURPOSE

2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

SECTION 3: SCOPE

3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del. C., §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

SECTION 4: DEFINITIONS

4.1 "Advanced Practice Nurse" as defined in 24 Del. C., §1902(d)(1).

Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

4.1:1 "CERTIFIED NURSE MIDWIFE (C.N.M.)"

A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

4.1:2 “CERTIFIED REGISTERED NURSE ANESTHETIST (C.R.N.A.)”

A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists’ Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists’ Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

4.1:3 “CLINICAL NURSE SPECIALIST (C.N.S.)”

A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master’s degree program in a clinical nurse specialty or post Master’s certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in Article VIII, Section 9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

4.1:4 “NURSE PRACTITIONER (N.P.)”

A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master’s program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women’s health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

4.2 “Audit”

The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

4.3 “Board”

The Delaware Board of Nursing

4.4 “Clinical Nursing Specialty” a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

4.4- 5 “Collaborative Agreement”

Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice

Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

4.5 6 “Guidelines/ Protocols”

Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

4.6 7 “National Certification”

That credential earned by a nurse who has met requirements of a Board approved certifying agency.

4.6 7:1 The agencies so approved include but are not limited to:

- A. American Academy of Nurse Practitioners
- B. American Nurses Credentialing Center
- C. American Association of Nurse Anesthetists Council on Certification of Nurse Anesthetists
- D. American Association of Nurse Anesthetists Council on Recertification of Nurse Anesthetists
- E. National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
- F. National Certification Board of Pediatric Nurse Practitioners and Nurses.
- G. ACNM Certification Council, Inc.

4.7 8 “Post Basic Program”

4.7 8:1 A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

4.7 8:2 The program must be one offered and administered by an approved health agency and/or institution of higher learning,

4.7 8:3 Post basic means a program taken after licensure is achieved.

4.8 9 “Scope of Specialized Practice”

That area of practice in which an Advanced Practice Nurse has a Master’s degree or a post-basic program certificate in a clinical nursing specialty with national certification.

4.9 10 “Supervision”

Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

SECTION 5: GRANDFATHERING PERIOD

5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of

licensure.

SECTION 6: STANDARDS FOR THE ADVANCED PRACTICE NURSE

6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in Section 4.1 of these Rules and Regulations:

A. Performs comprehensive assessments using appropriate physical and psychosocial parameters;

B. Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

C. Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;

D. Functions under established guidelines/protocols and/or accepted standards of care;

E. Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

F. Uses appropriate teaching/learning strategies to diagnose learning impediments;

G. Evaluates the quality of individual client care in accordance with quality assurance and other standards;

H. Reviews and revises guidelines/protocols, as necessary;

I. Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

J. Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

K. Pursues strategies to enhance access to and use of adequate health care services;

L. Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

M. Performs consultative services for clients referred by other members of the multi-disciplinary team; and

N. Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

6.3 In addition to these standards, each nurse certified

in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

SECTION 7: GENERIC FUNCTIONS OF THE ADVANCED PRACTICE NURSE WITHIN THE SPECIALIZED SCOPE OF PRACTICE include but are not limited to:

7.1 Eliciting detailed health history(s)

7.2 Defining nursing problem(s)

7.3 Performing physical examination(s)

7.4 Collecting and performing laboratory tests

7.5 Interpreting laboratory data

7.6 Initiating requests for essential laboratory procedures

7.7 Initiating requests for essential x-rays

7.8 Screening patients to identify abnormal problems

7.9 Initiating referrals to appropriate resources and services as necessary

7.10 Initiating or modifying treatment and medications within established guidelines

7.11 Assessing and reporting changes in the health of individuals, families and communities

7.12 Providing health education through teaching and counseling

7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public

7.14 Delegating tasks appropriately

7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del. C., §1906(20).

SECTION 8: CRITERIA FOR APPROVAL OF CERTIFICATION AGENCIES

8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 Del. C., §1902(d)(1).

8.2 The national certifying body:

8.2:1 Is national in the scope of its credentialing.

8.2:2 Has no requirement for an applicant to be a member of any organization.

8.2:3 Has educational requirements which are consistent with the requirements of these rules.

8.2:4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.2:5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.2:5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.2:5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.2:5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.2:5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.2:5.5 Examinations are evaluated for psychometric performance;

8.2:5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.2:5.7 Examination security is maintained through established procedures

8.2:6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.2:7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.2:8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.2:9 Has an evaluation process to provide quality assurance in its certification program.

SECTION 9: APPLICATION FOR LICENSURE TO PRACTICE AS AN ADVANCED PRACTICE NURSE

9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

9.2:1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists before beginning employment in Delaware.

9.2:2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

9.4 A Registered Nurse meeting the practice requirement as listed in Section 11 and all other

requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

9.4:1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

9.4:2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 11.2.1.

9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 Del. C. Chapter 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 Del. C., Section 1906(20) - (22).

SECTION 10: TEMPORARY PERMIT FOR ADVANCED PRACTICE NURSE LICENSURE

10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

A. The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

B. The individual applying holds a current license in Delaware, and

C. The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

D. The individual is a graduate of a Master's

program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

E. Application(s) and fee(s) are on file in the Board office.

10.1:1 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

A. The individual meets the requirements in 10.1.A. or B., and E. and;

B. The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

C. The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 10.1 D; or,

D. The individual meets A and B hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

10.2 If the certifying examination has been passed, the appropriate form must accompany the application.

10.3 A temporary permit may be issued:

- A. For up to two years in three month periods.
- B. At the discretion of the Executive Director.

10.4 A temporary permit will be withdrawn:

A. Upon failure to pass the first certifying examination

1. The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

- a. current employer reference,
- b. supervision available,
- c. job description,
- d. letter outlining any extenuating circumstances,
- e. any other information the Board of Nursing deems necessary.

~~B. In the absence of a collaborative agreement.~~

€ B. For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

10.5 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

10.6 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

10.7 Any person practicing or holding oneself out as an

Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (Chapter 19, Title 24).

10.8 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

SECTION 11: MAINTENANCE OF LICENSURE STATUS: REINSTATEMENT

11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

11.2:1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

11.2:2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

11.4 Advanced Practice Nurses who fail to renew their licenses by December 31 of the renewal period shall be considered to have lapsed licenses. After December 31 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 11.4 followed.

11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

SECTION 12 AUDIT OF LICENSEES

12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

A. Upon receipt of such notice, the licensee must

submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

B. The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

C. An unsatisfactory audit shall result in Board action.

D. Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

12.2 The Board may select licensees for audit throughout the biennium.

SECTION 13 EXCEPTIONS TO THE REQUIREMENTS TO PRACTICE

13.1 The requirements set forth in Section 9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

ARTICLE X DISCIPLINARY PROCEEDINGS

SECTION 1: DISCIPLINARY SANCTIONS

1.1 The Board may:

- refuse to issue a temporary permit or a license to practice nursing;
- revoke, suspend or censure a license to practice nursing;
- issue a letter of reprimand;
- place a license on probationary status;
- refuse to renew a license; or
- otherwise discipline a licensee as provided by 24 Delaware Code, Chapter 19 §1922.

SECTION 2: PROCEDURES

2.1 Any individual shall submit written complaints of violations of Delaware Code 24, Chapter 19 to the Division of Professional Regulation and the Executive Director shall retain a copy.

2.2 Any Board member receiving a complaint alleging a practitioner's or licensee's violation of the Nurse Practice Act should promptly forward the complaint to the Division of Professional Regulation with a copy to the Executive Director.

2.3 Hearings on licensing matters and complaints filed with the Board that allege a practitioner or licensee has violated the Nurse Practice Act, 24 Del. C. Chapter 19, shall be heard and determined by the Board in accordance with the applicable provisions of the Nurse Practice Act and the Administrative Procedures Act, 29 Del. C., Chapter 101. When the licensee/practitioner, prosecuting Deputy Attorney General, and appointed Board member, if any, consent, the

complaint may be resolved through the Consent Agreement process described herein in lieu of a formal disciplinary hearing before the Board.

SECTION 3: REISSUANCE OF LICENSE FOLLOWING DISCIPLINARY ACTION

3.1 Upon application made by the licensee, a suspended or probated license may be reissued or reinstated, on such conditions as the Board may determine, after the imposed period of discipline has concluded and after evidence is presented to satisfy the Board that the condition that led to the disciplinary action has been corrected.

SECTION 4: UNPROFESSIONAL CONDUCT DEFINED

4.1 Nurses whose behavior fails to conform to legal standards and accepted standards of the nursing profession and who thus may adversely affect the health and welfare of the public may be found guilty of unprofessional conduct.

4.2 Unprofessional conduct shall include but is not limited to the following:

A. Performing acts beyond the authorized scope of the level of nursing practice for which the individual is licensed.

B. Assuming duties and responsibilities within the practice of nursing without adequate preparation, or without maintaining competency.

C. Performing new nursing techniques and/or procedures without education and practice.

D. Inaccurately recording, falsifying or altering a patient or agency record.

E. Committing verbal or physical abuse of patients or co-employees.

F. Assigning unlicensed persons to perform the practice of licensed nurses.

G. Delegating nursing practice or advanced nursing practice to unqualified persons.

H. Failing to supervise persons to whom nursing practice or advanced nursing practice has been delegated.

I. Leaving a patient assignment after accepting responsibility except in documented emergency situations.

J. Failing to safeguard a patient's dignity and right to privacy in providing services.

K. Violating the confidentiality of information concerning a patient.

L. Failing to take appropriate action to safeguard a patient from incompetent, unethical or illegal health care practice.

M. Practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological, or mental impairment.

N. Diverting drugs, supplies or property of a patient or agency.

O. Diverting, possessing, obtaining, supplying or

administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

P. Practicing professional or practical nursing when license or temporary permit has expired.

Q. Practicing as an Advanced Practice Nurse when designation and/or certification and/or temporary permit has expired.

R. Practicing professional or practical nursing in this state without a current Delaware license or permit.

S. Practicing as an Advanced Practice Nurse in this state without current designation and a registered nurse license and/or temporary permits.

T. Allowing another person to use her/his nursing license, temporary permit, or certification of Advanced Practice Nurse for any purpose.

U. Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule and regulation intended to guide the conduct of a nurse or other health care provider.

V. Resorting to fraud, misrepresentation or deceit in taking NCLEX-RN or PN, or in obtaining a license, temporary permit or advanced practice designation.

W. Disclosing the contents of the licensing examination or soliciting, accepting or compiling information regarding the examination before, during or after its administration.

X. Failing to report unprofessional conduct by another licensee.

Y. Practicing or holding oneself out as an Advanced Practice Nurse in any category without holding a Board authorized certificate of state designation in such category.

Z. Failing to comply with the requirements for mandatory continuing education.

AA. Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

BB. Failing to comply with the terms and conditions set out in a disciplinary action of the Board. (4/8/98)

SECTION 5 - CONSENT AGREEMENT PROCESS

5.1 Disciplinary proceedings subject to resolution by Consent Agreement process shall proceed as follows:

5.1:1 The President shall appoint a Board member, subject to ratification by the Board at the next meeting, to review each formal complaint against a licensee and determine whether the Consent Agreement process can be used in lieu of a formal disciplinary hearing. Similarity to previous cases that have established Board remedies and severity and number of counts may be considered. The assigned Deputy Attorney General may also request that the complaint proceed by the Consent Agreement process.

5.1:2 If the appointed Board member and the state prosecutor concur that a consent agreement is appropriate, the Board office shall send the licensee a copy of the formal complaint and a request to proceed either to a formal hearing or to a Consent Agreement process within 14 days. If the Consent Agreement process is not appropriate, the complaint will be set for hearing.

5.1:3 The licensee shall be required to respond within 14 days when the Consent Agreement alternative is offered. When the response deadline is not met or the licensee declines the Consent Agreement process, a hearing date shall be scheduled.

5.1:4 Upon receipt of agreement to use the Consent Agreement process, the appointed Board member and Board counsel shall receive a copy of the complaint, investigative report, and any other appropriate material within seven days.

5.1:5 The Board counsel shall consult with the appointed Board member in drafting the Consent Agreement. Negotiations among the licensee and his/her counsel, if any, the Board member, Board counsel, and the prosecutor may take place by informal conferences, telephone, or correspondence. The Consent Agreement will include a brief recitation of the facts; the licensee's acknowledgment of charge(s) in the complaint and violation of the Nurse Practice Act; the licensee's waiver of rights to the formal disciplinary hearing before the Board; and sanction to be imposed.

5.1:6 The consultation and drafting and acceptance of the consent agreement are to be done in a timely fashion, with a report to the Board at 60 day intervals until presentation for approval by the Board.

5.1:7 If agreement among all parties has not occurred after 120 days from presentation of the first consent agreement, the Board shall be notified of the reasons why no agreement has been reached. If appropriate, the Board may schedule a complaint for a hearing.

5.1:8 After the licensee and his or her attorney, if any, the prosecutor, and the appointed Board member have signed the consent agreement, it shall be presented to the Board at the Board's next meeting for signature by a quorum of the Board and entry as an order of the Board.

5.1:9 The Consent Agreement is not effective until it is entered as an order of the Board. At any time before the Consent Agreement is entered as an order of the Board, either the licensee or the State may terminate the consent agreement process and elect to proceed by formal disciplinary hearing before the Board.

DEPARTMENT OF EDUCATION

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

REPEAL OF REGULATIONS FROM THE HANDBOOK OF PERSONNEL ADMINISTRATION FOR DELAWARE SCHOOL DISTRICTS

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal the following regulations from the Handbook of Personnel Administration for Delaware School Districts:

Delayed Certification, pages 7-1 and 7-2, is addressed in Chapter 4, A3, page 24, Receipt of Credentials for Persons in the Delaware Public School System, in the General Regulations of the Manual for Certification of Public School Personnel.

Sub-Standard Certification, pages 7-1 and 7-2, is now called a Temporary Certificate and is found in Chapter 2, A4, page 12, in the General Regulations of the Manual for Certification in Public School Personnel.

Provisional Certificate, page 7-2, is no longer a valid regulation.

AS APPEARS IN THE HANDBOOK OF PERSONNEL ADMINISTRATION FOR DELAWARE SCHOOL DISTRICTS

Delayed Certification - If all credentials have not been received by the State Department of Public Instruction within one month after beginning service, the applicant shall be paid on the substitute teachers' salary basis until he is properly certificated. The salary will then be determined on the basis of education, experience and military service, and certificate status and will be made retroactive to the time of beginning service. (State Board of Education regulation, June 14, 1972)

Sub-Standard Certification - The table below shows the salary to be paid or the deductions from salary to be made, whichever is applicable, on account of the various substandard certificates:

Table with 2 columns: General Certification, Salary. Rows: Emergency (80% of the salary set forth for the position), Provisional (90% of the salary set forth for the position)

(State Board of Education regulation, December 16, 1971)

Trade & Industry Certification

Table with 2 columns: Emergency, Provisional. Row: salary for the position minus \$400 / salary for the position minus \$200

(State Board of Education regulation, June 14, 1972)

Provisional Certificate - In any case where the State portion of a salary is drawn from several sections of 14 Delaware Code, Chapter 13, or any other salary provision, the portion of the salary to be paid to persons holding the provisional certificate shall be applied to the total salary paid as authorized by any section or combination of sections in the law.

(State Board of Education regulation, June 11, 1973)

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

Regulations from the Handbook for Personnel Administration for Delaware School Districts, including Sick Leave, Accumulation of Annual Leave, Teacher Work Day, Professional Employees Strikes, Administrator Contracts, Permanent File of School Districts, and Definitions, Public and Private Schools.

A. TYPE OF REGULATORY ACTION REQUESTED Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks to amend the following regulations from the Handbook for Personnel Administration for Delaware School Districts, Sick Leave, Accumulation of Annual Leave, Teacher Work Day, Professional Employees Strikes, Administrator Contracts, Permanent File of School Districts, and Definitions, Public Schools, Private Schools.

700.5 Sick Leave and Accumulation of Annual Leave from pages 7-1 and 7-2 have been amended and included in one regulation called Employee Leave. The Del. C. references and the technical assistance comments have been removed. In the case of vacation leave the regulation has been revised to reflect current practice and 14 Del. C., Section 1318 (I), which addresses how to handle accumulated vacation leave when an employee retires or goes to another job.

700.6 Teacher Work Day from pages 11-10 and 11-11 has been amended to remove the technical assistance language and add clarity to the regulation. The certification references will be repealed as referenced through another Board action.

700.7 Professional Employee Strikes from pages 6-1 and 6-2 has been amended to remove the technical assistance language and to clearly include into a single regulation the part passed in February 1976 and the part passed in May of

1979.

700.8 Administrator Contracts from pages 8-1 to 8-3 has been amended to eliminate the Del. C. references and the technical assistance and to add clarity by bringing the elements together in a more coherent fashion.

700.9 Permanent Files of School Districts from pages 5-1 to 5-2 has been amended to reflect changes in the way vacation leave is handled to have the numbering system conform to the other regulations.

700.10 Definitions of Public Schools, Charter Schools and Private Schools has been amended to change the word "entirely" in the public school definition to "primarily" remove the words "and cities", and to add a definition of "Charter Schools".

C. IMPACT CRITERIA

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

The amended regulations address district personnel issues, not curriculum issues.

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

The amended regulations address district personnel issues, not educational equity.

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

The amended regulations address district personnel issues, not students' health and safety.

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

The amended regulations address district personnel issues, not students' rights.

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

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulations 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 amended regulations 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 amended regulations?

The Del. C. requires the Department of Education to make regulations in these areas.

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

There is no additional cost to the state and to the local school boards for compliance with the amended regulations.

AS APPEARS IN THE HANDBOOK OF PERSONNEL ADMINISTRATION FOR DELAWARE SCHOOL DISTRICTS

Regulations and Legal Provisions

~~Work Day — In compliance with 14 Delaware Code § 305(e), the State Board of Education defined a teacher's full work day as follows:~~

~~Teachers are engaged in a professional employment. Their salaries and hours of employment are fixed with due regard to their professional status and are not fixed upon the same basis as those of day laborers. The worth of a teacher is not measured in terms of a specific sum of money per hour. A teacher expects to and does perform a service. Extra-curricular or co-curricular activities comprise all those events and programs which are sponsored by the school and may reasonable be characterized as a supplement to the established program of studies in the classroom in order to enrich the learning and self-development opportunities of pupils. Teachers are legally bound to perform such activities as may be reasonably assigned them by the district board of education.~~

~~Therefore, a teacher's full work day is comprised of a minimum of 7 1/2 hours, inclusive of lunch, plus the~~

amount of time required for discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school. (State Board of Education regulation, November 19, 1987. The effective date of the minimum 7 1/2 hours teacher work day is July 1, 1988; or when a negotiated contract that provides otherwise expires.)

Duty-Free Period Every teacher shall have, during each school day, a duty-free period of at least 30 consecutive minutes. §1328.

Delayed Certification — If all credentials have not been received by the State Department of Public Instruction within one month after beginning service, the applicant shall be paid on the substitute teachers' salary basis until he is properly certificated. The salary will then be determined on the basis of education, experience and military service, and certificate status and will be made retroactive to the time of beginning service. (State Board of Education regulation, June 14, 1972)

Sub-Standard Certification — The table below shows the salary to be paid or the deductions from salary to be made, whichever is applicable, on account of the various substandard certificates:

General Certification	Salary
Emergency	80% of the salary set forth for the position
Provisional	90% of the salary set forth for the position

(State Board of Education regulation, December 16, 1971)

Trade & Industry Certification

Emergency	salary for the position minus \$400
Provisional	salary for the position minus \$200

(State Board of Education regulation, June 14, 1972)

Provisional Certificate — In any case where the State portion of a salary is drawn from several sections of 14 Del. C., Ch. 13, or any other salary provision, the portion of the salary to be paid to persons holding the provisional certificate shall be applied to the total salary paid as authorized by any section or combination of sections in the law. (State Board of Education regulation, June 11, 1973)

AS AMENDED

700.5 Teacher Work Day

1.0 Teacher Work Day — In compliance with 14 Del. C., Section 1305(e) the Secretary of Education shall define a teacher's work day as a minimum of 7 1/2 hours, inclusive 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. (14 Del. C., Section 1305(e) defines the number of teacher work days per year and 14 Del. C., Section 1328 defines the duty free period.)

**AS APPEARS IN THE HANDBOOK OF PERSONNEL
ADMINISTRATION FOR DELAWARE SCHOOL
DISTRICTS**

7. LEAVES AND ABSENCES

Leave Interpretations

Calendar days include Saturday, Sunday, and any days schools are not in session.

Ten, eleven, or twelve days of sick leave are to be available at the start of the school year. Adjustments for employees who terminate service prior to the end of the year are to be made in the final pay check. (State Board of Education regulation, May 18, 1972)

Accumulation of Annual Leave

Title 14, Section 1318(h) limits the maximum lawful amount of annual leave that any employee can accumulate to 42 days. This section specifies when and how adjustments to accumulated annual leave are to be made.

Note: In this regard State Board of Education regulation August 15, 1974 states that "In the case of termination, all vacation days shall be used prior to the terminal date."

Sick Leave

Allowances — Sick leave allowances are as follows: 10 days for 10-month employees, 11 days for 11-month employees, and 12 days for 12-month employees at full pay §1318(a).

Transfer of — Sick leave accumulated by an employee of any State agency shall be transferred when said employee begins subsequent employment in a school district. (Approved by State Board of Education, May 15, 1980.)

Work Related Injury or Disease — Title 29, §5933 provides that whenever a State employee qualifies for Worker's Compensation Benefits, such employee, for a period not to exceed three months from the date compensation begins, shall not be charged sick leave. This section prescribes compensation and conditions that must be met. (See also Department of Finance Memorandum # 82-3 and Attorney General's Opinion on the amendment of 29 Delaware Code §5933. Both are in the Appendix.)

Terminal Pay for Accumulated Sick Leave — Title 14, §1318(g) provides that in the case of an employee to be retired subsequent to June 1, 1969, after serving in covered employment under provisions of Title 29, Chapter 55, payment shall be made for each unused sick leave day, not to exceed 90 days upon retirement. The total amount paid shall be based on that portion of the salary computed in

accordance with State schedules, regardless of the source of funding, and shall be based upon 50% of the per diem rate of pay in effect at the time of retirement. Per diem rates are specified in Title 14, §1318(g).

Sick Leave and Absences for Other Reasons. Teachers and other school employees may be absent for the following reasons without loss of pay:

1. **Death in the Immediate Family.** Up to five (5) working days. Immediate family is defined as father, mother, brother, sister, son, daughter, grandchild, husband, wife, parent-in-law, daughter-in-law, son-in-law, or any relative who resides in the same household, or any person with whom the employee has made his or her home. This absence shall be in addition to other leaves granted the employee. 14 Del. C., Section 1318(b).

2. **Critical Illness in Immediate Family.** Three (3) calendar days, per critical illness, to be counted in sick leave. 14 Del. C., Section 1318(c).

3. **Death of a Near Relative.** One (1) day for the funeral. Near relative is defined as first cousin, grandfather, grandmother, aunt, uncle, niece, nephew, brother-in-law, or sister-in-law. This absence shall be in addition to other leaves granted the employee. 14 Del. C., Section 1318(d).

4. **Religious Holidays.** No more than three (3) calendar days per year, to be counted in sick leave. 14 Del. C., Section 1318(e).

5. **Personal Leave.** An employee may be absent without loss of pay no more than 3 days per fiscal year for personal reasons of the employee. Such absences shall be included in the sick leave of the employee. Such absences must be approved by the chief school officers. 14 Del. C., Section 1318(f).

Deduction for Unexcused Absence

For each day's absence for reasons other than those permitted under Title 14, §1318 there shall be deducted 1/185th of the annual salary of the employee who is employed for 10 months, 1/204th for the employee who is employed for 11 months, and 1/222nd for the employee who is employed 12 months, for each day of unexcused absence. 14 Delaware Code §1320.

Note: State law requires that employing boards keep an accurate record of absences. (See Personnel Records section of this handbook)

Upon termination of employment with the Department (including resignation, retirement, transfer, or involuntary termination) the employee shall elect one of the following options for the payment of accumulated vacation credits:

1. **Termination Pay on Regulation Payroll** — Under this option, the employee would specify his/her last working day in the Department. The employee would then remain on the regular semi-monthly payroll of the Department until such time as all vacation credits are

exhausted. The employee would continue to earn vacation at the rates specified in this section (Section K.) and would have an effective date of termination on the same date as the last day on the payroll. The per diem rate of pay for the last semi-monthly payroll would be computed by dividing the semi-monthly regular pay by the number of working days in that pay period.

2. **Lump Sum Payment** — Under this option, the employee would specify a termination date, typically the same date as the last actual working day in the Department. On the next regular State pay date, the Department would make a lump sum payment for all unused vacation credits. The employee would earn no vacation credits after the termination date. The payment for unused vacation credits would be made on a per diem basis computed by dividing the employee's annual salary on the date of termination by 222.

Approved by State Board May 26, 1982.

AS AMENDED

700.6 Employee Leave

1.0 Sick Leave - Sick leave accumulated by an employee of any state agency shall be transferred when said employee begins subsequent employment in a school district.

1.1 Adjustments for employees who terminate service prior to the end of the school year shall be made in the final paycheck.

2.0 Vacation Leave - Accumulated vacation leave shall be paid upon termination of employment. The employee may either remain on the regular payroll until such time as all vacation time is exhausted, or a lump sum payment may be made for all unused vacation time on the employee's final paycheck. Accumulated vacation time shall not be transferred between different employing state agencies.

AS APPEARS IN THE HANDBOOK OF PERSONNEL ADMINISTRATION FOR DELAWARE SCHOOL DISTRICTS

Professional School Employee Strikes

In face of a work stoppage or strike, a local board of education shall meet within three school days (as scheduled in the State Board approved calendar for the year) of initiation of that action and make a formal determination in line with the procedural requirements (29 Delaware Code, Chapter 100 and 14 Delaware Code §1048) that a "strike" or "circumvention" with the terms of 14 Delaware Code Chapter 40 has taken place within its jurisdiction.

If it is determined that such illegal activity has taken place, the local board shall:

(i) Adopt a resolution informing the exclusive negotiating representative that the employee organization

has violated the terms of 14 Delaware Code §4011 and that the certification of such organization as the exclusive representative will be revoked at a time to be determined by the board of education;

(2) Refrain from making payroll deductions for the dues of any employee organization which violated the law;

(3) Deduct salary for unexcused absence in accordance with 14 Delaware Code §1320;

(4) Execute items (2) and (3) above in the preparation of the next regular payroll;

(5) Require a medical certificate for each employee absent claiming sick leave during the period of the strike.

(State Board of Education regulation, February 19, 1976)

As a part of any settlement following a strike or work stoppage, the local board shall not enter into any direct or implied agreement which would permit school days lost because of the strike to be rescheduled. Similarly, the local board shall not agree to extend the school year or to request such an extension from the State Board of Education. (State Board of Education regulation, May 17, 1979.)

AS AMENDED

700.7 Professional Employee Work Stoppage or Strike

1.0 If it is determined that illegal activity such as a work stoppage or strike has taken place, the local board shall:

1.1 Adopt a resolution informing the exclusive negotiating representative that the employee organization has violated the terms of 14 *Delaware Code*, Section 4011, and that the certification of such organization as the exclusive representative will be revoked at a time to be determined by the board of education;

1.2 Refrain from making payroll deductions for the dues of any employee organization, which violated the law;

1.3 Deduct salary for unexcused absence in accordance with 14 *Delaware Code*, Section 1320;

1.4 Execute items 2.2 and 2.3 above in the preparation of the next regular payroll;

1.5 Require a medical certificate for each employee absent claiming sick leave during the period of the strike.

2.0 As a part of any settlement following a strike or work stoppage, the local board shall not enter into any direct or implied agreement, which would permit school days lost because of the strike to be rescheduled. Similarly, the local board shall not agree to extend the school year or to request such an extension from the Secretary of Education.

AS APPEARS IN THE HANDBOOK OF PERSONNEL ADMINISTRATION FOR DELAWARE SCHOOL DISTRICTS

Contracts

School Employees — The contract with school employees shall be a contract on a form approved by the State Board of Education. Title 14, §1094. (See Appendix for approved forms.)

Boards may sign individual employment contracts only with those professional employees whose base salary is that provided for in Title 14, §1305. Salary amounts in contracts shall be for one fiscal year, except that contracts for administrative personnel — assistant principal, principal, supervisor, administrative assistant, director, assistant superintendent, or superintendent — shall not be so limited. Contracts with administrators may be for periods up to five years. Salaries for an ensuing year may not be contracted for prior to May 1, at which time salaries must be based on the State schedules in existence then for the contracted year. Contracts entered into before May 1 with out-of-state teachers shall be based on the salary in effect for the current year. (Title 14, §1329). Professional employees who are employed for less than a school year or who are employed to fill positions temporarily vacated by other professional employees who are on board approved leave of absence may be issued the Temporary Professional Employee Contract.

Every teacher, whether tenured or not, whose contract is not going to be renewed must be notified by May 1 regarding employment status for the next year. Any teacher not notified by May 1 can assume continuation of his or her contract. Title 14, §1410. For administrators, failure on the part of either the administrator or the employing board, to notify the other in writing by certified mail, no later than six months prior to termination of the contract, of either party's intent not to renew the contract will automatically result in one year extension of the existing contract.

(State Board of Education regulation, November 27, 1974)

Consultants See Appendix for regulations for the use of contracts for consultant service and for sample form for Contract for Consultant Service.

8. TERMINATION OF SERVICES

Dismissal

Teachers — Every teacher, whether tenured or not, whose contract is not going to be renewed must be notified by May 1 of employment status for the succeeding year.

The procedures for the termination of services where termination is initiated by the school district are defined in Title 14, Chapter 14, and school officials are advised to consult that particular chapter in any case involving

termination of services.

Note that the provisions of §§ 1411, 1413, 1414 apply to all teachers except those employed temporarily to replace professional personnel on leave of absence, those holding temporary certificates, and those not having completed three years of service in the State, two years of which shall be in the employ of the terminating board and further providing that time spent in the military service shall not be counted as years of service for purposes of this chapter.

The Attorney General has given the following opinions relative to terminating services:

Where tenure is involved in dismissals, the requirement of two years under the "terminating board" need not necessarily be consecutive. Notice by the terminating board must be given on or before May 1 of the second year under such "terminating board". Temporary professional employees may be dismissed, generally, after one month's notice. However, if such employees are retained until the end of the year, said employees may be entitled to notice on or before May 1.

Attorney General, March 1957

Notice may be in writing and must be delivered on or before May 1. If recipient (teacher) refuses to accept delivery or secretes self to avoid acceptance of notice, such notice is nevertheless effective.

Attorney General, June 1956

It is not sufficient that recipient of notice be notified that registered mail is at the post office.

Attorney General, June 1956

It does not appear that the contract of a teacher may be terminated due to illness.

Attorney General March 1961

Local school district professional employees defined as "teacher(s)" in § 1401 who are paid wholly or in part from Federal funds are not covered by the provisions of Chapter 14.

Attorney General, April 10, 1973

Three years of service means three full years. As an example, if a teacher is first employed on November 10, tenure will be acquired on November 10 three years later, if there has been no interruption in the employment.

Attorney General, May 9, 1966

The time a regularly appointed and employed teacher served in the military service counts in determining the period of service needed for tenure status.

Attorney General, May 19, 1967

A teacher who has taught for three years, two of

which were under a Temporary Emergency Certificate, has not acquired tenure within the meaning of the law.

Attorney General, February 27, 1968

Administrators Termination of a contract with administrators may occur by mutual consent of both parties to the contract or by action of the employing Board for good and just cause provided the Board does not arbitrarily call for dismissal; but does serve the administrator with a written performance evaluation and a fair hearing before the Board. Failure on the part of the Board to notify an administrator in writing by certified mail no later than six months prior to termination of the contract, of its intent not to review the contract will automatically result in a one year extension of the existing contract. (See State Board of Education Approved Contract in the Appendix)

Failure on the part of the administrator to comply with the conditions specified in the contract may result in suspension or revocation of his/her certificate by the State Superintendent of Public Instruction with right of appeal to the State Board of Education. (State Board of Education regulation, November 29, 1974)

Reduction in Force

Reduction in force is specified in Title § 1411 as a reason for termination.

Resolution of issues of seniority is the prerogative of the Local Education Agency. Neither reduction in force nor seniority are addressed by State Board rules and regulations.

Resignation

Language in employee contracts (see Appendix) specify conditions for resignations. Employee contracts specify that the employee shall not vacate his or her position during the school year without the mutual consent of both parties [to the contract].

Teachers wishing to vacate a position at the end of any school year must give notice in writing to the employing Board, on or before July 1 of such year.

Administrators wishing to terminate the employment contract must notify the employing Board in writing by certified mail no later than six months prior to the termination of the contract. Failure to do so will automatically result in a one year extension of the existing contract.

AS AMENDED

700.8 Administrator Contracts

1.0 Nonrenewal of the Existing Contracts

1.1 Failure on the part of either the administrator or the employing board to notify the other in writing by certified mail no later than six months prior to the end of the contract, of either party's intent not to renew the contract

will automatically result in one year's extension of the existing contract.

2.0 Termination of a Contract with an Administrator in the Middle of the Contract Period

2.1 Termination of a contract with administrators may occur by mutual consent of both parties or by action of the employing Board for good and just cause provided the Board does not arbitrarily call for dismissal; but does serve the administrator with written performance evaluation and a fair hearing before the Board.

2.2 Failure on the part of the administrator to comply with the conditions specified in the contract may result in suspension or revocation of the administrator's certificate by the Secretary of Education with right of appeal to the State Board of Education.

**AS APPEARS IN THE HANDBOOK OF PERSONNEL
ADMINISTRATION FOR DELAWARE SCHOOL
DISTRICTS**

Permanent File of School Districts

Title 14, §1094 requires that one copy of the contract with school employees be made part of the permanent files of the school district.

Delaware Code, Title 14, §122(b)(16) instructs the State Board of Education to prescribe rules and regulations assuring the permanent maintenance of the personnel records of all employees in all the school districts of the State, including those employees who terminated employment in the district, for a period of not less than 40 years, such records to include, but not be limited to, all annual salaries and sick leave and vacation information.

It is the regulation of the State Board of Education that the following definitions and procedures be observed and carried out:

(1) Records for all currently employed persons shall at all times be kept up to date.

(2) "Employee" shall in this case mean any person whose terms of employment are adequate to qualify the employee for the earning of credit toward pension.

(3) "Termination" in this case does not refer only to retirement but to any reason for the employee to leave the district.

(4) Salary data records shall be for each year of employment in the particular school district. (Total salary paid identified as fiscal or calendar year.)

(5) The record shall show a statement concerning sick leave days earned and used under 14 Delaware Code §1318 showing the number of days available at any time. In the case of termination because of retirement the record shall show the number of days for which per diem salary was paid (under present regulations @ 1/2 day for 90 days maximum) and also any residual number of days unused and not canceled by virtue of the per diem payment.

~~(6) The record of vacation time for those employees whose terms of employment provide for earned vacation shall be current. In the case of termination, all vacation days shall be used prior to the terminal date thus the personnel records of such a person should show no unused vacation days.~~

~~(7) In compliance with the provisions of the statute herein referred to, each school district shall keep at least the above referenced information concerning each employee ever employed by the district and this material shall be kept on file for at least forty years following termination and preferably on a permanent basis.~~

~~(8) For the security of records and the protection of the personnel for whom the information is recorded, it is recommended that original records are to be maintained at the school district for three (3) years after termination of an employee and a successful audit of such records. Records are to be purged according to Bureau of Archives and Records Management instructions and then microfilmed. Original records are then to be destroyed. A secured copy of the microfilmed record is to be retained permanently at the State Archives with a copy going back to the school district. A second option is that a school district may retain employee personnel records at the agency for three (3) years and successful audit of these records and then have these records placed on microfiche and updated annually. The secured copy of the microfiche record would be retained permanently at the State Archives with a copy going back to the school district. The original documents are then to be destroyed.~~

~~(9) The style and form of the presentation of material shall be at the discretion of the local school district except that materials presented to the Division of Historical and Cultural Affairs are to be grouped first by district, second, by year or block of years, and within the year or years alphabetically.~~

~~(10) The requirement of this regulation is that the information referred to above shall be maintained and shall be available at the school district level for any employee or former employee seeking that information for a period extending forty years beyond termination in that district.~~

~~(11) It is recommended that for the convenience of employees and former employees that school districts develop a card or other indexed alphabetically arranged file showing the name of each employee and the disposition of his or her records.~~

~~(State Board of Education regulation, August 15, 1974)~~

Public Records and Their Disposition

Agencies of the State of Delaware are required by law to transmit historical records to the custody of the Department of State and are directed not to dispose of any public record without the consent of that Department. The pertinent

statute dealing with public records follows:

All books, records, documents, and papers of historic or public interest, which are in the possession of state boards or state commissions, and which are not in current use, shall be transferred to the custody of the Department of State.

No officer, member or employee of any agency of this State or any political subdivision thereof shall destroy, sell or otherwise dispose of any public record or printed public document or official correspondence in his care or custody or under his control without first having advised the Department of State of their nature and obtained its consent. (66 Delaware Laws, c. 211, § 1.)

Questions concerning items to be sent to the Hall of Records should be brought to the attention of the Director of Historical and Cultural Affairs, Hall of Records, Records Management Section, Dover, DE 19901. Telephone 739-5318.

AS AMENDED

700.9 Permanent File of School Districts

1.0 The Del. C., Title 14, Section 122 (b)(13) requires local school districts to assure the permanent maintenance of personnel records of all employees in the school districts of the State for a period of not less than 40 years. The records must include but are not limited to all annual salaries and sick leave and vacation information. The following definitions shall apply and the following procedures shall be observed:

1.1 "Employee" shall in this case mean any person whose terms of employment are adequate to qualify the employee for the earning of credit toward pension.

1.2 "Termination" in this case does not refer only to retirement but to any reason for the employee to leave the district.

1.3 Records for all currently employed persons shall at all times be kept up to date.

1.4 Salary data records shall be for each year of employment in the particular school district. (Total salary paid identified as fiscal or calendar year.)

1.5 The record shall show a statement concerning sick leave days earned and used under 14 Delaware Code, Section 1318, showing the number of days available at any time.

1.6 The record of vacation time for those employees whose terms of employment provide for earned vacation.

1.7 In compliance with the provisions of the statute herein referred to, each school district shall keep at least the above referenced information concerning each employee ever employed by the district and this material shall be kept on file for at least forty years following termination and preferably on a permanent basis.

1.7.1 For the security of records and the protection of the personnel for whom the information is recorded, it is recommended that original records are to be maintained at the school district for three (3) years after termination of an employee and a successful audit of such records. Records are to be purged according to Bureau of Archives and Records Management instructions and then microfilmed. Original records are then to be destroyed. A secured copy of the microfilmed record is to be retained permanently at the State Archives with a copy going back to the school district. A second option is that a school district may retain employee personnel records at the agency for three (3) years and successful audit of these records and then have these records placed on microfiche and updated annually. The secured copy of the microfiche record would be retained permanently at the State Archives with a copy going back to the school district. The original documents are then to be destroyed.

1.7.2 The style and form of the presentation of material shall be at the discretion of the local school district except that materials presented to the Division of Historical and Cultural Affairs are to be grouped first by district, second by year or block of years, and within the year or years alphabetically.

1.7.3 The information referred to above shall be maintained and shall be available at the school district level for any employee or former employee seeking that information for a period extending forty years beyond termination in that district. (It is recommended that for the convenience of employees and former employees that school districts develop a card or other indexed alphabetically arranged file showing the name of each employee and the disposition of his or her records.)

AS APPEARS IN THE HANDBOOK OF PERSONNEL ADMINISTRATION FOR DELAWARE SCHOOL DISTRICTS

H. LAWS, RULES AND REGULATIONS PERTAINING TO SPECIFIC POSITIONS

Definitions

Public School — A public school shall mean a school having any or all of grades kindergarten through twelve, supported entirely 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. (State Board of Education regulation, November 12, 1970)

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. (State Board of Education regulation, November 12, 1970)

AS AMENDED**700.10 Definitions, Public Schools, Charter Schools, and Private Schools**

1.0 Public School: A public school shall mean a school having any or all grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. It also shall include the agencies of the state that administer the public funds.

1.1 Charter School: A charter school is an independent public school having at least two grades from K-12, which is supported primarily through public funds. Rather than operating under the supervision of public school administrators, a charter school is governed by an independent board of directors and has the same basic standing as a school district with some exceptions – most notably, they may not levy taxes. To encourage innovation, charter schools operate free from Title 14 and a number of other State laws and regulations.

2.0 Private School: A private school means a school having any or all of its 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.

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)**K-12 COMPREHENSIVE HEALTH EDUCATION AND FAMILY LIFE EDUCATION****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulation K-12 Comprehensive Health Education and Family Life Education Policy, pages A-39-41 in the Handbook for K-12 Education. The amended regulation retains most of the elements found in the original regulation but no longer requires the school districts to submit a separate plan for their health education program. The title has been changed and now focuses on comprehensive health education as including family life education. The amended regulation also recognizes the relationship of HIV and Drug and

Alcohol Education to the district's Consolidated Application planning and evaluation process. The regulation pulls together the Federal, State and DOE requirements for comprehensive K-12 health education programs and includes the relationship of those programs to the consolidated grant process.

C. IMPACT CRITERIA

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

The amended regulations are designed to support the implementation of the state content standards for comprehensive health education.

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

The amended regulations address curriculum issues, not equity issues.

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

The amended regulations address curriculum issues, and health and safety issues are an integral part of this curriculum.

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

The amended regulations address curriculum issues, not students' legal rights.

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

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level?

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

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulations 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 amended regulations 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 amended regulations?

The Del. C. requires the Department of Education to make regulations in this area.

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

There is no additional cost to the state and the local school boards for compliance with the amended regulations.

AS APPEARS IN THE HANDBOOK FOR K-12 EDUCATION

8. ~~K-12 COMPREHENSIVE HEALTH EDUCATION AND FAMILY LIFE EDUCATION POLICY~~

~~The purpose of this policy is to provide a framework for a K-12 Comprehensive Health Education and Family Life Education Program that establishes a foundation for understanding the relationships between personal behavior and health.~~

~~a. Each school district shall have in place by September 1, 1990 a Comprehensive Health Education and Family Life Education Program that includes the following minimum hours of instruction:~~

~~(1) In grades K-4, a minimum of thirty (30) hours in each grade of Comprehensive Health Education and Family Life Education of which ten (10) hours, in each grade, must address Drug/Alcohol Education.~~

~~(2) In grades 5 and 6, a minimum of thirty-five (35) hours in each grade of Comprehensive Health Education and Family Life Education of which fifteen (15) hours, in each grade, must address Drug/Alcohol Education.~~

~~(3) In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of Comprehensive Health Education of which fifteen (15) hours, in each grade, must address Drug/Alcohol Education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of Drug/Alcohol Education must be provided in the other grade.~~

~~(4) In grades 9-12, one-half (1/2) credit of Comprehensive Health Education is required for graduation of which fifteen (15) hours of this 1/2 credit course must~~

~~address Drug/Alcohol Education. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of Drug/Alcohol Education must be provided for all students.~~

~~b. Each school district shall have in place by September 1991 a written plan describing their K-12 Comprehensive Health Education and Family Life Education Program.~~

~~(1) The plan shall be submitted to the Department of Public Instruction for review and approval by July 1, 1991. Any changes or revisions to the approved district plan shall be submitted to the Department of Public Instruction, Improvement and Assistance Branch, as they occur. The approved plan should be updated at least every five years. The plan shall:~~

~~(a) identify a district level person to coordinate the district program and a coordinator in each building to carry out the district program at the building level.~~

~~(b) identify a district advisory committee composed of teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and any others interested in the areas of health, family life and substance abuse issues. (This committee may also serve as the Advisory Committee for the Federal Drug Education Project proposal. Names of the members are to be submitted each year with the Federal Drug Education Project proposal.)~~

~~(c) describe the course content and activities for the required hours as described in Part I.~~

~~(d) incorporate the health education content standards for grades K-12 inclusive of sex education and an HIV prevention program that promotes abstinence.~~

~~(e) describe the Drug/Alcohol Education program for each grade K-12.~~

~~(f) describe how Family Life Education concepts can be implemented through the current Health Education and Home Economics Programs in each school and through other appropriate subject areas.~~

~~(g) describe the family life component which is required in the content standards for middle level Exploratory Homemaking Programs with emphasis on parenting and life management skills.~~

~~(h) describe the family life component of the Home Economics Programs provided at the high school level based on the Vocational Home Economics Content Standards with emphasis on parenting and life management skills.~~

~~(i) describe the staff development component for Drug/Alcohol Education. Three (3) or more hours of staff training and development are required for each teacher providing Drug/Alcohol Education at each grade K-12.~~

~~(j) describe those specific staff~~

development components which address the areas of HIV Prevention, Sex Education and Family Life Education.

(k) describe the method used to evaluate the effectiveness of the program.

(2) The Department of Public Instruction will provide technical assistance to each school district in developing its plan and in providing the three (3) required hours of staff development in Drug/Alcohol Education.

(3) The Department of Public Instruction will monitor the implementation of each district's plan through a review of the plan, monitoring visits and other data as deemed necessary.

(State Board Approved September 1987, Revised July 1990)

AS AMENDED

800.25 K-12 COMPREHENSIVE HEALTH EDUCATION PROGRAM

1.0. Each school district shall have a sequential, skill-based K-12 Comprehensive Health Education Program that establishes a foundation of understanding the relationship between personal behavior and health and shall include at a minimum the following:

1.1 Identification of a district level person to coordinate the district program and a coordinator in each building to assure compliance at the building level.

1.2 Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and drug free schools and communities to serve as members of the District Consolidated Application Planning Committee.

1.3 The use of the state content standards for health education for grades K-12 inclusive of the core concepts: alcohol and other drugs, injury prevention, nutrition, physical activity, family life and sexuality, tobacco, emotional health, personal and consumer health and community and environmental health with minimum hours of instruction as follows:

1.3.1 In grades K-4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which ten (10) hours, in each grade, must address drug/alcohol education.

1.3.2 In grades 5 and 6, a minimum of thirty-five (35) hours in each grade of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug/alcohol education.

1.3.3 In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education of which fifteen (15) hours, in each grade, must address drug/alcohol education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of drug/alcohol education must be

provided in the other grade.

1.3.4 In grades 9-12, one-half (1/2) credit of comprehensive health education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address drug/alcohol education. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug/alcohol education must be provided for all students.

1.4 Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from high-risk behaviors.

1.5 Inclusion of the core concepts of nutrition and family life and sexuality implemented through family and consumer science/home economics courses.

1.6 An annual staff development plan that describes the use of effective instructional methods as demonstrated in sound research in the core concepts and skills inclusive of accessing information, self-management, analyzing internal and external influences, interpersonal communication, decision making and goal setting and advocacy.

1.7 A description of the method(s) used to implement and evaluate the effectiveness of the program which shall be reported every three years as part of the Quality Review for Ensuring School and Student Success.

* PLEASE NOTE: THE ABOVE PROPOSED REGULATORY CHANGES WILL BE CONSIDERED AT THE STATE BOARD OF EDUCATION MEETING ON THURSDAY, DECEMBER 16, 1999.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

DELAWARE STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code,
Section 4805(a) (29 Del.C. 4805(a))

The Lottery proposes the following amendments:

1. Regulation 2.0 would be amended to clarify the definition of "technology provider" to include vendors providing services to the video lottery agents or the Lottery.

2. Regulations 4.1 and 4.2 would be amended to clarify the licensing process for technology providers, consistent with the amendment to the "technology provider" definition in Regulation 2.0.

3. Regulation 5.1 regarding Lottery contracts with technology providers would be amended to reference the applicable section of the procurement chapter in title 29, chapter 69.

4. Regulation 5.2 regarding contracts with technology providers would be amended to include new Regulations 5.2.1 and 5.2.2. This amendment would reorder the existing Regulation to clarify the contractual provisions for technology providers who do or do not manufacture video lottery machines.

5. Regulation 5.11 regarding technology provider duties would be amended to require: 1) supervision of employees in compliance with Lottery rules; 2) prompt reporting of violations of laws to the Lottery; 3) compliance with all other requirements specified by the Director.

6. Regulation 6.35 would be amended to require video lottery agents to file with the Director copies of all video lottery related contracts in excess of \$1,000 and to notify the Director of any contract with a vendor subject to the Lottery's licensure procedures.

7. Regulation 8.2 would be amended to add new regulations 8.2.1 through 8.2.5. Regulation 8.2.1 through 8.2.2 would require a video lottery agent to file financial reports as required by the Lottery. Regulation 8.2.4 would allow the Lottery to prescribe the reporting forms to be used by the video lottery agents for reporting purposes. Regulation 8.2.5 would specify that video lottery agents must meet the minimum requirements of the Lottery's internal control procedures.

The Lottery will receive written public comments from December 1, 1999 through December 30, 1999. Comments should be sent to Wayne Lemons, Director-Delaware Lottery, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. The Lottery will conduct a public hearing on Wednesday, December 22, 1999 at 10:00 a.m. at the Delaware Lottery Office, 1575 McKee Road, Second Floor Conference Room, Dover, De. Copies of the proposed rules can be obtained from the Lottery office at the above address.

Proposed Amendments to Video Lottery Regulations

2.0 Definitions

“technology provider” – any person or entity, including video lottery manufacturers, who propose seeks to contract with a video lottery agent or the agency for the provision of goods or services, including management services, related to video lottery operations, the provision of which require a license pursuant to 29 Del. C. chapter 48.

4.0 Licensing of Technology Providers

....

4.1 As deemed necessary, the Director shall give public notice of the agency's intent to select technology providers of video lottery machines through a request for proposal and qualifications by advertising in a newspaper of general circulation in Delaware and in a prominent trade publication requesting expressions of interest to serve as a technology

provider. The licensing of a technology provider shall not serve as the basis of requiring the Director to select the technology provider under the procurement procedures set forth in chapter 69 of title 29 of the Delaware Code.

4.2 Each person desiring to obtain a license from the agency as a technology provider ~~for video lottery games~~ shall submit a license application on a form specified and supplied by the agency. The license application shall, among other things:

(1) Give notice that the applicant may be required to submit to a background investigation, the cost of which must be borne by the applicant...

5.0 Technology Providers: Contracts; Requirements; Duties

5.1 The Director shall, pursuant to the procedures set forth in chapter 69 of title 29 of the Delaware Code, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such numbers and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the Lottery, or convenience of the players, and in accordance with the agents' business plans as approved and amended by the Director. No single technology provider shall provide more than 65% of the total number of video lottery machines at the premises of any agent. No more than 1,000 video lottery machines shall be located within the confines of an agent's premises unless the Director approves up to an additional 1,000 machines or other number approved by the Director as permitted by law.

5.2.1 All contracts with technology providers who are video lottery machine manufacturers shall include without limitation, provisions to the following effect:

(1) The technology provider shall furnish a person to work with the agency and its consultants to provide assistance as needed in establishing, planning and executing acceptance tests on the video lottery machines provided by such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when video lottery machines are initially placed at the agent's site;

(2) The technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of Twenty Five Dollars (\$25) shall be permitted for wagering on a single play of any video game;

(3) For testing, examination and analysis

purposes, the technology provider shall furnish working models of video lottery machines, associated equipment, and documentation at locations designated by the Director. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the video lottery machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any such damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the video lottery machine at the technology provider's expense;

(4) Technology providers shall submit all hardware, software, and test equipment necessary for testing of their video lottery machines, and shall provide the Director with keys and locks subject to the Director's specifications for each approved video lottery machine;

(5) The EPROMs of each video lottery machine shall be certified to be in compliance with published specifications;

(6) No video lottery machine shall be put into use prior to certification of its model by the Director.

5.2.2 All contracts with technology providers shall include without limitation, provisions to the following effect:

(1) Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director. ~~provide the Director with keys and locks subject to the Director's specifications for each approved video lottery machine.~~

(2) Technology providers shall agree to modify their hardware and software as necessary to accommodate video game changes directed by the agency from time to time.

(3) Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts and issued by such companies as the Director shall approve.

(4) Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.

5.11 The following duties are required of all licensed technology providers, without limitation:

....

(15) Supervise its employees and their activities to ensure compliance with these rules.

(16) Promptly report to the Lottery any

violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

(17) Comply with such other requirements as shall be specified by the Director.

6.0 Agents: Duties

The following duties are required of all licensed agents:

....

6.35 As soon as it is known to the agent, file with the Director a copy of any current or proposed agreement and disclose to the Director any other relationship between the agent, its parents, subsidiaries, related entities, partners, owners, directors, officers or key employees for the sale, lease, maintenance, repair or other assignment of the agent's premises, or any other relationship of any vendor, manufacturer or other person who stands to benefit financially from the possession or use of video lottery machines by such agent. The agent shall file with the Director for approval every contract in excess of \$1,000 which pertains to the agent's video lottery operations. The agent shall notify the Director of any contract with an entity that is subject to the license requirements for vendors or technology providers under 29 Del. C. §4805(17) and Chapter 4 of these Regulations.

8.0 Accounting and Distribution Procedures

...

8.2 Each agent and technology provider shall submit to the Director such financial and operating information as the Director shall require from time to time at such times and in such format as the Director shall specify. For purposes of this and other information, each agent shall have a computer on the premises which is suitable for the purpose.

8.2.1 Each agent, unless specifically exempted by the Agency, shall file weekly, monthly, quarterly and annual reports of financial reports and statistical data in a format specified by the Director. The data may be used by the Agency to evaluate the financial position and operating performance of individual video lottery agents and to compile information regarding the performance and trends of the video lottery industry in the State of Delaware.

8.2.2 Each agent, unless specifically exempted by the Agency, shall at its own expense, cause its annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant licensed to practice in the State of Delaware.

8.2.3 The annual financial statement shall be prepared on a comparative basis for the current and prior fiscal year, and shall present the video lottery agent's present financial position and results of operations in conformity with generally accepted principles.

8.2.4 The Agency may periodically prescribe a set of standard reporting forms and instructions to be used by each video lottery agent for filing the weekly, monthly, and quarterly reports.

8.2.5 Each video lottery agent and technology provider, unless specifically exempted by the Agency, shall conduct its video lottery operations to meet the minimum requirements set forth in the Agency's Video Lottery Internal Control Procedures.

**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)

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

The Delaware 1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO

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

The 1990 CAAA requires states with non-attainment areas for ground-level ozone to develop comprehensive periodic emission inventories of ozone precursor pollutants (volatile organic compounds, nitrogen oxides, and carbon dioxide) once every three years after 1990. These emission inventories are purely technical and informational documents. However, states are required to incorporate them into the State Implementation Plan (SIP). Consequently, these periodic emission inventories must be made available for public review and public hearing, and submitted to EPA. This is the second of these inventories covering all three Delaware counties for the 1996 calendar year and ozone season.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C., Chapter 60 Section 6010
Clean Air Act Amendments of 1990

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

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing is scheduled for Tuesday, January 4, 2000, at 6:30 P.M., in the Richardson and Robbins Building, DNREC Auditorium on Kings Highway in Dover, Delaware.

7. PREPARED BY:

Raymond H. Malenfant, PM (302) 739-4791

**1996 Periodic Ozone
State Implementation Plan
EMISSIONS INVENTORY FOR VOC, NO_x, and CO
for the State of Delaware
Final Draft
November 1999**

ACKNOWLEDGEMENT

The agency directly responsible for preparing and submitting the *1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO* is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section.

The overall responsibility for inventory development falls within the Planning and Community Protection Branch of DNREC's Air Quality Management Section, under the management of Raymond H. Malenfant, Program Manager. Alfred R. Deramo, Program Manager of DNREC's Emissions Research, Planning and Attainment Group, was the project supervisor/coordinator of the *1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO*.

The following personnel in DNREC's Air Quality Management Section were responsible for developing their respective portion of this inventory:

Margaret A. Jenkins Pomatto, Environmental Scientist – Technical Editor and Graphics Design, and Off-Road Mobile Source Coordinator

Mohammed A. Mazeed, Environmental Engineer – Senior QA/QC Coordinator

John L. Outten, Environmental Scientist – Point Source Coordinator

Kevin D. Yingling, Environmental Scientist – Point Source QA Analyst

Marian A. Hitch, Senior Environmental Compliance Specialist – Point Source QA Analyst, and Stationary Area and Mobile Sources Reviewer

Mark H. Glaze, Resource Planner – On-Road Mobile Source Coordinator, and On-Road and Off-Road Mobile

Sources QA Analyst

John L. Sipple, Environmental Scientist – Stationary Area and Natural Sources Coordinator, and QA Analyst

Mark D. Eastburn, Environmental Scientist – Stationary Area and Natural Sources Coordinator, and QA Analyst

The Delaware Department of Transportation (DelDOT) was responsible for performing the work necessary to create the on-road mobile source portion of this inventory. Mike DuRoss, Transportation Planning Supervisor in the Division of Planning, Transportation Policy and Research Section at DelDOT, acted as the project leader responsible for development and documentation of the on-road mobile source inventory. Various other State agencies, including the Department of Agriculture, the Department of Labor, and the Department of Public Safety, provided activity level data for use in estimating emissions for this inventory.

SECTION 1 BACKGROUND AND EMISSIONS SUMMARY

BACKGROUND

This document presents the *1996 Periodic Ozone State Implementation Plan (SIP) Emissions Inventory for VOC, NO_x, and CO* (hereafter referred to as *1996 Periodic Emissions Inventory*), as required by the Clean Air Act Amendments (CAAA) of 1990. The CAAA of 1990 as does the original Clean Air Act of 1970, contains provisions for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS) for criteria pollutants.

Section 182(a)(1) of the CAAA requires states with nonattainment areas to submit a comprehensive, accurate, current inventory of actual emissions of ozone precursors from all sources within two years of enactment. This initial inventory covers the 1990 calendar year, and is widely known as the 1990 Base Year Ozone SIP Inventory. Section 182(a)(3) of the CAAA requires states with nonattainment areas to submit periodic inventories starting with 1993 and every three years thereafter until the area is redesignated to attainment. In meeting the requirements of Section 182(a)(3) of CAAA, the *1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NO_x* was submitted to and approved by U.S. Environmental Protection Agency (EPA), Region III on May 27, 1994, and March 25, 1996, respectively. The *1993 Periodic Ozone SIP Emissions Inventory for VOC, CO, and NO_x* was submitted to U.S. EPA, Region III on January 30, 1998.

All of Delaware's three counties are in nonattainment of the 1-hour NAAQS for ozone. As shown in Figure 1-1, New Castle and Kent Counties are part of the Philadelphia-Wilmington-Trenton Consolidated Metropolitan Statistical Area (Philadelphia CMSA), which is classified as a "severe" nonattainment area with a design value of 0.187 parts per

million (ppm). Sussex County is classified as "marginal" with a design value of 0.130 ppm. The nonattainment areas are defined by the publication *Designation of Areas for Air Quality Planning Purposes*, 40 CFR Part 81, Final Rule, U.S. EPA, Office of Air and Radiation, Washington, D.C., November 6, 1991. The total geographic area covered by this inventory includes the Kent, New Castle, and Sussex Counties nonattainment areas as shown in Figure 1-2.

This map was adapted from *Major CO, NO₂ and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area*, EPA450/4-92-005a, U.S. EPA, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, N.C., February 1992.

For the purposes of creating a consistent, statewide *1996 Periodic Emissions Inventory*, the entire state of Delaware, including Sussex County, was inventoried according to U.S. EPA guidelines for severe areas. Inventorying Sussex County as if it were a severe area had no effect on the method used to prepare this inventory, nor will it affect future ozone attainment planning activities. The only effect of this decision to inventory Sussex County as if it were a severe area is to improve the accuracy of the point source inventory by including sources in Sussex County that emit between ten and one hundred tons per year (TPY) of VOCs. Otherwise, point sources in Sussex County would be inventoried only if VOC emissions are greater than or equal to one hundred TPY.

Demographic data for the state of Delaware is used to estimate air emissions from many of the sources in this inventory and includes population, employment, housing, and other statistics. A summary of the 1996 demographic information for Delaware by county is presented in Table 1-1. Subsequent sections of this report describe how this data is used to estimate emissions for particular sources.

The remainder of this section presents a summary of Delaware's VOC, NO_x, and CO emissions totals for 1996.

DOCUMENT ORGANIZATION

This document presents detailed discussions of the emission estimation methods, data sources, and quality assurance procedures used to compile this inventory. Each source category is discussed in its own section as follows:

- Section 2 - Point Sources
- Section 3 - Stationary Area Sources
- Section 4 - Off-Road Mobile Sources
- Section 5 - On-Road Mobile Sources
- Section 6 - Natural Sources
- Section 7 - DNREC Quality Assurance Implementation

Reference documentation that is pertinent to the discussion in a particular section of this document is included in an attachment at the end of that particular section. For example, computer printouts and excerpts from emissions reports relevant to the Section 2 point source discussion are labeled in Attachment 2 and are found at the end of Section 2. Reference documents less directly related to emissions estimations in this inventory, or too large to be included in the attachments, are placed in appendices at the end of this document.

EMISSIONS SUMMARY

The VOC, NO_x, and CO emissions in this *1996 Periodic Emissions Inventory* are estimated on both an annual (TPY) and a daily (TPD) basis. Annual emissions are estimated for calendar year 1996. Daily emissions are estimated for a typical peak ozone season day. The peak ozone season is defined as that contiguous three-month period of the year during which the highest number of ozone exceedances have occurred over the past three to four years. The peak ozone season for the *1996 Periodic Emissions Inventory* report is June through August. Peak ozone season daily emissions represent average emissions that occur on a typical weekday during the peak ozone season. All references to daily or seasonal emissions in this document refer to peak ozone season daily emissions.

In this inventory, VOC, NO_x, and CO emission sources are categorized into point, stationary area, off-road mobile, on-road mobile, and natural sources. Peak ozone season daily and annual emissions are estimated for all of these categories.

Prior to compiling the final numbers in this summary, several adjustments were made to the estimated emissions values. First, in accordance with *Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources*, EPA-450/4-91-016, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, May 1991, [hereafter referred to as *Procedures, Volume I (1991)*], photochemically nonreactive VOC emissions were removed from the inventory. While most VOCs engage in photochemical reactions, some are considered nonreactive under atmospheric conditions. These compounds, as defined in Regulation No. 1 of the *Regulations Governing the Control of Air Pollution*, 40-09-81/02/01, Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, updated to February 1995, do not contribute to ozone formation, therefore are subtracted from the inventory. All references to "nonreactive VOCs" in this document mean *photochemically*, nonreactive VOCs.

Second, emissions from regulated sources were adjusted for rule effectiveness and/or rule penetration, where applicable. Rule effectiveness is an adjustment to the emissions estimates of regulated sources to account for the fact that all sources are not in compliance with applicable air regulations 100 percent of the time. The rule effectiveness adjustment compensates for underestimates of emissions caused by noncompliance with existing regulations, control equipment downtime, operating problems, and process upsets. Rule effectiveness adjustments were made according to the *Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories*, EPA-452/R-92-010, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, November 1992.

Rule penetration factors are used in conjunction with rule effectiveness to adjust regulated emissions estimates. Rule penetration is the portion of a source category that is affected by a regulation. If a regulation applies to only a certain percentage of sources within a source category, a rule penetration factor is applied to ensure that the rule effectiveness adjustment affects only the emissions values for those regulated sources, and not the emissions values for the unregulated sources in the category. Adjustments for removal of nonreactive VOCs, rule effectiveness, and rule penetration are discussed in detail in appropriate sections of this document. All summary tables in this document list emissions values that have been adjusted as appropriate for removal of nonreactive VOCs, rule effectiveness, and rule penetration.

Differences in emission estimates between this inventory and previous inventories compiled by AQM may be due to a number of reasons, including but not limited to: changes to or addition of emission controls, changes in business or industrial activity, different methods of estimation, and the availability of more complete data.

The results of Delaware's *1996 Periodic Emissions Inventory* are presented in both tabular and graphic form. Table 1-2 summarizes Delaware's 1996 annual emissions of VOC, NO_x, and CO for each county and for the state.

Table 1-3 summarizes Delaware's 1996 peak ozone season daily emissions of VOC, NO_x, and CO for each county and for the state. The state's total peak ozone season daily emissions of VOC, NO_x, and CO are depicted graphically in Figure 1-3. Using the information from Table 1-3, a distribution of the peak ozone season daily emissions by county was prepared as shown in Figure 1-4.

Table 1-4 summarizes Delaware's 1996 annual and peak ozone season daily emissions of VOC, NO_x, and CO by source category. The distribution of peak ozone season daily emissions by source category is depicted graphically in Figure 1-5.

Table 1-5 presents a summary of Delaware's 1996 annual and peak ozone season daily VOC emissions by county and by source category. Tables 1-6 and 1-7 present similar information for NO_x and CO, respectively. This information is presented graphically in Figures 1-6, 1-7, and 1-8, which show comparisons of source category emissions by county for VOC, NO_x, and CO, respectively.

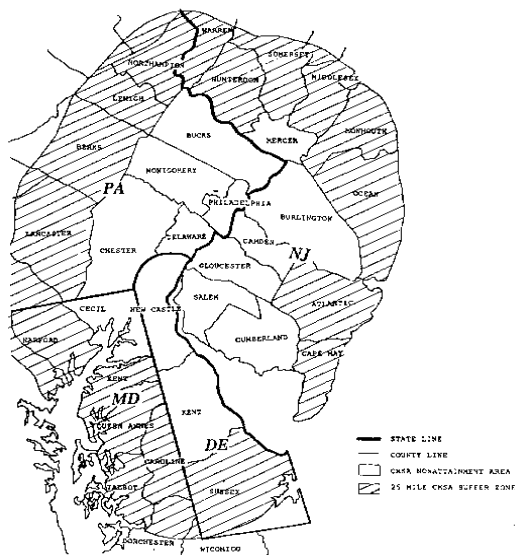


Figure 1-1. Philadelphia-Wilmington-Trenton CMSA Ozone Nonattainment Area¹

¹This map was adapted from *Major CO, NO₂ and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area*, EPA450/4-92-001a, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC, February, 1992.

1-2

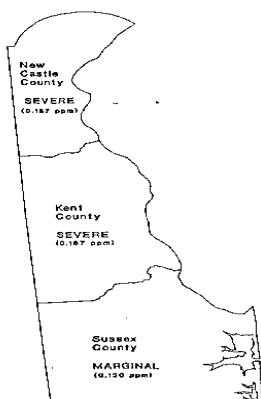


Figure 1-2. Inventory Area for the Delaware 1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO.

1-4

Figure 1-2. Inventory Area for the Delaware 1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO.

TABLE 1-1
SUMMARY OF 1996 DEMOGRAPHIC INFORMATION
FOR THE STATE OF DELAWARE

Demographic Parameter	KENT COUNTY VALUE	NEW CASTLE COUNTY VALUE	SUSSEX COUNTY VALUE	STATE VALUE
Population ^a	122,906	471,702	130,201	724,809
Land Area (square miles) ^b	594	439	950	1,983
Number of Households ^c	46,920	179,676	49,680	276,276
Manufacturing Employment ^d	6,519	39,319	11,985	57,823
Construction Employment ^d	2,504	15,358	4,172	22,034
Retail Employment ^d	11,895	43,739	13,965	69,599
Commercial/Institutional Employment ^d	37,309	185,653	35,903	258,865
Gasoline RVP ^e	8.1	8.1	8.1	8.1

^a State of Delaware, Delaware Economic Development Office, Delaware Population Projections Consortium, Dover, Delaware. January 1997.

^b *Webster's New Geographic Dictionary*, Miriam Webster Publishing Company, 1984.

^c U.S. Department of Commerce.

^d State of Delaware. Delaware Department of Labor.

^e Developed per EPA guidance using the *American Automobile Manufacturers Association International Fuel Survey for Philadelphia, PA--Summer 1996*.

TABLE 1-2
STATE AND COUNTY ANNUAL VOC, NO_x, AND CO
EMISSIONS

COUNTY	POLLUTANT EMISSIONS (TPY)		
	VOC	NO _x ^{a,b}	CO ^{a,c}
Kent	11,678	8,218	26,343
New Castle	26,672	31,577	102,084
Sussex	20,596	19,044	36,219
STATE TOTAL	58,946	58,839	164,646

^a Total annual NO_x and CO emissions are not calculated from stationary source solvent use, vehicle refueling and related activities, bioprocess emissions, miscellaneous area sources, and small facilities because there are no methods for determining annual emissions for these sources.

^b Total annual NO_x emissions are not calculated from slash, prescribed, nor agricultural burning because there are no methods for determining annual emissions for these sources.

^c Total annual CO emissions are not calculated from natural sources because there are no methods for determining annual emissions for this source.

**TABLE 1-3
STATE AND COUNTY PEAK OZONE SEASON
DAILY VOC, NO_x, AND CO EMISSIONS**

COUNTY	POLLUTANT EMISSIONS (TPD)		
	VOC	NO _x ^{a,c}	CO ^{a,c,d}
Kent	84.517	27.478	71.729
New Castle	144.866	99.510	359.822
Sussex	156.110	63.033	115.077
STATE TOTAL	385.493	190.021	546.628

^a Total annual NO_x and CO emissions are not calculated from stationary source solvent use, vehicle refueling and related activities, bioprocess emissions, miscellaneous area sources, and small facilities because there are no methods for determining annual emissions for these sources.

^b Total annual NO_x emissions are not calculated from slash, prescribed, nor agricultural burning because there are no methods for determining annual emissions for these sources.

^c Total annual CO emissions are not calculated from natural sources because there are no methods for determining annual emissions for this source.

^d Carbon dioxide emissions from natural sources are not generated by the PC-BEIS2.0 model, therefore are not reported in this inventory.

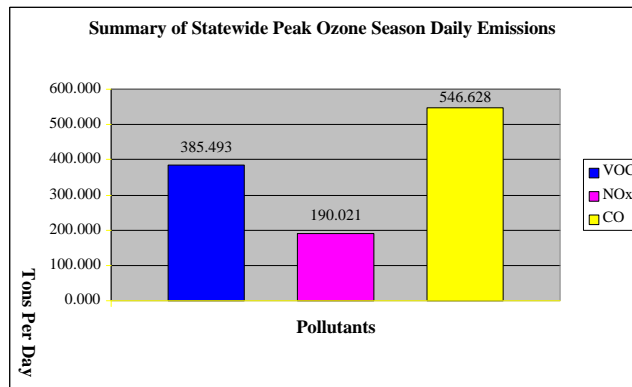


Figure 1-3. Summary of Statewide Peak Ozone Season Daily Emissions

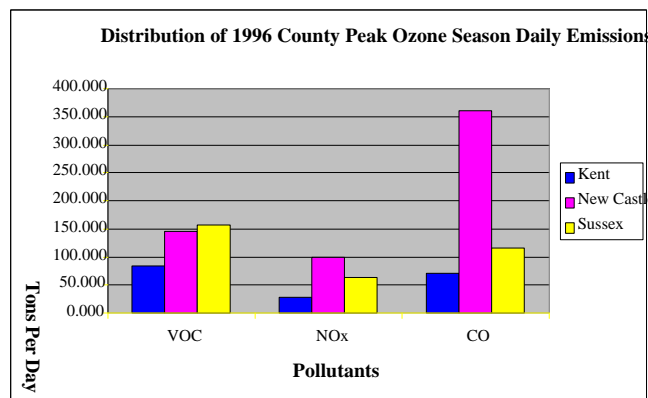


Figure 1-4. Distribution of Peak Ozone Season Daily Emissions by County

**TABLE 1-4
ANNUAL AND PEAK OZONE SEASON DAILY
EMISSIONS BY SOURCE CATEGORY**

SOURCE CATEGORY	POLLUTANT EMISSIONS					
	VOC		NO _x		CO	
	Annual (TPY)	Daily (TPY)	Annual (TPY)	Daily (TPD)	Annual (TPY)	Daily (TPD)
Point Sources	6,322	31.728	25,488	78.799	17,198 ^a	90.655
Stationary Area Sources	15,695 ^a	40.503	3,481 ^a	6.852	7,309	8.236
Off-road Mobile Sources	5,754	24.551	8,935	33.549	39,248	156.537
On-road Mobile Sources	11,014	46.770	19,142	60.670	100,891	291.200
Natural Sources	20,161	241.941	1,793	10.151	N/A ^b	N/A ^b

STATE TOTAL	58,946	385,493	58,839	190,021	164,646	546,628
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^a There are no methods for determining annual NO_x or CO emissions for leaking underground storage tank, and vehicle refueling and spillage emissions sources within the stationary area source category.

^b Not Applicable. Emissions of CO from biogenic sources are not generated by the PC-BEIS2.0 model, therefore are not reported in this inventory.

Figure 1-5. Distribution of Statewide Peak Ozone Season Daily Emissions by Source Category

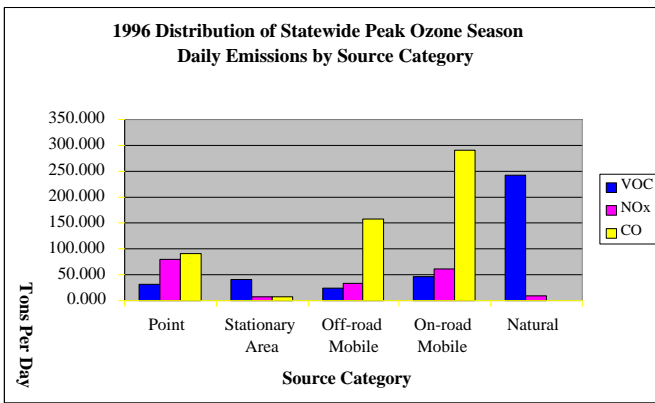


Figure 1-6. Distribution of Peak Ozone Season Daily VOC Emissions by Source Category and County

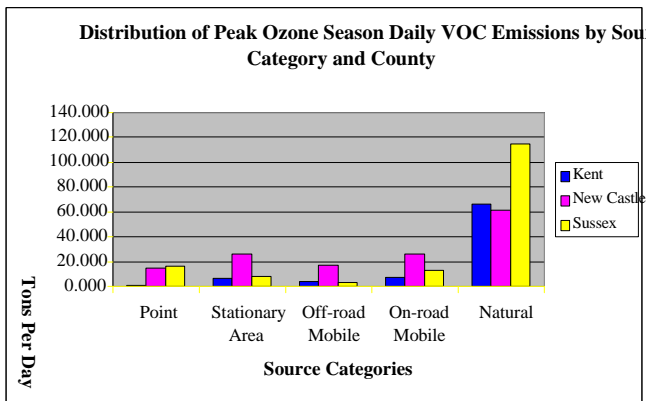


Figure 1-7. Distribution of Peak Ozone Season Daily NO_x Emissions by Source Category and County

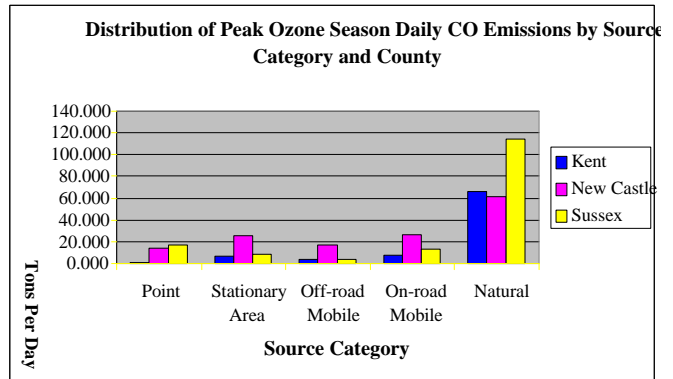


Figure 1-8. Distribution of Peak Ozone Season Daily CO Emissions by Source Category and County

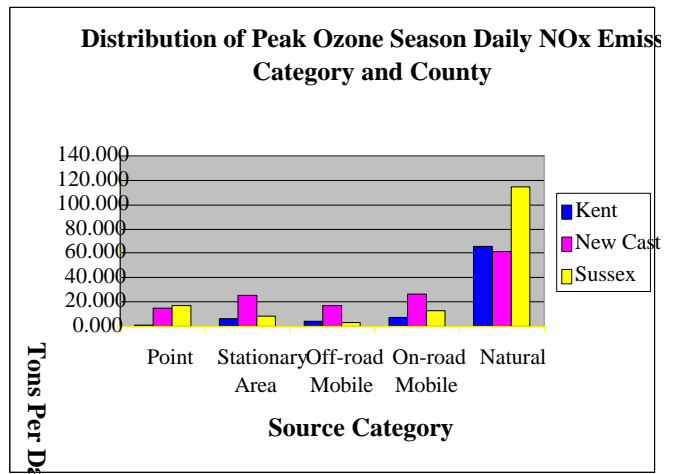


TABLE 1-5
SUMMARY OF VOC EMISSIONS BY COUNTY AND
SOURCE CATEGORY

COUNTY	VOC Emissions											
	POINT SOURCES		Stationary Area Sources		Off-Road Mobile Sources		On-Road Mobile Sources		Natural Sources		Total	
	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)*	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)
Kent	208	0.638	3,025	6.301	1,186	4.030	1,976	7.520	5,283	66.028	11,678	84.517
New Castle	3,837	14.340	8,334	25.905	3,728	17.046	6,080	26.090	4,693	61.485	26,672	144.866
Sussex	2,277	16.750	4,336	8.297	840	3.475	2,958	13.160	10,185	114.428	20,596	156.110
Total	6,322	31.728	15,695	40.503	5,754	24.551	11,014	46.770	20,161	241.941	58,946	385.493

TABLE 1-6
SUMMARY OF NO_x EMISSIONS BY COUNTY AND
SOURCE CATEGORY

COUNTY	NO _x Emissions											
	Point Sources		Stationary Area Sources		Off-Road Mobile Sources		On-Road Mobile Sources		Natural Sources		Total	
	Annual (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)
Kent	1,176	4.925	540	0.992	2,298	8.384	3,606	9.900	598	3.277	8,218	27.478
New Castle	12,965	39.550	2,202	4.333	4,944	18.649	11,078	34.820	388	2.158	31,577	99.510
Sussex	11,347	34.324	739	1.527	1,693	6.516	4,458	15.950	807	4.716	19,044	63.033
Total	25,488	78.799	3,481	6.852	8,935	33.549	19,142	60.670	1,793	10.151	57,046	190.021

TABLE 1-7
SUMMARY OF CO EMISSIONS BY COUNTY AND
SOURCE CATEGORY

County	CO EMISSIONS ^a									
	Point Sources		Stationary Area Sources		Off-Road Mobile Sources		On-Road Mobile Sources		Total	
	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)
Kent	146	0.527	1,869	1.077	6,200	22.335	18,128	47.790	26,343	71.729
New Castle	16,504	88.427	1,854	2.738	26,773	109.867	56,953	158.790	102,084	359.822
Sussex	548	1.701	3,586	4.421	6,275	24.335	25,810	84.620	36,219	115.077
Total	17,198	90.655	7,309	8.236	39,248	156.537	100,891	291.200	164,646	546.628

^a The PC-BEIS2.0 model does not generate CO emissions from natural sources. Therefore, the natural source category is not included in this table.

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. Section 6010)

REGISTER NOTICE**1. TITLE OF THE REGULATIONS:**

Delaware 1996 milestone demonstration for Kent and New Castle counties: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone.

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

The Clean Air Act Amendments of 1990 (CAAA) requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision for each of the milestone years (1996, 1999, 2002, and 2005) to demonstrate that the actual emissions of volatile organic compounds (VOC) and/or oxides of nitrogen (NOx) in Kent and New Castle Counties do not exceed the required emission targets specified in Delaware's Rate-of-Progress Plans. The document proposed herein is for the milestone year of 1996, and thus termed as Delaware's 1996 Milestone Demonstration.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C., Chapter 60 Section 6010.
Clean Air Act Amendments of 1990.

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

None

6. NOTICE OF PUBLIC COMMENT:

Public hearing will be held on January 4, 2000, at 6:00pm in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Frank F. Gao, Project Leader
Alfred R. Deramo, Program Manager(302) 739-4791
November 9, 1999

Delaware 1996 Milestone Demonstration For Kent And New Castle Counties**Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone****Submitted to:**

US Environmental Protection Agency

By

Delaware Department of Natural Resources and Environmental Control

December 1999

Acronym List

AQM	-	Air Quality Management Section of DNREC
BEA	-	Bureau of Economic Analysis
BY	-	Base year
CAAA	-	Clean Air Act Amendments of 1990
CMSA	-	Consolidated Metropolitan Statistical Area
CO	-	Carbon Monoxide
DAWM	-	Division of Air and Waste Management of DNREC
DeIDOT-	-	Delaware Department of Transportation
DNREC-	-	Delaware Department of Natural Resources and Environmental Control
EID	-	Emission Inventory Development
EPA	-	United States Environmental Protection Agency
FMVCP	-	Federal Motor Vehicle Control Program
HPMS	-	Highway Performance Monitoring System
I/M	-	Inspection and Maintenance
LEV	-	Low Emission Vehicle
NAA	-	Nonattainment Area
NAAQS-	-	National Ambient Air Quality Standard
NLEV	-	National Low Emission Vehicle
NOx	-	Oxides of Nitrogen
OAQPS-	-	Office of Air Quality Planning and Standards of EPA
OTAG	-	Ozone Transport Assessment Group
OTC	-	Ozone Transport Commission
OTR	-	Ozone Transport Region
PCP	-	Planning and Community Protection Branch of DNREC
PEI	-	Periodic Emission Inventory
PERC	-	Perchloroethylene
POTW	-	Publicly Owned Treatment Works
RACT	-	Reasonably Available Control Technology
RPP	-	Rate-of-Progress Plan
RVP	-	Reid Vapor Pressure
SCC	-	Source Classification Code
SIC	-	Standard Industrial Classification
SIP	-	State Implementation Plan

TPD	-	Tons per day
TPY	-	Tons per year
VHB	-	Vanasse Hangen Brustlin, Inc.
VOC	-	Volatile Organic Compound

References

1. *Guidance on the Relationship between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA-452/R-93-007, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, May 1993.

2. *The 1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NOx*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, revised as of May 3, 1994.

3. *The Delaware 15% Rate-of-Progress Plan*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 1995.

4. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate-of-Progress Plans*. EPA-452/R-92-005, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, October 1992.

5. *Regulations Governing the Control of Air Pollution*. Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, March 1995.

6. *Procedures for Preparing Emissions Projections*. EPA-450/4-91-019, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, July 1991.

7. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*. EPA-452/R-93-002, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

8. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans*. EPA-452/R-93-005, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

9. *Rate-of-Progress Plan Guidance for the 15% Calculations*. Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, U.S. Environmental Protection Agency, Washington, D.C., October 29, 1993.

10. *The 1993 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, January 1998.

11. *The 1996 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO*. Air Quality

Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, November 1999.

12. *Summary of EPA's Nonroad Engine Control Programs*. EPA-420-F-96-016, Office of Mobile Sources, U.S. Environmental Protection Agency, Ann Arbor, Michigan, February 1997.

Summary

This document addresses Delaware's 1996 milestone demonstration regarding attainment of the 1-hour National Ambient Air Quality Standard for the ground-level ozone. Under the Clean Air Act Amendments of 1990 (CAAA), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour ozone standard. Under Sections 182(b)(1) and 182(d) of the CAAA, Delaware is required to achieve a 15% reduction in emissions of volatile organic compounds (VOC) from its 1990 levels in these two counties. Under this requirement, the 1996 target level of VOC emissions in Kent and New Castle Counties has been determined to be 115.815 tons per day (TPD) in the peak ozone season. To achieve this target, Delaware implemented numerous control measures over a large variety of VOC emission sources from 1990 to 1996. Delaware's 1996 periodic emission inventory, which has been recently compiled, shows that the 1996 actual VOC emissions in Kent and New Castle Counties are 101.870 TPD. Thus, Delaware demonstrates herein that its 1996 milestone for VOC emission reductions has been successfully met.

1. Introduction

1.1 Background

The Clean Air Act Amendments of 1990 (CAAA) set forth National Ambient Air Quality Standards (NAAQS) for six air pollutants that pose public health risks and environmental threats. Delaware exceeds the standard for only one of these pollutants, i.e., the ground-level ozone. High levels of ozone can harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pains, and greater susceptibility to respiratory infection. Children, the elderly and individuals with respiratory diseases are especially vulnerable to the ozone threat. Even healthy individuals can be harmed if they attempt strenuous activity on days with high ozone levels. High levels of ozone also cause serious damage to forests and agricultural crops, resulting in economic losses to logging and farming operations.

The CAAA classifies five nonattainment areas (NAA) that exceed the 1-hour ozone NAAQS based on the severity of the pollution problem. In order of increasing severity, they are marginal, moderate, serious, severe, and extreme. Attainment dates depend on the nonattainment designation for individual areas (Section 181, CAAA). The Philadelphia Consolidated Metropolitan Statistical Area

(CMSA) is classified as a severe nonattainment area (Figure 1), which has an attainment date of 2005. As shown in Figure 1, Kent and New Castle Counties in Delaware fall within the Philadelphia CMSA. Thus, these two counties are subject to all requirements set forth for the severe ozone nonattainment class. All discussions and data presented in this document apply only to Kent and New Castle Counties.

Ozone is generally not directly emitted to the atmosphere, but formed in the lower atmosphere by photochemical reactions mainly between volatile organic compounds (VOC) and nitrogen oxides (NOx) in the presence of sunlight. Thus, VOC and NOx are defined as two major ozone precursors. In order to reduce ozone concentrations in the ambient air, the CAAA requires all ozone nonattainment areas to achieve specific reductions in anthropogenic VOC emissions and/or NOx emissions over several specified periods of years until the ozone standard is attained. These periodic emission reductions are termed as "rate of progress" toward the attainment of the 1-hour ozone standard (Reference 1).

Under Section 182(d) of CAAA, Delaware is required to develop and submit State Implementation Plans (SIP) to the United States Environmental Protection Agency (EPA) for each of the milestone years of 1996, 1999, 2002 and 2005. In these plans, Delaware has to show that, by adopting and implementing adequate control measures, it can achieve adequate rate-of-progress reductions in VOC and/or NOx emissions for its severe ozone nonattainment area, i.e., Kent and New Castle Counties. Since these state implementation plans construct the path of Delaware's rate of progress toward the attainment of ozone standard, they are termed as Delaware's Rate-of-Progress Plans (RPPs).

Under Section 182(a) of the CAAA, Delaware is required to develop comprehensive emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005 to monitor actual VOC and NOx emissions from its nonattainment areas along the path of rate of progress. These emission inventories are termed as Delaware's periodic emission inventories (PEIs). Under Sections 182(a) and 182(g) of the CAAA, Delaware is required to use these periodic emission inventories (except 1993 PEI) to demonstrate whether Delaware meets its required emission reductions as specified in its rate-of-progress plans in individual milestone years. This demonstrating process is termed as periodic milestone demonstration (Reference 1).

This document contains Delaware's State Implementation Plan (SIP) revision for demonstrating Delaware 1996 compliance with adequate progress in emission reductions toward attainment of the 1-hour ozone NAAQS as required by the CAAA. The document is hereafter referred to as "Delaware 1996 Milestone Demonstration."



Figure 1. Philadelphia Consolidated Metropolitan Statistical Area (CMSA) Nonattainment Area.¹

¹ This map is adapted from *Major CO, NO₂ and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area*, EPA/4-92-005a, U.S. Environment Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC, February, 1992.

1.2 Responsibilities

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQM), under the direction of Darryl D. Tyler, Program Administrator. The Delaware Department of Transportation (DelDOT), in conjunction with the consulting firm Vanasse Hangen Brustlin, Inc. (VHB), Watertown, MA, is responsible for performing the work associated with the on-road mobile source emissions included in this document.

The working responsibility for Delaware's air quality management planning falls within the Planning and Community Protection (PCP) Branch of AQM Section, DAWM of DNREC, under the management of Raymond H. Malenfant, Program Manager. Alfred R. Deramo, Program Manager of the State Implementation Planning (SIP) Program within the PCP Branch, is the project manager of this document. Frank F. Gao, Environmental Engineer of the SIP Program, is the project leader and principal author of this document. Margaret A.J. Pomatto, Environmental Scientist of the Emission Inventory Development (EID) Program within the PCP Branch, is the quality assurance reviewer and technical editor of this document. Questions or comments regarding this document should be addressed to A. Deramo or F. Gao, (302)739-4791, AQM, 156 South

State Street, Dover, DE 19901.

2. Submittal and Summary of Delaware State Implementation Plans

2.1 Delaware 1990 Base Year Emission Inventory

Section 182(a)(1) of the CAAA requires each state with ozone nonattainment areas to develop a comprehensive and accurate 1990 emission inventory for ozone precursors for its nonattainment areas. The emission inventory must be submitted as a state implementation plan (SIP) revision to EPA for approval. This "1990 base year emission inventory" is used as the basis for a state to develop its rate-of-progress plans and control strategies toward attainment of the 1-hour ozone standard. Delaware's 1990 base year emission inventory was submitted to the EPA in May 1994, and approved by EPA in March 1996. The inventory is hereafter referred to as the 1990 Base Year Inventory (Reference 2).

The 1990 Base Year Inventory is categorized by source sectors, i.e., point, stationary area, off-road mobile, on-road mobile and biogenic source sectors (Appendix A). Since volatile organic compounds (VOC), nitrogen oxides (NO_x) and carbon monoxide (CO) are precursors forming ground level ozone, their emissions in 1990 are inventoried and reported in the 1990 Base Year Inventory. Because contribution of CO to ozone formation is considered insignificant and Delaware does not contain any CO nonattainment area, the CO component of the 1990 Base Year Inventory is not included in Delaware's rate-of-progress planning for ozone attainment. A summary of VOC and NO_x emissions by county in the 1990 Base Year Inventory is presented in Table 1. The unit of emissions reported in Table 1 is tons per day (TPD) in the peak ozone season. The peak ozone season in Delaware is defined as from June 1 through August 31.

Table 1. Summary of VOC and NO_x Emissions (TPD) in 1990 Base Year Inventory*

Source Sector	Kent		New Castle		Total	NAA
	VOC	NO _x	VOC	NO _x	VOC	NO _x
Point Sources	3.242	6.130	27.078	85.767	30.320	91.897
Stationary Area Sources	12.967	1.202	34.754	5.398	47.721	6.600
Off-Road Mobile Sources	3.494	7.891	16.674	18.777	20.168	26.668
On-Road Mobile Sources	13.070	10.620	35.280	27.060	48.350	37.680
Biogenic Sources**	32.460	0	17.510	0	49.970	0

Total Emissions	65.233	25.843	131.296	137.002	196.529	162.845
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*Data obtained from Delaware 1990 Base Year Emission Inventory (Reference 2).

** Biogenic NO_x emissions are assumed to be negligible.

2.2 Delaware 1996 Rate-of-Progress Plan

Under Sections 182(b)(1) and 182(d), Delaware is required to develop a rate-of-progress plan (as a SIP revision) for the period from 1990 to 1996, which describes how Delaware will achieve an actual VOC emission reduction by 1996 that is at least 15% of its VOC emission level in 1990. This plan is thus termed as the Delaware 1996 Rate-of-Progress Plan or 15% Rate-of-Progress Plan (RPP). Delaware developed the 1996 RPP and submitted it to EPA for approval in February 1995 (Reference 3). In this plan, Delaware first established a VOC emission target for 1996 to meet the rate-of-progress requirements specified in the CAAA. Delaware then presented its control measures being promulgated in the 1990-1996 period, and demonstrated that through these measures the required VOC emission target can be met in 1996. A summary of the 1996 RPP is provided in Appendix B of this document. This section presents a brief discussion of the major contents of the 1996 RPP and provides data necessary for the milestone compliance demonstration.

2.2.1 Delaware 1996 VOC Emission Target

The 15% rate-of-progress VOC emission reduction in the period of 1990 to 1996 is estimated from the 1990 baseline level. Section 182(b)(1)(B) defines the baseline emissions as the total amount of actual VOC emissions from all anthropogenic sources in the nonattainment areas. Thus, the 1990 Base Year Inventory VOC emissions in Table 1 must be modified to exclude emissions from biogenic sources and sources outside the nonattainment areas. In addition, emissions of perchloroethylene (PERC) were included in the 1990 Base Year Inventory because it was originally classified by EPA as a photochemically reactive VOC contributing to the formation of ozone. The EPA reclassified PERC as photochemically non-reactive after Delaware's 1990 Base Year Inventory was compiled. Thus, PERC emissions, which are now considered not to participate in the formation of ozone, need to be subtracted from the 1990 Base Year Inventory. The biogenic VOC emissions in the 1990 Base Year Inventory are 32.460 TPD and 17.510 TPD for Kent and New Castle Counties, respectively (Table 1). The PERC emissions in Kent County are 0.188 TPD, all from the area source sector. For New Castle County, the PERC emissions are 0.140 TPD from the point source sector and 0.388 TPD from the area source sector. Details of determination of the PERC emissions can be found in Appendix A of Reference 2. The modified 1990 base year VOC emissions, or the 1990

baseline VOC emissions, are presented in Table 2.

Table 2. Delaware 1990 Baseline and Adjusted Inventory of VOC Emissions (TPD)

Source Sector	Kent		New Castle		Total NAA	
	1990 Baseline	1990 Adjusted	1990 Baseline	1990 Adjusted	1990 Baseline	1990 Adjusted
Point Sources	3,242	3,242	26,938	26,938	30,180	30,180
Stationary Area Sources	12,779	12,779	34,366	34,366	47,145	47,145
Off-Road Mobile Sources	3,494	3,494	16,674	16,674	20,168	20,168
On-Road Mobile Sources	13,070	10,245	35,280	28,515	48,350	38,760
Total Emissions	32,585	29,760	113,258	106,493	145,843	136,253

According to Section 182(b)(1)(D) of the CAAA, emission reductions resulted from the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to 1990 are not creditable for achieving the 15% rate-of-progress VOC emission reductions in the 1996 RPP. Therefore, the 1990 baseline VOC emissions in Table 2 must be adjusted by removing the VOC emission reductions expected from FMVCP and RVP. The adjusting procedures are provided in an EPA guidance document (Reference 4). Details of the adjustments are provided in Delaware 1996 RPP (Reference 3). The FMVCP/RVP adjustments for Kent and New Castle Counties are 2.825 TPD and 6.765 TPD, respectively. The results of the adjustment are the 1990 Adjusted Baseline Emissions (as shown in Table 2), which are the basis for calculating the required rate-of-progress emission reductions and the emission target for the milestone year 1996.

The 15% VOC emission reductions are required for the entire nonattainment area, i.e., Kent and New Castle Counties. Thus, for Delaware's 1996 RPP, the total required emission reduction (ER_{1996}) in TPD is

$$ER_{1996} = EMIS_{1990-Adj} \times 15\% = 136.253 \times 15\% = 20.438 \text{ TPD}$$

where $EMIS_{1990-Adj}$ is the adjusted 1990 baseline VOC emissions as shown in Table 2. The VOC emission target level in 1996 RPP in TPD is

$$EMIS_{1996T} = EMIS_{1990-Adj} - ER_{1996} = 136.253 - 20.438 = 115.815 \text{ TPD}$$

2.2.2 Control Measures and Expected VOC

Emissions in 1996 RPP

To achieve the 1996 VOC emission target determined in the previous subsection, Delaware proposed numerous control measures in its 1996 RPP. The control measures included federal mandatory rules and Delaware's regulations to be promulgated prior to the peak ozone season of 1996 (Reference 5). These rules and regulations cover a large variety of VOC emission sources in all source sectors. A list of the control measures, along with their implementation dates, is given in Table 3. Detailed descriptions of individual rules and regulations have been presented in Delaware 1996 RPP (Reference 3).

In the 1996 RPP, Delaware also projected the 1996 VOC emissions in the peak ozone season assuming all control measures listed in Table 3 could be implemented as expected. The projections were termed as "control strategy projections" and conducted following the methods and procedures specified in EPA's guidance documents (References 4, 6, 7, 8, 9). In the projection calculations, factors such as growth, control efficiency, rule effectiveness, and rule penetration, were considered whenever appropriate for point sources, stationary area sources and non-road mobile sources. Emission projections for on-road mobile sources were conducted using EPA's MOBILE5a software. Details of the control strategy projections were presented in the 1996 RPP (Reference 3). A summary of the 1996 VOC control strategy emission projections is given in Table 4.

Table 4 indicates that the total VOC emissions projected for Delaware's entire nonattainment area (Kent and New Castle Counties) would be 115.336 TPD, which was smaller than the 1996 target level of 115.815 TPD. Thus, it was concluded in the 1996 RPP that the proposed control measures could be adequate and enough for Delaware to meet the 15% rate-of-progress requirement on VOC emission reductions.

Table 3. Control Measures Proposed in Delaware's 1996 RPP

Control Measures and Regulations	Creditability	Effective Date
Point Source Controls		
RACT "Catch-Ups" in Kent County:		
Solvent Metal Cleaning	Creditable	31-May-95
Surface Coating of Metal Furniture	Creditable	31-May-95
Leaks from Synthetic Organic Chemical,	Creditable	31-May-95
Polymer, and Resin Manufact. Equip.		

New RACT Regulations:		
Bulk Gasoline Marine Tank Vessel Loading Facilities	Creditable	31-Dec-95
SOCMI Reactor Processes and Distillation Operations	Creditable	1-Apr-96
Batch Processing Operations	Creditable	1-Apr-96
Offset Lithography	Creditable	1-Apr-96
Aerospace Coatings	Creditable	1-Apr-96
Industrial Cleaning Solvents	Creditable	29-Nov-94
Non-CTG RACT	Creditable	31-May-95
Federal Benzene Waste Rule	Creditable	Spring 1995
Sanitary Landfills	Creditable	9-Oct-93
Irreversible Process Changes	Creditable	1-Jan-96
Stationary Area Source Controls		
RACT "Catch-Ups" in Kent County:		
Solvent Metal Cleaning	Creditable	31-May-95
Cutback Asphalt	Creditable	31-May-95
New RACT Regulations:		
Stage I Vapor Recovery-Gasoline Dispensing Facilities	Creditable	15-Nov-94
Emulsified Asphalt	Creditable	31-May-93
Motor Vehicle Refinishing	Creditable	1-Apr-96
Offset Lithography	Creditable	1-Apr-96
Aerospace Coatings	Creditable	1-Apr-96
Stage II Vapor Recovery	Creditable	15-Nov-94
Open Burning	Creditable	8-Feb-95
Off-Road Mobile Source Controls		
Reformulated Fuel	Creditable	1-Jan-95
On-Road Mobile Source Controls		
FMVCP and RVP	Noncreditable	Pre-1990
Tier I Vehicle Emissions Standards	Creditable	Model Year 1994
a. Basic I/M for Kent County	Creditable	1-Jan-91
b. ATP and Pressure Test in Kent County	Creditable	1-Jan-95
ATP and Pressure Test in New Castle County	Creditable	1-Jan-95

Reformulated Fuel	Creditable	1-Jan-95
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Table 4. Delaware 1996 Control Strategy Projections for VOC Emissions (TPD)

Source Sector	Kent County	New Castle County	Total NAA
Point	1.268	21.391	22.659
Stationary Area	10.770	29.832	40.602
Off-Road Mobile	3.722	16.753	20.475
On-Road Mobile	8.030	23.570	31.600
Total Emissions	23.790	91.546	115.336

2.3 Delaware 1993 and 1996 Periodic Emission Inventories

Under Section 182(a) of the CAAA, Delaware is required to compile comprehensive periodic emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005. The emission data in these periodic inventories are either reported directly by individual sources (e.g., point sources such as industrial facilities), or calculated from current-year activity data obtained from sources or other agencies (e.g., area sources). Thus, the emissions in a periodic inventory are considered actual emissions in the subject calendar year. Delaware's first periodic inventory after 1990 is the 1993 periodic emission inventory (PEI), which compiles emissions of VOC, NO_x, and CO in 1993 from all sources included in the 1990 Base Year Emission Inventory. The 1993 PEI was submitted to EPA as a SIP revision in January 1998 (Reference 10). A summary of the 1993 PEI is presented in Appendix C. The emissions in the 1993 PEI are reported on both an annual basis (in tons per year, or TPY) and a daily basis in the peak ozone season (in tons per day, or TPD). For comparison purposes in this document, daily anthropogenic VOC emissions in the peak ozone season from Kent and New Castle Counties in the 1993 PEI are presented in Table 5.

Table 5. Anthropogenic VOC Emissions (TPD) in Delaware's 1993 Periodic Emission Inventory

Source Sector	Kent County	New Castle County	Total NAA
Point Sources	2.857	24.913	27.770
Stationary Area Sources	11.749	35.271	47.020
Off-Road Mobile Sources	3.671	16.824	20.495

On-Road Mobile Sources	10.000	30.510	40.510
Total Emissions	28.277	107.518	135.795

Delaware's 1996 periodic emission inventory (PEI) compiles emissions of VOC, NO_x, and CO in 1996 from all sources included in the 1990 Base Year Emission Inventory. The compilation of the 1996 PEI has been recently finished, and will be submitted to EPA as a SIP revision in November 1999. A summary of the 1996 PEI is provided in Appendix D. The emissions in the 1996 PEI are reported on both an annual basis (in tons per year, or TPY) and a daily basis in the peak ozone season (in tons per day, or TPD) (Reference 11). For comparison purposes in this document, daily anthropogenic VOC emissions in the peak ozone season from Kent and New Castle Counties in the 1996 PEI are presented in Table 6. In the next section, emission data in Table 6 will be used to conduct the 1996 milestone compliance demonstration.

Table 6. Anthropogenic VOC Emissions (TPD) in Delaware's 1996 Periodic Emission Inventory

Source Sector	Kent County	New Castle County	Total NAA
Point Sources	0.638	14.340	14.978
Stationary Area Sources	6.301	25.905	32.206
Off-Road Mobile Sources	4.030	17.046	21.076
On-Road Mobile Sources	7.520	26.090	33.610
Total Emissions	18.489	83.381	101.870

3. Delaware 1996 Milestone Compliance Demonstration

3.1 Milestone Compliance Demonstration

In the 1996 RPP, Delaware has determined that the 1996 target level of VOC emissions for its nonattainment area (i.e., Kent and New Castle Counties) would be 115.815 TPD in the peak ozone season. Delaware has also assessed that, through implementing necessary emission control measures proposed in the 1996 RPP, the target level could be achieved. In the 1996 PEI, Delaware has shown that the actual total VOC emission in 1996 is 101.870 TPD in the peak ozone season. The 1996 target level, the 1996 control strategy projection, and the 1996 PEI actual emission are summarized in Table 7. Since the 1996 PEI actual VOC emission is lower than the required target level, Delaware demonstrates herein that its 1996 milestone for VOC emission reductions has been successfully met.

Table 7. Milestone Compliance Demonstration for 1996

1996 Required		1996 Control		1996 PEI	
Emission (TPD)	Target	Strategy (TPD)	Projection	Actual (TPD)	Emission
115.815		115.336		101.870	

3.2 Effectiveness of Control Measures in Individual Source Sectors

In the 1996 RPP, Delaware has anticipated that control measures proposed for individual source sectors would lead to specific VOC emission levels in the corresponding source sectors in the 1996 milestone year. The anticipated VOC emission levels, or the control strategy projections, for individual source sectors are summarized in Table 8. For comparison purposes, the 1996 PEI actual VOC emission levels from individual source sectors are also listed in Table 8. In addition, differences between the 1996 RPP anticipated emission levels and the 1996 PEI actual emission levels are also presented in Table 8. Comparison and analysis of the 1996 RPP data and the 1996 PEI data will help assess relative effectiveness of controls in individual source sectors and direct future attention and efforts to VOC emission controls.

From Table 8, it can be seen that the 1996 PEI emissions from point and area source sectors are lower than the 1996 RPP anticipated levels. This fact reflects the effectiveness of VOC emission controls, primarily those of Reasonably Available Control Technology (RACT), implemented prior to the peak ozone season of 1996 upon stationary point and area sources (Table 3). In contrast, the 1996 PEI emissions from off-road and on-road mobile sources are higher than the 1996 RPP anticipated emission levels. It should be noted that the off-road sector was the least controlled sector in the 1996 RPP. The only control measure for this sector was the requirement of using reformulated gasoline in gasoline-fueled off-road engines. The VOC emission reduction from this sector was anticipated to be only 0.509 TPD in the peak ozone season (Reference 3). Delaware speculates that the lack of effective control measures over the off-road engines, especially diesel engines, would be a major cause of not achieving the anticipated VOC emission level in this source sector. In recent years, EPA has realized this lack of controls and begun turning its attention to off-road mobile sources that are believed to contribute significantly to air pollution (Reference 12). Delaware's finding provides supporting evidence for EPA's efforts in controlling VOC emissions from off-road mobile sources.

Table 8. Comparison of VOC Emissions between 1996 RPP Control Strategy Projections and 1996 PEI Actual Emissions (TPD)

	1996 RPP	1996 PEI	Difference	
Source Sector	(a)	(b)	(c)*	(d)**
Point Sources	22.659	14.978	-7.681	-33.9%
Stationary Area Sources	40.602	32.206	-8.396	-20.7%
Off-Road Mobile Sources	20.475	21.076	0.601	2.9%
On-Road Mobile Sources	31.600	33.610	2.010	6.4%
Total Emissions (TPD)	115.336	101.870	-13.466	-11.7%

*(c)=(b)-(a). ***(d)=(c)/(a).

The on-road mobile source sector has also shown a higher-than-anticipated VOC emission level in the 1996 PEI (Table 8). A comparison of the mobile source emissions in Table 4 and Table 6 by county indicates that the higher PEI VOC emission is produced in New Castle County. A contributing factor might be the increase in population. According to Delaware Department of Transportation, an unexpected population increase happened in New Castle County in the 1990s, with an annual average of 0.8% higher than that originally projected. This population increase caused an increase in VMT, especially in the employment-based trips.

As shown in Table 8, the total VOC emissions in the 1996 PEI are 11.7% lower than the control strategy projections calculated in the 1996 RPP. This demonstrates that the overall effectiveness of all control measures as a whole in the main plan of the 1996 RPP has actually met the 15% rate-of-progress requirements for VOC emission reductions. Thus, there is no need to introduce any additional controls specified in the contingency plan of the 1996 RPP (Reference 3). The contingency measures thereof can be then carried over to Delaware's next rate-of-progress plan (i.e., the 1999 RPP), which will be addressed in a separate SIP revision document.

3.3 Trends of VOC Emissions from 1990 to 1996

Prior to the peak ozone season of the 1996

milestone year, Delaware implemented numerous control measures over a large variety of VOC emission sources in its nonattainment area (Table 3). The effectiveness of these control measures has been discussed in the previous subsection. An analysis of emission trends from 1990 to 1996 will provide additional information in assessing the effectiveness of these controls and understanding the emission situations in individual source sectors. For this purpose, the actual anthropogenic VOC emissions from Delaware 1990 base year inventory, the 1993 PEI and the 1996 PEI are summarized in Table 9.

Table 9. Trends of Anthropogenic VOC Emissions in Delaware Nonattainment Area from 1990 Base Year to 1996 Milestone Year

		VOC Emissions	(TPD)	% Change*
Source Sector	1990 Baseline	1993 PEI	1996 PEI	1990-1996
Point Sources	30.180	27.770	14.978	-50.4%
Stationary Area Sources	47.145	47.020	32.206	-31.7%
Off-Road Mobile Sources	20.168	20.495	21.076	4.5%
On-Road Mobile Sources	48.350	40.510	33.610	-30.5%
Total Emissions	145.843	135.795	101.870	-30.2%

* % Change = (1996 PEI - 1990 Baseline)/1990 Baseline.

As shown in Table 9, the total anthropogenic VOC emissions in Delaware's nonattainment area decreased continuously from 1990 to 1996. The total VOC emission reported in the 1993 PEI is 6.9% lower than the 1990 baseline level. The total VOC emission in the 1996 PEI is 30.2% lower than the 1990 baseline level. The decreasing trend in anthropogenic VOC emissions from 1990 to 1996 is also plotted in Figure 2 using the total emission data in Table 9. The more rapid reduction between 1993 and 1996, as shown in Figure 2, is due to the fact that a majority of controls over VOC emissions were implemented in that period (Table 3).

The anthropogenic VOC emissions from individual source sectors are also summarized in Table 9. The trends of these emissions from 1990 to 1996 are plotted in Figure 3. From Table 9 and Figure 3, it can be seen that VOC emissions from point, stationary area and on-road mobile source sectors show significant reductions of 50.4%, 31.7%

and 30.5%, respectively, from 1990 to 1996. In contrast, VOC emissions in the off-road mobile sector show an unexpected 4.5% increase in this period. Again, this increase indicates that closer attention and more control measures are needed in this source sector in Delaware's post-1996 rate-of-progress planning.

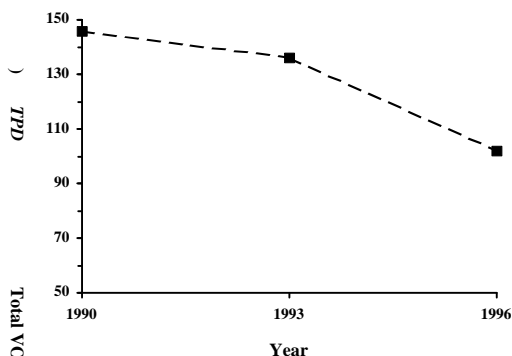


Figure 2. Trend of Total VOC Emissions in Delaware Nonattainment Area from the 1990 Base Year to the 1996 Milestone Year

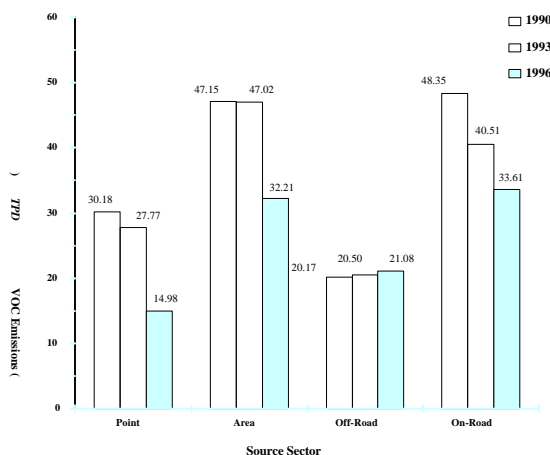


Figure 3. Comparison of Actual VOC Emissions in Individual Source Sectors in Delaware Nonattainment Area from 1990 to 1996

4.0 Documentation

- APPENDIX A. Summary of Delaware's 1990 Base Year Emission Inventory
- APPENDIX B. Summary of Delaware's 1996 (15%) Rate-of-Progress Plan
- APPENDIX C. Summary of Delaware's 1993 Periodic Emission Inventory
- APPENDIX D. Summary of Delaware's 1996 Periodic

Emission Inventory

(Hard copies of these appendixes are available upon request. Written requests should be addressed to Mr. A. Deramo, Program Manager, SIP Development Program, PCP-AQM-DAWM, DNREC, 156 South State Street, Dover, DE 19901, or at e-mail address: aderamo@dnrec.state.de.us)

DIVISION OF FISH AND WILDLIFE
 Statutory Authority: 7 Delaware Code,
 Section 903(e)(2)(a) (7 Del.C. 903(e)(2)(a))

REGISTER NOTICE

1. TITLE OF THE REGULATION

Tidal Finfish Regulations

2. 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. TFR No. 4 SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASON is proposed to be amended to adjust the 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.

TFR No. 6 STRIPED BASS LIMITS; RECREATIONAL FISHING SEASONS; METHOD OF TAKE; CREEL LIMIT; POSSESSION LIMIT is proposed to be amended to close the recreational fishery during the period May 10 through June 30 OR to reduce the recreational creel limit to one fish per person per day except for 24 days in November when the creel limit would remain at two per person per day OR to amend TFR No. 7. STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS by increasing the recreational minimum size limit from 28 inches to 30 inches. In combination with one of the above three options for the recreational fishery, it is proposed to amend. TFR No. 7 to incorporate a commercial slot size limit of 20 inches to 32 inches instead of a 20-inch minimum size limit. Any one of the three options to reduce the recreational fishery in combination with the commercial slot limit will reduce the fishing mortality by 14% on striped bass that measure 28 inches which is required in 2000 by the Striped Bass Fishery Management Plan.

TFR No. 10 WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS is proposed to be amended to change the 1999 dates when it was illegal to take weakfish with any

gear other than a hook and line in the Delaware Bay and ocean to the corresponding calendar dates in 2000. These dates involve 35 days.

TFR No. 23, BLACK SEA BASS SIZE LIMITS; TRIP LIMITS; SEASONS; QUOTAS is proposed to be amended to reduce the commercial quarterly trip limits to 9000 lbs., 3000 lbs., 2000 lbs. and 3000 lbs. The quarterly quotas will not change but the lower trip limits should prevent the quarterly quota from being exceeded and requiring the fishery to be closed.

TFR No. 25, ATLANTIC SHARKS is proposed to be amended to place a minimum size limit of 54 inches on large coastal, pelagic and small coastal sharks and reduce the recreational creel limit to one per vessel. It is also proposed to place 14 more shark species into the prohibited species category under the management unit.

TFR No. 26 AMERICAN SHAD AND HICKORY SHAD; CREEL LIMITS is proposed to be amended to prohibit the possession of any shad taken from the Nanticoke River in order to restore the spawning shad population.

3. 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.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §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, 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, Delaware at 7:30 PM on Tuesday, December 21, 1999. The record will remain open for written comments until 4:30 PM on December 29, 1999.

7. PREPARED BY:

Charles A. Lesser, (302)-739-3441, October 29, 1999

PROPOSED AMENDMENTS TO TIDAL FINFISH REGULATIONS

TIDAL FINFISH REGULATION NO. 4. SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS.

a) It shall be unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the period beginning at 12:01 AM ~~on July 16 and ending at midnight on August 7.~~ (Note: Some period(s) of time in the spring and/or fall may be closed; the dates to be decided after the public hearing).

b) It shall be unlawful for any recreational fisherman to have in possession more than ~~eight (8)~~ (Note: The creel limit may change depending on the season closure) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than ~~fifteen (15)~~ (Note: This size may change depending on the season closure) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~fifteen (15)~~ (Note: The size may change depending on the season closure) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) Is omitted intentionally.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Is omitted intentionally.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell,

trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~eight (8)~~ (Note: The creel limit may change depending on the season closure) summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

TIDAL FINFISH REGULATION 6. STRIPED BASS RECREATIONAL FISHING SEASONS; METHODS OF TAKE; CREEL LIMIT; POSSESSION LIMIT.

a) It shall be lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulation Nos. 2 and 7.

b) It shall be unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.

c) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession more than ~~two (2)~~ one (1) striped bass per day from the tidal waters of this State during the period beginning at 12:01 AM on December 1 and continuing through midnight on November 6. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.

d) It shall be unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass from the tidal waters of this state during the period beginning at 12:01 AM on November 7 and continuing through midnight on November 30.

~~d) e)~~ Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than ~~two (2)~~ one (1) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of

lodging during the period beginning at 12:01 AM on December 1 and continuing through midnight on November 6.

f) It shall be unlawful for any recreational fisherman to have in possession more than two (2) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging during the period beginning at 12:01 AM on November 7 and continuing through midnight on November 30.

g) It shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass during the period beginning at 12:01 AM on May 10 and continuing through midnight on June 30.

TIDAL FINFISH REGULATION 7. STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS.

a) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measures less than ~~twenty-eight (28)~~ thirty (30) inches in total length.

b) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less than twenty (20) inches in total length: or more than 32 inches in total length.

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than ~~28 inches~~ thirty (30), total length, unless said striped bass is in one or more of the following categories:

1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or

2) It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3) It is packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

4) It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

d) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass

for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

e) The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than ~~twenty eight (28)~~ thirty (30) inches in total length.

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length; or more than 32 inches in total length.

TIDAL FINFISH REGULATION 10. WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS.

a) It shall be unlawful for any person to possess weakfish *Cynoscion regalis* taken with a hook and line, that measure less than fourteen (14) inches, total length.

b) It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than fourteen (14) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than fourteen (14) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of fourteen (14) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Beginning at 12:01 AM on May 1, ~~1999~~ 2000 and

ending at midnight on May 9, ~~1999~~ 2000;

beginning at 12:01 AM on May ~~14, 1999~~ 12, 2000 and ending at midnight on May ~~16, 1999~~ 14, 2000;

beginning at 12:01 AM on May ~~21, 1999~~ 19, 2000 and ending at midnight on May ~~23, 1999~~ 21, 2000;

beginning at 12:01 AM on May ~~28, 1999~~ 26, 2000 and ending at midnight on May ~~30, 1999~~ 28, 2000;

beginning at 12:01 AM on June ~~4, 1999~~ 2, 2000 and ending at midnight on June ~~6, 1999~~ 4, 2000;

beginning at 12:01 AM on June ~~11, 1999~~ 9, 2000 and ending at midnight on June ~~13, 1999~~ 11, 2000;

beginning at 12:01 AM on June ~~18, 1999~~ 16, 2000 and ending at midnight on June ~~20, 1999~~ 18, 2000;

and beginning 12:01 AM on June 24, ~~1999~~ 2000 and ending at midnight on June 30, ~~1999~~ 2000."

f) The Department shall indicate on a persons food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of fourteen (14) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than fourteen (14) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of fourteen (14) weakfish.

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

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

b) Is omitted intentionally.

c) It shall be unlawful for any person 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) - ~~11,000 lbs.~~ 9000 lbs.

Second Quarter (April, May and June) - ~~7,000 lbs.~~ 3000 lbs.

Third Quarter (July, August and September) - ~~3,000 lbs.~~ 2000 lbs.

Fourth Quarter (October, November and December) - ~~4,000 lbs.~~ 3000 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.”

TIDAL FINFISH REGULATION 25. ATLANTIC SHARKS

(a) Definitions:

(1) Fillet shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

(2) Land or Landing shall mean to put or cause to go on shore from a vessel.

(3) Management Unit shall mean any of the large coastal species, small coastal species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation.

(4) Large coastal species shall mean any of the following species of sharks or parts thereof:

- Great hammerhead, *Sphyrna mokarran*
- Scalloped hammerhead, *Sphyrna lewini*
- Smooth hammerhead, *Sphyrna zygaena*
- White shark, *Carcharodon carcharias*
- Nurse shark, *Ginglymostoma cirratum*
- ~~Bignose shark, *Carcharhinus altimus*~~
- ~~Blacktip shark, *Carcharhinus limbatus*~~
- ~~Bull shark, *Carcharhinus leucas*~~
- ~~Caribbean reef shark, *Carcharhinus perezi*~~
- ~~Dusky shark, *Carcharhinus obscurus*~~
- ~~Galapagos shark, *Carcharhinus galapagensis*~~
- ~~Lemon shark, *Neqapriion brevirostris*~~
- ~~Narrowtooth shark, *Carcharhinus brachyurus*~~
- ~~Night shark, *Carcharhinus signatus*~~
- ~~Sandbar shark, *Carcharhinus plumbeus*~~
- ~~Silky shark, *Carcharhinus falciformis*~~
- ~~Spinner shark, *Carcharhinus brevipinna*~~
- ~~Tiger shark, *Galeocerdo cuvieri*~~

(5) Small coastal species shall mean any of the following species of sharks or parts thereof:

- ~~Atlantic angel shark, *Squatina dumerili*~~
- ~~Bonnethead, *Sphyrna tiburo*~~
- ~~Atlantic sharpnose shark, *Rhizoprionodon terraenovae*~~

~~terraenovae~~

- ~~Blacknose shark, *Carcharhinus acronotus*~~
- ~~Caribbean sharpnose shark, *Rhizoprionodon porosus*~~

~~porosus~~

- ~~Finetooth shark, *Carcharhinus isodon*~~
- ~~Smalltail shark, *Carcharhinus porosus*~~

(6) Pelagic species shall mean any of the following species of sharks or parts thereof:

- ~~Bigeye sixgill shark, *Hexanchus vitulus*~~
- ~~Sevengill shark, *Heptranchias perlo*~~
- ~~Sixgill shark, *Hexanchus griseus*~~
- ~~Longfin mako, *Isurus paucus*~~
- ~~Porbeagle shark, *Lamna nasus*~~
- ~~Shortfin mako, *Isurus oxyrinchus*~~
- ~~Blue shark, *Prionace glauca*~~
- ~~Oceanic whitetip shark, *Carcharhinus longimanus*~~

- ~~Bigeye thresher, *Alopias superciliosus*~~
- ~~Thresher shark, *Alopias vulpinus*~~

(7) Prohibited species shall mean any of the following species of sharks or parts thereof:

- Basking shark, *Cetorhinidae maximus*
- White shark, *Carcharodon carcharias*
- Bigeye sand tiger, *Odontaspis noronhai*
- Sand tiger, *Odontaspis taurus*
- Whale shark, *Rhincodon typus*
- Bignose shark, *Carcharhinus altimus*
- Caribbean reef shark, *Carcharhinus perezi*
- Dusky shark, *Carcharhinus obscurus*
- Galapagos shark, *Carcharhinus galapagensis*
- Narrowtooth shark, *Carcharhinus brachyurus*
- Night shark, *Carcharhinus signatus*
- Atlantic angel shark, *Squatina dumerili*
- Caribbean sharpnose shark, *Rhizoprionodon porosus*

porosus

- Smalltail shark, *Carcharhinus porosus*
- Bigeye sixgill shark, *Hexanchus vitulus*
- Sevengill shark, *Heptranchias perlo*
- Sixgill shark, *Hexanchus griseus*
- Longfin mako, *Isurus paucus*
- Bigeye thresher, *Alopias superciliosus*

(b) It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.

(c) It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing sand shark unless said fins are naturally attached to the body of said shark.

(d) It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated and the head removed prior to landing said shark.

(e) It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.

(f) It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than ~~two~~ one sharks in the management unit except that two Atlantic sharpnose sharks also may be on board.

(g) It shall be unlawful for any person who has been issued a valid commercial food fishing license while on

board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce.

(h) It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.

(i) It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any large coastal shark, any pelagic shark or any small coastal shark that measures less than 54 inches, fork length.

“TIDAL FINFISH REGULATION NO. 26, AMERICAN SHAD AND HICKORY SHAD, CREEL LIMITS”

(a) It shall be unlawful for any person who does not have a valid commercial food fishing license to have in possession more than an aggregate of ten (10) American shad and hickory shad at or between the place caught and his/her personal abode or transient place of lodging.”

b) It shall be unlawful for any person to take and reduce to possession any American shad or hickory shad from the Nanticoke River or its tributaries.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 103, 601 (7 Del.C. 103, 601)

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

Wildlife & Non-Tidal Fishing Regulations

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

Amendments are being proposed to: 1) modify the season for the taking of diamondback terrapin; 2) restrict the collection and sale of “native wildlife” species; 3) identify the native reptiles and amphibians that may be collected for noncommercial purposes; 4) update the regulation relating to the registration of native reptiles and amphibians owned prior to the effective date of the regulation limiting their possession; 5) change the title of WR-6 to “Game Preserves”; 6) update and formally adopt a list of endangered species for the State; and 7) create a slot length limit coupled with a revised size and possession limit to protect the State’s spawning population of smallmouth bass.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. **STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**
23 Delaware Code, Sections 103 and 601

5. **OTHER REGULATIONS AFFECTED BY THE PROPOSAL:**
None

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on January 11, 2000, at 7:30 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Division of Fish and Wildlife no later than 4:30 p.m. on January 25, 2000, and should be addressed to H. Lloyd Alexander, Wildlife Administrator, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901.

7. **PREPARED BY:** H. Lloyd Alexander (302-739-5297), 11/15/99

WR-1. DEFINITIONS.

For purposes of WR-2 through ~~WR-15~~ WR-16 and NT-1 through NT-8, the following words and phrases shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

(1) “Administered by the Division” shall mean owned, leased or licensed by the Division.

(2) “Antlered deer” shall mean any deer with one or more antlers three inches long or longer, measured from the base of the antler where it joins the skull to the tip of the antler following any curve of the antler.

(3) “Antlerless deer” shall mean any deer that has no antlers or antlers less than three inches in length.

(4) “Bait” shall mean any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

(5) “Baited field” shall include any farm field, woodland, marsh, water body or other tract of land where minerals, grain, fruit, crop or other nontoxic compounds have been placed to attract wildlife to be hunted.

(6) “Designated trout stream” shall mean:

a. Christina Creek, from the boundary line between this State and the State of Maryland through Rittenhouse Park;

b. White Clay Creek, from the boundary line between this State and the Commonwealth of Pennsylvania to the downstream side of Paper Mill Road;

c. Pike Creek, from Route 72 to Henderson Road;

d. Mill Creek, from Brackenville Road to Route 7;

e. Wilson Run, from Route 92 through Brandywine Creek State Park; and

f. Beaver Run, from the boundary line between this State and the Commonwealth of Pennsylvania to the

Brandywine River.

(7) "Director" shall mean the Director or Acting Director of the Division.

(8) "Division" shall mean the Division of Fish and Wildlife of the Department.

~~(9) "Endangered species" shall mean any species of fish or wildlife designated by regulation of the Department as being in danger of extinction throughout all or a significant portion of its range, or determined by the Secretary of Commerce or the Secretary of the Interior to be an endangered species in accordance with the Endangered Species Act of 1973, as amended.~~

~~(9)(10) "Established blind" shall mean a structure or pit constructed for the purpose of hunting migratory waterfowl by a landowner on his or her property or by another person with the permission of the landowner or the landowner's duly authorized agent.~~

~~(10)(11) "Established road" shall mean a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.~~

~~(11)(12) "Fishing" or "to fish" shall mean to take, catch, kill or reduce to possession or attempt to take, catch, kill or reduce to possession any fish by any means whatsoever.~~

~~(12)(13) "Game fish" shall include smallmouth bass, largemouth bass, black or white crappie, rock bass, white bass, walleye, northern pike, chain pickerel, muskellunge (or hybrids), salmon, trout, sunfishes and white bass/striped bass hybrids.~~

~~(13)(14) "Liberated game" shall mean cottontail rabbits and game birds, including bobwhite quail, mallard duck, chukar and pheasant released pursuant to § 568 of Title 7.~~

~~(14)(15) "Loaded muzzle-loading rifle" shall mean the powder and ball, bullet or shot is loaded in the bore. A muzzle-loading rifle shall not be considered loaded if the cap, primer, or priming powder (in a flintlock) is removed and:~~

a. The striking mechanism used to ignite the cap, primer or priming powder is removed or rendered inoperable; or

b. The rifle is enclosed in a case.

~~(15)(16) "Lure" shall mean any mixture of ingredients, element or compound that attract wildlife, but the wildlife is unlikely to consume.~~

~~(16)(17) "Longbow" shall mean a straight limb, reflex, recurve or compound bow. All crossbows or variations thereof and mechanical holding and releasing devices are expressly excluded from the definition.~~

~~(17)(18) "Nongame wildlife" shall mean any native wildlife, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit. "Native wildlife" shall mean any species of the animal kingdom indigenous to this State.~~

~~(18)(19) "Possession" shall mean either actual or constructive possession of or any control over the object~~

referred to.

~~(19)(20) "Refuge" shall mean an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.~~

~~(20)(21) "Restricted trout stream" shall mean the White Clay Creek from a point 25 yards above Thompson Bridge at Chambers Rock Road to the boundary line between this State and the Commonwealth of Pennsylvania.~~

~~(21)(22) "Roadway" shall mean any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.~~

~~(22)(23) "Season" shall mean that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.~~

~~(23)(24) "Wildlife" shall mean any member of the animal kingdom, including without limitation, any amphibian, arthropod, bird, mammal or reptile.~~

~~(24)(25) "Vehicle" shall include any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.~~

WR-4. SEASONS.

Section 1. Season Dates.

Specific dates for hunting seasons will be published officially each year in an annual publication entitled the "Delaware Hunting and Trapping Guide."

Section 2. General.

It shall be unlawful for any person to hunt those species of wildlife for which a season is designated at any time other than during that season.

Section 3. Protected Wildlife.

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt any species of protected wildlife.

(b) It shall be unlawful for any person to sell, transport or possess any species of protected wildlife, except when:

(1) Otherwise provided by law or regulation of the Department; or

(2) The wildlife was lawfully taken outside of this State in accordance with the laws or regulations of the state or nation where the wildlife was taken.

Section 4. Beaver.

(a) Unless otherwise authorized by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided:

(1) Beavers are damaging crops or other property;

(2) The property damage is certified by the landowner; and

(3) The number of beavers taken is reported to the Division by April 1.

(b) Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

Section 5. Bullfrogs.

(a) Season – Bullfrogs (*Rana catesbiana*) may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: from May 1 through September 30.

(b) Limit. – It shall be unlawful for any person to take more than twenty-four (24) bullfrogs in any one day.

(c) License. – A hunting or fishing license is required to take bullfrogs.

Section 6. Crows.

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March, unless said person holds a valid depredation permit. The hunting of crow is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

Section 7. Gray Squirrel.

(a) Season. – Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in November; and from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season. Squirrel hunting shall be unlawful during any period and in any area when it is lawful to hunt deer with a firearm.

(b) Limit. – It shall be unlawful for any person to take more than four gray squirrels in any one day.

Section 8. Opossum.

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

Section 9. Pheasant.

(a) Season. – Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season, except that no pheasant hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, pheasant may be hunted during the December firearm deer season when hunter orange is displayed in accordance with § 718 of Title 7.

(b) Female Pheasant. – It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on licensed shooting preserves, by licensed game breeders or as otherwise permitted by law.

(c) Male Pheasant Limit. – It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

(d) Scientific or Propagating Purposes. – It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit from the Director.

(e) Shooting Preserves. – Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on restricted experimental, propagating and shooting preserves.

Section 10. Quail.

(a) Season. – Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of February, except that no quail hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, quail may be hunted during the December or January firearm deer seasons when hunter orange is displayed in accordance with § 718 of Title 7.

(b) Limit. – It shall be unlawful for any person to take more than six quail in any one day.

Section 11. Rabbit.

(a) Season. – Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through the first

Saturday in February, except that no rabbit hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, rabbit may be hunted during the December or January firearm deer seasons when hunter orange is displayed in accordance with § 718 of Title 7.

(b) Limit. – It shall be unlawful for any person to take more than four rabbits in any one day.

Section 12. Raccoon.

(a) Trapping Season. – Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.

(b) Hunting Season. – Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.

(c) Notwithstanding subsection (b) of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

Section 13. Red Fox.

Red fox may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from October 1 through April 30 for chase only whereby it shall be unlawful to kill red fox, except no red fox hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, red foxes may be killed in accordance with § 788 of Title 7 and Section 8 of WR-2.

Section 14. Ruffed Grouse.

It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

Section 15. Snapping Turtles.

(a) Season. – It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

(b) Size. – It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a carapace length of less than eight inches, measured on the curvature.

Section 16. Terrapin.

(a) Season. – It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including ~~July 15 and October 1~~ September 1 and November 15.

(b) Limit. – It shall be unlawful for any person to take more than four diamondback terrapin in any one day.

WR-6. ~~RESTRICTED~~ ~~EXPERIMENTAL,~~ ~~PROPAGATING AND SHOOTING~~ GAME PRESERVES.

It shall be unlawful for any person to hunt liberated game on ~~restricted game~~ game preserves from April 1 through October 14.

WR-14. FALCONRY.

Section 1. Federal Regulations Adopted.

It shall be unlawful for any person to practice the sport of falconry, except in such a manner as prescribed by regulations promulgated under provisions of 50 CFR (Code of Federal Regulations) §§ 21.28, 21.29 and 21.30. Such regulations are hereby made part of the regulations of the Department as prescribed in §725 of Title 7. Notwithstanding the foregoing, the federal regulations governing falconry shall be superseded by more stringent restrictions prescribed by law or regulation of the Department.

Section 2. Permits.

(a) Residents wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person shall successfully pass a written test and have their facilities and equipment inspected as prescribed by the federal regulations.

(b) Nonresidents wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person must purchase a nonresident hunting license and be properly permitted to practice falconry in the state in which he or she resides.

(c) Falconry permits shall be effective, unless revoked, for a period of up to three years and coincide with the license period for the hunting license. The Division shall

participate in any joint state/federal permit system available.

(d) The issuance of Apprentice Class permits shall be limited to persons 15 years of age or older.

Section 3. Taking of Raptors.

(a) It shall be unlawful for any person to take any birds of prey from the wild without a permit from the Division. The Director shall establish a limit on the number of raptors which may be taken each year and appear before the Council on Game and Fish to receive input on such limit before its adoption.

(b) In ~~1999~~ 2000, the Division shall consider the issuance of no more than twelve (12) permits for taking birds of prey from the wild in Delaware, except that permits for no more than three (3) nestling red-tailed hawks or great horned owls shall be issued. Nonresident falconers may apply for available permits to take nestling provided the state in which the nonresident resides allows Delaware residents the reciprocal opportunity to remove nestling raptors.

(c) The taking of nestling (eyas) birds shall be limited to red-tailed hawks and great horned owls on Thursdays, Fridays and Saturdays from March 18 through June 30.

(d) The season for the taking of passage birds shall be from September 1 through January 12. Nonresident falconers may apply to obtain any available permits to take passage raptors in Delaware, provided the state in which the nonresident resides has a reciprocal arrangement that permits Delaware residents to take passage raptors.

(e) It shall be unlawful to remove raptors from private property without the express consent of the landowner. It shall also be unlawful for any person to remove raptors from State parks, State forests, State wildlife areas, State owned wetland mitigation sites, national wildlife refuges, nature preserves, natural areas, and county or local parks without the advance approval of the agency administering the property. The permit to remove a raptor from the wild must be in possession of the falconer when attempting to capture a raptor. Apprentice falconers must be under the direct supervision of their sponsor or a Master or General class falconer when removing raptors from the wild.

(f) Raptors taken from the wild in Delaware may not be sold or bartered.

Section 4. Hunting.

Falconry shall be a legal method of take for all game birds and game animals in Delaware. The hunting season for resident game shall be from September 1 through February 28. A permit holder whose raptor accidentally kills wildlife during a closed season for such wildlife shall leave the dead wildlife where it lies, except the raptor may feed upon the wildlife before leaving the site of the kill, provided that the wildlife shall not be reduced to possession by the falconer and the falconer shall cease hunting with the raptor that makes the accidental kill for the remainder of the day.

Section 5. Marking.

Any raptor possessed under a Delaware falconry permit must be banded with a permanent, non-reusable numbered band issued by the U.S. Fish and Wildlife Service or the Division. Captive reared raptors may be marked with either a permanent, non-reusable numbered band or, if sold, a numbered seamless band. Markers shall be removed from birds that die or are intentionally released into the wild and must be forwarded to the Division within ten days along with a report that documents the fate of the bird.

Section 6. Release.

Raptors, including hybrid raptors, which are not indigenous to Delaware shall not be permanently released into the wild. Raptors released in Delaware must be released within the appropriate season in which that species naturally occurs within the State.

WR-15. COLLECTION OR SALE OF NONGAME NATIVE WILDLIFE.

Section 1. Commercial Collection.

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to collect or possess collect, possess, import, cause to be imported, export, cause to be exported, buy, sell or offer for sale any North American nongame native wildlife species or any part thereof for commercial purposes without a permit from the Director. The permit shall limit the terms and conditions for collecting or possessing said wildlife within the State. Endangered species or a species classified as a threatened species in accordance with the Endangered Species Act of 1973, as amended may not be collected, possessed or sold without appropriate federal/state permits. Species that are exotic to Delaware and regulated by the Delaware Department of Agriculture shall be exempt from the provisions of this section.

(b) Notwithstanding subsection (a) of this section, native wildlife species may be possessed, imported, sold or offered for sale for commercial purposes without a permit from the Director if there is written documentation to confirm that said wildlife was legally taken in and transported from another state.

Section 2. Collection and Possession of Reptiles and Amphibians.

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to remove from the wild or possess any native reptile or amphibian species, their eggs or parts without a permit from the Director.

(b) For noncommercial purposes, one individual of each of the following any single species of reptiles and amphibians, ~~other than State Heritage Program ranked S1,~~

S2, S3, SX or SH, may be collected and possessed without a permit:

Reptiles

<u>Common Musk Turtle</u>	<u>Black Rat Snake</u>
<u>Five-lined Skink</u>	<u>Diamondback Terrapin</u>
<u>Common Garter Snake</u>	<u>Northern Fence Lizard</u>
<u>Eastern Box Turtle</u>	<u>Eastern Hognose Snake</u>
<u>Eastern Mud Turtle</u>	<u>Northern Water Snake</u>
<u>Painted Turtle</u>	<u>Racer</u>
<u>Redbelly Turtle</u>	<u>Ringneck Snake</u>
<u>Snapping Turtle</u>	<u>Worm Snake</u>

Amphibians

<u>American Toad</u>	<u>Northern Cricket Frog</u>
<u>Dusky Salamander</u>	<u>Bullfrog</u>
<u>Pickerel Frog</u>	<u>Eastern Newt</u>
<u>Eastern Spadefoot</u>	<u>Spring Peeper</u>
<u>Northern Two-lined Salamander</u>	
<u>Gray Treefrog</u>	<u>Southern Leopard Frog</u>
<u>Redback Salamander</u>	<u>Green Frog</u>
<u>Wood Frog</u>	<u>New Jersey Chorus Frog</u>

~~(e) Federally listed threatened and endangered species may not be collected or possessed without federal permits.~~

~~(c)(d)~~ It shall be unlawful to remove reptiles or amphibians from the wild and later release said animals back to the wild if they have been held in captivity for 30 days more.

Section 3. Captive Breeding.

(a) It shall be unlawful for any person to breed in captivity any ~~North American nongame native~~ wildlife species without a ~~nongame breeders~~ permit from the Director, ~~except for species that are regulated by the Delaware Department of Agriculture.~~ Said permit shall limit the terms and conditions for captive breeding of said wildlife.

(b) It shall be unlawful for any person to release captive-bred species into the wild. A signed bill of sale shall accompany any captive-bred species that are sold. ~~Federally listed threatened and endangered species may not be collected or possessed without the appropriate federal permits.~~

(c) This section shall not apply to accredited zoos or to raptors regulated by federal and State falconry or raptor propagation regulations.

Section 4. Collections Prior to Adoption of Regulations.

Persons ~~owning nongame wildlife that was in their possession prior to the effective date of this regulation shall have four months to register said wildlife with the Division.~~ Native reptiles and amphibians taken from the wild and

lawfully possessed prior to August 15, 1999, may continue to be held in captivity provided that written notification of the numbers and species being held is given to the Division prior to December 15, 1999. Once registered, said wildlife may be legally possessed.

Section 5. Sale or Possession of CITES Listed Species.

It shall be unlawful for any person to sell or possess bear gall bladder, or other viscera from any species of bear, or any part of other species listed as prohibited by the Convention on International Trade in Endangered Species (CITES). The possession of any part of a bear must be in conformance with CITES.

WR-16. ENDANGERED SPECIES.

Section 1. Importation, Transportation and Possession.

Pursuant to § 601 of Title 7, the importation, transportation, possession or sale of any endangered species of fish or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of endangered species of fish or wildlife is prohibited, except under license or permit from the Division.

Section 2. Designation of Species by Division.

(a) Pursuant to § 601 of Title 7, the Division may designate species of fish and wildlife that are seriously threatened with extinction as endangered species.

(b) For the purposes of this section, the phrase "seriously threatened with extinction" shall mean that the species satisfies one or more of the following criteria:

(1) Appears on the federal list of endangered species;

(2) Ranked as "globally rare" (G1, G2, or G3), which means 100 or fewer populations worldwide;

(3) Is rare within the mid-Atlantic coastal plain.

(c) Based upon the criteria prescribed by subsection (b) of this section, the following species are declared endangered in this State and are afforded the protection provided by § 601 of Title 7:

Amphibians

Salamander, Eastern Tiger (*Ambystoma tigrinum tigrinum*)

Treefrog, Barking (*Hyla gratiosa*)

Birds

Creeper, Brown^{BR} (*Certhia americana*)

Eagle, Bald (*Haliaeetus leucocephalus*)

Harrier, Northern^{BR} (*Circus cyaneus*)

Hawk, Cooper's^{BR} (*Accipiter cooperii*)

Heron, Black-Crowned Night- (*Nycticorax nycticorax*)

Heron, Yellow-Crowned Night- (*Nyctanassa*

violacea)

Plover, Piping (*Charadrius melodus*)
Oystercatcher, American (*Haematopus palliatus*)
Rail, Black (*Laterallus jamaicensis*)
Sandpiper, Upland (*Bartramia longicauda*)
Shrike, Loggerhead (*Lanius ludovicianus*)
Skimmer, Black (*Rynchops niger*)
Sparrow, Henslow's (*Ammodramus henslowii*)
Tern, Common^{BR} (*Sterna hirundo*)
Tern, Forster's^{BR} (*Sterna forsteri*)
Tern, Least (*Sterna antillarum*)
Warbler, Cerulean (*Dendroica cerulea*)
Warbler, Hooded^{1R} (*Wilsonia citrina*)
Warbler, Swainson's (*Limnothlypis swainsonii*)
Wren, Sedge (*Cistothorus platensis*)

Mollusks

Lampmussel, Yellow (*Lampsilis cariosa*)
Lampmussel, Eastern (*Lampsilis radiata*)
Wedgemussel, Dwarf (*Alasmidonta heterodon*)
Pondmussel, Eastern (*Ligumia nasuta*)
Floater, Brook (*Alasmidonta varicosa*)
Mucket, Tidewater (*Leptodea ochracea*)

Fish

Sturgeon, Atlantic (*Acipenser oxyrhynchus*)

Insects

Beetle, Little White Tiger (*Cicindela lepida*)
Beetle, White Tiger (*Cicindela dorsalis*)
Beetle, Seth Forest Scavenger (*Hydrochus* sp.)
Elfin, Frosted (*Incisalia irus*)
Firefly, Bethany (*Photuris bethaniensis*)
Hairstreak, Hessel's (*Mitoura hesseli*)
Hairstreak, King's (*Satyrium kingi*)
Skipper, Rare (*Problema bulenta*)
Wing, Mulberry (*Poanes massasoit chermocki*)

Mammals

Squirrel, Delmarva Fox (*Sciurus niger cinereus*)

Reptiles

Sea Turtle, Leatherback (*Dermochelys coriacea*)
Sea Turtle, Atlantic Ridley (*Lepidochelys kempii*)
Sea Turtle, Green (*Chelonia mydas*)
Sea Turtle, Loggerhead (*Caretta caretta*)
Turtle, Bog (*Clemmys muhlenbergii*)
Snake, Corn (*Elaphe guttata guttata*)

Section 3. Federally Listed Species.

(a) Pursuant to the Endangered Species Act of 1973 (16

1.^{RBR} Breeding population only.

USC §§ 1531-1543), as amended, the Secretary of the Interior must publish in the Federal Register a list of all fish and wildlife species determined by him or her or the Secretary of Commerce to be endangered species. The federal list of endangered species is hereby adopted and all species listed thereon are hereby declared to be endangered species in the State as prescribed in § 601 of Title 7.

(b) It shall be unlawful for any person to collect, possess or sell any species of fish or wildlife listed as endangered or threatened pursuant to the Endangered Species Act of 1973, as amended, without the appropriate federal permits.

NT-2. BAG LIMITS AND SEASONS.Section 1. Closed Seasons.

Unless otherwise prescribed by law or regulation of the Department, there shall be no closed season, size limits or possession limits on any species of fish taken by hook and line in any non-tidal waters of this State

Section 2. Bass.

(a) Statewide limits.

(1) It shall be unlawful for any person to have in possession at or between the place where taken and his or her personal abode or temporary place of lodging more than six (6) largemouth and/or smallmouth bass at or between the place where said largemouth and/or smallmouth bass were caught and said person's personal abode or temporary or transient place of lodging.

(2) Unless otherwise authorized in this regulation, it shall be unlawful for any person to possess any largemouth or smallmouth bass that measure less than twelve (12) inches in total length. Any largemouth bass taken which is less than the twelve (12) inches in total length shall be immediately returned to the water as quickly as possible with the least possible injury.

(3) It shall be unlawful for any person to possess any smallmouth bass measuring from twelve (12) inches to and including (17) inches in total length. Any smallmouth bass taken which is greater than twelve (12) inches and less than seventeen (17) inches shall be immediately returned to the water with the least possible injury.

(4) Notwithstanding paragraph (a)(1) of this section, it shall be unlawful for any person to have in possession more than one (1) smallmouth bass measuring more than seventeen (17) inches in total length at or between the place where said smallmouth bass was caught and said person's personal abode or temporary or transient place of lodging.

(5) It shall be lawful for any person to have in possession while fishing up to six (6) smallmouth bass that are less than twelve (12) inches in total length.

(b) Becks Pond.

(1) Notwithstanding paragraph (a)(1) of this

section, it shall be unlawful for any person to have in possession while fishing on Becks Pond more than two (2) largemouth ~~and/or smallmouth~~ bass.

(2) Notwithstanding paragraph (a)(2) of this section, it shall be unlawful for any person to have in possession while fishing on Becks Pond any largemouth ~~or smallmouth~~ bass less than fifteen (15) inches in total length. Any largemouth ~~or smallmouth~~ bass less than fifteen (15) inches in total length shall be immediately returned to Becks Pond with the least possible injury.

(c) *Andrews Lake.*

(1) Notwithstanding paragraph (a)(1) of this section, it shall be unlawful for any person

to have in possession while fishing on Andrews Lake more than one (1) largemouth bass of the six (6) allowed in possession to be larger than fifteen (15) inches in total length. Largemouth bass measuring less than twelve (12) inches may be taken and possessed within the six (6) allowed in possession while fishing on Andrews Lake.

(2) Notwithstanding paragraph (a)(2) of this section, it shall be unlawful for any person to have in possession while fishing on Andrews Lake any largemouth bass measuring from twelve (12) inches to and including fifteen (15) inches in total length.

(d) *Derby Pond and Hearn's Pond.*

(1) Notwithstanding subsection (a) of this section, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond more than one (1) largemouth bass of the six (6) allowed in possession to be larger than eighteen (18) inches. Largemouth bass measuring less than fifteen (15) inches may be taken and retained up to the legal possession limit while fishing on Derby Pond or Hearn's Pond.

(2) Notwithstanding the provisions of paragraph (a)(2) of this section, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond any largemouth bass measuring from fifteen (15) inches to and including eighteen (18) inches in total length.

Section 3. Trout.

(a) Season. – It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams, except between and including the first Saturday of April and the second Saturday of March of each succeeding year.

(b) Hours of Fishing. – It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams on the opening day of the trout season before 7:30 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

(c) Possession. – It shall be unlawful for any person to catch and/or have in his or her possession in any one day

during the prescribed open season more than six (6) rainbow, brown and/or brook trout. On any day after a person takes his or her legal limit of trout, said person shall be prohibited from fishing in a designated trout stream on the same day, unless otherwise authorized by law or this regulation.

(d) Trout Stamp. – It shall be unlawful for any person to fish in a designated trout stream on or before the first Saturday in April and June 30, of the same year, and on or before the first Saturday in October and November 30, of the same year, unless said person has in his or her possession a valid trout stamp, or, unless said person is exempted by law from having a trout stamp.

(e) Restricted Trout Stream.

(1) It shall be unlawful for any person to fish in a restricted trout stream with more than two flies on a line at any one time.

(2) It shall be unlawful for any person to use any metallic, wooden, plastic or rubber spinners, spoons, lures, plugs and/or natural bait on any restricted trout stream.

(3) It shall be unlawful for any person to have in his or her possession more than four (4) trout within 50 feet of any restricted trout stream. On the restricted trout stream only, trout may be caught and released as long as the four (4) trout possession limit is not exceeded. All trout released must be returned to the water as quickly as possible with the least possible injury.

(f) Closure of Trout Stream. – It shall be unlawful for any person to fish in a designated trout stream within two weeks (14 days) of a scheduled opening of the trout season.

Section 4. Striped Bass (hybrids).

It shall be unlawful for any person to have in his or her possession while fishing in the non-tidal waters of this State more than two (2) striped bass (*Morone saxatilis*) and/or striped bass hybrids (*Morone saxatilis crysops*) or any striped bass or striped bass hybrid under the length of fifteen (15) inches measured from the tip of the snout to the tip of the tail.

Section 5. Panfish Limits.

It shall be unlawful for any person to have in possession while fishing in any State-owned non-tidal water more than fifty (50) panfish in aggregate to include bluegill, pumpkinseed, redear sunfish, black crappie, white crappie, white perch or yellow perch, provided no more than twenty-five (25) of the fifty (50) allowed in possession are of any one species.

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)

**Addendum To The Ambulance Service Regulations Of
The State Fire Prevention Commission
BLS Ambulance Provider/first Responder
1999**

Order

The State Fire Prevention Commission ("The Commission") held a properly noticed public hearing on September 21, 1999 at 2:00 p.m. and 7:00 p.m. to receive comment on proposed additions to the Commission's, Ambulance Service Regulations regarding BLS Ambulance Provider/First Responder Section. 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. Similarly, those written comments received by The Commission are attached to this Order as Exhibit "B".

Based upon the evidence received, 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 proposed as the added provisions of the Ambulance Services Regulations as clarified at the Commission's October 26, 1999 monthly meeting. A copy is attached.

I. DEFINITIONS

1. For the purpose of this policy the following definitions are used.

2. State Fire Prevention Commission – The State Governing Body mandated in Title 16, Delaware Code ~~[whom which]~~ Regulates the Basic Life Support System in Delaware.

3. Delaware Emergency Medical Technician – Basic/ **[(Ambulance Attendant)]** – The individual as defined in Title 16 of Delaware Code who provides patient care on an ambulance and has completed the National Department of Transportation curriculum and initially certified as a National Registered and Delaware Emergency Medical Technician-Basic and upon recertification chooses to meet only the state requirements.

4. National Registry of Emergency Medical Technicians – The nationally recognized organization for the testing and registering of persons who have completed a DOT, EMT-Basic course.

5. National Department of Transportation – Emergency Medical Technician Curriculum ~~f: -]~~ A curriculum developed and adopted by the Federal

Government as a recommended guide for people providing emergency care in the field.

6. National Registered Emergency Medical Technician – Basic – a person who completed the DOT curriculum and passes the National Registry of Emergency Medical Technicians Examination.

7. Office of Emergency Medical Services – The State Agency Mandated in Title 16 that serves as the designated representative of the NREMT; provides medical advise and direction; regulates the statewide automatic external defibrillator program; and coordinates data collection activities for the EMS system.

8. Certification – An initial authorization to practice the skills of an EMT-Basic specifying that the individual has successfully completed and passed the approved curriculum and evaluation instruments.

9. Recertification Training – A defined curriculum that once completed allows the individual to continue practicing as an EMT-B for a specific period of time.

10. AED Certification – Semi-Automatic External Defibrillation Training and Certification as recognized by the Delaware ~~HB~~ Board of Medical Practice.

11. First Responder – An individual who has to take the First Responder Course as provided by the Delaware State Fire School.

12. First Responder Curriculum – The United States Department of Transportation National Standard Curriculum for First Responders.

13. Cardiopulmonary Resuscitation CPR – A combination of chest compressions and rescue breathing used during cardiac and respiratory arrest to keep oxygenated blood flowing to the brain. (AHA Manual)

14. Cardiopulmonary Resuscitation CPR - A combination of chest compressions and rescue breathing used during cardiac and respiratory arrest to keep oxygenated blood flowing to the brain.

15. NREMT – The National Registry of Emergency Medical Technicians.

16. DOT- United States Department of Transportation

17. Refresher – A course of instruction authorized by the DOT respectively for EMT-B or First Responders that prepare the ambulance provider for recertification by the DFPC or the NREMT.

18. EMT-B – Emergency Medical Technician – Basic

19. DSFS – Delaware State Fire School

20. OEMS – Office of Emergency Medical Services, Division of Public Health.

21. DFPC – The Delaware Fire Prevention Commission

22. EMT-B – Bridge Course – A state-approved course of instruction that upon successful completion entitles the provider to sit for the NREMT-B examination.

II. TRAINING STANDARD

Effective June 16, 1998, the current of United States Department of Transportation Emergency Medical Technician – Basic National Standard Curriculum shall be the curriculum adopted for the Ambulance Attendants in the State of Delaware.

III. TRAINING CERTIFICATION

All individuals who successfully complete initial EMT-B training or a bridge course shall be eligible for and must successfully pass the NREMT examination to receive Delaware EMT-B certification.

IV. EFFECTIVE DATE OF IMPLEMENTATION

[Effective] January 1, 2002 ~~fall ambulance attendants who provide patient care~~ there shall be a minimum of one EMT-B providing] care ~~and ride~~ in the patient care compartment ~~shall be Emergency Medical Technicians – Basic.~~

V. ELIGIBILITY FOR CERTIFICATION

A. Apply to the Delaware State Fire Prevention Commission on the approved application form:

B. An individual may apply for and receive certification as an Ambulance Attendant provided that.

1. They are a member in good standing of a Delaware Fire Department, an Ambulance Organization, a Private Ambulance Provider or any other group, business or industry certified by the Delaware State Fire Prevention Commission to provide ambulance service.

2. They have obtained registration from the NREMT.

3. The Chief, **[EMS Officer,]** CEO, or head of the respective organization signs the application.

VI. CERTIFICATION

A. Every individual who successfully completes the National Registry of Emergency Medical Technician-Basic certification will receive registration for the time period to coincide with the NREMT registration cycle. This is typically a two-year period. Individuals will be issued a Delaware EMT-B certification upon successful completion of initial or bridge course and the NREMT registration process.

B. During the Implementation phase from January 1, 1998 to December 31, 2001 initial NREMT-B certification may be obtained in one of two ways:

1. Complete a full Emergency Medical Technician Basic course as offered by a member of the Prehospital Education Consortium of Delaware or other recognized training program and passes the National Registry of Emergency Medical Technicians examination.

Prerequisites

~~fa: a)]~~Must be 18 years or older

~~(b: b)~~]Healthcare Provider CPR

~~(c: c)~~]AED Certification

2. Complete an Emergency Medical Technician Bridge course offered by a member of the Prehospital Education Consortium of Delaware or other recognized training program and passes the National Registry of Emergency Medical Technicians examination.

Prerequisites

~~(a: a)~~]Must possess current ambulance attendant or Emergency Care Technician certification.

~~(b: b)~~]CPR/AED

~~(c: c)~~]Must be 18 years old or older

C. After 2001 certification will be obtained by completing a state approved EMT-B Course and passing the National Registry of Emergency Medical Technicians Exam.

D. The Bridge Course will be offered only during implementation which ends December 31, 2001.

VII. RECERTIFICATION

A. Individuals will be recertified for a two-year period.

[1. Current CPR, AED and Continuing Education as mandated by the State Fire Prevention Commission.]

B. All individuals initially receive both a State and NREMT-B Certification. After the first two years, the department or the individual may:

1. Reregister with the NREMT. The provider will be recertified as both a Delaware EMT-B and NREMT-B.

2. Recertify as a Delaware EMT-B.

C. The registration requirements for a National Registry of Emergency Medical Technicians – Basic will be determined by the National Registry of Emergency Medical Technicians.

D. The recertification requirements for a Delaware EMT-B will be determined by the Delaware State Fire Prevention Commission, with recommendations of their medical advisor/director.

VIII. CONTINUING EDUCATION REQUIREMENTS

A. Requirements for continuing[**g**] education will be determined by the authority having jurisdiction over type and quantity of Continuing Education required.

B. Special Requirements:

1. Continuing education classes to achieve re-registration through the NREMT will be reviewed for approval by the OEMS in accordance with NREMT policy and procedure.

2. Delaware Continuing Education classes will be approved by the State Fire Prevention Commission with recommendation of their Medical Advisor/Director.

IX. DECERTIFICATION

A. An Ambulance attendant will lose their Delaware EMT-B Certification to provide patient care if:

1. They do not meet the required continuing education requirements as defined by the State Fire Prevention Commission.

2. Certification is revoked by the State Fire Prevention Commission following procedures and in compliance with Delaware fire Service Standards.

B. National Registry of Emergency Medical Technicians will revoke certification based upon their national policy. If an individual has their certification revoked by the National Registry of Emergency Medical Technicians the State Fire Prevention Commission may also revoke their Delaware EMT-B Certification.

X. EXPIRED CERTIFICATIONS

A. Maintain state EMT-B certification, but NREMT-B lapsed and wish to regain NREMT-B.

1. Attends DOT EMT-B refresher as specified by National Registry of Emergency Medical Technicians

2. Pass DOT EMT-B Practical Exam

3. Pass National Registry of Emergency Medical Technicians Written Exam

B. Both state EMT-B certification and NREMT-B lapsed beyond two years

1. Attend EMT-B course and pass the National Registry of Emergency Medical Technicians exam

2. CPR/AED – Current Certification.

C. Both state EMT-B certification and NREMT-B lapsed less than two years

1. DOT EMT-B Refresher

2. CPR/AED Current

3. National Registry of Emergency Medical Technicians/State Practical Exam

4. National Registry of Emergency Medical Technicians written exam.

XI. TESTING PROCEDURES

Initial testing and retesting for National Registered EMT-B and National Registered First Responders will follow the guidelines set forth by the National Registry of Medical Technicians.

XII. RECIPROCITY

A. EMT's who enter Delaware with prior Emergency Medical Services Training will receive reciprocity in the Delaware System provided that.

1. They become a member of a certified ambulance service provider.

2. They have a current National Registry EMT-B certification.

A. Submit request for reciprocity

B. CPR and AED as approved in Delaware

C. Challenge four (4) practical exams

3. They have a current EMT-B certification from another state

A. Certification less than 2 years and practical less than 12 months

1. State approved practical exam
2. National Registry written exam

B. Certification greater than two years and practical greater than 12 months

1. State Practical/National Registry exam
2. Complete DOT EMT-B Refresher
3. National Registry written exam
4. State Approved AED & CPR

Certification

4. They submit the required application form to the State Fire Prevention Commission.

B. PARAMEDICS

They hold a current certification and/or license specified below

1. National Registered Emergency Medical Technician-Paramedic

- A. Submit request for reciprocity
- B. Must produce current cards AED/CPR
- C. Letter from affiliate

2. Emergency Medical Technician-Paramedic from another state

A. Challenge National Registry exam at the basic or Paramedic level

B. Must take DOT refresher at the level they are challenging written exam

C. REGISTERED NURSE

1. Registered Nurse or higher with current Ambulance Attendant Certification

- A. DOT EMT-B Refresher
- B. National Registry/State approved practical exam

exam

- C. CPR/AED
- D. NREMT-B exam
- E. Letter from affiliate

2. Registered Nurse or higher with no prior EMS training.

- A. CPR/AED
- B. EMT-B course
- C. State approved practical
- D. National Registry written exam

D. Physicians with Delaware License

- A. CPR/AED
- B. State approved practical exam
- C. National Registry Written exam
- D. Letter from affiliate

E. Physicians without Delaware License

- A. CPR/AED
- B. EMT-B course National Registry State approved practical

C. National Registry Written exam

D. Letter from affiliate

F. The State Fire Prevention Commission reserves the right to administer a written examination if deemed necessary.

G. The State Fire Prevention Commission will grant reciprocity with recommendations from their Medical Advisor/Director.

XIII.REPORTING

A. Every individual who operates as an ambulance attendant and provides patient care will:

1. Ensure that the State mandated EMS Run ~~paper report~~ ~~on or~~ computer data report is submitted to ~~the receiving health care facility and to the~~ ambulance agency for forwarding to the proper collection agency. ~~and the receiving health care facility. Failure to comply with data submission will result in loss of ambulance attendant certification.~~

2. Submit any other data to the designated agencies as required by the State Fire Prevention Commission.

XIV.FIRST RESPONDER

A. Individuals who successfully complete the Delaware State Fire School First Responder Course will be certified as same by the Delaware State Fire Prevention Commission for a period of two years.

First Responder Criteria

1. CPR/AED Prerequisites
2. Must be 16 years old or older

B. National Registry First Responder Certification is optional

C. Individuals who have maintained their Ambulance Attendant Certification until December 31, 2001 but do not become an Emergency Medical Technician Basic will be certified as a First Responder.

D. A First Responder may provide initial on scene care in the following situations.

1. Initial on scene care as contained in the First Responder curriculum.

2. Semi Automatic External Defibrillation if holding an AED card.

3. Cardiopulmonary Resuscitation (CPR)

E. The First Responder may not provide transport of a patient without an EMT-B or higher present.

F. First Responders can participate as a member of an ambulance crew with an EMT-B providing Patient Care.

G. Must re certify as mandated by the State Fire Prevention Commission to maintain First Responder Status.

- DOT First Responder Refresher, AED & CPR
- National Registry – As determined by National Registry **[(Optional)]**

H. May have their certification revoked by the State Fire Prevention Commission in compliance with Delaware Fire Service Standards.

I. Reciprocity for First Responders from other states must submit request for reciprocity, ~~but~~ obtain CPR/AED as approved in Delaware, and challenge two practicals.

~~Part XV~~ Expired First Responder Cards
CERTIFICATIONS

A. State First Responder card lapsed ~~for~~ less than two (2) years

1. Refresher as specified by State Fire Prevention Commission
2. DOT First Responder Refresher
3. Current CPR & AED

B. Maintain State First Responder, but ~~for~~ National Registry First Responder lapsed

1. Refresher with practical evolutions as specified by National Registry
2. National Registry First Responder written exam

[3. Current CPR & AED]

C. State First Responder and National ~~for~~ Registry First Responder lapsed within two years

1. DOT First Responder Refresher
2. State approved practical
3. National Registry First Responder exam

[4. Current CPR & AED]

D. State First Responder and National Registry First Responder lapsed greater than 2 years: Must take entire First Responder Course.

amendments is attached to this Order as exhibit #1. The Commission proposed amendments to the following rules: Rule 10.04 - Bleeders and Rule 15.02(f) - Bleeder Medication.

2. The Commission received no written public comments during the comment period from September 1, 1999 through September 30, 1999. The Commission held a public hearing on the proposed rules on September 27, 1999 and received no comments at that time.

Finding of Fact

3. The public was given proper notice and an opportunity to provide the Commission with comments in writing on the proposed amendments to the Commission's rules. The Commission received no comments from the public in response to the proposed rules.

4. Under the proposed amendments to Rule 10.04 and Rule 15.02(f), a horse that bleeds for the third time will no longer be barred from further racing but will instead be barred for a ninety (90) day period. A horse that bleeds for the fourth time will be barred from further racing except under limited circumstances when the bleeding incidents occur outside a twelve month period. The rule amendments as proposed represented a proposal agreed upon by the horsemen's association and the stewards. The Commission finds that the proposed rule is necessary to the Commission's effective enforcement of 3 Del.C. Ch. 101 and is adopted in its proposed form.

Conclusions

5. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del.C. 10103. The Commission deems these rules as amended necessary for the effective enforcement of 3 Del.C. Ch. 101 and for the full and efficient performance of its duties thereunder.

6. The Commission concludes that the adoption of the proposed rules would be in the best interests of the citizens of the State of Delaware and necessary to insure the integrity and security of the conduct of thoroughbred racing in the State of Delaware.

7. These adopted rules replace in their entirety the former versions of the Rules of the Delaware Harness Racing Commission and any amendments.

8. The effective date of this Order shall be ten (10) days from the publication of this Order in the Register of Regulations on December 1, 1999.

Bernard Daney, Chairman
Duncan Patterson, Commissioner
James Decker, Commissioner
Caroline Wilson, Commissioner

DEPARTMENT OF AGRICULTURE

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10103 (3 Del.C. 10103)

Order

Pursuant to 29 Del.C. 10118, the Delaware Thoroughbred Racing Commission ("Commission") hereby issues this Order adopting proposed amendments to the Commission's Rules. Following notice as required by 29 Del.C. 10115, the Commission makes the following findings and conclusions:

Summary of Evidence and Information Submitted

1. The Commission posted public notice of the proposed rule amendments in the September 1, 1999 Register of Regulations. A copy of the proposed rule

Rule 10.04 Bleeders

Any horse known to have bled from its nostrils during a race or workout may not be entered or raced without the prior approval for racing by Licensee's Veterinarian. A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for ~~sixty (60)~~ thirty (30) calendar days. A horse which bleeds a third time ~~will be barred from further racing in the State of Delaware~~ shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. (A positive endoscopic examination shall be classed as a first time bleeder). See Rule 15.02 Bleeder Medication.

Rule 15.02 Bleeder Medication

Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (Lasix) to control epistaxis (bleeding) to horses under the following conditions:

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Licensee's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Licensee's Veterinarian at the detention barn within one (1) hour of workout or race.)

(b) A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Licensee's Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Licensee's Veterinarian or Stewards on official forms from that State prior to entry.

(c) The Licensee's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

(d) A horse in the Bleeder Program shall be required to be brought to a detention barn designated by the Licensee and approved by the Commission not later than three and

one-half (3 ½) hours before post time for the race in which it is entered and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time. During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

(e) (repealed).

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for ~~sixty (60)~~ thirty (30) calendar days. A horse which bleeds a third time ~~will be barred from further racing in the State of Delaware~~ shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

DEPARTMENT OF EDUCATION

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

Regulatory Implementing Order**Amendment To Regulation Payment Of Personnel
Under Various Programs****I. Summary Of The Evidence And Information
Submitted**

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulation Payment of Personnel under Specific Project Proposals, pages 2-3 to 2-6 in the Handbook of Personnel Administration for Delaware School Districts. The amendment changes the style and format of the regulation to make it clearer and revises the language by removing the references that are no longer valid. The regulation also

includes a new statement, 2.5, that addresses local district compliance with hourly compensation rates set by the Department of Education. This requirement was found in the first paragraph of the regulation Payment Schedules for Contractual Programs/In Service Education, page 2-2 of the Handbook of Personnel Administration for Delaware School Districts. Since parts a. and b. in that regulation have been repealed, item 2.5 has been included in this regulation.

Notice of the proposed amendment was published in the News Journal and the Delaware State News on October 18, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisement.

II. Findings Of Fact

The Acting Secretary finds that it is necessary to amend this regulation to update the language and to bring the regulation into line with actual practice and changes in procedures.

III. Decision To Amend The Regulation

For the foregoing reasons, the Acting 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 amended regulation shall be in effect for a period of five years from the effective date of this order as set forth 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 found in the Regulations of the Department of Education.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on November 18, 1999. 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 18th day of November, 1999.

Department Of Education
Valerie A Woodruff
Acting Secretary of Education

Approved this 18th day of November, 1999.

State Board Of Education

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Mary B Graham, Esq.
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

Payment Of Personnel Under Various Programs

~~The following is adopted as State Board of Education policy relative to the payment of professional, salaried, hourly wage, and consultant personnel employed by the various school districts and other agencies.~~

~~This policy shall be applicable to all project proposals within the jurisdiction of this Board serving as the State Board of Education and State Board for Vocational Education, whether new, renewed, or amended, beginning with the date of enactment by the Board.~~

~~It is recognized that programs conducted in local school districts and other agencies and financed from various funding sources are intended to be an improvement, enrichment, supplement to, and extension of the local educational programs but are at the same time intended to be a very integral part of the educational program of the school district.~~

A. Federal Regulation

~~Nothing in this regulation is intended to take precedent over or negate any Federal Program statute, rule or regulation. Federal funds shall not be available to pay all or a part of those expenses which the State or local educational agencies would have incurred even if they were not participating in a Federal grant program. The compensation of supervisory personnel, including superintendents of school districts, directors of instruction, supervisors of instruction in regular curriculum areas, and school principals, falls within the category of expenses that would have been incurred if a state were not participating in the program.~~

B. A District May:

~~1. Employ additional administrative, supervisory, and teaching personnel, or other necessary personnel beyond those allocated in Delaware Code, Title 14, in order to implement a Federally supported project.~~

~~2. Extend the employment of a ten or eleven month administrator or supervisor through the eleventh and twelfth month for purposes of conducting a Federally supported program. Part-time assignments are to be paid a pro-rata share.~~

3. Employ teachers of the school district during the 185-day school year in behalf of such activities as curriculum development, instruction and/or assessment task development, staff development or Federal programs up to and including a total of nine (9) additional hours per week.

4. Employ full-time instructional personnel who are qualified for administrative or supervisory positions to carry on administrative or supervisory activities beyond the regular school day or school week as described in Item "3" above.

5. Pay a salary equal to the combined State and local salary of other persons in similar assignments at the same rank.

6. Pay an hourly rate for part-time assignment as an amount pro-rated against the annual salary for the same rank and assignment and in accordance with the qualifications of the individual so assigned and in accordance with previous sections of this statement. (An hourly rate table has been prepared in the Finance Division, State Department of Public Instruction.) Include all assignments and salary factors in the budget of the project.

~~D. A District Shall Not:~~

1. Supplant a local or State position by substituting Federal funds for payment of that position.

2. Employ a twelve-month district person, otherwise supported by State funds, for additional payment under a Federal program.

3. Employ any teaching personnel for more than nine (9) additional hours per week.

4. Pay a salary to cover paid vacation days during intended Federal employment when that Federal employment is an extension of a ten- or eleven-month school year as assigned and paid by the State.

- 5.
- 6.
- 7.
- 8.

9. Extend the privileges of tenure, as described in Delaware Code, Title 14, Chapter 14, to any person whose salary is drawn from Federal funds; nor may tenure be applied for that part of an assignment that is paid for from Federal funds.

10.

11. Pay a salary or wage to a person involved in pre-planning or preparation activities that are not a distinct part of the approved project. This does not preclude inservice activities during a project.

~~C. A District Shall:~~

7. Include a description of the position in the project proposal as presented to the State Department of Public Instruction for approval.

8. In describing any new or additional position, align it with a recognized rank as described in Delaware Code, Title 14; or in the case of a nonpublic school institution

describe the position in terms of a rank already existing in the institution and assigned to comparable work.

9. Include in the benefits of the employee all of those benefits that accrue to an employee of the State or the local school district except the benefit of tenure.

10. Seek and obtain approval of a Federally-funded project through the office of the appropriate coordinator in the State Department of Public Instruction prior to the assignment of personnel for the assumption of duties and payment of wages or salary.

11.

(State Board of Education, May 16, 1969)

As Amended

700.3 4] Compensation of [District] Personnel Under Specific Project Proposals

1.0 A district may use Federal or local funds to ~~do the following~~:

1.1 Employ additional administrative, supervisory and teaching personnel, or other necessary personnel beyond those allocated in *Delaware Code*, Title 14, in order to implement a federally or locally supported project.

1.2 Extend the employment of a ten or eleven month employee through the eleventh and twelfth month for purposes of conducting a federally or locally supported program. Part-time assignments shall be paid a pro-rata share.

1.3 Employ teachers of the school district during the school year for additional hours each week to support such activities as extra-time ~~tutoring instruction~~.

1.4 Employ full-time instructional personnel who are qualified for administrative or supervisory positions to carry on administrative or supervisory activities beyond the regular school day or school week.

1.5 Pay a salary equal to the combined State and local salary of other persons in similar assignments at the same rank.

1.6 Pay an hourly rate for a part-time assignment as an amount pro-rated against the annual salary for the same rank and assignment and in accordance with the qualifications of the individual so assigned and in accordance with previous sections of this statement.

2.0 A district shall ~~do the following~~:

2.1 ~~[Where applicable] [i]~~include a description of the position in the project proposal as presented to the State Department of Education for approval.

2.2 In describing any new or additional position, align it with a recognized rank as described in *Delaware Code*, Title 14; or in the case of a nonpublic school institution

describe the position in terms of a rank already existing in the institution and assigned to comparable work.

2.3 Include in the benefits of the employee all of those benefits that accrue to an employee of the State or the local school district except [that] the benefit of [the provisions of 14 Del. C., Chapter 14 shall not apply to any person whose salary is paid from Federal funds in whole or in part tenure].

2.4 Seek and obtain approval of a Federally-funded project through the office of the appropriate coordinator in the State Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.

[2.5 Comply with the maximum hourly compensation rates as published by the Department of Education unless there is authorization to pay at a per diem rate.]

3.0 A district shall not ~~do the following~~:

3.1 Supplant funds for a local or State position by substituting Federal funds for payment of that position.

3.2 Pay a salary to cover paid vacation days during intended Federal employment when that Federal employment is an extension of a ten- or eleven-month school year as assigned and paid by the State.

~~[3.3 Extend the privileges of tenure, as described in Delaware Code, Title 14, Chapter 14, to any person whose salary is drawn from Federal funds; nor may tenure be applied for that part of an assignment that is paid for from Federal funds.]~~

Regulatory Implementing Order Repeal Of Regulation For Charter Schools - Admissions

I. Summary Of The Evidence And Information Submitted

The Acting Secretary of Education seeks the approval of the State Board of Education to repeal the regulation Charter Schools - Admissions. The repeal of this regulation is necessary because of the following realities:

- The regulation was enacted in October 1995 before any school had recruited students or opened; with experience we are seeing that it is not operational.
- Title 14, Section 505, exempts all Charter Schools from Department of Education regulations.
- Title 14, Section 504A(I), says establish admissions procedures "to the extent practicable."
- The Department of Education has required 50 to 60% enrollment in Charter Schools by May 1st, beyond the April 1st deadline stated in the regulation and assumes continued enrollment after May 1st.

- Additional conditions have been set for existing Charter Schools requiring 85% enrollment by July 15th, well beyond the deadline stated in the regulation.
- The regulation would not allow Charter Schools to fill vacancies left by students who withdraw from the school and since the size of the schools are generally small, it would jeopardize the viability of a school's operation.
- Public School Choice programs are also addressed in this regulation, but 14 Del. C., Chapter 4, addresses choice program admission deadlines.

Notice of the proposed repeal was published in the News Journal and the Delaware State News on October 18, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisement.

II. Findings Of Fact

The Acting Secretary finds that it is necessary to repeal this regulation for the reasons described above.

III. Decision To Repeal The Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to repeal the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby repealed.

IV. Text And Citation

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B, and shall be removed from the Handbook for K-12 Education.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on November 18, 1999. 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 18th day of November, 1999.

Department Of Education
Valerie A Woodruff
Acting Secretary of Education

Approved this 18th day of November, 1999.

State Board Of Education
Dr. James L. Spartz, President
Jean W. Allen, Vice President
Mary B Graham, Esq.
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

~~accordance with the good cause provisions of the Choice law. (State Board approved October, 1995)~~

Repeal of Regulation for Charter Schools - Admission

The Acting Secretary of Education seeks the approval of the State Board of Education to repeal the regulation Charter Schools - Admissions. The repeal of this regulation is necessary because of the following realities:

- The regulation was enacted in October 1995 before any school had recruited students or opened; with experience we are seeing that it is not operational.
- Title 14, Section 505, exempts all Charter Schools from Department of Education regulations.
- Title 14, Section 504A(I), says establish admissions procedures "to the extent practicable."
- The Department of Education has required 50 to 60% enrollment in Charter Schools by May 1st, beyond the April 1st deadline stated in the regulation and assumes continued enrollment after May 1st.
- Additional conditions have been set for existing Charter Schools requiring 85% enrollment by July 15th, well beyond the deadline stated in the regulation.
- The regulation would not allow Charter Schools to fill vacancies left by students who withdraw from the school and since the size of the schools are generally small, it would jeopardize the viability of a school's operation.
- Public School Choice programs are also addressed in this regulation, but 14 Del. C., Chapter 4, addresses choice program admission deadlines.

e. ~~Charter Schools - Admissions~~

~~For the purpose of admission decisions made pursuant to the provisions of the Delaware Charter School Program, no Regular school district or Charter School shall accept for admission a student who is currently enrolled in a Delaware public school district after April 15th of the school year preceding the student's requested admission. The purpose of this regulation is to provide ample time for Districts of residence to make staff decisions in accordance with the notification requirements of the Delaware Code. This regulation does not apply to decisions affecting nonpublic student admissions, intra-district choice transfers, admissions to Kindergarten, or admission decisions made in~~

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

In The Matter Of:

Revision Of The Regulations
Of Delaware's A Better Chance
Welfare Reform Program

Nature Of The Proceedings:

The Delaware Health & Social Services ("Department") initiated proceedings to update the manual to implement a lifetime time limit on receipt of Delaware's A Better Chance Welfare Reform Program benefits, limit benefits to 36 months and to require up front Work for Your Welfare for individuals applying for benefits on or after January 1, 2000.

On September 1, 1999, the DHSS published in the Delaware Register of Regulations (pages 369-374) its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 30, 1999, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations. It was determined that oral and written comments were not received.

Findings Of Fact:

The Department finds that the proposed changes, as set forth in the September 1999 Delaware Registry of Regulations, should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed regulation are adopted and shall become effective ten days after publication of the final regulation in the Delaware Register.

Gregg C. Sylvester, MD, Secretary, 11/9/99

DSSM Section 3002, Time Limit, Temporary Welfare Program

3002.1 Two-Parent Families - Time Limit, Temporary Welfare Program

A). Delaware's A Better Chance (ABC) Welfare Reform, cash benefits ~~will be~~ are time-limited for households headed by two employable adult's age 19 or older who are included in the grant. ~~The time limit is forty-eight (48) cumulative months.~~ For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive these benefits only through participation in a pay-after-performance work experience position or if the adults are working at least 20 hours per week and the family has countable income that is below the need standard.

Time Limits will not apply when Delaware's unemployment rate exceeds the national average by 2% or when the Delaware unemployment rate is greater than 7.5%.

Time limits apply when four conditions are met:

- the caretaker is included in the grant,
- the caretaker is age 19 or older,
- the caretaker is employable, and
- the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children's Program.

B) During the time-limited period, employable adult recipients will receive full cash benefits only as long as they fulfill their Contract of Mutual Responsibility, and participate in a pay-after-performance work experience program or they are working and family income is below the need-standard of 75% of the Federal Poverty level.

The pay-after-performance work experience position is intended for families who do not have unsubsidized employment. Determine the number of hours of work required by dividing the ABC benefit by the minimum wage. In addition, participants will be required to conduct up to ten (10) hours of job search each week. Failure to comply with the job search requirements will result in an employment and training sanction being applied as described in DSSM 3011.2.

C) Periodic Alerts to Families Regarding Time Remaining before the Family Reaches the Time Limit

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

3002.2 Single Parent / Non-Parent Caretaker Families

A). ~~Under~~ Delaware's A BETTER CHANCE AFDC (ABC) Welfare Reform, cash benefits are time-

limited for households headed by an employable adult, who is age 19 or older and included in the grant. ~~The time limit is twenty-four (24) cumulative months.~~ For households applying on or after 01/01/2000 the lifetime time limit will be thirty-six (36) cumulative months. Families will receive ~~these benefits for an additional twenty-four (24) cumulative months~~ only through participation in a pay-after-performance work experience position or if the adult is working at least twenty hours per week and the family has countable income that is below the need standard.

Time limits will not apply when Delaware's unemployment rate exceeds the national average by 2% or when the Delaware unemployment rate is greater than 7.5%.

Time limits apply when four conditions are met:

- the caretaker is included in the grant;
- the caretaker is age 19 or older;
- the caretaker is employable; and
- the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.

When one or more of the conditions listed above is not met, the family receives benefits in the non-time-limited program known as the Children's Program.

(B) Periodic Alerts to Families Regarding Time Remaining Before the Family Reaches the Time Limit.

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

3002.3 Periodic Alerts to Families Regarding Time Remaining Before the Family Reaches the Time Limit

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

TIME LIMITS FOR THOSE ON ASSISTANCE PRIOR TO 01/01/2000

If a family was headed by an employable adult age 19 or older who was included in the grant and received Delaware's A BETTER CHANCE (ABC) welfare Reform cash benefits prior to 01/01/2000 they had a forty-eight (48) cumulative month time limit. This lifetime time limit will still apply for those families. After twenty-four (24) cumulative months these families can only receive benefits if the adult is working at least twenty hours per week or through participation in a pay-after-performance work experience position. The family must still have countable income that is below the need standard. Families with a forty-eight (48) month cumulative time limit who reapply for assistance on or after 01/01/2000 can only receive benefits if the adult is working at least twenty hours per week or if through participation in a pay-after-performance work experience position.

Here are some examples:

1. Example:

A family initially began receiving ABC 08/01/1997. The ABC case was closed 06/30/1998. The family applied for and received ABC benefits while the time limit was forty-eight (48) months. The family used eleven (11) months of time limited ABC benefits. The family reapplies for benefits 02/01/2000. The family can receive up to thirty-seven (37) more cumulative months of ABC benefits in the time-limited program if and only if:

- the employable adult is working at least twenty hours per week; or
- by participating in a pay-after-performance work experience position; and
- the family still has countable income that is below the need standard.

2. Example:

A family had not received ABC benefits prior to 01/01/2000. The family applies for and it opened in ABC 03/01/2000. The family can only receive ABC benefits for up to thirty-six (36) cumulative months and only if:

- the employable adult is working at least twenty hours per week; or
- by participating in a pay-after-performance work experience position; and
- the family still has countable income that is below the need standard.

3002.4 Periodic Alerts to Families Regarding Time Remaining Before the Family Reaches the Time Limit.

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

3002.4~~3002.5~~Assessment Prior to Termination of Benefits

At least ~~120~~ 90 days prior to the end of the 36 or 48 cumulative month period in which a family has received assistance (through cash assistance and participation in pay-after-performance), the Division will complete another assessment of employability. If the Division determines that the adult caretaker is not employable, the Division will continue benefits under the Children's Program as described in DSSM 3003. If the Division determines that the adult caretaker is employable, ABC benefits will end to the family as of the last day of the 36 or 48 cumulative months.

~~3002.5~~ 3002.6Noticing Prior to Termination of Benefits

At least two months prior to the end of the 36 or 48 cumulative months in which a family has received assistance, the Division will remind the family that assistance will end and notify the family of the right to apply for an extension.

~~3002.6~~ 3002.7Extensions

The Division will limit extensions to those families who can demonstrate that:

- the agency substantially failed to provide the services specified in the individual's Contract of Mutual Responsibility (see DSSM 3009 for Contract); the related extension will correspond to the time period for which services were not provided; or
- despite their best efforts to find and keep employment, no suitable unsubsidized employment was available in the local economy to the employable adult caretaker; the maximum extension under such circumstances will be in 12 cumulative months periods. A family may request extensions until; the family has reached sixty (60) cumulative months in the time-limited program for families with a 48 cumulative life time time limit and 48 months for families with a 36 month cumulative life time time limit. See "SUITABLE EMPLOYMENT" definition.

The Division Director or the Director's designee will make decisions on granting extensions within 45 days of the request. Fair hearing provisions set forth in DSSM 5000 apply. Benefits will not continue beyond the time limit.

The Division will not grant extensions if:

- the adult caretaker received and rejected offers of employment, quit a job without good cause, or was fired for cause; or
- the adult caretaker did not make a good faith effort to comply with the terms of the CONTRACT OF MUTUAL RESPONSIBILITY.

The responsibility rests with the adult caretaker to demonstrate substantiality. It is not enough for the adult caretaker to simply make a claim that the agency failed in its effort to provide the services specified under the Contract of Mutual Responsibility. The adult caretaker must present the reasons for the claim and show how the agency failed to provide these services.

~~3002.7~~ 3002.8Re-Application after the Time Limit

Assistance will be denied to employable caretakers reapplying for benefits after the 36 or 48 cumulative month time limit, unless the caretaker proves that grounds exist for an extension.

- ~~the family has not received assistance for 96 consecutive months or~~
- the caretaker proves that grounds exist for an extension.

Benefits will be provided to these families only in the pay-after-performance component, for a maximum of ~~twelve cumulative months~~ sixty (60) cumulative months in the time-limited program for families with a 48 cumulative life time time limit and 48 months for families with a 36 month cumulative life time time limit. DSS will conduct an assessment and notice the family prior to termination of benefits (See DSSM 3002).

Families headed by unemployable caretakers can receive assistance under the Children's Program.

DIVISION OF SOCIAL SERVICES

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

In The Matter Of: |

Revision Of The Regulations
Of The Child Care Regulations |

Nature Of The Proceedings:

Delaware Health and Social Services/ Division of Social Services proposed in the October 1999 issue of the Delaware Register (pages 497 - 511) to make changes to existing child care regulations. These changes are an increase in income eligibility limits to 200% of the federal poverty level, expansion of the fee scale to accommodate this increase, and the waiving of income limits and co-pays for protective caretakers who need child care. Public comments were invited by the October 31, 1999 deadline. It was determined that no written materials or suggestions had been received from any individual or the public.

Findings Of Fact:

The Department finds that the proposed regulation as published in the October 1999 Register of Regulations should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed regulations regarding the increase in income eligibility limits to 200% of the Federal Poverty Level, the fee scale changes and the waiving of income limits and co-pays for protective caretakers be adopted and shall become effective ten days after publication of this notice in the Delaware Register.

Gregg C. Sylvester, MD, Secretary
November 12, 1999

11003.0 Eligibility Requirements

DSS provides child care services to eligible families with a child(ren) who resides in the home and who is under the age of 13, or children 13 to 18, who are physically or mentally incapable of caring for themselves or active with the Division of Family Services. Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option,

the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who have worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction.

A family needs service when parent/caretakers are required to be out of the home, or are reasonably unavailable (may be in the home but cannot provide supervision, such as a parent works a third shift, is in the home, but needs to rest), and no one else is available to provide supervision.

A. Parent/caretakers need service to:

1. accept employment,
2. keep employment,
3. participate in training leading to employment,
4. participate in education,
5. work and the other parent/caretaker or adult household member is chronically ill or incapacitated,
6. have someone care for the children because of a parent/caretaker special need.

B. A child(ren) needs service to:

1. provide for a special need (physical or emotional disabilities, behavior problems, or developmental delays, etc.);
2. provide protective supervision in order to prevent abuse or neglect.

In addition to having an eligible child and a child care need, certain DSS child care programs require parent/caretakers to meet income limits. Under certain other child care programs, DSS guarantees child care. These financial requirements along with other technical requirements help determine the parent/caretaker's child care category.

Categories relate to the funding sources used by DSS to pay for child care services.

The following sections discuss the technical requirements for child care services based on category and need.

11003.1 Technical Requirements

Technical requirements relate to the circumstances which qualify a parent/caretaker for a specific category of child care funding. These circumstances help determine whether a child care need exists, whether DSS guarantees child care, whether DSS considers income, and whether the parent pays a child care fee.

11003.2 Parent/Caretaker in ABC

DSS guarantees child care for a dependent child, or a child who would be dependent except for the receipt of benefits under SSI, when the parent/caretaker receives ABC benefits and it is necessary for the parent/caretaker to:

- A. accept employment or remain employed

(Category 12),

B. participate in ABC (Category 11), or Child care is available to a caretaker in the above instance only if the caretaker is part of the TANF assistance unit. The child also needs to be a dependent child.

11003.2.1 ABC Sanctions

Recipients who fail without good cause to meet requirements for ABC are sanctioned. A sanction means that the recipient's needs are not considered in determining the family's need for assistance and the recipient loses her/his share of the TANF grant. When these recipients receive sanctions, they lose their ABC Child Care and, as long as the ABC case remains open, they cannot receive other categories of child care. In order to retain ABC Child Care, the recipient will have to cure the sanction, meaning they will have to cooperate with their ABC requirements, or they will have to become exempt.

11003.3 Parent/Caretaker on Food Stamps

A. DSS provides child care for a dependent child when a parent/caretaker receives Food Stamps and the parent/caretaker needs to:

1. participate in Food Stamp Employment and Training activities, or
2. volunteer to participate in Employment and Training activities (both are Category 21).

B. Persons can volunteer to participate in E&T - Food Stamps activities only as long as the activity for which they volunteer is a component activity of E&T - Food Stamps. Acceptable E&T - Food Stamps component activities are:

1. Independent Job Search,
2. Self-Directed Job Search Training,
3. Basic Life Skills Enrichment,
4. High School and/or Adult Education,
5. Post-Secondary Education (first degree only), and
6. Vocational Skills Training.

Mandatory participants who fail to participate receive a sanction. Persons who receive a sanction lose their child care while the sanction remains in effect.

11003.3.1 Food Stamp Guarantee

To the extent that child care is necessary for an eligible Food Stamp recipient to participate in First Step - Food Stamps, DSS guarantees the recipient's child care. Note, however, that parent/caretakers responsible for a child under the age of six are exempt from participation in E&T - Food Stamps activities unless they choose to volunteer. DSS considers parent/caretakers receiving First Step - Food Stamps Child Care a priority, and will typically provide service when DSS has a waiting list. Again, because DSS provides E&T - Food Stamps Child Care as an entitlement, recipients are to receive timely and adequate notice requirements before any termination or reduction in benefits.

11003.4 Transitional Child Care

Parent/caretakers who received TANF and who are working can continue to receive child care if they:

- A. stopped receiving TANF because of income from work or because their income disregards expired,
- B. request Transitional Child Care (Category 13).

11003.5 In-Home Child Care

The Fair Labor Standards Act requires that in-home child care providers be treated as domestic service workers. As a result, DSS must pay these providers the minimum wage. Paying the federal minimum wage would make the cost of in-home care disproportionate to other types of care. As a result, DSS has placed a limit on parental use of the in-home care option.

A. As of July 1994, in-home care has been limited to:

1. families in which four or more children require care, or
2. families with fewer children only as a matter of last resort.

B. Examples of "last resort" may include:

1. the parent works the late shift in a rural area where other types of care are not available, or
2. there is a special needs child for whom it is impossible to find any other child care arrangement.

Federal regulations define in-home care as child care provided in the child's own home. In-home care also includes situations where the caregiver and the child share a home.

11003.6 Income Limits

To be eligible for child care services, a family is to have gross income equal to or less than 155 percent of the current federal poverty level for a family of equal size. This income requirement typically applies to all income eligible child care programs. Refer to Appendix I for current income limits.

11003.7 Income Eligible Child Care

A. DSS provides child care to families who are financially eligible to receive care because the family's gross income is equal to or under ~~155~~ 200 percent of the federal poverty level and they have one or more of the following needs for care:

1. a low-income (~~155~~ 200 percent or less of the federal poverty level) parent/caretaker needs child care in order to accept employment or remain employed and would be at risk of becoming eligible for ABC if child care were not provided (At-Risk Child Care, Category 31); or
2. a low-income (~~155~~ 200 percent or less of the federal poverty level) parent/caretaker needs child care in order to work, attend a job training program, or participate in an educational program, or are receiving or need to receive protective services (CCDBG Child Care, Category 31); or
3. a parent/caretaker needs child care to work or participate in education or training; searches one month for employment after losing a job; because the child or the

parent/caretaker or other adult household member has special needs; because they care for a protective child who is active with the Division of Family Services or the parent/caretaker is homeless. (SSBG Child Care, Category 31).

B. DSS programmed its CCMIS to include all the above child care needs into one category, Category 31. Therefore, Child Care Case Managers will only have to consider whether parent/caretakers meet just one of the above needs to include them in a Category 31 funding stream. However, DSS also programmed its CCMIS so that it could make the policy distinctions needed to make payments from the appropriate funding source for each child in care. Though Child Care Case Managers will not have to make these distinctions, it is helpful to know them.

They are:

1. At-Risk Child Care will only include parent/caretakers who need child care to accept a job or to keep a job.

It will include parent/caretakers who have the need for child care because of a special needs child or a protective child, but it will always coincide with the parent/caretaker's need to accept or keep a job.

2. CCDBG Child Care will include:

- a. parent/caretakers who need child care to accept or keep a job, and/or
- b. participate in education or training, or
- c. children who receive or need to receive protective services.

It will also include parent/caretakers who need care because of a special needs child. It will always coincide with the parent/caretaker's need to work or participate in education or training. It will not include parent/caretakers who have a special need or other adult household member who has a special need.

3. SSBG Child Care will include:

- a. parent/caretakers who need child care to accept or keep a job,
 - b. parent/caretakers who need child care to participate in education or training,
 - c. parent/caretakers whose only need is a special need child or special needs adult household member,
 - d. children who need protective services,
- or
- e. parent/caretakers who are homeless.

11003.7.1 Income Eligible/Program Limitation

There is no child care guarantee with the funding sources which make up the income eligible category like there is with First Step - ABC and Transitional Child Care. Funding is limited by the amount of DSS' grant award. This means that DSS cannot serve all the income eligible parent/caretakers who have a legitimate child care need. Though families may be eligible, a lack of available funding will prevent DSS from authorizing service. DSS therefore, reserves the right to limit, where appropriate, its income

eligible child care services whenever the demand for income eligible services comes near or matches available funding resources. DSS also reserves the right, under these conditions, to determine who it will serve, when it will serve them, and how it will serve them.

11003.7.2 Income Eligible/Homeless

Parent/caretakers who are homeless and whose incomes are at or below ~~455~~ 200 percent of the federal poverty level can receive income eligible services exclusive of meeting any other need requirement. DSS defines homeless as:

A. families living in a shelter or receiving emergency assistance to live in a temporary arrangement (an example of a temporary arrangement are those families receiving assistance to live in a local motel); or

B. families without a fixed address or not living in a permanent dwelling (examples of families without a fixed address are families living in cars or tents, excluding families who live with other families).

DSS will provide child care services to homeless families for up to three months or until the family is able to obtain suitable living arrangements. Once families have obtained suitable living arrangements, child care services can only continue if families have another need for service, such as the family needs child care in order to work.

11003.7.3 Income Eligible/Loss of Employment or Job Transition

Parent/caretakers who lose employment or who have a gap in employment because of a transition between jobs, can continue service for up to one month. Child care services will cease if employment does not begin again after this time.

11003.7.4 Income Eligible/Training

Parent/caretakers who participate in a training program can continue receiving child care services for the duration of their participation as long as:

A. the training was part of a First Step Employability Development Plan; or

B. there is a reasonable expectation that the training course will lead to a job within a foreseeable time frame (6 to 18 months), such as persons participating in apprenticeship programs, on-the-job training programs, or vocational skill programs.

Child care services can continue for up to one month to allow for breaks between training programs or to allow for an employment search upon completion of training.

11003.7.5 Income Eligible/Education and Post-Secondary Education

Parent/caretakers who participate in education and post-secondary education can receive income eligible child care for the duration of their participation as long as:

A. their participation will lead to completion of high school, a high school equivalent or a GED; or

B. their participation in post-secondary education was part of a First Step Employability Development Plan; or

C. their participation in post-secondary education began as a requirement for participation in the First Step - Food Stamps program; and

D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.

DSS will not authorize child care services for parent/caretakers who already have one four year college degree or are in a graduate program.

11003.7.6 Income Eligible/Protective Child Care

DSS will provide child care services for children who need to receive or who receive protective services from the Division of Family Services exclusive of other child care needs. DSS will also give service priority to protective children, meaning DSS will provide an exemption to protective children during a waiting list period. However, by agreement with the Division of Family Services, this exemption will only exist for a limited number of protective children. Currently the limitation is 280 children, but is subject to change based on available funding and forecasted need. (An Interagency Agreement exists between the Department of Services For Children, Youth and Their Families, Division of Family Services, and the Department of Health and Social Services, Division of Social Services.)

11003.7.7 Income Waiver

DSS ~~may will~~ waive the ~~455~~ 200 percent income eligibility limitation for families ~~only on a case-by-case basis~~ when the child is receiving or needs to receive protective services. The need for care in this instance is coordinated with the Division of Family Services and is part of a range of services being provided to and/or required of the parent to help ensure the protection of the child.

11003.7.8 Special Needs Children

Policy is yet to be decided.

11003.8 Necessity of Child Care

For parent/caretakers to receive child care services, DSS will need to consider whether child care is necessary. Child care will be considered necessary when:

A. the child is not in school during the hours of the parent/caretaker's employment; or

B. the child is not in school during the hours of the parent/caretaker's participation in training or education; or

C. in all cases of two parent households, both parents must have a need for child care in order for DSS to provide child care services, for example:

1. in two parent households both parents work; or

2. one works and the other has another need (such as education or training), is incapacitated (a

parent who needs to participate in in-patient rehabilitation is included in the meaning of incapacitated) or is unavailable (such as one parent works the late shift and needs to sleep during the day while the other parent works); or

D. there is no other legally responsible and capable adult in the household (such as another family member).

DSS will make an exception in the last case if the other adult household member is incapacitated, the child is at risk of abuse, or the age or disposition of the other adult makes it unlikely to expect him/her to provide care (such as grandparents are not required to provide care if they are not inclined to do so on their own).

11003.9 Financial Requirements

Child care services are available to families who otherwise cannot pay for all or part of the cost of care. This determination of who cannot afford to pay all, or a portion of the cost of care, is always a determination based on income. The financial requirements, which follow, relate to the circumstances which qualify parent/caretakers for child care services based on income. These requirements help determine whose income to count or not count, what is counted, and when and how to count it.

11003.9.1 Countable Income

A. All sources of income, earned (such as wages) and unearned (such as child support, social security pensions, etc.) are countable income when determining a family's monthly gross income. Monthly gross income typically includes the following:

1. Money from wages or salary, such as total money earnings from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues, etc.

2. Gross income from farm or non-farm self-employment is determined by subtracting business expenses such as supplies, equipment, etc. from gross proceeds. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the ABC standard allowance for work connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9605 and 9701 through 9702.3.

3. Social Security pensions, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, and child support.

B. Monies received from the following sources are not counted:

1. per capita payments to or funds held in trust for any individual in satisfaction of a judgement of Indian Claims Commission or the Court of Claims;

2. payments made pursuant to the

Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;

3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);

4. withdrawal of bank deposits;

5. money borrowed or given as gifts;

6. capital gains;

7. the value of USDA donated foods and Food Stamp Act of 1964 as amended;

8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;

9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

10. earnings of a child under the age of 14 years of age;

11. loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;

12. any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;

13. home produce utilized for household consumption;

14. all of the earned income of a minor parent who is a full-time student or a part-time student who is working but is not a full-time employee (such as high school students who are employed full-time during summer);

15. payments derived from participation in projects under the First Step (such as CWEP) program or other job training programs; and

16. all Vista income.

Resources (such as cars, homes, savings accounts, life insurance, etc.) are not considered when determining financial eligibility or the parent fee.

11003.9.2 Whose Income to Count

In all Category 13 and 31 cases, count all income attributable to the parent(s) as family income. Family as used here means those persons whose needs and income are considered together. A person who acts as a child's caretaker (as defined in DSSM 11002.9), is not included in the definition of family. In this instance, any income attributable to the child or children is the income which is counted.

11003.9.3 Family Size

The people whose needs and income are

considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family's financial eligibility. Therefore, knowing who to include in the determination of family size is an important part in deciding financial eligibility. Rules to follow when considering family size are relationship and whose income is counted.

A. Parents (natural, legal, adoptive, or step) and their children under 18 living in the home, will always be included together in the make up of family size.

B. Adults who are not the natural, legal, adoptive, or step-parent of the child or children under 18 living in the home are not included.

11003.9.4 Parents Under 18 and Family Size

Consider minor parents (under 18) for child care services separately from their legal guardian or parents. This means that minor parents can apply for child care services on their own even if they live with their legal guardian or parents. In this case, need for care and financial eligibility is based on the minor parents' circumstances and not that of their parents or legal guardian.

11000.9.4.1 Minor Parents and ABC

In the case of a minor parent who is a mandatory First Step - ABC participant, the minor parent will have to comply with First Step - ABC requirements for DSS to maintain child care services. Requirements for First Step - ABC are satisfactory participation in the assigned activity and making good progress toward the completion of the activity.

11003.9.5 Making Income Determinations

DSS programmed the CCMIS to automatically make financial eligibility decisions. As long as the appropriate income for the appropriate persons is entered into the system, and as long as the correct family size is entered, the CCMIS will calculate income and determine eligibility.

The following are examples for converting various pay schedules to monthly income.

A. Client A is paid \$200.00 per week - $\$200 \times 4.33 = \$866/\text{month}$.

B. Client A is paid \$200 per week, but has a varying work schedule.

Week one - \$200; week two - \$100; week three - \$176; week four - \$200. $\$200 + \$100 + \$176 + \$200 = \$676$ divided by 4 = \$169/week average. $\$169 \times 4.33 = \$731.77/\text{month}$.

C. Client B is paid \$400 every other week. $\$400 \times 2.16 = \864 .

D. Client C is paid \$950 twice a month. $\$950 \times 2 = \$1900/\text{month}$.

E. Other sources of income, such as child support, are added to wages either as the actual amount received or as an average of the amount received in the past three months.

11003.10 Changes in Need or Income

Parent/caretakers are required to report changes that affect either their need for child care or their income. Parent/caretakers are to report these changes to their Child Care Case Manager within 10 days. The types of changes that parent/caretakers are to report are:

- A. loss of job;
- B. new employment;
- C. for Category 13, 21, or 31 cases, any increase or decrease in wages resulting in a change to income of \$75 or more;
- D. for Category 13, 21, or 31 cases, any other change to income which will result in an increase or decrease to income of \$75 or more (such as a change in child support); or
- E. any change in education/training or other status which would impact the parent/caretakers need for care.

11004.0 APPLICATION PROCESSING

Any parent/caretaker who expresses a desire for child care services may apply by contacting a DSS office. The process to actually obtain child care services starts when parent/caretakers contact a Child Care Case Manager or a First Step Case Manager. Consider this an informal inquiry unless or until it results in the completion of a written application (Form 600, Eligibility Screening Application).

11004.1 Formal Application Process

The formal application process will always consist of the following:

- A. a Case Manager, parent/caretaker interview;
- B. a review and verification of eligibility requirements;
- C. a review of the parent information about child care certificates;
- D. a determination of eligibility along with written parent/caretaker notification of the eligibility decision;
- E. completion of the Child Care Eligibility Screening Form (Form 600);
- F. as necessary, a determination of the child care fee;
- G. creation of a case in the CCMIS;
- H. as appropriate, completion of the Service Authorization Form (Form 618d);
- I. completion of the Child Care Payment Agreement (Form 626); and
- J. a review of the parent/caretaker's rights and responsibilities, such as keeping their Case Manager informed of changes.

11004.2 Interviews

Case Managers normally conduct face-to-face formal interviews. This means that Case Managers normally schedule office appointments for parent/caretakers. However, there may be occasions where a face-to-face interview is not necessary.

Schedule appointments for formal interviews in the following manner.

A. As soon as reasonably possible after the parent/caretaker makes an informal contact, set a specific day and time for an interview. Consider the parent/caretaker's schedule and attempt to schedule appointments at parent/caretaker convenience.

B. Advise the parent/caretakers of the information they will need to bring to the formal interview. At a minimum parent/caretakers should bring:

1. if employed, current pay stubs from the most recent month of the date of application or a letter or employer statement noting the employer's name, the parent/caretaker's work schedule, earnings, and start date;
2. if in training and/or school, a statement from the school/training program with starting and completion dates and days and hours required to attend or a copy of a registration form and class schedule;
3. any other income information;
4. any other information which may have a bearing on establishing need, such as:

- a. in cases of a special need for either a child or an adult, parent/caretakers must complete the Special

Needs Form (Form #601);

- b. for a protective need, complete the Division of Family Services Referral; or

- c. provide some other written documentation from a recognized professional (such as doctor, social worker, nurse, school counselor, etc.) of the special needs.

C. Along with appointment information, send and/or give parent/caretakers a child care certificate package and a list of approximately five available contracted providers. Instruct parent/caretakers to select a provider prior to the formal interview. Even though parent/caretakers may ultimately select providers under contract with DSS, provide them with enough information to make an informed choice. Therefore, in all instances, send and/or give parent/caretakers a certificate package.

D. For parent/caretakers who come into the office without a scheduled appointment, conduct the formal interview process that same day if possible. However, the parent/caretakers need to select a child care provider before care can be authorized. Though verification of the appropriate information to establish need is important, service can be authorized for approximately one month in an emergency. In this case, allow parent/caretakers ten days from the date of the initial application to secure and provide the necessary documentation. If the initial application in this case occurs between the first and the ninth of the month, authorization for care will extend to the end of the current month. If the initial application in this case occurs from the tenth of the month or after, authorization for care will extend

to the end of the following month. If after the ten days, documentation is not provided, send the parent/caretaker a Failure To Provide Information Closing letter (CCMIS letter 4020) informing the parent/caretaker that services will end. If the parent/caretaker provides documentation, extend the authorization accordingly.

11004.2.1 Conducting the Interview

The formal interview will include:

- A. an evaluation of parent/caretaker need for child care services (see DSSM 11003);
- B. a determination of financial eligibility as needed;
- C. an assessment of the family's child care needs as well as the needs of the child(ren) to be placed in care;
- D. an explanation of the available types of child care; the choices parent/caretakers have regarding these provider types; the various provider requirements regarding licensure, health, and safety, including record of immunization; and required child abuse and criminal history checks;
- E. an explanation of DSS payment rates and fee scale, including a discussion of how fees are assessed, where fees are to be paid, what happens if the fee is not paid, and how parent/caretakers are to keep DSS informed of changes that affect fees;
- F. an explanation of parent/caretakers rights and responsibilities;
- G. completion of the Child Care Screening Application, and as applicable completion of the Child Care Authorization and the Child Care Payment Agreement form; and
- H. verification of appropriate information establishing need and income.

11004.3 Review and Verification of Eligibility Requirements

As part of the formal application process, use the parent/caretaker interview to review and verify eligibility requirements. This interview will always include an evaluation of the parent/caretaker need for child care and, as appropriate, a determination of financial eligibility. DSSM 11003, Eligibility Requirements, provides guidance for this review.

When a parent/caretaker makes a contact to inquire about child care, ask the following questions of the parent/caretaker to determine and verify need (these questions follow the eligibility requirements noted in DSSM 11003 and match CCMIS need codes in the CCMIS User Manual, Section 9.8).

- A. Is the parent/caretaker employed or do they need child care to accept employment (Category 12 for Non-First Step employed or Category 31 if not on ABC)? The caretaker must be part of the ABC grant to be a Category 12.
- B. Is the parent/caretaker a former ABC recipient

who is now employed and no longer receiving ABC because of this employment (Category 13 TCC)?

C. Is the parent/caretaker a First Step participant? (Remember, for a caretaker to be a First Step - ABC participant, she/he must be part of the ABC grant. This is Category 11 or 21.)

D. Is the parent/caretaker a self-initiated participant (First Step - ABC) or volunteer (Food Stamp) for First Step? (This includes Categories 11 or 21.)

E. Is the parent/caretaker enrolled in and regularly attending a training program or going to school (Category 31)?

F. Is a special needs child or parent/caretaker in the household (Category 31)?

G. Is there a protective referral from Family Services (Category 31)?

H. If the parent/caretaker meets a Category 13 or 31 need, is their income equal to or below ~~155~~ 200 percent of the federal poverty level needs.

Use the appropriate documents identified in DSSM 11004.2 to verify the need for service. However, verification will not delay authorization of service in the event documentation is not immediately available. See DSSM 11004.3.1, Service Priorities, to determine what may delay service. Authorize service while allowing parent/caretakers ten days to provide the appropriate verification. If after this time documentation is not provided, send the parent/caretaker the Failure to Provide Information Closing letter (CCMIS letter 4020) informing the parent/caretaker that services will end (see DSSM 11004.2 for details).

Place the appropriate category and service need in the marked boxes of the Child Care Screening Application (Form 600).

11004.3.1 Service Priorities

In addition to the eligibility questions in DSSM 11004.3, determine if the applicant meets a priority for service. If the applicant has a need, but is not a service priority, services may be delayed. Delay services by placing non-service priority applicants on a waiting list while authorizing service for those who are a priority. The following families qualify for priority service:

- A. First Step - ABC participants in approved First Step components (Category 11);
- B. Non-First Step families in Child Care Category 12;
- C. families who qualify for Transitional Child Care in Category 13;
- D. families qualifying for child care services under the First Step - Food Stamps program in an approved First Step - ABC component (Category 21);
- E. families in Category 31 with the following need for service:
 1. teen parents who attend high school or ABE or GED programs,

2. special needs caretaker or child, and
3. homeless families as defined in

DSSM 11003.7.2; and

F. protective children as referred by Family Services up to the number agreed upon between DSS and Family Services.

Parent/caretakers in the above circumstances will continue to receive child care services as long as they meet the service need and they continue to meet program requirements, e.g. they continue in First Step.

11004.4 Child Care Certificates

As part of the formal application process, inform all parent/caretakers of their right to choose a child care provider. Parent/caretakers may elect to use a provider under contract with DSS or elect to receive a child care certificate. The child care certificate allows parent/caretakers to select any licensed non-contract provider or license-exempt provider. The child care certificate is part of a package of information provided to parent/caretakers as part of the formal application process. It is necessary to not only provide parent/caretakers with a copy of this package, but explain the purpose of this package and ensure that parent/caretakers reasonably understand its contents.

11004.4.1 Explanation of Certificates

Use the following as a guide to explain the child care certificate package.

A. Parent/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.

B. Licensed Care: In Delaware, all family child care homes, group homes, and child care centers must have a license to operate. Do not allow a parent to select an unlicensed family, group, or center child care provider.

C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:

1. persons who come into the child's own home to care for the parent/caretaker's child,
2. relatives who provide care in their home for the parent/caretaker's child;
3. public or private school care,
4. preschools and kindergarten care, and
5. before and after school care programs.

Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

1. maintaining documentation of the child's immunization record,
2. safe and clean building premises,
3. providers and those 18 and older who live in the home where care is being provided must not have any record of child abuse or neglect (do not allow persons to

provide care where there is a known record of abuse or neglect), and

4. relatives who provide care cannot be part of the welfare grant.

D. Once parent/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

Parent/caretakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.

F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parent/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.

G. Allow parent/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parent/caretakers will need to obtain a new certificate if they still wish to receive service.

H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.

11004.5 Determination of Eligibility

DSS programmed the CCMIS to make eligibility decisions. As Case Managers enter the appropriate parent/caretaker information, the CCMIS will notify Case Managers whether they can proceed to authorize service. As a case is determined either eligible or ineligible, use the appropriate letter of the CCMIS letter function to inform the parent/caretaker of the DSS child care decision. Letters are not automatically generated by the CCMIS; therefore, ensure they complete this step. Parent/caretakers, whether ineligible or not, will always receive a written decision

regarding their official request for child care services.

11004.6 Child Care Eligibility Screening Application

Complete a Child Care Eligibility Screening Application for all parent/caretakers before authorizing child care services. The information from this form becomes the basis upon which child care services are authorized. Therefore, the information should be as complete and accurate as possible. It is important for the parent/caretaker requesting service to sign this application. Their signature represents their official request for service. If a face-to-face interview is not conducted to obtain the information to complete the application, obtain the parent/caretaker signature on the application at the earliest opportunity after service is authorized. Do not allow parent/caretakers to receive services beyond one month without having a signed application on file.

When it is necessary to authorize new child care services to parent/caretakers because of a category change (such as parent/caretakers going from a Category 11 to 13), it is not necessary to have parent/caretakers complete a new child care screening application. This enables DSS to maintain the concept of seamless service.

11004.7 Determination of the Child Care Fee

Under regulations, families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a child care fee. DSS, however, provides child care services to certain families at no cost. Part of the process, therefore, of determining fees includes not only the decision of how much parent/caretakers should pay for the cost of care, but also which families should receive services at no cost.

Parent/caretakers who have a need for service or who receive child care services in Categories 11 or 12 receive service at no cost. In addition, Caretakers in Category 31, who have a need for services and who are caretakers of children who receive ABC or GA assistance, will receive service at no cost. Also, parents/caretakers in Category 31 who are in need of protective services will receive service at no cost, unless the Division of Family Services specifically requests that a parent/caretaker pay a fee.

NOTE: The CCMIS is designed so that if Category 11 or 12 are entered as the child care category, the child care fee is waived automatically.

Parent/caretakers in Categories 13, 21, and 31 are to pay a child care fee, unless the fee is waived. ~~However, regulations do not allow DSS to waive fees for Category 13 parent/caretakers.~~

In categories ~~other than 13~~ where parent/caretakers are to pay a child care fee, the fee may still be waived under the following circumstances:

- A. ~~a child has a protective need;~~
- B. a family has extensive medical expenses for

which there are no payments through Medicaid or other insurance carriers;

C. a family's shelter costs exceed 30 percent of household expenses;

D. a family's utility costs, exclusive of telephone, exceed 15 percent of household income;

E. a family has additional food expenses resulting from diets prescribed by a physician;

F. a family has additional transportation costs due to lack of public transportation in rural areas;

G. a family is homeless;

H. a family has a special need and this need poses a financial hardship; or

I. other situations of hardship exist (multiple children in care, household crisis, etc.).

Document the decision to waive the fee as well as obtain supervisory approval before doing so. The CCMIS User Manual contains the appropriate waiver codes for waiving fees in the CCMIS.

As is the case with income, a person who acts as a child's caretaker, as defined in DSSM 11002.9, pays a child care fee based only upon income attributable to the child.

11004.7.1 Child Care Fee Scale and Determination of Fee

The assessed child care fee is based on family size, family income as a percentage of the poverty scale and the cost of care. The child care fee scale used to determine the child care fee is attached as Appendix III. To arrive at the actual fee, look at this scale and use the following steps.

A. Determine the family size.

B. From the family size column, determine the income range of the parent/caretaker.

C. At the top of the income ranges are percentages from 0% to 36% all the way up to 190% to 200%. These are the percentages of the federal poverty scale as it relates to family income by family size. It means that a family's income can range between 0% to 36% all the way up to 190% to 200% of the federal poverty scale. Find the appropriate percentage column for your family. ~~Based upon the income range of the parent/caretaker, find the percentage of the cost of care that the parent/caretaker will pay.~~

D. Finally, based on family size and income at that appropriate percentage range, look at the percentages below (these are ranges from 1% to 80%). This is the percentage of the cost of care that this family will pay per child based on the percentage of their income as it relates to the federal poverty level. Finally, based upon the type of care (i.e. home, center, etc.) a parent/caretaker selects, multiply the percentage of the cost of care by the cost for that type of care. This is the fee the parent/caretaker will pay.

Families with income between: 0% and 36% of poverty pay 1% of the cost of care, 36% and 45% pay 5% of the cost of care, 45% and 55% pay 7% of the cost of care, 55% and 65% pay 8% of the cost of care, 65% and 75% pay

10% of the cost of care, 75% and 85% pay 12% of the cost of care, 85% and 95% pay 14% of the cost of care, 95% and 100% pay 16% of the cost of care, 100% and 105% pay 21% of the cost of care, 105% and 115% pay 23% of the cost of care, 115% and 120% pay 25% of the cost of care, 120% and 125% pay 30% of the cost of care, 125% and 135% pay 32% of the cost of care, 135% and 145% pay 44% of the cost of care, 145% and 155% pay 46% of the cost of care, 155% and 160% pay 48% of the cost of care, 160% and 170% pay 50% of the cost of care, 170% and 180% pay 60% of the cost of care, 180% and 190% pay 70% of the cost of care and 190% and 200% pay 80% of the cost of care.

11004.7.2 Paying the Child Care Fee

Parent/caretakers will pay their child care fee directly to the child care provider. This fee, in combination with what DSS pays the provider, represents the reimbursement limit DSS allows for child care services. These limits are based on the child care type and the age of the child. DSS either has contracts with providers for these rates or providers agree to accept them as their rates. If, however, providers do not accept these rates, parent/caretakers will self-arrange care directly with the provider. In this instance, the parent/caretaker will not only pay their fee, but also the provider's full charge for care. The parent/caretaker will submit an original receipt for reimbursement, at which time DSS will reimburse the parent/caretaker in an amount up to the statewide limits (see 11004.4.1 above), less the child care fee. Parent/caretakers who fail to pay their child care fee or who fail to make arrangements to pay past fees owed will have their child care services terminated. Providers are responsible for informing DSS of the parent/caretaker's failure to pay the fee. Obtain such information in writing from providers whenever possible. However, it is acceptable to obtain this information verbally if the following procedures are used:

A. Accept and document (e.g. note the date and time of the call/conversation and the information given in the case record) the information from the provider.

B. Request that the provider follow up this information in writing to the child care monitor in their county.

C. Send the Failure to Pay Child Care Fee Closing (CCMIS Notice 4060) to the parent/caretakers informing them that service will terminate due to non-payment of the fee unless arrangements are made with providers to pay past fees owed.

D. Require parent/caretakers to submit information in writing which details the arrangements they made with providers to pay past fees owed.

Parent/caretakers whose child care case closes because of failure to pay child care fees cannot receive a new authorization for service until they satisfy or make arrangements to pay past fees owed.

11004.8 Creation of a Case in the CCMIS

It will not be possible to complete a child care application until a case is created in the CCMIS. Only by creating a case is it possible to authorize and allow payment for child care services. If the CCMIS is not functioning when the parent/caretaker is interviewed, manually complete the information needed to create a case and authorize care, and enter the information into the CCMIS at the earliest opportunity. The beginning date for service in this instance will be the actual interview date or the date the parent/caretaker needs service to begin. Follow the Client Management Section of the CCMIS User Manual.

In creating a case, observe the following rules.

A. The first person entered in the case is the casehead, e.g. parent/caretaker.

B. Complete a search of the Master Client Index (MCI) for each participant before initiating new records (see the User Manual for instructions). If clients are not currently receiving DSS benefits, ask if clients ever received benefits in the past. This will assist the MCI search.

C. Register each participant (i.e. parent/caretaker or child) who is not already registered in the Master Client Index.

D. CCMIS data screens have required data fields. These fields are "starred" on the CCMIS data screens. It is necessary to complete the data for these fields before the system will allow case processing to proceed.

E. When entering a "new" case, enter an "N" for Action Type (see the User Manual for coding instructions).

F. Review dates for new cases on the CASE INFORMATION screen should have a maximum time period of six months from the date of application (use end of month dates, e.g. January 31). Time periods can be for less time, but must never exceed six months. This date does not correspond to the authorization ending date, but is used for Case Manager worklisting purposes. The next review period is the time during which redetermination of parent/caretaker eligibility is done to ensure that child care services can either continue or should close.

G. DSS programmed the CCMIS to allow for entry of information related to category and need at the child level instead of the case level. DSS did this to enable Case Managers to split children into different categories when all the children from the same household cannot be placed into one category.

H. It is not possible to add income sources or employers for active DCIS cases (i.e. open in ABC or Food Stamps). However, it is possible to adjust wages or other income sources. Remember it is from these income sources that the CCMIS will determine financial eligibility and fees. Case Managers should make every effort, therefore, to ensure this information is accurate.

I. Once all appropriate casehead information has been entered, add the "child" participant(s) to the case. Add child participant(s) in the same way as the casehead.

However, enter information related to category and need, and the fee waived reason (if the fee is to be waived), at the child level for this information to register in the CCMIS. If this is a Category 11 or 12 case, the CCMIS waives the fee automatically.

11004.9 Authorizing Service

Once a case is created, service must be authorized before parent/caretakers can receive subsidized child care. Authorization is both the name for the form (618d) and the process to grant parent/caretakers child care services (see DSSM 11002.9 for definition).

Complete a separate authorization for each child who is eligible to receive child care services. Therefore, if there is more than one child in a family who needs service, complete separate authorizations for each child. Complete an authorization by creating one in the CCMIS. Again, as when entering a case, CCMIS authorization data screens have required data fields which are "starred." Complete these data fields before proceeding. Follow the rules below in creating authorizations.

A. Obtain provider information before completing an authorization.

This means that if parent/caretakers wish to select a provider by using a child care certificate, they must have the certificate returned before an authorization can be issued.

B. Parent/caretakers can only choose providers who are either self-arranged, licensed exempt or who can be matched to existing information in the Site Referral function of the CCMIS. If the provider selected has a contract with DSS, this provider will be listed in the CCMIS under the Site Referral section. Access these providers through their site ID#. Finally, if parent/caretakers use a certificate and they select a contracted provider, consider this as contracted care even though the parent/caretaker used a certificate.

C. When parent/caretakers wish to self-arrange child care, ensure the parent submits the information on the Self-Arranged Provider Agreement and Registration Form. When parent/caretakers wish to arrange certificate child care, ensure the parent submits the information on the Child Care Certificate Provider Agreement and Registration Form. Send the appropriate form to the Child Care Monitor for CCMIS processing. The monitor will notify the Case Manager when the information is data entered.

D. When the monitor notifies the Case Manager that data has been entered in CCMIS, enter effective and expiration dates on the authorization. Effective dates will always start when service is due to begin. In most cases, service will begin either the same day the authorization is completed or on a date in the near future. However, there may be occasions when service will begin prior to the actual date of the child care interview.

1. For categories 11, 12, and 21 child care, authorize care for periods of up to one year.

2. For Category 13, Transitional Child Care, authorize care for the parent/caretaker's entire eligibility period up to a maximum of 12 months.

NOTE: Eligibility for TCC begins the first month after the closing of the ABC case and extends for 12 consecutive months.

3. For Category 31 child care, authorize care for periods of up to six months or less depending upon the parent/caretaker's circumstances.

Though care can be authorized for periods greater than six months, it is still necessary to review each child care case at least every six months to ensure that the parent/caretaker remains eligible for services.

As noted above, the ending date will always be the last day of the month of the authorization period.

E. Ensure that service is authorized only for the days and hours that parent/caretakers actually need care. Therefore, only enter the following on the authorization:

1. the appropriate number of days per week that parent/caretakers will need care, for example 1, 2, 3, 4, or 5 days;

2. the appropriate type of care needed, half-day (P), full-day (X), day and a half (T), or two full days (D) (supervisory approval is necessary for T and D care);

3. whether absent days are paid (absent days correspond to the number of authorized days, however, when care is self-arranged, DSS pays only for the days the child attends care);

4. whether extended care is authorized; and

5. whether school care is authorized.

F. When completing authorizations for First Step participants (Categories 11 or 21), complete the Employment and Training type and the Employment and Training component fields of the authorization screen. Employment and Training type refers to whether the participant is mandatory or a volunteer. Components refer to participant activities. The User Manual contains the appropriate codes.

G. The remaining fields (Category, Waive Fee Reason, Family Size, and Family Income) of the authorization screen are system completed, depending upon the information previously entered on the CHILD CARE CASE INFORMATION screen. The authorization is now complete. Press the appropriate key to post the authorization in the system. Complete separate authorizations if there are more children who need care.

11004.9.1 Changing Authorizations

Complete a change to an existing authorization whenever a situation occurs within the authorization period which requires a change to the parent/caretaker's situation. The CCMIS defines this as a Change Authorization. Examples of when Change Authorizations occur are:

A. a change in the authorized level of service, for example number of days, type of service, absent days,

etc.;

- B. a change of provider;
- C. a change in category;
- D. a change in parent/caretaker need;
- E. a change in family size;
- F. a change in income; or
- G. a change in the child care fee.

11004.9.2 Interrupted Child Care

Families receiving child care during the school year sometimes need to change their service requirements during the summer months. For instance, some parents make alternate arrangements during the summer for a school-age child who receives care throughout the school year. These arrangements may not require the need for child care services. However, the parent may still need child care when the school year starts again in September. In addition, some parents only work during the school year and may not need child care during the summer months, such as parents who drive a school bus.

DSS will continue service to those families who do not need service for the summer but who will need service again in September. This break is considered an interruption of service and not as an end to the family's service need. Therefore, even though these families need to re-apply for service before September, they will not be re-applying as totally new cases and will not have to go on the waiting list.

Certain families who have an authorization end date for June may not keep their redetermination appointments (due to making alternate arrangements for child care during the summer or not needing care at all). These families are notified to contact their Case Manager if they need care again in September. If they fail without good cause to keep their re-application appointments or to contact their Case Manager, their service will not continue as before. They will go on the waiting list.

11004.9.3 Changing Provider

DSS designed the CCMIS so that there would not be two "active" authorizations for one child at the same time. However, there is one exception: when a parent/caretaker wishes to change providers. In this instance, enter the change of provider and the CCMIS will (1) change the old authorization to close it effective the end of the current month, and (2) create a new authorization effective the date of the change in provider. Both authorizations will remain in effect until the first expires. This will allow DSS to pay both providers.

However, because DSS requires that providers be given at least five days notice of this change, there may be instances when the original authorization will remain in effect until the last day of the next month. Since the Change Authorization will be mailed to the provider, do not send a separate notice. Ensure that parent/caretakers pay any fees they may owe the old child care provider.

11004.9.4 Creating Unmet Needs

Under certain conditions, DSS may not be able to provide service to eligible parent/caretakers. Either because of a lack of funding or because DSS cannot match child's child care need with an available provider, do not authorize service. When an authorization for one of the above reasons cannot be completed, place the child or children on an Unmet Need Waiting List. Follow the Unmet Needs Section of the User Manual both for placement and removal of a child(ren) on the Unmet Need Waiting List.

When services to parent/caretakers who are a non-service priority must be delayed, do the following:

- A. continue to accept requests and applications for child care services,
- B. complete the child care case information to create a CCMIS case,
- C. place the child(ren) on the Unmet Need Waiting List,
- D. inform parent/caretakers that DSS is placing them on a waiting list and that they will be notified when an opening becomes available, and
- E. either authorize care when services are available or close the case if parent/caretakers no longer desire service.

11004.10 Child Care Payment Agreement

Parent/caretakers will no longer receive a copy of the authorization. Instead, as authorizations are created, the CCMIS will automatically batch and process the authorizations each night at the DCIS data center. The DCIS data center will mail the authorization to providers the next work day. Instead of the authorization, provide parent/caretakers with a copy of the Child Care Payment Agreement Form (Form 626). Parent/caretakers will present this copy of the Child Care Payment Agreement form to providers as their initial verification of service authorization. (Providers have been instructed to accept this as a sign of authorization until the official authorization arrives in the mail.)

The purpose of the Child Care Payment Agreement Form is to ensure that parent/caretakers acknowledge their responsibilities as recipients of DSS child care services. Complete the blank spaces of this form with information appropriate to each parent/caretaker. Complete the form, give two copies to the parent/caretaker (one for their records and one for presentation to the provider), and keep one copy with the Case Manager's file.

11004.11 Review/Determination

Authorizations remain effective for the entire authorization period as long as parent/caretakers continue to meet the requirements for service (such as the parent/caretaker remains a First Step participant, keeps employment, remains income eligible, etc.). At least once every six months and just prior to the end of each authorization period, review/redetermine the circumstances

of each parent/caretaker to see if child care services can continue. The review/redetermination process will differ for each child care category.

A. For Category 11, 12, and 21 child care cases, perform the following every six months:

1. review each Category 11 and 21 case to ensure the parent/caretaker is still active with First Step by having the parent/caretaker provide some proof they are a First Step participant;

2. review each Category 12 case to ensure that the parent/caretaker is still employed by having the parent/caretaker provide some proof of employment.

For this review, it will not always be necessary to schedule parent/caretakers for a face-to-face interview or to repeat the application process. As long as parent/caretakers provide some proof that they remain a First Step participant or remain an employed ABC recipient, they remain eligible for child care services. However, at least once per year, schedule parent/caretakers for a face-to-face interview.

Prior to the end of each authorization period, not only complete the review described above, but also complete a new authorization under Action Type "R" for redetermination and set new dates for the next authorization period.

Because parent/caretakers receiving Category 11, 12, and 21 child care can receive child care as long as they meet requirements, do not allow an authorization to end or close a case without first providing parent/caretakers with timely and adequate notice. Do not simply send Category 11, 12, and 21 families a redetermination notice and then close a case if there is no response to this notice (i.e. they either fail to keep an appointment or fail to provide requested information). Send a separate ten day closing notice to parent/caretakers who fail without good cause to keep an appointment or provide proof of information about First Step or employment. If after ten days there is no response, close the case at the end of the current month. However, if the ten days extends into the next month, the case will not close until the end of the following month.

If parent/caretakers provide good cause for their failure to act, continue service. Good cause can be anything believed to be reasonable, but generally includes things such as:

1. illness;
2. court required appearance;
3. a household emergency (fire, heating problem, family crisis, etc.);
4. lack of transportation; or
5. bad weather.

If it is believed that good cause does not exist, but the parent/caretaker requests a fair hearing, close the case after proper notice. Child care services for Category 11, 12, and 21 do not continue pending the outcome of a fair hearing.

If a Category 11, 12, or 21 case is closed without providing timely and adequate notice, it is to be administratively reopened to ensure uninterrupted service.

B. For Category 13 child care cases, at least every six months:

1. review each Category 13 case to ensure the parent/caretakers are still employed by having them provide

some proof of employment;

2. review income and family size information to determine income eligibility and to reset the child care fee (if income changes the fee, do a Change Authorization to set a new fee);

3. complete a new Child Care Payment Agreement Form resulting from a change in fee;

NOTE: If the fee increases, the new fee will not take effect until proper notice is given. When the Change authorization is completed, the CCMS will determine whether the change can occur the first day of the next month or the first day of the month following the next month.

4. close the parent/caretaker if income is over the ~~155~~ 200 percent of poverty limit.

NOTE: Give proper notice. If unable to give ten day notice of the closing before the end of the month, then the case will not close until the last day of the next month.

For this initial review, it will not be necessary to conduct a face-to-face interview or to repeat the application process. However, parent/caretakers will have to submit documentation for Case Managers to verify employment and income.

Prior to the end of the TCC authorization period, send parent/caretakers an appointment letter for a redetermination interview. At this appointment, redetermine the parent/caretaker's eligibility for service as a Category 31 child care case. Service cannot continue if the parent/caretakers fail to meet Category 31 eligibility requirements.

If parent/caretakers fail, without good cause, to either provide proof of employment and income or to keep their appointment, follow the notice requirements noted above regarding Category 11, 12, and 21 cases. Note the following difference: TCC services can continue pending a fair hearing request, but only within the 12 month limitation.

Parent/caretakers whose TCC eligibility ends, but who meet requirements for Category 31 child care, can continue receiving child care. Complete a new authorization under Action Type "R" for redetermination. Complete a category change and set a new authorization period. Since this is now a Category 31 case, the authorization period should now be six months.

C. For Category 31 child care cases, perform the following at least every six months:

1. complete a redetermination by scheduling

parent/caretakers for a redetermination interview and requesting parent/caretakers to provide verification of need and income;

2. at the redetermination interview, redetermine eligibility using the criteria in DSSM 11003, Eligibility Requirements;

3. update case information (it will not be necessary for the parent/caretaker to complete a new application);

4. update the child care fee by reviewing income and family size;

5. complete a new Child Care Payment Agreement Form;

NOTE: Complete a new form whether the fee changes or not. Also, if the fee increases, the fee will not take effect until proper notice is given. Do not use the approval letter in the CCMIS to notify parent/caretakers of the fee change. Use instead the Child Care Approval Letter after Redetermination (Form 629).

6. complete a new authorization under Action Type "R" for redetermination and set new dates for the authorization or close the case if the parent/caretaker is no longer eligible.

Parent/caretakers who fail without good cause to keep their redetermination interview, or who do not provide verification of need and income, will have their child care case close. Though there is no requirement in Category 31 cases to provide parent/caretakers with notice of this closing, send a Generic Closing Letter (Form 630), to the parent/caretaker. State the reason for the closing on this form.

In situations where good cause is believed (such as a parent/caretaker calls the Case Manager with this information), or where the parent/caretaker is unable to keep the interview appointment due to illness, it is possible to do a redetermination for one month to allow the parent/caretaker time for another interview.

Parent/caretakers whose child care case closes because of their failure to keep a redetermination interview or provide verification of need and income may request a fair hearing. Child care services, however, will not continue past the authorization end date.

In the event the agency errs in not completing a redetermination before a parent/caretaker's current authorization expires (such as change of Case Manager causes no redetermination letter to go out), still do a redetermination authorization, backdated to the first day of the month the new authorization would have begun had the agency not erred.

Parent/caretakers whose child care cases close because they failed to keep a redetermination or provide verification, can reapply for service (see instructions for reopening a case in the User Manual). However, if DSS is in a "wait list" situation, these parent/caretakers will be subject

to DSS' priority service order.

11004.12 Closing Cases

A parent/caretaker's authorization for service should end when any of the following occurs:

A. the parent/caretaker need no longer exists,

B. the parent/caretaker's income exceeds income limits,

C. the parent/caretaker fails to pay the child care fee or fails to make arrangements to pay past fees owed,

D. the parent/caretaker refuses to provide verification of eligibility,

E. the parent/caretaker is a First Step participant who is sanctioned,

F. a protective case fails to follow the Division of Family Services case plan,

G. a TCC parent/caretaker quits a job without good reason,

H. at the request of the parent/caretaker, and

I. if program funds should be reduced.

When a case needs to be closed due to one of the above reasons, complete the Close Case function in the CCMIS (see instructions for closing cases in the User Manual).

When closing cases for Categories 11, 12, 13, and 21, send the appropriate closing notice which provides a ten day notice (see discussion above in DSSM 11004.11). Even though DSS programmed the CCMIS to allow for ten day notice before an authorization closes, separately send the notice through the CCMIS letter function. For Category 31 cases, send a Generic Closing Letter (Form 630). State the reason for the closing on this form.

When parent/caretakers make a request to close their case, allow a minimum of five care days to notify providers of the case closing. Again the CCMIS is programmed to make allowance for this time.

11004.12.1 Loss of Need Transition

If parent/caretakers should lose their need for service, child care authorization should generally end. However, under certain circumstances, continue to authorize service for up to one month for parent/caretakers who:

A. lose employment and who need to search for new employment,

B. experience a gap in employment because of a transition between jobs,

C. end an education/training program and need to search for employment, or

D. experience a break in an education/training program.

DIVISION OF SOCIAL SERVICES

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

In The Matter Of:

Revision Of The Regulations
Of The Medicaid/medical
Assistance Program

Nature Of The Proceedings:

The Delaware Department of Health and Social Services (“Department”) initiated proceedings to update policies related to provider general policies. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 1999 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the October 1999 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective December 10, 1999.

Gregg C. Sylvester, M.D., Secretary
November 9, 1999

Who is eligible for the DHCP?

To be eligible for the DHCP the child must:

- be under the age of 19 years (through 18);
- have a family income less than or equal to 200% of the Federal Poverty Level (FPL);
- be a current Delaware resident with intent to remain;
- be uninsured for at least 6 previous months (exceptions to this would be made if coverage is lost due to: death of parent, disability of parent,

termination of employment, change to a new employer who does not cover dependents, change of address so that no employer-sponsored coverage is available, expiration of the coverage periods established by COBRA, employer terminating health coverage as a benefit for all employees);

NOTE: Applicants who have been uninsured less than 6 months will be given a time when their pending application for the program can be approved. ~~If children have been enrolled in the DHCP, but premiums have not been paid for 2 months, eligibility will be suspended and enrollment in the MCO will end. The family will then be ineligible for 6 months from the date of suspension and disenrollment, unless they can demonstrate good cause, as defined by the State, for non-payment of premium. Families who do not pay the premiums may re-enroll at any time without penalty, with the re-enrollment period starting with the first month for which the premium is paid.~~

DIVISION OF SOCIAL SERVICES

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

In The Matter Of:

Revision Of The Regulations
Of The Medicaid/medical
Assistance Program

Nature Of The Proceedings:

The Delaware Department of Health and Social Services (“Department”) initiated proceedings to update policies related to the home health provider manual. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the September 1999 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective December 10, 1999.

Gregg C. Sylvester, M.D., Secretary
November 4, 1999

Home Health Provider Manual

X. Assisted Living Medicaid Waiver Program

Individuals who are eligible for the Assisted Living Medicaid Waiver program will be issued a unique Medicaid card. The card will identify the individual as being eligible for the Assisted Living Waiver.

Home health services provided to clients who are eligible for the Assisted Living Medicaid Waiver program must be prior authorized by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) nurse/case manager. The primary care physician, family, consumer, home health agency, or private duty nurse should direct request for prior authorization to the appropriate DSAAPD location as listed in the front of the General Policy. The request should include the following information:

- Name of consumer
- Consumer's Medical Assistance ID number
- Date of birth
- Detailed medical history that documents the need for the home health or private duty nursing service requested
- Nursing assessment and plan of care
- Physical assessment and diagnosis
- Psycho-social assessment including home, family an environmental factors
- Level of function (physical, mental, developmental)Availability and ability of caretaker to maintain client in the home, e.g., knowledge of emergency procedures.

The DSAAPD will forward a letter detailing the prior authorization to the home health agency. This notification must be retained in the home health agency's medical record. Prior authorization from the DSAAPD nurse/case manager does not relieve the HHA from responsibility of conducting an independent assessment that meets the DMAP policy. See Appendix A for the appropriate HCPCS codes used for services provider to assisted living waiver clients.

The DMAP does not cover home health services provided to an assisted living consumer on a non-medical/social leave of absence outside the State of Delaware.

The DMAP may cover medically necessary home health services to an assisted living consumer on a non-medical/social leave of absence within the State of Delaware. Prior authorization must be obtained through the DSAAPD nurse for nursing aide services and/or skilled nursing services.

The DMAP does not cover home health aide visits in the assisted living agency.

The DMAP may cover medically necessary skilled nursing visits in the assisted living agency. Prior authorization must be obtained through the DSAAPD nurse.

DIVISION OF SOCIAL SERVICES

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

In The Matter Of:

Revision Of The Regulations
Of The Medicaid/medical
Assistance Program

Nature Of The Proceedings:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to pharmacy provider manual. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the September 1999 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective December 10, 1999.

Gregg C. Sylvester, M.D., Secretary
November 4, 1999

Pharmacy Provider Manual

Drugs Used for Cosmetic Purposes

Drugs used for cosmetic purposes are not routinely covered by the DMAP. Currently, those drugs include Minoxidil Lotion and Retin A for adults. [NOTE: Retin A is covered for DMAP recipients under the age of 21 (through the 20th year).] The DMAP defines the treatment of acne in adults as cosmetic. Medications for adults suffering from acne are not covered.

**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)

* PLEASE NOTE: ALTHOUGH THE SECRETARY'S ORDER ON THIS REGULATION REFLECTS AN EFFECTIVE DATE OF OCTOBER 11, 1999, THE APPROPRIATE EFFECTIVE DATE FOR THIS REGULATION IS DECEMBER 13TH DUE TO A DELAY IN SUBMISSION FOR PUBLICATION IN THE REGISTER.

**Re: Delaware's Regulations Governing the Control of
Air Pollution Relating to PM 2.5 and the National Low
Emissions Vehicle Program**

Date of Issuance: September 1, 1999

Effective Date of the Amendments: October 11, 1999

I. Background Findings

A public hearing was held on July 8, 1999, at the DNREC Auditorium in Dover to receive comment on two new proposed regulatory provisions. The first involves a new primary and secondary ambient air quality standard for fine particulate matter, commonly called PM_{2.5}, which would be incorporated into Regulation No. 3. The second aspect of this hearing involved the National Low Emission Vehicle Program the purpose of which is to reduce emissions from automobiles through more stringent NLEV regulations which automobile manufacturers have voluntarily opted to

implement rather than alternative restrictions. Proper notice of the public hearing was provided as required by law. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated August 16, 1999, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

1. Proper notice of the hearing was provided as required by law.

2. Included as an exhibit to the hearing is a letter from the United States Protection Agency Region III expressing support for the fine particulate standard.

3. Absolutely no public comments were entered into the hearing record either orally or in written form. 4. In view of the support for the fine particulate standard from EPA and in the absence of any opposition to either proposal, evidence in the record supports promulgation of the proposed changes to the regulations.

5. Although the NLEV program was proposed in response to requests from automobile manufacturers and it appears to be entirely federally enforceable, the purpose and intent of it should reduce the amount of pollutants in Delaware's air.

6. The complete lack of public opposition to the proposed changes demonstrates that any burden of compliance to the regulated community is offset by the potential environmental benefits from the proposed regulatory changes.

III. Order

In view of the above, I hereby order that the proposed changes to the Delaware Regulations Governing the Control of Air Quality (as shown in hearing exhibit no. 1) be adopted in the manner and form provided for by law.

IV. Reasons

Adopting the proposed amendments to Delaware's Regulations Governing the Control of Air Pollution will further the policies and purposes of 7 Del. C. Chapter 60, because the standards and program should help reduce the amount of pollutants in Delaware's air. Further, the complete lack of public opposition to the proposed changes demonstrates that any burden of compliance to the regulated community is offset by the potential environmental benefits from the proposed regulatory changes.

Nicholas A. Di Pasquale, Secretary

Adopted Regulation Changes to The Delaware Regulations Governing the Control of Air Pollution.

Regulation No. 3 – AMBIENT AIR QUALITY STANDARDS

Section 11 - PM₁₀ and PM_{2.5} Particulates

11.1 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM₁₀ are:

- a. ...
- b. ...

11.2 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM_{2.5} are:

a. ~~{Reserved}~~ 65 micrograms per cubic meter (Fg/m³) 24-hour average concentration. The 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38757 -38758, is less than or equal to 65 Fg/m³.

b. ~~{Reserved}~~ 15.0 micrograms per cubic meter (Fg/m³) annual arithmetic mean concentration. The annual primary and secondary PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38756 - 38757, is less than or equal to 15.0 Fg/m³.

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. 6010)

Re: Regulations Governing the Control of Air Pollution Amendment to Regulation No. 37 - NO_x Budget Program

Date of Issuance: November 12, 1999

Effective Date of the Amendments: December 11, 1999

I. Background

On Thursday, September 23, 1999, at approximately 6:05 p.m., 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 amendment to Regulation No. 37 of the *Regulations Governing the Control of Air Pollution*. The

hearing record remained open after the hearing until October 1, 1999, but no additional public comment was received other than Conectiv Exhibit No. 1 and Motiva Exhibit No. 1, which were accepted into the record at the public hearing. After the close of the public record, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated November 8, 1999, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated November 4, 1999, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed amendment to Regulation No. 37 of the *Regulations Governing the Control of Air Pollution*, as proposed at the public hearing, be promulgated in the manner and form provided for by law.

IV. Reasons

Adopting the proposed amendment to Regulation No. 37 of the *Regulations Governing the Control of Air Pollution* will further the policies and purposes of 7 Del.C. Chapter 60. The record demonstrates that NO_x is a precursor chemical to the formation of ground level ozone, which has significant adverse impacts of the health of humans and plant life. Regulation No. 37 institutes a program of compliance toward attaining the 1-hour national ambient air quality standards for ground level ozone (smog) by regulating NO_x emissions. In addition, Delaware is required by the federal Clean Air Act to achieve attainment with the National Ambient Air Quality Standards for ground level ozone.

Nicholas A. Di Pasquale, Secretary

Section 1 - General Provisions

a. The purpose of this regulation is to reduce nitrogen oxides (No_x) emissions in Delaware through implementation of Delaware's portion of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) by establishing in the State of Delaware a NO_x Budget Program.

b. A NO_x allowance is an authorization to emit NO_x, valid only for the purposes of meeting the requirements of this regulation.

1. All applicable state and federal requirements remain applicable.

2. A NO_x allowance does not constitute a security or other form of property.

c. On or after May 1, 1999, the *owner or operator* of each *budget source* shall, not later than December 31 of each calendar year, hold a quantity of NO_x allowances in the *budget source's current year NATS account* that is equal to or greater than the total NO_x emitted from that *budget source* during the period May 1 through September 30 of the subject year.

d. *Allowance transfers* between *budget sources* sharing a common *owner or operator* and/or *authorized account representative* are subject to all applicable requirements of this regulation, including the *allowance transfer* requirements identified in Section 11 of this regulation.

e. Offsets required for new or modified sources subject to non-attainment new source review must be obtained in accordance with Regulation 25 of Delaware's "Regulations Governing the Control of Air Pollution" and Section 173 of the Clean Air Act. *Allowances* are not considered offsets within the context of this regulation.

f. Nothing in this regulation shall be construed to limit the authority of the Department to condition, limit, suspend, or terminate any *allowances* or authorization to emit.

g. The Department shall maintain an up to date listing of the NO_x sources subject to this regulation.

1. The listing shall identify the name of each NO_x *budget source* and its annual *allowance allocation*, if any.

2. The Department shall submit a copy of the listing to the *NATS Administrator* by January 1 of each year, commencing in 1999.

Section 2 - Applicability

a. The NO_x Budget Program applies to any *owner or operator* of a *budget source* where that source is located in the State of Delaware.

b. Any person who owns, operates, leases, or controls a stationary NO_x source in Delaware not subject to this program, by definition, may choose to *opt into* the NO_x Budget Program in accordance with the requirements of Section 8 of this regulation. Upon approval of the *opt-in* application by the Department, the person shall be subject to all terms and conditions of this regulation.

c. A *general account* may be established in accordance with Section 7 of this regulation. The person responsible for the *general account* shall be responsible for meeting the requirements for an *Authorized Account Representative* and applicable *account* maintenance fees.

Section 3 - Definitions

For the purposes of this regulation, the following

definitions apply. All terms not defined herein shall have the meaning given them in the Clean Air Act and Regulation 1 of the State of Delaware "Regulations Governing the Control of Air Pollution".

a. *Account* means the place in the NO_x *Allowance Tracking System* where allowances held by a *budget source* (*compliance account*), or allowances held by any person (*general account*), are recorded.

b. *Account number* means the identification number assigned by the NO_x *Allowance Tracking System* (*NATS Administrator*) to a *compliance* or *general account* pursuant to Section 10 of this regulation.

c. *Administrator* means the Administrator of the U.S. EPA. The *Administrator* of the U.S. EPA or his designee(s) shall manage and operate the NO_x *Allowance Tracking System* and the NO_x *Emissions Tracking System*.

d. *Allocate* or *Allocation* means the assignment of *allowances* to a *budget source* through this regulation; and as recorded by the *Administrator* in a NO_x *Allowance Tracking System compliance account*.

e. *Allowance* means the limited authorization to emit one ton of NO_x during a specified *control period*, or any *control period* thereafter subject to the terms and conditions for use of *banked allowance* as defined by this regulation. All *allowances* shall be allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

f. *Allowance deduction* means the withdrawal of allowances for permanent retirement by the *NATS Administrator* from a NO_x *Allowance Tracking System account* pursuant to Section 16 of this regulation.

g. *Allowance transfer* means the conveyance to another *account* of one or more *allowances* from one account to another by whatever means, including but not limited to purchase, trade, auction, or gift in accordance with the procedures established in Section 11 of this regulation, effected by the submission of an *allowance transfer* request to the *NATS Administrator*.

h. *Alternative monitoring system* means a system or component of a system, designed to provide direct or indirect data of mass emissions per time period, pollutant concentrations, or volumetric flow as provided for in Section 13 of this regulation.

i. *Authorized Account Representative (AAR)* means the responsible person who is authorized, in writing, to transfer and otherwise manage *allowances* as well as certify reports to the *NATS* and the *NETS*.

j. *Banked Allowance* means an *allowance* which is not used to reconcile emissions in the designated year of *allocation* but which is carried forward into the next year and flagged in the *compliance* or *general account* as "banked".

k. *Banking* means the retention of unused *allowances* from one *control period* for use in a future *control period*.

l. *Baseline* means, except for the purposes of Section 12(d) (Early Reductions) of this regulation, the NO_x emission inventory approved by the Ozone Transport Commission on June 13, 1995, and revised thereafter, as the official 1990 baseline emissions of May 1 through September 30 for purposes of the NO_x Budget Program.

m. *Boiler* means a unit which combusts *fossil fuel* to produce steam or to heat water, or any other heat transfer medium.

n. *Budget* or *Emission Budget* means the numerical result in tons per *control period* of NO_x emissions which results from the application of the emission reduction requirement of the *OTC MOU* dated September 27, 1994, and which is the maximum amount of NO_x emissions which may be released from the *budget sources* collectively during a given *control period*.

o. *Budget source* means a *fossil fuel fired boiler* or *indirect heat exchanger* with a *maximum heat input* capacity of 250 MMBTU/Hour, or more; and all *electric generating units* with a *generator nameplate capacity* of 15 MW, or greater. (Although not a *budget source* by definition, any person who applies to *opt into* the NO_x Budget Program shall be considered a *budget source* and subject to applicable program requirements upon approval of the application for *opt-in*.)

p. *Clean Air Act* means the federal Clean Air Act (42 U.S.C. 7401- 7626).

q. *Compliance account* means the *account* for a particular *budget source* in the *NO_x Allowance Tracking System*, in which are held current and/or future year allowances.

r. *Continuous Emissions Monitoring System (CEMS)* means the equipment required by this regulation used to sample, analyze, and measure which will provide a permanent record of emissions expressed in pounds per million British Thermal Units (Btu) and tons per day. The following systems are component parts included in a continuous emissions monitoring system: nitrogen oxides pollutant concentration monitor, diluent gas monitor (oxygen or carbon dioxide), a data acquisition and handling system, and flow monitoring systems (where appropriate).

s. *Control period* means the period beginning May 1 of each year and ending on September 30 of the same year, inclusive.

t. *Current year* means the calendar year in which the action takes place or for which an *allocation* is designated. For example, an *allowance allocated* for use in 1999 which goes unused and becomes a *banked allowance* on January 1, 2000 can be used in the "*Current Year*" 2000 subject to the conditions for *banked allowance* use as stated in this regulation.

u. *Early Reduction Allowance* means an *allowance* credited for a NO_x emission reduction achieved during the *control periods* of either 1997 or 1998, or both.

v. *Electric generating unit* means any *fossil fuel fired* combustion unit which provides electricity for sale or use.

w. *Excess emissions* means emissions of nitrogen oxides reported by a *budget source* during a particular *control period*, rounded to the nearest whole ton, which is greater than the number of *allowances* which are available in that *budget source's NO_x Allowance Tracking System compliance account* on December 31 of the calendar year for the subject NO_x control season. For the purpose of determining whole tons on *excess emissions*, the number of tons of *excess emissions* shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

x. *Existing budget source* means a *budget source* that operated at any time during the period beginning May 1, 1990 through September 30, 1990.

y. *Fossil fuel* means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived wholly, or in part, from such material. For the purposes of this regulation only, this definition does not include CO derived from any source.

z. *Fossil fuel fired* means the combustion of *fossil fuel* or any derivative of *fossil fuel* alone, or, if in combination with any other fuel, where *fossil fuel* comprises 51% or greater of the annual *heat input* on a BTU basis.

aa. *General Account* means an *account* in the *NATS* that is not a *compliance account*.

bb. *Heat input* means heat derived from the combustion of any fuel in a *budget source*. *Heat input* does not include the heat derived from preheated combustion air, recirculated flue gas, or exhaust from other sources.

cc. *Indirect heat exchanger* means combustion equipment in which the flame and/or products of combustion are separated from any contact with the principal material in the process by metallic or refractory walls, which includes, but is not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, reactor feed preheaters, and fuel-fired reactors such as steam hydrocarbon reformer heaters and pyrolysis heaters.

dd. *Maximum heat input capacity* means the ability of a *budget source* to combust a stated maximum amount of fuel on a steady state basis, as determined by the greater of the physical design rating or the actual maximum operating capacity of the *budget source*. *Maximum heat input capacity* is expressed in millions of British Thermal Units (MMBTU) per unit of time which is the product of the gross caloric value of the fuel (expressed in MMBTU/pound) multiplied by the fuel feed rate in the combustion device (expressed in pounds of fuel/time).

ee. *Nameplate capacity* means the maximum electrical generating output that a generator can sustain when not restricted by seasonal or other deratings.

ff. *New budget source* means a NO_x source that is a *budget source*, by definition, that did not operate between May 1, 1990 and September 30, 1990, inclusive. A NO_x source, that is a *budget source* by definition, that was constructed prior to or during the period May 1, 1990 through September 30, 1990, but did not operate during the period May 1, 1990 through September 30, 1990, shall be treated as a *new budget source*.

gg. *NO_x Allowance Tracking System (NATS)* means the computerized system established and used by the Administrator to track the number of *allowances* held and used by any person.

hh. *NO_x Emissions Tracking System (NETS)* means the computerized system established and used by the Administrator to track and provide a permanent record of NO_x emissions from each *budget source*.

ii. *Non-Part 75 Budget Source* means any *budget source* not subject to the requirements for emissions monitoring adopted pursuant to Regulation 36 of the State of Delaware "Regulations Governing the Control of Air Pollution".

jj. *Off budget* means not subject to this regulation.

kk. *Off budget source* means any source of NO_x emissions that is not included in the NO_x Budget Program as either a *budget source*, by definition, or as an *opt in source*.

ll. *Opt in* means to choose to voluntarily participate in the NO_x Budget Program, and comply with the terms and conditions of this regulation.

mm. *Opt-in-baseline* means the Department approved *heat input* and/or NO_x emissions for use as a basis for *allowance allocation* and deduction.

nn. *OTC* means the Ozone Transport Commission.

oo. *OTC MOU* means the Memorandum of Understanding that was signed by representatives of eleven states and the District of Columbia on September 27, 1994.

pp. *OTR* means the Ozone Transport Region as designated by Section 184(a) of the Clean Air Act.

qq. *Owner or Operator* means any person who is an owner or who operates, controls or supervises a *budget source* and shall include, but not be limited to, any holding company, utility system or plant manager of a *budget source*.

rr. *Quantifiable* means a reliable and replicable basis for calculating the amount of an emission reduction that is acceptable to both the Department and to the Administrator of the U.S. EPA.

ss. *Part 75 Budget Source* means any *budget source* subject to the requirements for emissions monitoring adopted pursuant to Regulation 36 of the State of Delaware "Regulations Governing the Control of Air Pollution".

tt. *Real* means a reduction in the rate of emissions,

quantified retrospectively, net of any consequential increase in actual emissions due to shifting demand.

uu. *Recorded* with regard to an *allowance transfer* or *deduction* means that an *account* in the NATS has been updated by the Administrator with the particulars of an *allowance transfer* or *deduction*.

vv. *Regional NO_x budget* means the maximum amount of NO_x emissions which may be released from all *budget sources*, collectively throughout the OTR, during a given *control period*.

ww. *Repowering*, for the purpose of *early reduction credit* means either: 1) Qualifying Repowering Technology as defined by 40 CFR, Part 72 or; 2) the replacement of a *budget source* by either a new combustion source or the purchase of heat or power from the owner of a new combustion source, provided that: a) The replacement source (regardless of owner) is on the same, or contiguous property as the *budget source* being replaced; b) The replacement source has a maximum heat output rate that is equal to or greater than the maximum heat output rate of the *budget source* being replaced; or, c) The replacement source has a power output rate that is equal to or greater than the power output rate of the combustion source being replaced; and d) The replacement source incorporates technology capable of controlling multiple combustion pollutants simultaneously with improved fuel efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

xx. *Submitted* means sent to the appropriate authority under the signature of the *authorized account representative* or alternate *authorized account representative*. An official U.S. Postal Service postmark, or electronic time stamp, shall establish the date of submittal.

yy. *Surplus* means that, at the time the reduction was made, the emission reduction was not required by Delaware's SIP, was not relied upon in an applicable attainment demonstration, was not required by state or federal permit or order, and was made enforceable in a permit that was issued after the date of the *OTC MOU* (September 27, 1994).

zz. *Use* means, for purposes of emission reductions moved off budget, that approval of the Department has been obtained to apply the emission reduction at a source.

Section 4 - Allowance Allocation

a. This program establishes NO_x emission *allowances* for each NO_x *control period* beginning May 1, 1999 through the NO_x *control period* ending September 30, 2002. *Allowance allocation* levels for each of these annual NO_x *control periods* are based on actual May 1, 1990 to September 30, 1990 actual NO_x mass emissions.

b. The NO_x Budget Program does not establish NO_x emission allowances for any NO_x control period subsequent to the year 2002 NO_x control period. NO_x emission allowances for each NO_x control period subsequent to the year 2002 NO_x control period will be established through ~~amendment of this regulation~~ follow-on regulation.

c. NO_x allowance allocations to budget sources may be made only by the Department in accordance with Section 4, Section 8, and Section 12 and Section 18 of this regulation.

d. Appendix A of this regulation identifies the budget sources and identifies the number of allowances each budget source is allocated. Allowance allocations to each of the budget sources was determined as follows:

1. Unless otherwise noted in Appendix A of this regulation, the document EPA-454/R-95-013, "1990 OTC NO_x Baseline Emission Inventory" served as the basis for determination of the number of OTC MOU Allowances allocated to each existing budget source.

i. Each existing budget source's OTC MOU Allowance allocation for NO_x control periods during the period May 1, 1999 to September 30, 2002, inclusive, was identified in the referenced document, Appendix B, Final OTC NO_x Baseline Inventory, Delaware, Point-Segment Level Data, Phase II Target (Point Level).

ii. The identified values were rounded to the nearest whole allowance by rounding down for allowances less than 0.5 and rounding up for decimals of 0.5 or greater.

2. Exceptional Circumstances Allowances, as granted by the OTC and as identified in the document EPA-454/R-95-013, "1990 OTC NO_x Baseline Emission Inventory" for the existing budget sources, are identified in Appendix A. These Exceptional Circumstance Allowances were adjusted for the appropriate NO_x emission rate reduction requirement prior to inclusion in Appendix A.

3. The OTC allocated to the state of Delaware an additional 86 allowances, referred to as reserve allowances, prior to application of NO_x emission rate reduction requirements, as its share of a total 10,000 ton reserve. Application of OTC required emission reductions resulted in a total of 35 Reserve Allowances available for distribution, as identified in the document EPA-454/R-95-013, "1990 OTC NO_x Baseline Emission Inventory".

i. Each of the 28 existing budget sources identified in Appendix A as the existing budget sources were allocated one (1) reserve allowance.

ii. One (1) additional reserve allowance was allocated to each of the four organizations with existing budget sources. The additional reserve allowance for each of the four organizations was added to the respective existing budget source with the greatest heat input rating.

iii. The remaining three (3) reserve allowances shall be held by the Department unused for the NO_x control

periods between May 1, 1999 and September 30, 2002.

iv. Reserve Allowances are applicable only for the NO_x control periods during the period May 1, 1999 to September 30, 2002, inclusive. Reserve Allowances do not exist for NO_x control periods subsequent to the year 2002.

4. The final NO_x allowance allocation for each of the 28 existing budget sources, for each of the NO_x control periods during the period of May 1, 1999 and September 30, 2002, is the sum of the values determined in Sections 4(d)(1) - (3) and is identified in Appendix A. For the existing budget sources that were not identified in the document "1990 OTC NO_x Baseline Emissions Inventory", the final allowance allocation includes an allowance allocation determined in accordance with the procedures identified in Section 4(f)(2)(i) - (ii) of this regulation.

5. Known operating NO_x sources, that are budget sources by definition, that did not operate in the May 1, 1990 to September 30, 1990 period are identified in Appendix A with a final allowance allocation of zero (0) allowances.

e. Budget sources that receive a NO_x emission allowance allocation and subsequently cease to operate shall continue to receive allowances for each control period unless the allowances are reduced under Section 4(g) of this regulation or a request to reallocate allowances has been approved in accordance with Section 11 of this regulation.

f. Any NO_x source, that is a budget source by definition, and that is not included in Attachment A of this regulation and which operated at any time between May 1, 1990 and September 30, 1990, inclusive, shall comply with the requirements of this regulation prior to operating in any NO_x control period.

1. The owner or operator shall submit to the Department an application including, as a minimum, the following information:

i. Identification of the source by plant name, address, and plant combustion unit number or equipment identification number.

ii. The name, address, telephone and facsimile number of the authorized account representative and, if desired, of an alternative authorized account representative.

iii. A list of the owners and operators of the source.

iv. A description of the source, including fuel type(s), maximum rated heat input capacity and electrical output rating where applicable.

v. Documentation of the May 1, 1990 - September 30, 1990 mass emissions (in tons), including:

A. Quantification of the mass emissions (in tons).

B. A description of the method used to determine the NO_x emissions.

C. Under no circumstances shall the

emissions exceed any applicable federal or state emission limit.

vi. Documentation of the May 1, 1990 - September 30, 1990 *heat input* (in MMBTU), including:

A. Quantification of the *heat input* (in MMBTU/hr).

B. A description of the method used to determine the *heat input*.

C. The *heat input* shall be consistent with the *baseline control period* NO_x mass emissions determined in Section 4(f)(1)(v) of this regulation.

vii. Determination of the May 1, 1990 - September 30, 1990 NO_x emission rate, consistent with the guidelines of the "Procedures for Development of the OTC NO_x Baseline Emission Inventory", using the mass emissions identified in Section 4(f)(1)(v) of this regulation and the *heat input* identified in Section 4(f)(1)(vi) of this regulation. viii. An emission monitoring plan in accordance with Section 13 of this regulation.

ix. A statement that the *submitted* information is representative of the true emissions during the May 1, 1990 - September 30, 1990 and that the source was operated in accordance with all applicable requirements during that time.

x. The following statement: "*I am authorized to make this submission on behalf of the owners and operators of the budget source for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.*"

xi. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

2. For sources that notify the Department that they are subject to this regulation no later than April 30, 1999, the Department shall *allocate* NO_x emissions *allowances* to the source as follows:

i. For *fossil fuel fired boilers* and *indirect heat exchangers* with a maximum *heat input* capacity of 250 MMBTU/hr or more, *allowance allocations* shall be determined as follows:

A. For sources located in New Castle and Kent counties, *allowance allocations* shall be based on the more stringent of the following:

1. The less stringent of:

a. The actual May 1, 1990 to September 30, 1990 mass emissions reduced by 65%; or,

b. The mass emissions resulting from the multiplication of the actual May 1, 1990 to September 30, 1990 *heat input* by a NO_x emissions rate of 0.20 lb/MMBTU.

2. If an approved RACT emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 4(f)(2)(i)(A)(1)(a) and 4(f)(2)(i)(A)(1)(b), then the RACT value shall be the emissions limit for the NO_x Budget Program.

B. For sources located in Sussex county, *allowance allocations* shall be based on the more stringent of the following:

1. The less stringent of:

a. The actual May 1, 1990 to September 30, 1990 mass emissions reduced by 55%; or,

b. The mass emissions resulting from the multiplication of the actual May 1, 1990 to September 30, 1990 *heat input* by a NO_x emissions rate of 0.20 lb/MMBTU.

2. If an approved RACT emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 4(f)(2)(i)(B)(1)(a) and 4(f)(2)(i)(B)(1)(b), then the RACT value shall be the emissions limit for the NO_x Budget Program.

ii. For *electric generating units* with a rated output of 15 MW or more that is not affected by Section 4(f)(2)(i) of this regulation, *allowance allocations* shall equal the more stringent of the May 1, 1990 to September 30, 1990 actual emissions or that derived from the application of an approved RACT limit to the actual May 1, 1990 to September 30, 1990 *heat input* value.

3. Within 60 days of receipt of the submittal, the Department shall review the submittal and take the following actions:

i. If the Department does not approve the submittal, the *authorized account representative* identified in the submittal shall be notified in writing of the finding and the reason(s) for the finding.

ii. If the Department approves the submittal, the Department shall:

A. Notify in writing the *authorized account representative* identified in the submittal.

B. The Department shall notify the *OTC Administrator* and authorize the *NATS Administrator* to open a *compliance account* for the subject source.

4. Any subject source that does not notify the Department prior to May 1, 1999, or that can not quantify its May 1, 1990 - September 30, 1990 emissions rate or heat

input, shall be treated as a new *budget source* in accordance with Section 9 of this regulation.

5. Compliance with Section 4(f) of this regulation does not imply compliance nor sanction noncompliance with this regulation for prior NO_x *control period* operation.

g. If, after the effective date of this regulation, a *budget source* reduces *control period* emissions and said emission reductions are to be *used* by a source that is not a *budget source* (i.e. the emissions are moved off *budget*), that *budget source* shall request that the Department reduce its current year and future year allocation.

1. The request shall be *submitted* to the Department not later than the date that the request to *use* the emissions reduction at the *off budget source is submitted*, and shall include the following information, as a minimum:

i. The *compliance account* number of the *budget source* providing the emissions reduction.

ii. Identification of the NO_x source that is to *use* the emissions reduction, including:

A. Name and mailing address of the source.

B. Name, mailing address, and telephone number of a knowledgeable representative from that source.

iii. Identification of the calendar date for which the reduction of *current year* and future year allocations is to be effective, which shall not be later than the effective date of the *use* of the emissions reduction.

iv. A statement documenting the physical changes to the *budget source* or changes in the methods of operating the *budget source* which resulted in the reduction of NO_x emissions.

v. Quantification and justifying documentation of the NO_x emissions reduction, including a description of the methodology used to verify the emissions reduction.

vi. The quantity of *current year* and future year allocations to be reduced, which is the portion of the *control period* emissions reduction that is to move off budget.

vii. Certification by the *authorized account representative* or alternate *authorized account representative* including the following statement in verbatim: “*I am authorized to make this submission on behalf of the owners or operators of the NO_x source and I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment.*”

viii. Signature of the *authorized account representative* or alternate *authorized account representative* of the *budget source* providing the emissions reduction and

the date of signature.

2. Within 30 days of receipt of the submittal, the Department shall review the submittal and take the following actions:

i. If the Department does not approve the request, the *authorized account representative* identified on the submittal shall be notified in writing of the finding and the reason(s) for the finding.

ii. If the Department approves the request, the Department shall notify in writing the *authorized account representative* identified on the request and the following provisions apply:

A. The Department shall authorize the *NATS Administrator* to deduct from the *compliance account* of the *budget source* providing the emissions reduction the quantity of *current year* and future year *allowances* to be reduced.

B. The deducted *current year* and future year *allowances* shall be permanently retired from the NO_x Budget Program.

Section 5 - Permits

a. No later than the effective date of this regulation, the *owner or operator* of an *existing budget source* shall request amendment of any applicable construction or operating permit issued, or application for any permit submitted, in accordance with the State of Delaware “Regulations Governing the Control of Air Pollution”. The amendment request shall include the following:

1. A condition(s) that requires the establishment of a *compliance account* in accordance with Section 6 of this regulation.

2. A condition(s) that requires NO_x mass emission monitoring during NO_x *control periods* in accordance with Section 13 of this regulation.

3. A condition(s) that requires NO_x mass emission reporting and other reporting requirements in accordance with Section 15 of this regulation.

4. A condition(s) that requires end-of-season *compliance account* reconciliation in accordance with Section 16 of this regulation.

5. A condition(s) that requires compliance certification in accordance with Section 17 of this regulation.

6. A condition(s) that prohibits the source from emitting NO_x during each NO_x *allowance control period* in excess of the amount of NO_x *allowances* held in the source’s *compliance account* for the NO_x *allowance control period* as of December 31 of the subject year.

7. A condition(s) that authorizes the transfer of *allowances* for purposes of compliance with this regulation, containing reference to the source’s *NATS compliance account* and the *authorized account representative* and alternate *authorized account representative*, if any.

b. Permit revisions/amendments shall not be required for changes in emissions that are authorized by *allowances* held in the *compliance account* provided that any transfer is in compliance with this regulation by December 31 of each year, is in compliance with the authorization for transfer contained in the permit, and does not affect any other applicable state or federal requirement.

c. Permit revisions/amendments shall not be required for changes in *allowances* held by the source which are acquired or transferred in compliance with this regulation and in compliance with the authorization for transfer in the permit.

d. Any equipment modification or change in operating practices taken to meet the requirements of this program shall be performed in accordance with all applicable state and federal requirements.

Section 6 - Establishment of Compliance Accounts

a. The *owner or operator* of each *existing budget source*, and each *new budget source*, shall designate one *authorized account representative* and, if desired, one alternate *authorized account representative* for that *budget source*. The *authorized account representative* or alternate *authorized account representative* shall submit to the Department an "Account Certificate of Representation".

1. For *existing budget sources*, initial designations shall be *submitted* no later than the effective date of this regulation.

2. For *new budget sources* that began operation prior to May 1, 1999, initial designations shall be *submitted* no later than April 30, 1999. For *new budget sources* that begin operation on or after May 1, 1999, initial designations shall be *submitted* no less than 30 days prior to the first hour of operation in a *NO_x control period*.

3. An *authorized account representative* or alternative account representative may be replaced at any time with the submittal of a new "Account Certificate of Representation". Notwithstanding any such change, all submissions, actions, and inactions by the previous *authorized account representative* or alternate *authorized account representative* prior to the date and time the *NATS Administrator* receives the superseding "Account Certificate of Representation" shall be binding on the new *authorized account representative*, on the new alternate *authorized account representative*, and on the *owners and operators* of the *budget source*.

4. Within 30 days following any change in *owner or operator*, *authorized account representative*, or any alternate *authorized account representative*, the *authorized account representative* or the alternate *authorized account representative* shall submit a revision to the "Account Certificate of Representation" amending the outdated information.

b. The "Account Certificate of Representation" shall be signed and dated by the *authorized account representative* or

the alternate *authorized account representative* for the *NO_x budget source* and shall contain, as a minimum, the following information:

1. Identification of the *NO_x budget source* by plant name, address, and plant combustion unit number or equipment identification number for which the certification of representation is *submitted*.

2. The name, address, telephone and facsimile number of the *authorized account representative* and alternate authorized account representative, if applicable.

3. A list of the owners and operators of the *NO_x budget source*.

4. A description of the source, including fuel type(s), *maximum heat input capacity*, and electrical output rating where applicable.

5. The following statement: "I am authorized to make this submission on behalf of the owners and operators of the budget source for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

6. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

c. The Department shall review all *submitted* "Account Certificate of Representation" forms. Within 30 days of receipt of the "Account Certificate of Representation", the Department shall take one of the following actions:

1. If not approved by the Department, the Department shall notify in writing the *authorized account representative* identified in the "Account Certificate of Representation" of the reason(s) for disapproval.

2. If approved by the Department, the Department shall forward the "Account Certificate of Representation" to the *NATS Administrator* and authorize the *NATS Administrator* to open/revise a *compliance account* for the *budget source*.

d. *Authorized account representative* and alternate *authorized account representative* designations or changes become effective upon the logged date of receipt of a completed "Account Certificate of Representation" by the *NATS Administrator*. The *NATS Administrator* shall acknowledge receipt and the effective date of the designation or changes by written correspondence to the *authorized account representative*.

e. The alternate *authorized account representative* shall have the same authority as the *authorized account representative*. Correspondence from the *NATS Administrator* shall be directed to the *authorized account representative*.

f. Only the *authorized account representative* or the alternate *authorized account representative* may request transfers of NO_x allowances in a *NATS account*. The *authorized account representative* shall be responsible for all transactions and reports submitted to the *NATS*.

Section 7 - Establishment of General Accounts

a. An *authorized account representative* and alternate *authorized account representative*, if any, shall be designated for each *general account* by the *general account owners*. Said representative shall have obligations similar to that of an *authorized account representative* of a *budget source*.

b. Any person or group of persons may open a *general account* in the *NATS* for the purpose of holding and transferring allowances. That person or group of persons shall submit to the Department an application to open a *general account*. The *general account application* shall include the following minimum information:

1. Organization or company name to be used for the general account name listed in the *NATS*, and type of organization (if applicable).

2. The name, address, telephone, and facsimile number of the *account's authorized account representative* and alternate authorized account representative, if applicable.

3. A list of all persons subject to a binding agreement for the *authorized account representative* or alternate *authorized account representative* to represent their ownership interest with respect to the allowances held in the *general account*.

4. The following statement: "I certify that I was selected under the terms of an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the NO_x allowance tracking system (*NATS*) account. I certify that I have all necessary authority to carry out my duties and responsibilities on behalf of the persons with ownership interest and that they shall be fully bound by my actions, inactions, or submissions under this regulation. I shall abide by my fiduciary responsibilities assigned pursuant to the binding agreement. I am authorized to make this submission on behalf of the persons with an ownership interest for whom this submission is made. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the information is to the best of

my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false material information, or omitting material information, including the possibility of fine or imprisonment for violations."

5. Signature of the *general account's authorized account representative* or alternate *authorized account representative* and date of signature.

c. The Department shall review all submitted *general account* and revised *general account applications*. Within 30 days of receipt of the application, the Department shall take one of the following actions:

1. If not approved by the Department, the Department shall notify in writing the *authorized account representative* identified in the *general account application* of the reason(s) for disapproval.

2. If approved by the Department, the Department shall forward the *general account application* to the *NATS Administrator* and authorize the *NATS Administrator* to open/revise a *general account* in the organization or company name identified in the *general account application*.

d. No allowance transfer shall be recorded for a *general account* until the *NATS Administrator* has established the new *account*.

e. The *authorized account representative* or alternate *authorized account representative* of an established *general account* may transfer allowances at any time in accordance with Section 11 of this regulation.

f. An *authorized account representative* or alternative account representative of an existing *general account* may be replaced by submitting to the Department a revised *general account application* in accordance with Section 7(b) of this regulation.

g. The *authorized account representative* or alternate *authorized account representative* of a *general account* may apply to the Department to close the *general account* as follows:

1. By submitting a copy of an allowance transfer request to the *NATS Administrator* authorizing the transfer of all allowances held in the *account* to one or more other accounts in the *NATS* and/or retiring allowances held in the *account*.

2. By submitting to the Department, in writing, a request to delete the *general account* from the *NATS*. The request shall be certified by the *authorized account representative* or alternate *authorized account representative*.

3. Upon approval, the Department shall authorize the *NATS Administrator* to close the *general account* and confirm closure in writing to the *general account's authorized account representative*.

Section 8 - Opt In Provisions

Except as provided for in Section 4(g) of this regulation,

the owner or operator of any stationary source in the state of Delaware that is not subject to the NO_x Budget Program by definition, may choose to *opt into* the NO_x Budget Program as follows:

a. The *owner or operator* of a stationary source who chooses to *opt into* the NO_x Budget Program shall submit to the Department an *opt-in* application. The *opt-in* application shall include, as a minimum, the following information:

1. Identification of the *opt-in* source by plant name, address, and plant combustion unit number or equipment identification number.

2. The name, address, telephone and facsimile number of the *authorized account representative* and, if desired, of an alternative authorized account representative.

3. A list of the owners and operators of the *opt-in* source.

4. A description of the *opt-in* source, including fuel type(s), maximum rated heat input capacity and electrical output rating where applicable.

5. Documentation of the *opt-in-baseline control period* mass emissions (in tons).

i. The *opt-in-baseline control period* emissions shall be the lower of the average of the mass emissions from the immediately preceding two consecutive NO_x *control periods* and the allowable emissions.

A. If the mass emissions from the preceding two *control periods* are not representative of normal operations, the Department may approve use of an alternative two consecutive NO_x *control periods* within the five years preceding the *date of the opt-in* application.

B. If the *opt-in* source does not have two consecutive years of operation, the *owner or operator* shall identify the lower of the permitted allowable NO_x emissions and any applicable Federal or State emission limitation as the *opt-in-baseline* emissions.

ii. The documentation shall include:

A. Identification of the time period represented by the emissions data.

B. Quantification of the *opt-in-baseline control period* mass emissions (in tons).

C. A description of the method used to determine the *opt-in-baseline control period* NO_x emissions.

6. Documentation of the *opt-in-baseline* NO_x *control period heat input* (in MMBTU).

i. The *opt-in-baseline control period heat input* shall be consistent with the *opt-in-baseline control period* NO_x mass emissions determined in Section 8(a)(5) of this regulation.

ii. The documentation shall include:

A. Quantification of the *opt-in-baseline control period heat input* (in MMBTU/hr).

B. A description of the method used to

determine the *opt-in-baseline control period heat input*.

7. Determination of the *opt-in-baseline* NO_x emission rate, consistent with the guidelines of the "Procedures for Development of the OTC NO_x Baseline Emission Inventory", using the *opt-in-baseline control period* mass emissions identified in Section 8(a)(5) of this regulation and the *opt-in-baseline* NO_x *control period heat input* identified in Section 8(a)(6) of this regulation.

8. An emission monitoring plan in accordance with Section 13 of this regulation.

9. A statement that the source was operated in accordance with all applicable requirements during the *control periods*.

10. The following statement: "*I am authorized to make this submission on behalf of the owners and operators of the budget source for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.*"

11. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

b. Within 60 days of receipt of any *opt-in* application, the Department shall take the following actions:

1. The Department shall review the application for completeness and accuracy and:

i. Verify that the monitoring methods used to determine the *opt-in-baseline control period* NO_x mass emissions and the *opt-in-baseline* NO_x *control period heat input* are consistent with those described in Section 13 of this regulation.

ii. Verify that the *opt-in-baseline* emissions were calculated in accordance with the guidelines in the "Procedures for Development of the OTC NO_x Baseline Emission Inventory".

2. If the Department disapproves the *opt-in* application, the *authorized account representative* identified in the *opt-in* application shall be notified in writing of the determination and the reason(s) for the application not being approved.

3. If the Department determines that the *opt-in* application is acceptable, the Department shall request the OTC Stationary/Area Source Committee to review the application. Within 30 days of receiving the OTC Stationary/Area Source Committee comments, the

Department shall consider the comments and take the following action:

i. If it is determined that the *opt-in* application does not properly justify opting the source into the NO_x Budget Program, the Department shall notify the *authorized account representative* in writing of the determination and the reason(s) for the application not being accepted.

ii. If it is determined that the *opt-in* application justifies opting the source into the NO_x Budget Program, the Department shall notify the *authorized account representative* in writing of that determination.

c. The Department shall assign an *allowance allocation* to any *owner or operator* that has been approved by the Department to *opt into* the NO_x Budget Program.

1. The *allowance allocation* for an *opt-in* source, that is not considered a *budget source* by definition, shall be equal to the more stringent of the *opt-in-baseline control period* emissions or the allowable NO_x emissions from the source.

2. The *allowance allocation* for an *opt-in* source that has a maximum *heat input* rating of 250 MMBTU/hr shall be determined as follows:

i. For sources located in New Castle and Kent counties, *allowance allocations* shall be based on the more stringent of the following:

A. The less stringent of:

1. The *opt-in-baseline* actual mass emissions reduced by 65%; or,

2. The mass emissions resulting from the multiplication of the actual *opt-in-baseline* heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

B. If any permitted NO_x emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 8(c)(2)(i)(A)(1) and 8(c)(2)(i)(A)(2), then the permitted emissions limit shall be used to determine the emissions limitation for the NO_x Budget Program.

ii. For sources located in Sussex county, *allowance allocations* shall be based on the more stringent of the following:

A. The less stringent of:

1. The *opt-in-baseline* actual mass emissions reduced by 55%; or,

2. The mass emissions resulting from the multiplication of the actual *opt-in-baseline* heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

B. If any permitted NO_x emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 8(c)(2)(ii)(A)(1) and 8(c)(2)(ii)(A)(2), then the permitted emissions limit shall be used to determine the emissions limitation for the NO_x Budget Program.

3. If the *owner or operator* of an *opt-in* source is required to obtain NO_x emissions offsets in accordance with Regulation 25 of the State of Delaware "Regulations Governing the Control of Air Pollution", the *allowance allocation* calculated under Section 8(c)(1) or (2) of this regulation shall be reduced by the portion of the *control period* emission reduction that is associated with any *budget source*.

4. The *allowance allocation* associated with the *opt-in* source shall be added to Delaware's NO_x *budget* prior to *allocation* of *allowances* to the *opt-in* source. This regulation shall be revised to reflect changes in the number of allowances in the NO_x Budget Program.

5. Under no circumstances shall the *allocation* of *allowances* to a source which chooses to *opt into* the program require adjustments to the *allocation* of *allowances* to *budget sources* in the NO_x Budget Program.

d. Upon the approval of the *opt-in* application and assignment of an *allowance allocation*, the Department shall authorize the *NATS Administrator* to open a *compliance account* for the *opt-in* source in accordance with Section 10 of this regulation.

e. Within 30 days of approval to *opt into* the NO_x Budget Program, any *owner or operator* shall apply for a permit, or the modification of applicable permits, in accordance with Section 5 of this regulation.

f. Upon approval of the *opt-in* application and establishment of the *compliance account*, the *owner or operator* of the source shall be subject to all applicable requirements of this regulation including the requirements for *allowance transfer* or deduction, emissions monitoring, record keeping, reporting, and penalties.

1. A certification test notice and test protocol shall be *submitted* to the Department no later than 90 days prior to anticipated performance of the certification testing.

2. Certification testing shall be completed prior to operation in the next NO_x *control period* following approval of the source to *opt into* the NO_x Budget Program.

3. A certification test report meeting the requirements of the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions" shall be *submitted* to the Department no later than 45 days following the performance of the certification testing.

g. Any *owner or operator* approved to *opt into* the NO_x Budget Program that did not have two consecutive years of operation upon initial application and determined *opt-in-baseline* emissions in accordance with Section 8(a)(5)(i)(B) of this regulation shall submit to the Department a revised *opt-in* application.

1. The revised *opt-in* application shall be *submitted* no more than 60 days following first completion of operation in two consecutive NO_x *control periods*.

2. The revised *opt-in* application shall provide actual operating information, including NO_x mass emissions and *heat input*, for each of the two NO_x *control periods*.

3. Within 60 days of receipt on any revised *opt-in* application, the Department shall review the revised *opt-in* application and take the following actions:

i. If the Department does not approve the revised *opt-in* application:

A. The Department shall notify the *opt-in source's authorized account representative* of the determination in writing and indicate the reason(s) for the determination.

B. The *opt-in source's authorized account representative* shall resolve the Department's comments and an updated revised *opt-in* application shall be submitted to the Department no more than 60 days from the Department's request.

C. Upon approval of any updated revised *opt-in* application, the Department shall process the application in accordance with Section 8(g)(3)(ii) of this regulation.

ii. If the Department is in concurrence with the revised *opt-in* application, the following actions shall be taken:

A. The Department shall request the *OTC Stationary/Area Source Committee* to comment on the revised *opt-in* application. Within 30 days of receiving the *OTC Stationary/Area Source Committee* comments, the Department shall consider the comments and take action in accordance with Section 8(g)(3)(ii)(B) or Section 8(g)(3)(ii)(C) of this regulation.

B. If it is determined that the revised *opt-in* application shall not be approved:

1. The Department shall notify the *opt-in source's authorized account representative* of the determination in writing and indicate the reason(s) for the determination.

2. The *opt-in source's authorized account representative* or alternate *authorized account representative* shall resolve the Department's comments and an updated revised *opt-in* application shall be submitted to the Department no more than 60 days from the Department's request.

3. Upon approval of any updated revised *opt-in* application, the Department shall process the application in accordance with Section 8(g)(3)(ii)(C) of this regulation.

C. If it is determined that the revised *opt-in* shall be approved, the following actions shall be taken:

1. If the initial *allocation* was lower than that indicated in the revised application:

a. The Department shall revise the NO_x *budget* to reflect the *allocation* determination

identified in the revised *opt-in* application.

b. The Department shall authorize the *NATS Administrator* to revise the *allocation* to the subject source's *compliance account*.

c. The Department shall not authorize any additional allowances to cover any shortfall in the two *opt-in-baseline* NO_x *control periods*. Any violation of a permit condition or of this regulation may result in an enforcement action.

2. If the initial *allocation* was higher than that indicated in the revised application:

a. The Department shall revise the NO_x *budget* to reflect the *allocation* determination identified in the revised *opt-in* application.

b. The Department shall authorize the *NATS Administrator* to revise the *allocation* to the subject source's *compliance account*.

c. The Department shall authorize the *NATS Administrator* to deduct the excess *allowances allocated* to the *opt-in* source, calculated as the difference between the actual *allocated allowances* and the *allowances allocated* on the basis of the revised *opt-in* application for the years of operation in NO_x *control periods*.

h. Any *owner or operator* who chooses to *opt into* the NO_x Budget Program can not opt-out of the program unless NO_x emitting operations at the *opt-in* source have ceased, and the *allowance* adjustment provisions of Section 8(i) of this regulation apply.

i. Any *owner or operator* who chooses to *opt into* the NO_x Budget Program and who subsequently chooses to cease or curtail operations during any NO_x *allowance control period* after opting-in shall be subject to an *allowance* adjustment equivalent to the NO_x emissions decrease that results from the shut down or curtailment.

1. The *NETS Administrator* shall compare actual *heat input* data following each NO_x *control period* with the *opt-in-baseline heat input* for each *opt-in* source.

2. The *NATS Administrator* shall calculate and deduct *allowances* equivalent to any decrease in the *opt-in* source's *heat input* below its *opt-in-baseline heat input*. This deduction shall be calculated using the average of the two most recent years *heat input* compared to the *heat input* used in the *opt-in-baseline* calculation.

3. The *NATS Administrator* shall notify the NO_x *budget source's authorized account representative* and the Department of any such deductions.

4. This adjustment affects only the *current year allocation* and shall not effect the NO_x *budget source's allocations* for future years.

5. No deduction shall result from reducing NO_x emission rates below the rate used in the *opt-in allowance* calculation.

6. A source that is to be repowered or replaced can be opted into the NO_x Budget Program without the shutdown/curtailment deductions. The *heat input* for the repowered or replaced source can be substituted for the present year's activity for the *opt-in NO_x allowance* adjustment calculation.

j. For replacement sources, all sources under common control in the State of Delaware to which production may be shifted shall be opted-in together.

k. When an *opt-in* source undergoes reconstruction or modification such that the source becomes a *budget source* by definition:

1. The *opt-in* source's *authorized account representative* or alternate *authorized account representative* shall notify the Department within 30 days of completion of the modification or reconstruction.

2. The Department shall authorize the *NATS Administrator* to deduct *allowances* equal to those allocated to the *opt-in* source in the *NO_x control period* for the calendar year in which the *opt-in* source becomes a *budget source* by definition.

3. The Department shall authorize the *NATS Administrator* to deduct all *allowances* that were allocated pursuant to Section 8(c) of this regulation to the *opt-in* source, for all future years following the calendar year in which the *opt-in* source becomes a *budget source* by definition. This regulation shall be revised to reflect changes in the number of allowances in the NO_x Budget Program.

4. The reconstructed or modified source shall be treated as a *new budget source* in accordance with Section 9 of this Regulation.

Section 9 - New Budget Source Provisions

a. NO_x *allowances* shall not be created for new NO_x sources that are *budget sources* by definition. The *owner or operator* is responsible to acquire any required NO_x *allowances* from the *NATS*.

b. The *owner or operator* of a *new budget source* shall establish a compliance account and be in compliance with all applicable requirements of this regulation prior to the commencement of operation in any *NO_x control period*. *New budget sources* shall:

1. Request a permit/permit amendment meeting the requirements of Section 5 of this regulation no less than 90 days prior to operation in any *NO_x control period*.

2. Submit a monitoring plan to the Department, in accordance with Section 13 of this regulation, no later than 90 days prior to the anticipated performance of monitoring system certification.

3. Install and operate an approved monitoring system(s) to measure, record, and report hourly and cumulative NO_x mass emissions.

4. *Submit* to the Department a certification test notice and protocol no later than 90 days prior to the anticipated performance of the certification testing.

5. Complete the monitoring system certification prior to operation in any *NO_x control period*.

6. *Submit* to the Department a certification test report meeting the requirements of the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions" no later than 45 days following the performance of the certification testing.

Section 10 - NO_x Allowance Tracking System (NATS)

a. The *NO_x allowance tracking system* is an electronic recordkeeping and reporting system which is the official database for all NO_x *allowance* deduction and transfer within this program. The *NATS* shall track:

1. The *allowances* allocated to each *budget source*.

2. The *allowances* held in each *account*.

3. The *allowances* deducted from each *budget source* during each *control period*, as requested by a transfer request submitted by the *budget source's authorized account representative* or alternate *authorized account representative* in accordance with Section 16(b) of this regulation.

4. *Compliance accounts* established for each *budget source* to determine the compliance for the source, including the following information:

i. The *account number* of the *compliance account*.

ii. The name(s), address(es), and telephone number(s) of the *account owner* (s).

iii. The name, address, and telephone number of the *authorized account representative* and alternate *authorized account representative*, as applicable.

iv. The name and street address of the associated *budget source*, and the state in which the *budget source* is located.

v. The number of *allowances* held in the *account*.

5. *General accounts* opened by individuals or entities, upon request, which are not used to determine compliance, including the following information:

i. The *account number* of the *general account*.

ii. The name(s), address(es) and telephone number(s) of the *account owner*(s).

iii. The name, address, and telephone number of the *authorized account representative* and alternate *authorized account representative*, as applicable.

iv. The number of *allowances* held in the *account*.

6. *Allowance transfers*.

7. Deductions of *allowances* by the *NATS Administrator* for compliance purposes, in accordance with Section 16(d) of this regulation.

b. The *NATS* Administrator shall establish *compliance* and *general accounts* when authorized to do so by the Department pursuant to Sections 6, 7, and 8 of this regulation.

c. Each *compliance account* and *general account* shall have a unique identification number and each *allowance* shall be assigned a unique serial number. Each *allowance* serial number shall indicate the year of *allocation*.

Section 11 - Allowance Transfer

a. *Allowances* may be transferred at any time during any year, not just the *current year*.

b. The transfer of *allowances* between *budget sources* in different states for purposes of compliance is contingent upon the adoption and implementation by those states of NO_x *budget* program regulations and their participation in the *NATS*.

c. Transfer requests shall be *submitted* to the *NATS Administrator* on a form or electronic media, as directed by the *NATS Administrator*, and shall include the following information:

1. The *account number* of the originating *account* and the acquiring *account*.

2. The name(s) and address(s) of the owner(s) of the originating *account* and the acquiring *account*.

3. The serial number of each *allowance* being transferred.

4. The following statement from the *authorized account representative* or alternate *authorized account representative* of the originating *account*, in verbatim: "*I am authorized to make this submission on behalf of the owners or operators of the budget source and I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment.*"

5. Signature of the *authorized account representative* or alternate *authorized account representative* of the originating *account* and the date of signature.

d. The *Authorized account representative* or alternate *authorized account representative* for the originating *account* shall further provide a copy of the transfer request to each *owner or operator* of the *budget source*.

e. Transfer requests shall be processed by the *NATS Administrator* in order of receipt.

f. A transfer request shall be determined to be valid by the *NATS Administrator* if:

1. Each *allowance* listed in the transfer request is held by the originating *account* at the time the transfer is to be *recorded*.

2. The acquiring party has an *account* in the *NATS*.

3. The transfer request has been certified by the person named as *authorized account representative* or alternate *authorized account representative* for the originating *account*.

- g. Transfer requests judged valid by the *NATS Administrator* shall be completed and *recorded* in the *NATS* by deducting the specified *allowances* from the originating *account* and adding them to the acquiring *account*.

- h. Transfer requests judged to be invalid by the *NATS Administrator* shall be returned to the *authorized account representative* indicated on the transfer request along with documentation why the transfer request was judged to be invalid.

- i. The *NATS Administrator* shall provide notification of an *allowance* transfer to the *authorized account representatives* of the originating *account*, the *authorized account representative* of the acquiring *account*, and the Department, including the following information:

1. The effective date of transfer.

2. Identification of the originating *account* and acquiring *account* by name as well as by *account number*.

3. The number of *allowances* transferred and their serial numbers.

- j. The *authorized account representative* or alternate *authorized account representative* of a *compliance account* or a *general account* may request that some or all allocated *allowances* be transferred to another *compliance account* or to a *general account* for the current year, any future year, block of years, or for the duration of the program. The *authorized account representative* or alternate *authorized account representative* of the originating *account* shall submit a request for transfer that states this intent to the *NATS Administrator*, and the transfer request shall conform to the requirements of this Section. In addition, the request for transfer shall be *submitted* to the Department with a letter requesting that the *budget* be revised to reflect the change in *allowance* allocations.

- k. Upon request by the Department any *authorized account representative* or alternate *authorized account representative* shall make available to the Department information regarding transaction cost and *allowance* price.

Section 12 - Allowance Banking

- a. The *banking* of *allowances* is permitted to allow retention of unused *allowances* from one year to a future year in either a *compliance account* or a *general account*.

- b. Except for *allowances* created under Section 12(d) of this regulation, *allowances* not used under Section 16 of this regulation shall be held in a *compliance account* or *general account* and designated as "*banked*" *allowances* by the *NATS Administrator*.

- c. The use of *banked allowances* shall be restricted as

follows:

1. By March 1 of each year the *NATS Administrator* shall divide the total number of *banked allowances* by the regional NO_x *budget*.

i. If the total number of *banked allowances* in the *NATS* is less than or equal to 10% of the regional NO_x *budget* for the *current year control period*, all *banked allowances* can be deducted in the *current year* on a 1-for-1 basis.

ii. If the total number of *banked allowances* in the *NATS* exceeds 10% of the regional NO_x *budget* for the *current year control period*, *budget sources* shall be notified by the *NATS Administrator* of the *allowance ratio* which must be applied to *banked allowance* in each *compliance account* and *general account* to determine the number of *allowances* available for deduction in the *current year control period* on a 1-for-1 basis and the number of *allowances* available for deduction on a 2-for-1 basis.

2. Where a finding has been made by the *NATS Administrator* that *banked allowances* exceed 10% of the *current year regional NO_x budget*, each *NATS compliance account* and *general account* of *banked allowances* shall be subject to the following *banked allowance* deduction protocol:

i. A ratio shall be established according to the following formula:

$$\frac{0.10 \times \text{the regional NO}_x \text{ Budget}}{\text{the total number of banked allowances in the region}}$$

the total number of *banked allowances* in the region

ii. The ratio calculated in Section 12(c)(2)(i) of this regulation shall be applied to the *banked allowances* in each *account*. The resulting number is the number of *banked allowances* in the *account* which can be used in the *current year control period* on a 1-for-1 basis. *Banked allowances* in excess of this number, if used, shall be used on a 2-for-1 basis.

d. The *owner or operator* of an *existing budget source* may apply to the Department to receive *early reduction allowances* for actual NO_x reductions occurring in 1997 and/or 1998.

1. No later than the effective date of this regulation, the *authorized account representative* or *alternate authorized account representative* from any *budget source* seeking *early reduction allowances* shall submit to the Department an application that includes, at a minimum, the following information:

i. Identification of the *budget source*.

ii. Identification of the calendar time period for which *early reduction allowances* are being sought (i.e., May 1 - September 30, 1997, May 1 - September 30, 1998, or both).

iii. Identification of the *baseline NO_x control*

period emission limit (tons), which shall be the more stringent of the following:

A. The level of control required by the *OTC MOU*;

B. The lower of the permitted allowable emissions for the source and the allowable emissions identified in the state implementation plan (SIP);

C. The actual emissions for the 1990 *control period*, or;

D. The actual emissions for the average of two representative year *control periods* within the first five years of operation if the *budget source* did not commence operation until after 1990.

iv. The *baseline NO_x control period heat input* (MMBTU) corresponding to the *baseline NO_x control period* emission limit (tons) determined in Section 12(d)(1)(iii) of this regulation.

v. The actual *NO_x control period NO_x* emissions (tons) occurring in 1997 and/or 1998, as applicable.

vi. The actual *NO_x control period heat input* (MMBTU) occurring in 1997 and/or 1998, as applicable.

vii. The calculated *NO_x control period* emissions rate (lb/MMBTU), as determined using the *control period NO_x* emissions identified in Section 12(d)(1)(v) of this regulation multiplied by 2000 to obtain actual emissions in pounds (lbs), divided by the *control period heat input* (MMBTU) identified in Section 12(d)(1)(vi) of this regulation.

viii. The amount of NO_x emissions *early reduction allowances* shall be calculated by subtracting the actual *control period NO_x* emissions (in tons), identified in Section 12(d)(1)(v) of this regulation, from the *baseline NO_x* emissions limit (in tons) identified in Section 12(d)(1)(iii) of this regulation.

ix. If the actual *control period heat input*, as identified in Section 12(d)(1)(vi) of this regulation, is less than the *baseline NO_x control period heat input*, as identified in Section 12(d)(1)(iv) of this regulation, the NO_x emissions *early reduction allowances* determined in Section 12(d)(1)(viii) of this regulation shall be corrected as follows:

A. The actual *control period heat input* (MMBTU), as identified in Section 12(d)(1)(vi) of this regulation, shall be subtracted from the *baseline NO_x control period heat input* (MMBTU), as identified in Section 12(d)(1)(iv) of this regulation, to obtain the *heat input* correction.

B. The *heat input* correction (MMBTU) is multiplied by the calculated *NO_x control period* emissions rate (lb/MMBTU) determined in Section 12(d)(1)(vii) of this regulation. The resulting value is divided by 2000 to obtain tons of NO_x .

C. The corrected NO_x emissions *early reduction allowance* is the result of subtracting the results of Section 12(d)(1)(ix)(B) of this regulation from the NO_x emissions *early reduction allowances* calculated in Section 12(d)(1)(viii) of this regulation.

x. A statement indicating the *budget source* was operating in accordance with all applicable requirements during the applicable NO_x *control period* including:

A. Whether the monitoring plan that was *submitted* in accordance with Section 13 of this regulation was maintained to reflect the actual operation and monitoring of the unit and contains all information necessary to attribute monitored emissions to the *budget source*. If *early reduction allowances* are being sought for a *control period* prior to the implementation of monitoring in accordance with Section 13(a) of this regulation, a monitoring plan prepared in accordance with Section 13(a) of this regulation shall be *submitted* describing the monitoring method in use during the *control period* for which *early reduction allowances* are being sought.

B. Whether all the emissions from the *budget source* were monitored, or accounted for, throughout the NO_x *control period* and reported.

C. Whether the information that formed the basis for certification of the emissions monitoring plan has changed affecting the certification of the monitoring.

D. If a change in the monitoring method is reported under Section 12(d)(1)(x)(C) of this regulation, specify the nature of the change, the reason for the change, when the change occurred, and what method was used to determine emissions during the period mandated by the change.

xi. A statement documenting the specific physical changes to the *budget source* or changes in the methods of operating the *budget source* which resulted in the reduction of emissions.

xii. The following statement: “*I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.*”

xiii. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

2. *Early reduction allowance* requests shall be reviewed by the Department.

i. If the Department determines that the

emissions reductions were not enforceable, *real*, *quantifiable*, or *surplus*, the Department shall notify the *budget source's authorized account representative* in writing, indicating the reason(s) the request for *early reduction allowances* is being denied.

ii. If the Department determines that the emissions reductions are enforceable, *real*, *quantifiable*, and *surplus*:

A. The Department shall request the *OTC Stationary/Area Source Committee* to comment on the generation of potential *early reduction allowances*.

B. The Department shall consider the *OTC Stationary/Area Source Committee* comments and either:

1. Notify the *budget source's authorized account representative* in writing denying the request for *early reduction allowances* and indicate the reason(s) for the determination; or

2. Notify the *budget source's authorized account representative* in writing that the requested emissions reduction *allowances* shall be added to the *budget source's account*; and

3. Authorize the *NATS Administrator* to add the *allowances* to the *budget source's account* as 1999 *allowances*.

3. Reductions associated with *repowering* of a *budget source* are eligible for *early reduction credit* provided that the permit for construction of the replacement source was issued after the date of the *OTC MOU* (September 27, 1994), and the *budget source* being replaced ceases operation in 1997 or 1998.

4. No later than October 1, 1999, the Department shall publish a report which documents the applicable sources and the number of *early reduction credits* awarded.

Section 13 - Emission Monitoring

a. NO_x emissions from each *budget source* shall be monitored in accordance with this section and in accordance with the requirements of the *OTC* documents titled “Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program”, dated January 28, 1997, and “NO_x Budget Program Monitoring Certification and Reporting Instructions”, dated July 3, 1997. The provisions of these documents are hereby adopted by reference.

b. Monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing, and quality assurance/quality control testing as specified in the *OTC* document titled “Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program”. If an *owner or operator* uses certified monitoring systems under Part 75 to meet the requirements of this program and maintains and operates those monitoring systems according to the requirements of Part 75, it is not necessary to re-

perform initial certification tests to ensure the accuracy of these components under the NO_x Budget Program.

c. During a period when valid data is not being recorded by devices approved for use to demonstrate compliance with the requirements of this section, the *owner or operator* shall provide substitute data in accordance with the requirements of:

1. For *Part 75 budget sources*, the procedures of 40 CFR Part 75, Subpart D, and Part 1 of the *OTC* document titled "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

2. For *non-Part 75 budget sources*, the procedures of Part 2 of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" except for those provisions in this document that allow alternative methods or procedures. Any alternative methods or procedures must be reviewed and approved by the Department and EPA.

d. The *owner or operator* of a NO_x *budget source* shall meet the following emissions monitoring deadlines:

1. All existing *Part 75 NO_x budget sources* not required by the NO_x Budget Program to install additional monitoring equipment, or required to only make software changes to implement the additional requirements of this program, shall meet the monitoring requirements of the NO_x Budget Program as follows:

i. By meeting all current Part 75 monitoring requirements during the NO_x *control period* during each calendar year.

ii. By monitoring hourly and cumulative NO_x mass emissions for the NO_x *control period* in each calendar year starting in 1999 in accordance with the *OTC* documents "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

2. All existing *Part 75 budget sources* required to install and certify new monitoring systems to meet the requirements of the NO_x Budget Program shall meet the monitoring requirements of this program as follows:

i. By meeting all current Part 75 monitoring requirements during the NO_x *control period* during each calendar year.

ii. Reserved

iii. By monitoring hourly and cumulative NO_x mass emissions using certified monitoring systems for each NO_x *control period* each calendar year starting in 1999 in accordance with the *OTC* documents "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

3. All *existing non-Part 75 budget sources* shall meet the monitoring requirements of the NO_x Budget Program as follows:

i. Reserved

ii. By monitoring hourly and cumulative NO_x mass emissions using certified monitoring systems for each NO_x *control period* of each calendar year starting in 1999 in accordance with the *OTC* documents "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

e. The *owner or operator* of a *budget source* subject to 40 CFR Part 75 shall demonstrate compliance with this section with a certified Part 75 monitoring system.

1. The *authorized account representative* or alternate *authorized account representative* shall submit to the Department a monitoring plan prepared in accordance with 40 CFR Part 75 and the additional requirements of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions".

i. All existing *Part 75 budget sources* not required to install additional monitoring equipment shall submit to the Department a complete hardcopy monitoring plan containing monitoring plan changes and additions required by the NO_x Budget Program no later than the effective date of this regulation. These *Part 75 budget sources* shall also submit to the Department a complete electronic monitoring plan upon request by the Department.

ii. For any *Part 75 budget source* required to install and certify new monitoring systems, submit to the Department a complete hardcopy monitoring plan acceptable to the Department at least 45 days prior to the initiation of certification tests for the new system(s). These *Part 75 budget sources* shall also submit to the Department a complete electronic monitoring plan upon request by the Department.

iii. For *new budget sources* under 40 CFR Part 75, submit to the Department the NO_x Budget Program information with the hardcopy Acid Rain Program monitoring plan no later than 90 days prior to the projected Acid Rain Program participation date. These *new Part 75 budget sources* shall also submit to the Department a complete electronic monitoring plan upon request by the Department.

2. The *authorized account representative* or alternate *authorized account representative* shall obtain certification of the NO_x emissions monitoring system in accordance with 40 CFR Part 75 and the additional requirements of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for

the NO_x Budget Program” and the *OTC* document “NO_x Budget Program Monitoring Certification and Reporting Instructions”.

i. If the *Part 75 budget source* uses certified monitoring systems under Part 75 to meet the requirements of the NO_x Budget Program and maintains and operates those monitoring systems according to the requirements of Part 75, it is not necessary to re-perform initial certification tests to ensure the accuracy of the monitoring systems under the NO_x Budget Program.

A. Formula verifications must be performed to demonstrate that the data acquisition system accurately calculates and reports NO_x mass emissions (lb/hr) based on hourly *heat input* (MMBTU/hr) and NO_x emission rate (lb/MMBTU).

B. Formula verifications shall be submitted to the Department no later than the effective date of this regulation.

ii. If it is necessary for the *owner or operator* of a *Part 75 budget source* to install and operate additional NO_x or flow systems or fuel flow systems because of stack and unit configuration, the *owner or operator* must certify the monitoring systems using the procedures of 40 CFR Part 75.

A. Successful certification testing of the monitoring system in accordance with the requirements of 40 CFR Part 75 shall be completed no later than April 30, 1999.

B. A certification test notice and protocol shall be submitted to the Department for approval prior to the anticipated performance of the certification testing, but no later than the effective date of this regulation.

C. A certification report meeting the requirements of the *OTC* document “NO_x Budget Program Monitoring Certification and Reporting Instructions” shall be submitted to the Department no later than 45 days following the performance of the certification testing.

3. If the *Part 75 budget source* has a flow monitor certified under Part 75, NO_x emissions in pounds per hour shall be determined using the Part 75 NO_x *CEMS* and the flow monitor. The NO_x emission rate in pounds per million BTU shall be determined using the procedure in 40 CFR Part 75, Appendix F, Section 3. The hourly *heat input* shall be determined by using the procedures in 40 CFR Part 75, Appendix F, Section 5. The NO_x emissions in pounds per hour shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) by the *heat input* rate (in million BTU per hour).

4. If the *Part 75 budget source* does not have a certified flow monitor, but does have a certified NO_x *CEMS*, the NO_x emissions rate in pounds per hour shall be

determined by using the NO_x *CEMS* to determine the NO_x emission rate in pounds per million BTU and the *heat input* shall be determined by using the procedures in 40 CFR Part 75, Appendix D. The NO_x emissions rate (in pounds per hour) shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) by the *heat input* rate (in million BTU per hour).

5. If the *Part 75 budget source* uses the procedures in 40 CFR Part 75, Appendix E, to determine the NO_x emission rate, the NO_x emissions in pounds per hour shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) determined using the Appendix E procedures times the *heat input* (in million BTU per hour) determined using the procedures in 40 CFR Part 75, Appendix D.

6. If the *Part 75 budget source* uses the procedures in 40 CFR Part 75, Subpart E, to determine NO_x emission rate, the NO_x emissions in pounds per hour shall be determined using the alternative monitoring method approved under 40 CFR Part 75, Subpart E, and the procedures contained in the *OTC* document titled “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program”.

7. The relevant procedures of the *OTC* document “Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program” shall be employed for unusual or complicated stack configurations.

f. The *owner or operator* of a *budget source* not subject to 40 CFR Part 75 shall seek the use of a NO_x monitoring method to comply with this regulation as follows:

1. The *authorized account representative* or alternate *authorized account representative* shall prepare and submit to the Department for approval a hardcopy monitoring plan for each NO_x *budget source*. Upon request by the Department, the *authorized account representative* or alternate *authorized account representative* shall also submit to the Department a complete electronic monitoring plan. Sources subject to the program on the effective date of this regulation shall submit the complete monitoring plan no later than the effective date of this regulation. Sources becoming subject to the *budget* program after the effective date of this regulation must submit a complete monitoring plan no later than 90 days prior to projected initial participation date. The monitoring plan shall be prepared in accordance with the requirements of the *OTC* documents “Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program” and “NO_x Budget Program Monitoring and Certification and Reporting Instructions”, and shall contain the following information, as a minimum:

i. A description of the monitoring method to be used.

ii. A description of the major components of

the monitoring system including the manufacturer, serial number of the component, the measurement span of the component and documentation to demonstrate that the measurement span of each component is appropriate to measure all of the expected values. This requirement applies to all monitoring systems including NO_x CEMS which have not been certified pursuant to 40 CFR Part 75.

iii. An estimate of the accuracy of the system and documentation to demonstrate how the estimate of accuracy was determined. This requirement applies to all monitoring systems that are not installed/being installed in accordance with the requirements of 40 CFR Part 75.

iv. A description of the tests that will be used for initial certification, initial quality assurance, periodic quality assurance, and relative accuracy.

v. If the monitoring method of determining *heat input* involves *boiler* efficiency testing, a description of the tests to determine *boiler* efficiency.

vi. If the monitoring method uses fuel sampling, a description of the test to be used in the fuel sampling program.

vii. If the monitoring method utilizes a generic default emission rate factor, the monitoring plan shall identify the generic default emission rate factor and provide documentation of the applicability of the generic default emission rate factor to the *non-Part 75 budget source*.

viii. If the monitoring method utilizes a unit specific default emission rate factor the monitoring plan shall include the following:

A. All necessary information to support the emission rate including:

1. Historical fuel use data and historical emissions test data if previous testing has been performed prior to May 1, 1997 to meet other state or federal requirements and the testing was performed using Department approved methods and protocols; or

2. If emissions testing is performed to determine the emission rate, include a test protocol explaining the test to be conducted. All test performed on or after May 1, 1997 must meet the requirements of 40 CFR Part 75, Appendix E, and the requirements of the OTC document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

B. Procedures which will be utilized to demonstrate that any control equipment in operation during the testing to develop source specific emission factors, or during development of load-based emission curves, are in use when those emission factors are applied to estimate NO_x emissions.

C. Alternative uncontrolled emission rates to be used to estimate NO_x emissions during periods when control equipment is not being used or is inoperable.

ix. If the monitoring method utilizes fuel flow

meters to determine *heat input* and said meters have not been certified pursuant to 40 CFR Part 75, the monitoring plan shall include a description of all components of the fuel flow meter, the estimated accuracy of the fuel flow meter, the most recent calibration of each of the components and the original accuracy specifications from the manufacturer of the fuel flow meter.

x. The *submitted* complete monitoring plan shall meet all of the provisions of Part 2, Section II of the OTC document "Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program" and the OTC document "NO_x Budget Program Monitoring Certification and Reporting Instructions".

2. The *authorized account representative* or alternate *authorized account representative* shall obtain certification of the NO_x emissions monitoring system in accordance with the requirements of the OTC documents "Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

i. The certification testing shall be successfully completed no later than April 30, 1999.

ii. A certification test notice and protocol shall be *submitted* to the Department prior to the anticipated performance of the certification testing, but no later than the effective date of this regulation.

iii. A certification report meeting the requirements of the OTC document "NO_x Budget Program Monitoring Certification and Reporting Instructions" shall be *submitted* to the Department no later than 45 days following the performance of the certification testing.

3. The *owner or operator* of a *non-Part 75 budget source* shall monitor NO_x emissions in accordance with one of the following requirements:

i. Any *non-Part 75 budget source* that has a maximum rated *heat input* capacity of 250 MMBTU/hr or greater which is not a peaking unit as defined in 40 CFR 72.2, or whose operating permit allows for the combustion of any solid fossil fuel, or is required to install a NO_x CEMS for the purposes of meeting either the requirements of 40 CFR Part 60 or any other Department or Federal requirement, shall install, certify, and operate a NO_x CEMS. Any *budget source* that has previously installed a NO_x CEMS for the purposes of meeting either the requirements of 40 CFR Part 60 or any other Department or Federal requirement shall certify and operate the NO_x CEMS.

A. The NO_x CEMS shall be used to measure stack gas NO_x concentration and the NO_x emissions rate in lb/MMBTU calculated in accordance with the procedures in 40 CFR Part 75, Appendix F.

B. Any *non-Part 75 budget source*

utilizing a NO_x CEMS shall meet the following requirements from the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program":

1. Initial certification requirements identified in Part 2, Section III.
2. Quality assurance requirements identified in Part 2, Section IV.
3. Re-certification requirements identified in Part 2, Section V.

ii. The *owner or operator* of a *non-Part 75 budget source* not required to install a NO_x CEMS in accordance with Section 13(f)(3)(i) of this regulation may elect to install a NO_x CEMS meeting the requirements of 40 CFR Part 75 or Section 13(f)(3)(i) of this regulation.

iii. The *owner or operator* of a *non-Part 75 budget source* that is not required to have a NO_x CEMS may request approval from the Department to use any of the following methodologies to determine the NO_x emission rate:

A. The *owner or operator* of a *non-Part 75 budget source* may request the use of an alternative monitoring methodology meeting the requirements of 40 CFR Part 75, Subpart E. The Department must approve the use of an *alternative monitoring system* before such system is operated to meet the requirements of the NO_x Budget Program. If the methodology must be incorporated into a permit pursuant to Regulation 30 of Delaware's "Regulations Governing the Control of Air Pollution", the methodology must also be approved by the EPA.

B. The *owner or operator* of a *boiler or combustion turbine non-Part 75 budget source* may request the use of the procedures contained in 40 CFR Part 75, Appendix E, to measure the NO_x emission rate, in lb/MMBTU, consistent with the requirements identified in Part 2 of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

C. The *owner or operator* of a combustion turbine *non-Part 75 budget source* may request the use of default emission factors to determine NO_x emissions, in pounds per MMBTU, as follows:

1. For oil-fired combustion turbines, the generic default emission factor is 1.2 pounds of NO_x per MMBTU.
2. For gas-fired combustion turbines, the generic default emission factor is 0.7 pound of NO_x per MMBTU.
3. The *owner or operator* of oil-fired and gas-fired combustion turbines may perform testing, in accordance with Department approved methods, to determine unit specific maximum potential NO_x emission

rates in accordance with the requirements of Part 2 of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

D. The *owner or operator* of a *boiler non-Part 75 budget source* may request the use of default emission factors to determine NO_x emissions, in pound per MMBTU, as follows:

1. For oil-fired *boilers*, the generic default emission factor is 2.0 pounds of NO_x per MMBTU.
2. For gas-fired *boilers*, the generic default emission factor is 1.5 pound of NO_x per MMBTU.
3. The *owner or operator* of oil-fired and gas-fired *boilers* may perform testing, in accordance with Department approved methods, to determine unit specific maximum potential NO_x emission rates in accordance with the requirements of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

4. The *owner or operator* of a *non-Part 75 budget source* may determine *heat input* in accordance with the following guidelines:

i. The *owner or operator* of a *non-Part 75 budget source* using a NO_x CEMS to measure NO_x emission rate may elect to measure stack flow and diluent (O₂ or CO₂) concentration and use the procedures of 40 CFR Part 75, Appendix F, to determine the hourly *heat input*. For flow monitoring systems, the *non-Part 75 budget source* must meet all applicable requirements of 40 CFR Part 75.

ii. The *owner or operator* of a *non-Part 75 budget source* combusting only oil and/or natural gas may determine hourly *heat input* rate by monitoring fuel flow and conducting fuel sampling.

A. The *owner or operator* of a *non-Part 75 budget source* may monitor fuel flow by using fuel flow meter systems certified under 40 CFR Part 75, Appendix D, or as defined in Part 2, Section III of the *OTC* document "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program."

B. The *owner or operator* of a *non-Part 75 budget source* combusting oil may perform oil sampling and testing in accordance with the requirements of 40 CFR Part 75 or Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program."

C. The *owner or operator* of a *non-Part 75 budget source* combusting gas must determine the heating value of the gas in accordance with the requirements of 40 CFR Part 75 or the methodologies approved in Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program."

iii. The *owner or operator* of a *non-Part 75*

budget source electrical generating unit less than 25 megawatts rated capacity that combusts only oil or gas may petition the Department to determine *heat input* by measuring fuel used on a frequency of greater than one hour but no less than weekly.

A. The fuel usage must be reported on an hourly basis by apportioning the fuel based on electrical load in accordance with the following formula:

$$\text{Hourly fuel usage} = \frac{\text{Hourly electrical load}}{\text{Total electrical load}} \times \text{total fuel usage}$$

B. The *owner or operator* of a *non-Part 75 budget source* combusting oil may perform oil sampling and testing in accordance with the requirements of 40 CFR Part 75 or Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

C. The *owner or operator* of a *non-Part 75 budget source* combusting gas must determine the heating value of the gas in accordance with the requirements of 40 CFR Part 75 or the methodologies approved in Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

iv. The *owner or operator* of a *non-Part 75 budget source* that combusts only oil and/or gas and has elected to use a unit-specific or generic default NO_x emission rate, may petition the Department to determine hourly *heat input* based on fuel use measurements for a specified period that is longer than one hour.

A. The petition must include a description of the periodic measurement methodology, including an assessment of its accuracy.

B. Each time period must begin on or after May 1 and conclude on or before September 30 of each calendar year.

C. To determine hourly input, the *owner or operator* shall apportion the long term fuel measurements to operating hours during the *control period*.

D. Fuel sampling and analysis must conform to the requirements of Part 2, Section I(C)(2) of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

v. The *owner or operator* of a *non-Part 75 budget source* that combusts any fuel other than oil or natural gas may petition the Department to use an alternative method of determining *heat input*, including:

A. Conducting fuel sampling and analysis and monitoring fuel usage.

B. Using *boiler* efficiency curves and other monitored information such as *boiler* steam output.

C. Any other method approved by the

Department and which meets the requirements identified in Part 2, Section I, of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

vi. The *owner or operator* of a *non-Part 75 budget source* may petition the Department to use a unit-specific maximum hourly *heat input* based on the higher of the manufacturer's rated capacity or the highest observed hourly *heat input* in the period beginning five years prior to the program participation date. The Department may approve a lower maximum *heat input* if an *owner or operator* demonstrates that the highest observed hourly *heat input* in the last five years is not representative of the unit's current capabilities because modifications have been made limiting its capacity permanently.

vii. Methods used for determination of *heat input* are subject to both applicable initial and periodic relative accuracy and quality assurance testing requirements in accordance with the following provisions of the *OTC* document "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program":

A. Initial certification requirements identified in Part 2, Section III.

B. Quality assurance requirements identified in Part 2, Section IV.

C. Re-certification requirements identified in Part 2, Section V.

5. Once the NO_x emission rate in pounds per million BTU has been determined in accordance with Section 13(f)(3) of this regulation and the *heat input* rate in MMBTU per hour has been determined in accordance with Section 13(f)(4) of this regulation, the two values shall be multiplied together to result in NO_x emissions in pounds per hour and reported to the *NETS* in accordance with Section 15 of this regulation.

6. The relevant procedures of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" shall be employed for unusual or complicated stack configurations.

Section 14 - Recordkeeping

The *owner or operator* of any *budget source* shall maintain, for a period of at least five years, copies of all measurements, tests, reports, data, and other information required by this regulation.

Section 15 - Emissions Reporting

a. The *Authorized account representative* or alternate *authorized account representative* for each *budget source* shall submit to the *NETS Administrator*, electronically in a format which meets the requirements of the EPA's Electronic Data Reporting (EDR) convention, emissions and operating information in accordance with the *OTC*

documents "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

1. All *existing Part 75 budget sources* not required to install additional monitoring equipment shall meet the reporting requirements of the NO_x Budget Program as follows:

i. By meeting all current Part 75 reporting requirements and reporting the additional unit identification information as required by the NO_x Budget Program (100 and 500 level records) beginning no later than with the submittal of the quarterly report for the second calendar quarter of 1999.

ii. Reserved

iii. Beginning with the quarterly report for the second quarter of 1999, report all Part 75 required information and all additional information required by the NO_x Budget Program including:

A. Additional unit identification information.

B. Hourly NO_x mass emissions in pounds per hour based on reported hourly *heat input* and hourly NO_x emission rate.

C. Cumulative NO_x *control period* NO_x mass emissions in tons per NO_x *control period*.

D. Additional monitoring plan information related to the NO_x Budget Program.

E. Certification status information as required by the NO_x Budget Program.

2. Beginning no later than with the quarterly report for the second quarter of 1999 all *Part 75 budget sources*, that are required to install and certify new monitoring systems to meet the requirements of the NO_x Budget Program, shall meet the reporting requirements of the NO_x Budget Program by meeting all current Part 75 reporting requirements and the additional reporting requirements of the NO_x Budget Program including *submittal* of the following information:

i. Additional unit identification information.

ii. Hourly NO_x mass emissions in pounds per hour based on reported hourly *heat input* and hourly NO_x emission rate.

iii. Cumulative NO_x *control period* NO_x mass emissions in tons per NO_x *control period*.

iv. Additional monitoring plan information related to the NO_x Budget Program.

v. Certification status information as required by the NO_x Budget Program.

3. All *non-Part 75 budget sources* shall meet the

reporting requirements of the NO_x Budget Program by reporting all information required by the NO_x Budget Program as well as reporting hourly and cumulative NO_x mass emissions beginning no later than with the quarterly report for the second quarter of 1999.

b. The *authorized account representative* or alternate *authorized account representative* of a *budget source* subject to 40 CFR Part 75 shall submit NO_x Budget Program quarterly data to the U.S. EPA as part of the quarterly reports *submitted* for the compliance with 40 CFR Part 75.

c. The *authorized account representative* or alternate *authorized account representative* of a *budget source* not subject to 40 CFR Part 75 shall submit NO_x budget program quarterly data to the U.S. EPA as follows:

1. For *non-Part 75 budget sources* not utilizing NO_x *CEMS*, submit two quarterly reports each year, one for the second quarter and one for the third quarter.

2. For *non-Part 75 budget sources* using any NO_x *CEMS* based measurement methodology, submit a complete quarterly report for each quarter in the year.

3. The submission deadline is thirty days after the end of the calendar quarter. If the thirtieth day falls on a weekend or federal holiday, the reporting deadline is midnight of the first day following the holiday or weekend.

d. Should a *budget source* be permanently shutdown, the *authorized account representative* or alternate *authorized account representative* may submit a written request the Department for an exemption from the requirements of Sections 13 and 14 of this regulation. The shutdown exemption request shall identify the *budget source* being shutdown and the date of permanent shutdown. Within 30 days of receipt of the shutdown exemption request, the Department shall:

1. If the Department does not approve the shutdown exemption request, the *authorized account representative* shall be notified in writing, including the reason(s) for not approving the request.

2. If the Department approves the shutdown exemption request:

i. The *authorized account representative* shall be notified in writing.

ii. The Department shall notify the *NETS Administrator* of the approved shutdown request.

Section 16 - End-of Season Reconciliation

a. *Allowances* may be used for compliance with this program in a designated compliance year by being in a *compliance account* as of December 31 of the subject year, or by being identified in an *allowance transfer* request that is *submitted* by December 31 of the subject year.

b. Each year during the period November 1 through December 31, inclusive, the *authorized account representative* or alternate *authorized account representative*

shall request the *NATS Administrator* to deduct *current year allowances* from the *compliance account* equivalent to the NO_x emissions from the *budget source* in the most recent *control period*. This request shall be *submitted* by the *authorized account representative* or alternate *authorized account representative* to the *NATS Administrator* by not later than December 31. This request shall identify the *compliance account* of the *budget source* and the serial number of each of the *allowances* to be deducted.

1. *Allowances* allocated for the current NO_x *control period* may be used without restriction.

2. *Allowances* allocated for future NO_x *control periods* may not be used.

3. *Allowances* which were allocated for any preceding NO_x *control period* which were banked may be used in the current *control period*. *Banked allowance* shall be deducted against NO_x emissions in accordance with the ratio of NO_x *allowances* to emissions as specified in Section 12 of this regulation.

c. If the emissions from a *budget source* in the current *control period* exceed the *allowances* held in that *budget source's compliance account* for that *control period*:

1. The *budget source* shall obtain additional *allowances* by December 31 of the subject year so that the total number of *allowances* in the *compliance account* meeting the criteria of Section 16(b)(1) through (3) of this regulation, including *allowances* identified in any *allowance transfer* request properly *submitted* to the *NATS Administrator* by December 31 of the subject year, equals or exceeds the *control period* emissions of NO_x rounded to the nearest whole ton.

2. If there is an insufficient number of NO_x *allowances* available for NO_x *allowance deduction*, the source is out of compliance with this regulation and subject to enforcement action and penalties pursuant to Section 18 of this regulation.

d. If by the December 31 compliance deadline the *authorized account representative* or alternate *authorized account representative* either makes no NO_x *allowance deduction* request, or a NO_x *allowance deduction* request insufficient to meet the *allowances* required by the actual emissions, a violation of this regulation may have occurred and the *NATS Administrator* may deduct the necessary number of NO_x *allowances* from the *budget source's compliance account*. The *NATS Administrator* shall provide written notice to the *authorized account representative* that NO_x *allowances* were deducted from the source's *account*.

e. The *authorized account representative* or alternate *authorized account representative* may notify the *NATS Administrator* of any claim that the *NATS Administrator* made an error in recording transfer information that was *submitted* in accordance with Section 11 of this regulation,

provided that such claim of error notification is *submitted* to the *NATS Administrator* by no later than 15 business days following the date of the notification by the *NATS Administrator* pursuant to actions taken in accordance with Section 16(d) of this regulation.

1. Such claim of error notification shall be in writing and shall include:

i. A description of the error alleged to have been made by the *NATS Administrator*.

ii. A proposed correction of the alleged error.

iii. Any supporting documentation or other information concerning the alleged error and proposed corrective action.

iv. The following statement: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

v. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

2. The *NATS Administrator*, at the *NATS Administrator's* sole discretion based on the documentation provided, shall determine what changes, if any, shall be made to the *account(s)* subject to the alleged error. Not later than 20 business days after receipt of a claim of error notification, the *NATS Administrator* shall submit to the *authorized account representative* and to the Department a written response stating the determination made, any action taken by the *NATS Administrator*, and the reason(s) for the determination and actions.

3. The *NATS Administrator* may, without prior notice of a claim of error and at the *NATS Administrator's* sole discretion, correct any errors in any account on the *NATS Administrator's* own motion. The *NATS Administrator* shall notify the *authorized account representative* and the Department no later than 20 business days following any such corrections.

Section 17 - Compliance Certification

a. For each NO_x *allowance control period*, the *authorized account representative* or alternate *authorized account representative* of each *budget source* shall submit to the Department an annual compliance certification.

b. The compliance certification shall be *submitted* no later than December 31 of each year.

c. The compliance certification shall contain, at a minimum, the following information:

1. Identification of the *budget source*, including the *budget source's* name and address, the name of the *authorized account representative* and alternate *authorized account representative*, if any, and the *NATS account number*.

2. A statement indicating whether or not emissions data was *submitted* to the *NETS Administrator* pursuant to Section 15 of this regulation.

3. A statement indicating whether or not the *budget source* held sufficient NO_x *allowances*, as determined in Section 16 of this regulation, in its *compliance account* for the NO_x *allowance control period* as of December 31 of the subject year, or by being identified in an *allowance transfer request* that was *submitted* by December 31 of the subject year, to equal or exceed the *budget source's* actual emissions as reported to the *NETS Administrator* for the *control period*.

i. If the *budget source's compliance account* held sufficient *allowances*, no additional documentation is required to be submitted under Section 17(c)(3) of this regulation.

ii. If the *budget source's compliance account* held insufficient *allowances*, the *authorized account representative* or alternate *authorized account representative* may include all of the following information as part of the compliance certification for consideration by the Department under Section 18(b) and Section 18(c) of this regulation:

A. A calculation showing the overall percentage that the *control period* NO_x emissions from the non-compliant *budget source* plus all other *budget sources* under control of a common company, as identified in Appendix "A" of this regulation, and within the State of Delaware, exceeded their *allowance* holdings:

Overall Percentage = ((Total NO_x Emissions/Total Allowance Holdings)-1) * 100

Where:

Total NO_x Emissions = The subject year's *control period* NO_x emissions from the non-compliant *budget source* plus all other *budget sources* under the control of a common company, as identified in Appendix "A" of this regulation, and within the State of Delaware.

Total Allowance Holdings = As of December 31 of the subject year, the total number of *allowances* held in the compliance accounts of the non-compliant *budget source* plus all other *budget sources* under the control of a common company, as identified in Appendix "A" of this regulation, and within the State of Delaware. The total *allowance* holdings shall also include *allowances* identified in any *allowance transfer request* properly submitted to the *NATS Administrator*, in accordance with the requirements of Section 11 of this regulation, by December 31 of the subject year.

B. A copy of a reasonably specific plan for the balancing of the *budget source's compliance account* by December 31 of the subject year that 1) was prepared at the start of the *control period*, and 2) included contingencies for reasonably anticipated events which might compromise the *budget source's* ability to balance its *compliance account* (e.g., especially hot weather, operational glitches at the *budget source*, etc):

C. Documentation showing that investments in equipment, *allowance* purchase, and/or other items were made consistent with the *budget source's* plan under Section 17(c)(3)(ii)(B) of this regulation:

D. Documentation showing that the *budget source's* plan under Section 17(c)(3)(ii)(B) of this regulation was periodically reevaluated, and continuing reasonable efforts were made to ensure operations and/or *allowance* purchases would allow the *budget source* to balance the *budget source's compliance account* by December 31 of the subject year:

E. Documentation indicating that communications with brokers about the availability of *allowances* for purchase occurred consistent with the *budget source's* plan under Sections 17(c)(3)(ii)(B) and (D) of this regulation and, if applicable, rationale indicating why any available *allowances* were not purchased):

F. Certification that, except for the final balancing of a *compliance account*, all program requirements (e.g., applications, submittals, monitoring, etc.) were substantially satisfied. For the purposes of making the determination under Section 18(b) of this regulation only, instances where a requirement was not satisfied due to the Department's and/or the United States Environmental Protection Agency's failure to provide a necessary approval in a timely fashion shall be considered by the Department in determining whether the *budget source* substantially satisfied that particular requirement, provided documentation of such failure is included with the certification, and:

G. Documentation of any other factors that the *authorized account representative* or alternate *authorized account representative* considers relevant.

4. A statement of certification whether the monitoring plan which governs the *budget source* was maintained to reflect actual operation and monitoring of the *budget source* and contains all information necessary to attribute monitored emissions to the *budget source*.

5. A statement of certification that all emissions from the *budget source* were accounted for, either through the applicable monitoring or through application of the appropriate missing data procedures.

6. A statement whether the facts that form the basis for certification of each monitor or monitoring method approved in accordance with Section 13 of this regulation have changed.

7. If a change is required to be reported in accordance with Section 17(c)(6) of this regulation, specify the nature of the change, when the change occurred, and how the *budget source's* compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor re-certification.

8. The following statement in verbatim, "*I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fines or imprisonment.*"

9. Signature of the *budget source's* authorized account representative or alternate authorized account representative and the date of signature.

d. The Department may verify compliance by whatever means necessary, including but not limited to:

1. Inspection of facility operating records.
2. Obtaining information on *allowance deduction* and transfers from the *NATS Administrator*.
3. Obtaining information on emissions from the *NETS Administrator*.
4. Testing emission monitoring devices.
5. Requiring the *budget source* to conduct emissions testing using testing methods approved by the Department.

Section 18 - Failure to Meet Compliance Requirements

a. If the emissions from a *budget source* exceed *allowances* held in the *budget source's* compliance account for the *control period* as of December 31 of the subject year, the *NATS Administrator* shall deduct *allowances* from the *budget source's* compliance account for the next *control period* at a rate of three (3) *allowances* for every one (1) ton of *excess emissions*.

1. The *NATS Administrator* shall provide written notice to the *budget source's* authorized account representative that NO_x *allowances* were deducted from the *budget source's* account.

2. The *authorized account representative* or alternate *authorized account representative* may notify the *NATS Administrator* of any claim that the *NATS Administrator* made an error in recording *submitted* transfer information in accordance with Section 16(e) of this regulation.

3. If the NO_x emissions from a *budget source* exceed *allowances* held in the *budget source's* compliance

account for the year 2002 *control period* as of December 31, 2002, *allowances* will be deducted from the 2003 *control period* in accordance with the requirements of follow-on regulation that addresses *allowance allocations* for the year 2003 *control period*.

b. If the result of the calculation submitted pursuant to Section 17(c)(3)(ii)(A) of this regulation is equal to or less than 5%, and if the Department determines that the *budget source* has made all reasonable efforts to comply with the requirements of this regulation based on the information submitted pursuant to Section 17(c)(3)(ii) of this regulation, considered collectively, then:

1. For shortfalls that occurred for the 1999 *control period*, the Department shall:

i. Within 30 days of receipt of the notification under Section 18(a)(1) of this regulation;

A. Calculate a penalty correction allocation. Such allocation shall be calculated by multiplying the value of the 3-to-1 penalty that was applied to the 1999 *control period* shortfall under Section 18(a) of this regulation by two-thirds. This quantity may be adjusted by the Department at any time to account for any revision occurring under Section 18(a)(2) of this regulation.

B. Notify the *OTC* and authorize the *NATS Administrator* to transfer the quantity of *allowances* equal to the penalty correction allocation calculated under Section 18(b)(1)(i)(A) of this regulation into Delaware's primary reserve *NATS account*.

ii. Within 30 days of determining that the *NATS Administrator* has added the subject *allowances* into Delaware's primary reserve *NATS account*, submit a transfer request to the *NATS Administrator* transferring the penalty correction allocation to the appropriate *budget source's* compliance account.

2. For shortfalls that occurred for the 2000 *control period*, the Department shall:

i. Within 30 days of receipt of the notification under Section 18(a)(1) of this regulation;

A. Calculate a penalty correction allocation. Such allocation shall be calculated by multiplying the value of the 3-to-1 penalty that was applied to the 2000 *control period* shortfall under Section 18(a) of this regulation by one-third. This quantity may be adjusted by the Department at any time to account for any revision occurring under Section 18(a)(2) of this regulation.

B. Notify the *OTC* and authorize the *NATS Administrator* to transfer the quantity of *allowances* equal to the penalty correction allocation calculated under Section 18(b)(2)(i)(A) of this regulation into Delaware's primary reserve *NATS account*.

ii. Within 30 days of determining that the *NATS Administrator* has added the subject *allowances* into Delaware's primary reserve *NATS account*, submit a transfer request to the *NATS Administrator* transferring the penalty

correction allocation to the appropriate budget source's compliance account.

3. For shortfalls that occurred subsequent to calendar year 2000 control period, the 3-to-1 penalty is in effect for all circumstances and the Department shall not process any penalty corrections under Section 18(b) of this regulation.

b.c. In addition to NO_x allowance deduction penalties under Section 18(a) of this regulation, the Department may enforce the provisions of this regulation under 7 Del.C. Chapter 60. In the determination of the number of days of violation for the purposes of calculating the maximum penalty under the provisions of 7 Del.C. Chapter 60, any excess emissions for the control period shall constitute daily violations for the control period, 153 violations. The Department will consider collectively the criteria set forth in Section 17(c)(3)(ii) of this regulation in determining the magnitude of the penalty assessed.

Section 19 - Program Audit

a. The Department shall conduct an audit of the NO_x Budget Program prior to May 1, 2002, and at a minimum every three years thereafter. The audit shall include the following:

1. Confirmation of emissions reporting accuracy through validation of NO_x allowance monitoring and data acquisition systems at the budget source.

2. Examination of the extent to which banked allowances have, or have not, contributed to emissions in excess of the budget for each control period covered by the audit.

3. An analysis of the geographic distribution of emissions as well as hourly and daily emission totals in the context of ozone control.

4. An assessment of whether the program is providing the level of emissions reductions anticipated and include in the SIP.

b. The Department shall prepare a report on the results of the audit. The Department shall seek public input on the conclusions contained in the audit report and provide for a public notice, public comment period, and allow for the request to hold a public hearing on the conclusions contained in the report.

c. In addition to the Department audit, the Department may seek a third party audit of the program. Such an audit could be implemented by the Department or could be performed on a region-wide basis under the supervision of the OTC.

d. Should an audit result in recommendations for program revisions at the state level, the Department shall consider the audit recommendations, in consultation with the OTC, and if found necessary, propose the appropriate program revisions as changes to current procedures or modifications to this regulation.

Section 20 - Program Fees

The authorized account representative or alternate authorized account representative of each compliance account and each general account shall pay fees to the Department consistent with the fee schedule established from time to time by the Delaware General Assembly, should a fee schedule be established.

FINAL REGULATIONS

NO_x BUDGET PROGRAM --- APPENDIX "A"

COMPANY	FACILITY and PLANT POINT	OTC IDENTIFIED ALLOWANCES	EXCEPTIONAL CIRCUMSTANCES ALLOWANCES	RESERVE ALLOWANCES	FINAL ALLOWANCES	SOURCE TYPE
DELMARVA POWER	Christiana Sub 001	6	-0-	1	7	Non-Part 75
	Christiana Sub 002	6	-0-	1	7	Non-Part 75
	Delaware City 002	1	-0-	1	2	Non-Part 75
	Edge Moor 001	1	-0-	1	2	Non-Part 75
	Edge Moor 002	241	-0-	1	242	Part 75
	Edge Moor 003	345	-0-	1	346	Part 75
	Edge Moor 004	621	28	1	650	Part 75
	Hay Road 001	49	-0-	1	50	Non-Part 75
	Hay Road 002	34	-0-	1	35	Non-Part 75
	Hay Road 3*	-0-	-0-	-0-	-0-	Part 75
	Indian River 001	340	-0-	1	341	Part 75
	Indian River 002	397	-0-	1	398	Part 75
	Indian River 003	834***	-0-	1	835	Part 75
	Indian River 004	1,652	-0-	2	1,654	Part 75
	Indian River 10**	-0-	-0-	1	2	Non-Part 75
	Madison Str. 001	-0-	-0-	1	1	Non-Part 75
West Sub 001	2	-0-	1	3	Non-Part 75	
DFD Operating Services	McKee Run 001	72***	-0-	1	73	Non-Part 75
	McKee Run 002	44***	-0-	1	45	Non-Part 75
	McKee Run 003	184	-0-	2	186	Part 75
	VanSant 1*	-0-	-0-	-0-	-0-	Part 75
FIRST STATE STAR	Co-Gen 1**	-0-	-0-	2	203	Non-Part 75
MOTIVA ENTERPRISE	DelawareCity 006****	-0-	-0-	1	105	Non-Part 75
	Delaware City 019	20	-0-	1	21	Non-Part 75
	Delaware City 034	70	-0-	1	71	Non-Part 75
	Delaware City 067	93	-0-	1	94	Non-Part 75
	Delaware City 068	206	-0-	1	207	Non-Part 75
	Delaware City 069	227	-0-	1	228	Non-Part 75
	Delaware City 070	214	-0-	2	216	Non-Part 75
	Delaware City 072	-0-	-0-	-0-	-0-	Non-Part 75
	Delaware City 074	117	-0-	1	118	Non-Part 75
	Delaware City 105	-0-	-0-	-0-	-0-	Non-Part 75
TOTAL		5,776	28	32	6,142	

NOTES:

(*) These Units did not start operation until after 1990.

(**) Units operated in the 1990 NO_x control period but were not included in the "1990 OTC Baseline Emissions Inventory".

(***) OTC MOU allowances corrected from "1990 OTC Baseline Emissions Inventory" due to use of incorrect RACT factor.

(****) OTC MOU allowances corrected from "1990 OTC Baseline Emissions Inventory" due to incorrect reporting of 1990 fuel use information.

NO_x BUDGET PROGRAM - APPENDIX B

COMPANY	FACILITY or PLANT POINT	1990 BASELINE HEAT INPUT (10 ⁶ BTU)	1990 BASELINE NO _x EMISSIONS (Tons)	1990 BASELINE EMISSION RATE (lb/mmBTU)	RACT NO _x EMISSIONS (Tons)
DELMARVA POWER	Christiana Sub 001	16,245	5.8	0.709	5.8
	Christiana Sub 002	15,447	5.5	0.709	5.5
	Delaware City 002	1,612	0.6	0.703	0.6
	Edge Moor 001	1,835	0.7	0.708	0.7
	Edge Moor 002	2,409,836	655.8	0.545	648.1
	Edge Moor 003	3,451,182	928.7	0.540	516.0
	Edge Moor 004	6,213,944	1,436.8	0.463	1,147.3
	Hay Road 001	938,341	49.0	0.105	49.0
	Hay Road 002	631,111	33.6	0.106	33.6
	Hay Road 3*	-0-	-0-	-0-	-0-
	Indian River 001	1,816,612	755.6	0.828	755.6
	Indian River 002	2,134,257	882.3	0.828	882.3
	Indian River 003	4,521,301	1,853.7	0.819	762.1
	Indian River 004	8,747,546	3,671.6	0.838	1,830.8
	Indian River 10**	-0-	-0-	-0-	-0-
	Madison Street 001	1,079	0.4	0.706	0.4
	West Sub 001	6,105	2.2	0.709	2.2
DFD	McKee Run 001	344,472	91.6	0.524	55.0
	McKee Run 002	211,742	56.3	0.505	33.8
	McKee Run 003	1,724,601	411.7	0.447	321.8
	VanSant 1*	-0-	-0-	-0-	-0-
FIRST STATE	Co-Gen 1**	-0-	-0-	-0-	-0-
STAR MOTIVA ENTERPRISE	Delaware City 006**	-0-	-0-	-0-	-0-
STAR MOTIVA ENTERPRISE	Delaware City 019	318,601	20.1	0.126	20.1
	Delaware City 034	1,100,470	69.5	0.126	69.5
	Delaware City 067	931,712	229.0	0.486	116.5
	Delaware City 068	1,820,133	588.5	0.647	345.8
	Delaware City 069	2,002,309	647.4	0.647	440.5
	Delaware City 070	1,888,905	610.7	0.647	368.3
	Delaware City 072	-0-	-0-	-0-	-0-
	Delaware City 074	1,847,552	116.7	0.126	116.7
	Delaware City 105	-0-	-0-	-0-	-0-

NOTES: Data as identified in "1990 OTC NO_x Baseline Emission Inventory", Final OTC NO_x Baseline Inventory, Point-Segment Level Data.

(*) These Units did not start operation until after 1990.

(**) Indian River Point 10, First State Co-Gen 1, and Delaware City 006 were not included in the Reference Document, but were operating in the 1990 NO_x control period.

DIVISION OF WATER RESOURCES

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

Re: Total Maximum Daily Load (TMDL) for Zinc in the Red Clay Creek

Date of Issuance: November 10, 1999

Effective Date of TMDL: December 11, 1999

I. Background Findings

A public hearing was held on Tuesday, September 7, 1999, to gather public comments on a proposed Total Maximum Daily Load ("TMDL") for zinc in the Red Clay Creek. Water quality monitoring performed by the Delaware Department of Natural Resources and Environmental Control ("DNREC") and others has shown that the concentration of zinc in the Red Clay Creek, adjacent to and downstream of Yorklyn, Delaware, does not meet applicable water quality standards for zinc. Although zinc is an essential element for both aquatic life and humans, excessive concentrations can adversely affect aquatic life and human health. Zinc concentrations in the Red Clay Creek are not high enough to adversely affect people who

drink water that is withdrawn from the Red Clay Creek. Zinc concentrations do, however, occasionally exceed water quality criteria designed to protect fish and other aquatic life from the toxic effects of the metal.

Zinc enters the Red Clay Creek from point sources and nonpoint sources. National Vulcanized Fiber Company ("NVF") in Yorklyn is the only permitted point source discharger of zinc to the Red Clay Creek in Delaware. Nonpoint sources of zinc in the Red Clay Creek include background loadings from the area of the Red Clay Creek watershed upstream of Yorklyn, seepage of contaminated groundwater from beneath the NVF facility to the Red Clay Creek and diffusive flux from Creek sediments to the overlying water column.

Section 303(d) of the federal Clean Water Act ("CWA") requires states to develop a list of waterbodies for which existing pollution controls are not sufficient to attain applicable water quality standards ("§ 303(d) List"). The TMDL described in § 303(d) of the CWA must be composed of three components, including Waste Load Allocations ("WLA") for point source discharges, Load Allocations ("LA") for nonpoint sources, and a Margin of Safety ("MOS") to account for uncertainties in the relationship between pollutant loading and in-stream concentrations.

DNREC listed the Red Clay Creek on Delaware's 1996 and 1998 § 303(d) Lists because the levels of zinc in the waters of Red Clay Creek frequently exceeded, and continue to exceed, applicable water quality standards despite existing controls. Therefore, in order to assure that applicable water quality standards would be met and beneficial stream uses protected, DNREC proposed a TMDL to reduce the amount of zinc in Red Clay Creek as required by § 303(d) of the CWA. DNREC proposed a TMDL of 1.81 pounds per day for zinc in the Red Clay Creek. The proposed mass loading from NVF's permitted discharge 002 (WLA₀₀₂) and the mass loading from contaminated groundwater beneath the NVF property (LA_{g.w.}) was 1.2 pounds of zinc per day, measured as total zinc. The proposed mass loading from the area upstream of Yorklyn (LA_{up}) was 0.6 pounds per day, measured as total zinc. The proposed TMDL also reserved a small percentage (~ 1%) of the TMDL as a Margin of Safety. This small margin of safety (less than 1 percent of the TMDL) reflects the robust data set and the conservative approach used to establish the TMDL, while still accounting for the uncertainty associated with possible diffusion of zinc from Red Clay Creek sediments.

After the hearing, the Department prepared a document presenting its review of the technical issues set out in the record entitled "Response to Public Comments Re: Proposed Total Maximum Daily Load for Zinc in the Red Clay Creek, Delaware" and that document is expressly incorporated herein. Thereafter, the Hearing Officer

prepared a Report with recommendations dated November 9, 1999, which is also expressly incorporated herein.

II. Other Findings And Conclusions

A. Findings

1. Proper notice of the proposed action and public hearing was provided as required by law. Further, efforts to secure public participation went beyond the minimum legal requirements.

2. Water quality monitoring has shown that the concentration of zinc in the Red Clay Creek frequently exceeds applicable water quality standards for zinc adjacent to and downstream from the National Vulcanized Fibers (NVF) manufacturing facility in Yorklyn, Delaware.

3. Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a Total Maximum Daily Load (TMDL) for waterbodies and pollutants for which existing pollution controls are not sufficient to attain applicable water quality standards.

4. The zinc TMDL of 1.81 pounds per day is designed to ensure compliance with the State of Delaware Surface Water Quality Standards. The TMDL properly considers applicable water quality criteria and critical design flows as specified within the State of Delaware Surface Water Quality Standards. Substantial scientific evidence and analysis to support a modification to the applicable water quality criteria was not submitted during the comment period. Similarly, an attempt by one commenter to apply a dynamic modeling approach to the development of an alternative zinc TMDL for the Red Clay Creek was insufficient to justify modifications to the proposed TMDL.

5. As required by Section 303(d) of the Federal Clean Water Act, TMDLs must include a total allowable load composed of 3 parts: a wasteload allocation (WLA) for point sources, a load allocation (LA) for nonpoint sources, and a margin of safety to account for uncertainties between zinc loading and resulting in-stream zinc concentrations. The zinc TMDL for the Red Clay Creek includes all 3 of these required parts.

6. A wasteload allocation for NVF NPDES outfall 002 and a load allocation for zinc released from the NVF site via groundwater discharge have been combined into a single allowable NVF site loading of 1.2 pounds of zinc per day. This approach is justified by the site-specific considerations involved and is not in conflict with existing laws and regulations. As stated in Article 6 of the proposed TMDL regulation, the manner in which the 1.2 pounds per day site loading is allocated between outfall 002 and the groundwater discharge is an implementation issue that shall be addressed through the development of a Pollution Control Strategy.

7. A load allocation of 0.6 pounds per day has been specified to account for background sources of zinc located upstream from the NVF Yorklyn facility. This load allocation is justified based upon data contained in the record and the application of reasonable assumptions concerning non-detected concentrations of zinc in upstream samples.

8. The TMDL includes a margin of safety of 0.01 pounds per day of zinc. This margin of safety accounts for uncertainties associated with the flux of zinc from the sediments and uncertainties associated with water hardness as supported by the record. A larger margin of safety, based on an arbitrary selection of 10 percent of the TMDL, is not justified. Similarly, a larger margin of safety to account for future development is not justified by the record.

9. The TMDL considers and accounts for critical environmental conditions which occur in the Red Clay Creek. The TMDL identifies the critical environmental conditions as times of low stream flow when concentrations of zinc tend to be highest, especially at points closest to the NVF Yorklyn facility. Furthermore, the TMDL considers seasonal environmental variations through the use of critical low flow conditions in the stream, which occur during summer to fall drought periods.

10. Section 303(d) of the Federal Clean Water Act does not require consideration of attainability, costs, or benefits associated with TMDLs, nor does that Section require a balancing of costs and benefits in establishing TMDLs.

11. The DNREC's conclusion regarding the presence of a contaminated groundwater discharge from the NVF site to the Red Clay Creek is supported by a number of corroborating factors as detailed in the record.

12. The DNREC's use of NVF's Toxics Release Inventory (TRI) data was based on the basic principle of mass balance, independent of how NVF collected that data. Further, DNREC properly qualified any conclusions it drew that relied upon the TRI data. Finally, there is reason to believe that the TRI data submitted by the NVF Company may understate the amount of zinc released from the NVF Yorklyn facility to the Red Clay Creek.

13. The work underway at the NVF Yorklyn facility as a part of an EPA removal action does not alter the proposed TMDL. Rather, the TMDL provides a target for the removal action to strive for.

14. Failure of DNREC to adopt the proposed TMDL by December 31, 1999 will result in EPA action to establish a Federal TMDL for zinc in this waterbody by December 31, 2000.

B. Conclusion

Based on the record established in this matter, DNREC has a reasonable basis upon which to adopt the TMDL regulation as proposed at the hearing.

III. Order

In view of the findings and conclusions, it is hereby ordered that the proposed TMDL as set forth in the record be adopted in final form and that the regulatory promulgation process move forward as required by law.

IV. Reasons

The record in this matter provides a reasonable basis to support the DNREC's proposed TMDL regulation, the adoption of which is necessary to ensure that applicable water quality standards for zinc are met in the Red Clay Creek where the record shows that water quality frequently exceeds applicable standards for zinc adjacent to and downstream from the National Vulcanized Fibers (NVF) manufacturing facility in Yorklyn, Delaware. Thus, promulgation of this TMDL regulation will help further the policies and purposes of 7 Del. C. Chapter 60 by leading to the reduction of zinc loadings in Red Clay Creek so as to conserve and protect water resources of this State.

Nicholas A. DiPasquale, Secretary

Total Maximum Daily Load (TMDL) for Zinc in the Red Clay Creek, Delaware

A. INTRODUCTION and BACKGROUND

Water quality monitoring performed by the Delaware Department of Natural Resources and Environmental Control (DNREC) and others has shown that the Red Clay Creek, adjacent to and downstream of Yorklyn, Delaware, does not meet applicable water quality standards for zinc. Although zinc is an essential element for both aquatic life and humans, excessive concentrations can adversely affect aquatic life and human health. Zinc concentrations in the Red Clay Creek are not high enough to adversely affect people who drink water that is withdrawn from the Red Clay Creek. Zinc concentrations do, however, frequently exceed water quality criteria designed to protect fish and other aquatic life from the toxic affects of the metal.

A reduction in the amount of zinc reaching the Red Clay Creek is necessary to assure that applicable water quality standards are met and beneficial stream uses are protected. Zinc enters the Red Clay Creek from point sources and nonpoint sources. The National Vulcanized Fiber (NVF) Company located in Yorklyn, Delaware, is the only permitted point source discharge of zinc to the Red Clay Creek in Delaware. Nonpoint sources of zinc in the Red Clay Creek include background loading from the area of the Red Clay Creek watershed upstream of Yorklyn, seepage of contaminated groundwater from beneath the NVF facility to the Red Clay Creek, and diffusive flux from Creek sediments to the overlying water column.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution controls are not sufficient to attain applicable water quality standards. Section 303(d) also requires each state to develop Total Maximum Daily Loads (TMDLs) for those waterbodies and pollutants placed on the state's 303(d) List. A TMDL sets a limit on the amount of a substance that can enter a water body while still assuring that applicable water quality standards are met and beneficial stream uses are protected. A TMDL is composed of three components, including a Waste Load Allocation (WLA) for point source discharges, a Load Allocation (LA) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

DNREC listed the Red Clay Creek on Delaware's 1996 and 1998 303(d) Lists because applicable water quality standards for zinc were, and continue to be, frequently exceeded. Therefore, DNREC is proposing the following Total Maximum Daily Load (TMDL) regulation for zinc in the Red Clay Creek.

B. Total Maximum Daily Load (TMDL) Regulation for Zinc in the Red Clay Creek, Delaware

Article 1. The TMDL for zinc in the Red Clay Creek shall be 1.81 pounds per day, measured as total zinc.

Article 2. The combined mass loading of zinc to the Red Clay Creek from NVF's permitted discharge 002 (i.e., WLA₀₀₂), plus the mass loading of zinc to the Red Clay Creek from contaminated groundwater beneath the NVF property (i.e., LA_{g.w.}) shall not exceed 1.2 pounds of zinc per day, measured as total zinc.

Article 3. The load allocation of zinc from the area upstream of Yorklyn (i.e., LA_{up}) shall be capped at 0.6 pounds per day, measured as total zinc.

Article 4. The margin of safety (MOS) for the TMDL listed in Article 1 has been set at 0.01 pounds of zinc per day. This small margin of safety (less than 1% of the TMDL) reflects the robust data set and the conservative approach used to establish the TMDL, while still accounting for the uncertainty associated with possible diffusion of zinc from Red Clay Creek sediments.

Article 5. DNREC has determined with a reasonable degree of scientific certainty that water quality standards for zinc will be met in the Red Clay Creek once the mass loading requirements of Articles 1 through 3 are met.

Article 6. Implementation of this TMDL Regulation shall be achieved through the development of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with affected parties, the interested public, and the Department's ongoing Whole Basin Management Program. The manner in which the 1.2 pounds per day that is noted in Article 2 above is allocated between

discharge 002 and the contaminated groundwater discharge shall be one particular area of focus as part of the Pollution Control Strategy. The Pollution Control Strategy will also consider how monitoring will be conducted to verify compliance with the TMDL.

**DEPARTMENT OF STATE
OFFICE OF THE STATE BANKING
COMMISSIONER**

Statutory Authority: 5 Delaware Code,
Section 121(b) (5 **Del.C.** 121(b))

**Order Adopting Amended Regulations
5.1101etal.0002, 5.1101etal.0005 AND 5.1101etal.0009**

IT IS HEREBY ORDERED, this 15th day of November, 1999, that amended regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 are adopted as regulations of the State Bank Commissioner. Copies of amended regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 are attached hereto and incorporated herein by reference. Amended regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 supersede previous regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009, respectively. The effective date of amended regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 is December 13, 1999. Amended regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Amended regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 are adopted pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amendments and the text of amended regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 were published in the October 1, 1999 issue of the Delaware Register of Regulations. The Notice also was published in the News Journal and the Delaware State News on October 8, 1999 and mailed on or before that date to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before November 2, 1999, and stated that the proposed amended regulations were available for inspection at the Office of the State Bank Commissioner, that copies were

available upon request, and that a public hearing would be held on November 2, 1999 at 10:00 a.m. in Room 114 of the Tatnall Building, William Penn Street, Dover, Delaware.

2. No comments about the proposed amended regulations were received on or before November 2, 1999.

3. A public hearing was held on November 2, 1999 at 10:00 a.m. regarding the proposed amended regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009. The State Bank Commissioner, the Deputy Bank Commissioner for Intergovernmental Affairs, the Bank Franchise Tax Specialist for the Office of the State Bank Commissioner, and the Court Reporter attended the hearing. No other person attended the hearing. The State Bank Commissioner and the Deputy Bank Commissioner for Intergovernmental Affairs summarized the proposed amended regulations for the record. No other comments were made or received at the hearing on the proposed amended regulations.

4. After review and consideration, the State Bank Commissioner decided to adopt amended regulations 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 as proposed.

Robert A. Glen
State Bank Commissioner

Regulation No.: 5.1101etal.0002

~~Proposed~~ Effective Date: December 13, 1999]

INSTRUCTIONS FOR PREPARATION OF FRANCHISE TAX (5 Del. C., Chapter 11)

I. This regulation applies to banking organizations and trust companies, other than resulting branches in this State of out-of-state banks or federal savings banks not headquartered in this state but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0003 and 5.1101etal.0004, respectively. Regulations 5.1101etal.0005, 5.1101etal.0006 and 5.1101etal.0007 are applicable to federal savings banks not headquartered in this State but maintaining branches in this State. Regulations 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011 are applicable to resulting branches in this State of out-of-state banks.

II. Definitions

A. "Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

B. "Banking organization" means:

1. A bank or bank and trust company organized

and existing under the laws of this State;

2. A national bank, including a federal savings bank, with its principal office in this State;

3. An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq., or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System, and maintaining an office in this State;

4. A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;

5. A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or

6. A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del. C. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

2. The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;

3. The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;

4. The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;

5. The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to a banking organization described in subsection B.3 above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or

6. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

D. "International Banking Facility" means a set of asset and liability accounts, segregated on the books of a

banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

E. "National Bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.

F. "Net Operating Income Before Taxes" means the total net interest income plus total non-interest income, minus provision for loan and lease losses, provision for allocated transfer risk, and total non-interest expense, and adjustments made for securities gains or losses and other appropriate adjustments.

G. "Out-of-state bank" has the same meaning as in §795 of Title 5 of the Delaware Code, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

H. "Resulting branch in this State of an out-of-state bank" has the same meaning as in §1101(a) of Title 5 of the Delaware Code, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the Delaware Code, and, in addition, a branch office in this State of an out-of-state bank.

I. "Securities Business" means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

J. "Trust Company" means a trust company or corporation doing a trust company business which has a principal place of business in this State.

III. Estimated Franchise Tax

A banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax:

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0003;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Adjusted for any estimated income from an insurance division or subsidiary;

3. Less any deductions set forth in 5 Del. C. §1101;

4. Multiplied by .56 to arrive at estimated taxable income;

5. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

6. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

7. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

40% due on or before June 1 of the current taxable year;

20% due on or before September 1 of the current taxable year;

20% due on or before December 1 of the current taxable year.

IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization and the final franchise tax report, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a banking organization entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year, except as otherwise required by 5 Del. C. §904.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection IV. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0004.

C. Calculation of final tax. The total final franchise tax shall be calculated as follows:

1. The net operating income before taxes, which includes the income of any corporation making an election

as provided in Regulation No. 5.1101(f).0001;

2. Adjusted for any income from an insurance division or subsidiary;

3. Less any deduction set forth in 5 Del. C. §1101;

4. Multiplied by .56 to arrive at "taxable income";

5. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;

6. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

7. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

V. Payment of Final Franchise Tax

A. Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

B. The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

A. In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;

2. The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

C. Notwithstanding the above, the addition to the tax

with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

VII. Penalty - Late Payment of Final Franchise Tax

In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for a banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the final franchise tax report due January 30 or February 15, as applicable.

Regulation No.: 5.1101etal.0005

~~Proposed~~ Effective Date: December 13, 1999

INSTRUCTIONS FOR PREPARATION OF FRANCHISE TAX FOR FEDERAL SAVINGS BANKS NOT HEADQUARTERED IN THIS STATE BUT MAINTAINING BRANCHES IN THIS STATE (5 Del. C., Chapter 11)

I. This regulation applies only to federal savings banks not headquartered in this State but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0006 and 5.1101etal.0007, respectively.

II. Definitions

A. "Net operating income before taxes" means the total net income calculated in accordance with Section VIII of this Regulation, with adjustments made for securities

gains or losses and other appropriate adjustments.

III. Estimated Franchise Tax

A federal savings bank not headquartered in this State whose franchise tax liability for the current year is anticipated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0006;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes of the branch or branches located in Delaware;

2. Less the interest income from obligations of volunteer fire companies;

3. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

4. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

5. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

40% due on or before June 1 of the current year;

20% due on or before September 1 of the current year;

20% due on or before December 1 of the current year.

IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income of the Delaware branch or branches of the federal savings bank not headquartered in this State and the final franchise tax report shall be filed with the Office of the State Bank Commissioner on or before January 30 each year;

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in section IV.

A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0007.

C. Calculation of final tax. The total final franchise tax shall be calculated as follows:

1. The net operating income before taxes of the branch or branches located in Delaware;

2. Less the interest income from obligations of volunteer fire companies;

3. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

4. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

5. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

V. Payment of Final Franchise Tax

A. Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

B. The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

A. In the case of any underpayment of estimated franchise tax or installment of estimated franchise tax required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;

2. The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required

to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the federal savings bank not headquartered in this State for the preceding taxable year.

VII. Penalty - Late Payment of Estimated Franchise Tax or Installment or Final Franchise Tax

In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

VIII. Separate Accounting by Delaware Branches

A. Books and Records. Each branch in this State of a federal savings bank not headquartered in this State must keep a separate set of books and records as if it were an entity separate from the rest of the federal savings bank that operates such Delaware branch. These books and records must reflect the following items attributable to the Delaware branch:

1. Assets and the credit equivalent amounts of off-balance sheet items used in computing the risk-based capital ratio under 12 C.F.R. part 567;
2. Liabilities;
3. Income and gain;
4. Expense and loss.

B. Consolidation of Delaware Branches. If a federal savings bank not headquartered in this State operates more than one Delaware branch, it may treat all Delaware branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

C. Determining Assets Attributable to a Delaware Branch

1. General Principle of Asset Attribution. The general principle will be to attribute assets to a Delaware branch if personnel at the Delaware branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

2. Loans and Finance Leases. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts

receivable.

3. Stocks and Debt Securities. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

4. Foreign Exchange Contracts and Futures Options, Swaps, and Similar Assets. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the licensing of such asset.

6. Currency. U.S. and foreign currency will be attributed to a Delaware branch if physically stored at the Delaware branch.

7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a Delaware branch if they are located at or are part of the physical facility of a Delaware branch.

8. Other Business Assets. Other business assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

9. Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in 12 C.F.R. part 567 not otherwise addressed above (e.g., guarantees, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending federal savings bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities). These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

D. Liabilities Attributable to a Delaware Branch.

The liabilities attributable to a Delaware branch shall be the deposits recorded on the books of the Delaware branch plus any other legally enforceable obligations of the Delaware branch recorded on the books of the Delaware branch or the federal savings bank not headquartered in this State.

E. Income of a Delaware Branch.

1. Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a Delaware branch in accordance with the rules

in subsection C above will be attributed to the Delaware branch.

2. Income from Fees. Fee income not attributed to a Delaware branch in accordance with subsection 1 above will be attributed to the Delaware branch depending on the type of fee income.

a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the Delaware branch if the letters of credit, travelers checks, or money orders are issued by the Delaware branch, except to the extent that subsection 1 above requires otherwise.

b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the Delaware branch if the services generating the fees are performed by personnel at the Delaware branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

F. Determining the Expenses of a Delaware Branch.

1. Interest. The amount of interest expense of a Delaware branch shall be the actual interest booked by the Delaware branch, which should reflect market rates.

2. Direct Expenses of a Delaware Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the Delaware branch are direct expenses of such Delaware branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the Delaware branch, some taxes, insurance, the cost of supplies and fees for services rendered to the Delaware branch.

3. Indirect Expenses of a Delaware Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a Delaware branch must be allocated between the Delaware branch and the rest of the federal savings bank operating the Delaware branch. If the federal savings bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the federal savings bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the Delaware branch to the assets of the entire federal savings bank or based on the ratio of gross income of the Delaware branch to gross income of the entire federal savings bank.

Regulation No.: 5.1101etal.0009

[Proposed Effective Date: December 13, 1999]

**INSTRUCTIONS FOR PREPARATION OF
FRANCHISE TAX FOR RESULTING BRANCHES IN
THIS STATE OF OUT-OF-STATE BANKS
(5 Del. C., Chapter 11)**

I. This regulation applies only to resulting branches in this State of out-of-state banks. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0010 and 5.1101etal.0011, respectively.

II. Definitions

A. "Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

B. "Banking organization" means:

1. A bank or bank and trust company organized and existing under the laws of this State;

2. A national bank, including a federal savings bank, with its principal office in this State;

3. An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq., or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System, and maintaining an office in this State;

4. A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;

5. A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or

6. A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del. C. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

2. The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;

3. The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;

4. The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;

5. The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to a banking organization described in subsection B.3 above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or

6. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

D. "International Banking Facility" means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

E. "National Bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.

F. "Net Operating Income Before Taxes" means the total net income calculated in accordance with Section IX of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

G. "Out-of-state bank" has the same meaning as in §795 of Title 5 of the Delaware Code, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

H. "Resulting branch in this State of an out-of-state bank" has the same meaning as in §1101(a) of Title 5 of the Delaware Code, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the Delaware Code, and, in addition, a branch office in this State of an out-of-state bank.

I. "Securities Business" means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

J. "Trust Company" means a trust company or corporation doing a trust company business which has a principal place of business in this State.

III. Estimated Franchise Tax

A resulting branch or branches in this State of an out-of-state bank whose franchise tax liability for the current year, on a consolidated basis, is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated tax.

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0010;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Increased by the resulting branch imputed capital addback for the preceding income year (calculated in accordance with Section IV.C.2. of this Regulation).

3. Adjusted for any estimated income from an insurance division or subsidiary;

4. Less any deductions set forth in 5 Del. C. §1101;

5. Multiplied by .56 to arrive at estimated taxable income;

6. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

7. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

8. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

40% due on or before June 1 of the current taxable year;

20% due on or before September 1 of the current taxable year;

20% due on or before December 1 of the current taxable year.

IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income, on a

consolidated basis, of the resulting branch or branches in this State of the out-of-state bank and the final franchise tax report, setting forth the "taxable income", on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a resulting branch of an out-of-state bank that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection IV.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0011.

C. Calculation of final tax. The total final franchise tax shall be calculated as follows:

1. The net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Increased by the resulting branch imputed capital addback, which is the product of the greater of the products determined under subparagraphs (a) and (b) of this subsection (2) and the average of the monthly short-term applicable federal rates, as determined under §1274(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1274(d)), or any successor provisions thereto, and as published each month in the Internal Revenue Bulletin, for the twelve-month period preceding the date on which the resulting branch imputed capital addback is being determined.

(a) The product of (i) the deposits recorded on the books of the resulting branch in this State, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed "adequately capitalized" pursuant to 12 C.F.R. Part 325.

(b) The product of (i) the value of that portion of the total risk-weighted assets (as defined in 12 C.F.R. Part 325) of the out-of-state bank operating the resulting branch in this State that are attributable to such resulting branch in accordance with section IX.C of this regulation, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed 'adequately capitalized' pursuant to 12 C.F.R. Part 325.

3. Adjusted for any income from an insurance

division or subsidiary;

4. Less any deduction set forth in 5 Del. C. §1101;

5. Multiplied by .56 to arrive at "taxable income";

6. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;

7. The subtotal annual franchise tax shall be adjusted for tax credits pursuant to 5 Del.C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

8. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

V. Payment of Final Franchise Tax

A. Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

B. The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

A. In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;

2. The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of

all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the resulting branch(es) of the out-of-state bank for the preceding taxable year.

D. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the addition is attributable to the difference between the imputed capital addback for the current and preceding income years.

VII. Penalty - Late Payment of Final Franchise Tax

In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a "subsidiary corporation" of the resulting branch(es) of the out-of-state bank pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for the resulting branch(es) of the out-of-state bank whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the Final Franchise Tax Report due January 30 or February 15, as applicable.

IX. Separate Accounting by Resulting Branches

A. Books and Records. Each resulting branch must keep a separate set of books and records as if it were an entity separate from the rest of the bank that operates such resulting branch. These books and records must reflect the following items attributable to the resulting branch:

1. Assets and the credit equivalent amounts of off-balance sheet items used in computing the risk-based capital ratio under 12 C.F.R. part 325;
2. Liabilities;
3. Income and gain;
4. Expense and loss.

B. Consolidation of Delaware Branches. If a bank operates more than one resulting branch, it may treat all resulting branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

C. Determining Assets Attributable to a Resulting

Branch

1. General Principle of Asset Attribution. The general principle will be to attribute assets to a resulting branch if personnel at the resulting branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

2. Loans and Finance Leases. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

3. Stocks and Debt Securities. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

4. Foreign Exchange Contracts and Futures, Options, Swaps, and Similar Assets. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the licensing of such asset.

6. Currency. U.S. and foreign currency will be attributed to a resulting branch if physically stored at the resulting branch.

7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a resulting branch if they are located at or are part of the physical facility of a resulting branch.

8. Other Business Assets. Other business assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

9. Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in Appendix A to 12 C.F.R. part 325 (the "Appendix") not otherwise addressed above (e.g., guarantees, surety contracts, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities, note issuance facilities described in the Appendix). These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation,

acquisition, or administration of such assets.

D. Liabilities Attributable to a Resulting Branch. The liabilities attributable to a resulting branch shall be the deposits recorded on the books of the resulting branch plus any other legally enforceable obligations of the resulting branch recorded on the books of the resulting branch or its parent.

E. Income of a Resulting Branch.

1. Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a resulting branch in accordance with the rules in section IX.C above will be attributed to the resulting branch.

2. Income from Fees. Fee income not attributed to a resulting branch in accordance with 1. above will be attributed to the resulting branch depending on the type of fee income.

a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the resulting branch if the letters of credit, travelers checks, or money orders are issued by the resulting branch, except to the extent that 1. requires otherwise.

b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the resulting branch if the services generating the fees are performed by personnel at the resulting branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

F. Determining the Expenses of a Resulting Branch.

1. Interest. The amount of interest expense of a resulting branch shall be the actual interest booked by the resulting branch, which should reflect market rates.

2. Direct Expenses of a Resulting Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the resulting branch are direct expenses of such resulting branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the resulting branch, some taxes, insurance, the cost of supplies and fees for services rendered to the resulting branch.

3. Indirect Expenses of a Resulting Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a resulting branch must be allocated between the resulting branch and the rest of the bank operating the resulting branch. If the bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the bank makes no

such allocation, such expenses could be allocated on the basis of the ratio of assets of the resulting branch to the assets of the entire bank or based on the ratio of gross income of the resulting branch to gross income of the entire bank.

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Architectural Accessibility Board	Mr. Richard V. Aydelotte	10/11/02
	Mr. Chang U. Yoon	10/11/02
Board of Funeral Services	Mr. Richard Harra	09/28/02
	Dr. J. Thomas Sturgis, Jr.	09/28/02
Commission on National and Community Service	Mr. Willie Savage, II	10/03/00
Committee on Massage/Bodywork Practitioners	Ms. Patricia A. Beetschen	10/15/00
Council on Environmental Control	Ms. Lorraine Fleming	11/15/02
Council on Mental Retardation	Ms. Cheryl A. Coffin	10/25/02
Council on State Service Centers	Reverend Richard M. Avant	10/04/02
	Ms. Hope Day Cochran	10/04/02
Council on Volunteer Services	Mr. Vincent L. Garlick	11/21/01
	Dr. Edward Goate	11/21/01
	Ms. Pearl J. Maull	11/21/01
	Ms. Rachael A. Schreiber	11/21/01
	Mr. Robert D. Ullrich	11/21/01
Delaware Bicycle Council	Mr. Carl W. Anderson	04/22/02
Delaware Children's Trust Fund Board of Directors	Dr. Jerome L. Abrams	10/04/02
Delaware Emergency Medical Services Oversight Council	Mr. Stephen P. Austin	
Delaware Emergency Medical Oversight Council	Mr. Thomas P. McGonigle	Pleasure of the Governor
	Mr. William E. Narcowich	Pleasure of the Governor
Delaware Greenways and Trails Council	Ms. Megan M. Manlove	10/04/02
Delaware Health Resources Board	Mr. Timothy J. Constantine	10/25/02
Delaware Higher Education Commission	Dr. William Markell	Pleasure of the Governor
Delaware Institute of Dental Education and Research	Ms. Melanie K. Sharp	10/04/02
Delmarva Advisory Council	Major General George K. Hastings (Retired)	Pleasure of the Governor
Fire Prevention Commission	Mr. Michael H. Vincent	One Year Term

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Governor's Council on Agriculture	Mr. Dale Ockels	04/29/02
Historical Records Advisory Board	Mr. Daniel Griffiths	09/21/02
Interagency Coordinating Council	Mr. David M. Dennett Ms. Joan S. Powell	10/04/02 10/04/02
Judicial Nominating Commission	Ms. Lolita A. Lopez	10/29/02
Local Records Commission	Mr. John Terrence Jaywork	Pleasure of the Governor
Real Estate Commission of Delaware	Ms. Marcia J. Shihadeh	10/04/02
State Board of Examiners of Psychologists	Dr. Peter B. Appel, Ph.D.	10/11/02
State Board of Pharmacy	Mr. Calvin A. Freedman Mr. Belasco J. Bossard Ms. Ruth B. Melvin	07/01/02 07/01/01 07/01/01
State Examining Board of Physical Therapists	Ms. Phyllis Collins	01/09/0
State Public Education Assessment and Accountability Advisory Committee	Dr. Nicholas A. Fischer Mr. William M. Topkis	Pleasure of the Governor Pleasure of the Governor
Sussex County Vocational-Technical School Board of Education	Mr. Gregory W. Williams	11/15/06

**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. Section 6010)

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

(non-regulatory plan) Addendum to the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

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

In May, 1998 the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted to the U.S. Environmental Protection Agency (EPA) a plan entitled The Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area ("The Phase II document"). The Phase II document successfully demonstrated attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) for the Delaware portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (NAA). Kent and New Castle counties are the two Delaware severe ozone nonattainment counties for which the modeled attainment demonstration is required by the 1990 Clean Air Act Amendments (CAAA).

Due to a proposed court settlement between the Natural Resources Defense Council (NRDC) and the EPA, three additional requirements must be met in the states' attainment demonstrations. The three requirements are 1.) inclusion of an on-road mobile source emissions budget for use in transportation conformity, 2.) inclusion of an enforceable commitment to produce an amount of additional emission reductions established by EPA to eliminate the attainment shortfall for the entire Philadelphia-Wilmington-Trenton nonattainment area, and 3.) inclusion of an enforceable commitment to conduct a mid-course review and evaluation based on air quality and emissions trends.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., Chapter 60 Section 6010.
Clean Air Act Amendments of 1990.

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

None

6. NOTICE OF PUBLIC COMMENT:

Public hearing will be held on January 4, 2000, at 6:00pm in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Mohammed A. Mazeed, Project Leader
Alfred R. Deramo, Program Manager
(302) 739-4791 November 9, 1999

**Addendum To The Delaware Phase II Attainment
Demonstration for the Philadelphia-Wilmington-
Trenton Ozone Nonattainment Area (May 1998)**

**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**

November 1999

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
FMVCP	Federal Motor Vehicle Control Program
HDDE	Heavy-Duty Diesel Engine
HDGV	Heavy-Duty Gasoline Vehicle
LDDT	Light-Duty Diesel Trucks
LDGV	Light-Duty Gasoline Vehicles
LDGT1	Light-Duty Gasoline Truck 1 (0 - 3750 pounds)
LDGT2	Light-Duty Gasoline Truck 2 (3750 - 5750 pounds)
LEV	Low Emission Vehicle
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
NLEV	National Low Emission Vehicle
NOx	Oxides of Nitrogen
NRDC	Natural Resources Defense Council

OTAG	Ozone Transport Assessment Group
OTR	Ozone Transport Region
RFG	Reformulated Gasoline
RPP	Rate-of-Progress Plan
SIP	State Implementation Plan
TPD	Tons per Peak Ozone Season Day
UAM	Urban Airshed Model
VMT	Vehicles Miles Traveled
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. Recently 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 should meet in order to get their Phase II attainment demonstrations approved. This document lists all the EPA identified requirements and addresses how Delaware will fulfil those requirements to get the Delaware Phase II Attainment Demonstration Plan approved.

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. Alfred R. Deramo, Program Manager of State Implementation Planning Program (SIPP) Group is the project manager and chief editor of this document. Mohammed A. Mazeed, Ph.D., P.E. is the principal author of this document, and Janet Kremer of EPA Region III Office is responsible for developing necessary emissions factors required for developing the on-road mobile source emissions budgets.

2. EPA's Recent Additional Requirements for Getting the Phase II Attainment Demonstrations Approved

Due to the proposed court settlement between the Natural Resources Defense Council (NRDC) and EPA, EPA declared that the states should meet additional requirements for the approval of the 1-hour attainment demonstrations. They are:

On-road Mobile Source Emissions Budgets: states should include in their Phase II Attainment Demonstration SIPs adequate on-road mobile source volatile organic compound (VOC) and oxides of nitrogen (NOx) emissions budgets for use in transportation conformity.

Regional NOx Reductions: states must have rules adopted or, for severe areas an enforceable commitment to adopt controls consistent with the NOx reductions assumed in the attainment plan.

Additional Measures: enforceable commitment is required from states to adopt additional measures, which may be measures adopted regionally such as in the Ozone Transport Region (OTR), or locally in individual states.

Mid-Course Review: an enforceable commitment is required from states to conduct a mid-course review and evaluation based on air quality and emissions trends.

Clean Air Act Measures: states must adopt and submit rules for all previously required CAAA mandated measures for the specific area classification including measures needed for 15% and 9% rate of progress. The 15% and 9% rate-of-progress plans (RPPs) are required by Section 182(d) of the CAAA.

Fuel Reductions: states should include in their Phase II attainment demonstration SIPs reductions expected from Tier 2 tailpipe and low sulfur-in-fuel standards in the attainment demonstration.

3. Delaware's Response and Commitments

This addendum addresses how Delaware fulfils its obligations for meeting EPA's approval of the Delaware Phase II attainment demonstration. They are addressed below.

3.1 Phase II On-Road Mobile Source Emissions Budgets & Fuel Reductions

This section addresses two of the six requirements addressed above - the on-road mobile source emissions

budgets and fuel reductions. An April 30, 1999 letter from Judith Katz (Director, Air Protection Division, EPA Region III Office) states that, in order for the on-road mobile source emissions budgets to be adequate for the purposes of transportation conformity, the budgets should reflect the National Low Emission Vehicle (NLEV) and heavy-duty diesel engine (HDDE) programs (*Appendix 1*). Another requirement for the adequacy of the on-road mobile source emissions budgets is that the control measures should be in effect on the attainment date. Ms. Katz's October 26, 1999 letter declares that Delaware's motor vehicle budgets are inadequate (*Appendix 2*).

A draft memo dated October 14, 1999 from Lydia Wegman (Director, Air Quality Standards and Standards Division) ("Wegman memo") (*Appendix 3*) states that, if the attainment demonstration contains shortfalls the states should use Tier 2 Federal Motor Vehicle Control Program (FMVCP) and low sulfur-in-fuel standards ("Tier 2") in their attainment demonstrations. Recently EPA has identified that the Philadelphia CMSA has an attainment shortfall, and therefore the Delaware Phase II Attainment Plan meets Lydia Wegman's criterion for including the Tier 2 emissions reductions in its on-road mobile source emissions budgets.

The Delaware Phase II document did not identify the on-road mobile source emissions budgets that are necessary for the purposes of transportation conformity. This addendum assigns the on-road mobile source emissions budgets for the Kent and New Castle county severe ozone NAA. Delaware, in its Phase II document, besides the benefits of other control measures, claimed the benefits of Low Emission Vehicle (LEV) standards, but did not claim the benefit of HDDE emissions standards. The requirement, however, is that the budgets should reflect NLEV program but not LEV, and the HDDE program. In developing the on-road mobile source emissions budgets this addendum replaces the benefit of the LEV program with the NLEV program and adds the benefit of the HDDE program. The benefits of HDDE program and the NOx benefit of Phase II reformulated gasoline (RFG II) cannot be modeled using Mobile5a, the EPA model that was originally used for estimating the on-road mobile source VOC, NOx and CO emissions factors. Therefore, it was necessary to use the updated model, Mobile5b. In developing Delaware's Phase II attainment on-road mobile source emissions budgets, the EPA Region III office ran the Mobile5b model to estimate necessary emissions factors. The resulting on-road mobile source emissions with the NLEV, HDDE and RFG II control measures are listed in Table 1.

Table 1. On-Road Mobile Source Emissions Estimates for 2005 with NLEV, HDDE and RFG II Programs in Tons per Peak Ozone Season Day (TPD)

COUNTY	VOC EMISSIONS	NOx EMISSIONS
Kent	5.00	8.81
New Castle	15.30	25.63
Total Nonattainment Area	20.30	34.44

To satisfy the criterion in the Wegman memo, this addendum includes the emissions reductions from Tier 2 standards. The spreadsheets containing Tier 2 reductions in 2005 listed in the Wegman memo are provided by the EPA Region III office. These reductions are calculated from the 2007 inventories by applying the ratios of 2005 to 2007 emission factors (based on Mobile5b) and Vehicles Miles Traveled (VMT) to the 2007 inventories. The Mobile5b runs used national defaults for many of the inputs, and the VMT projections used in this analysis were derived from the National Emissions Trends report. Because of these simplifying assumptions, these estimates should be viewed only as approximations. The exact figures can be estimated when Mobile6 becomes available. The Wegman memo lists the approximate benefits from Tier 2 emission reductions by county by vehicle type in the NAA. For Kent and New Castle Counties, the VOC and reductions in year 2005 are listed in Table 2.

Table 2. Emissions Reductions due to Tier 2/Low Sulfur-in-Fuel for Year 2005 in Tons per Peak Ozone Season Day (TPD)

County	Vehicle Type*	VOC Emissions	NOx Emissions
Kent	LDGV	0.0525	0.3680
	LDGT1	0.0666	0.3683
	LDGT2	0.0362	0.1355
	LDDT	0.0013	0.0032
	HDGV	0.0042	0.0301
<i>Kent County Subtotal</i>		<i>0.1608</i>	<i>0.9051</i>
New Castle	LDGV	0.1894	1.1621
	LDGT1	0.2074	1.0638
	LDGT2	0.1227	0.4045
	LDDT	0.0052	0.0103

	HDGV	0.0126	0.0691
<i>New Castle County Subtotal</i>		<i>0.5373</i>	<i>2.7098</i>
Total Nonattainment Area		0.6981	3.6149

* see the acronym listing for information on each vehicle type

The effect of Tier 2 control is to further reduce the emissions listed in Table 1. For Kent County it reduces the VOC and NOx emissions by 0.16 and 0.91 TPD, respectively, and for New Castle County by 0.54 and 2.71 TPD, respectively. Note that the Tier 2 emissions reductions are rounded to two significant figures after the decimal to stay consistent with the mobile source emissions estimates. The resulting 2005 on-road mobile emissions with all controls including Tier 2 are listed in Table 3.

Table 3. On-Road Mobile Source Emissions Estimates for Year 2005 with NLEV, HDDE, RFG II and Tier 2/Low Sulfur-in-Fuel Programs in Tons per Peak Ozone Season Day (TPD)

COUNTY	VOC EMISSIONS	NOx EMISSIONS
Kent	4.84	7.90
New Castle	14.76	22.92
Total Nonattainment Area	19.60	30.82

For the purposes of transportation conformity, the year 2005 VOC and NOx emissions budgets for Kent County are established here as 4.84 TPD and 7.90 TPD, respectively; and for New Castle County the year 2005 VOC and NOx emissions budgets are 14.76 TPD and 22.92 TPD, respectively.

3.2 Regional NOx Reductions

EPA requires that for the nonattainment area the states must adopt controls consistent with the NOx reductions assumed in the attainment plan, and that the states in their attainment plans can assume reductions in transported NOx consistent with EPA's NOx SIP call. Delaware, in its attainment demonstration, assumed transported NOx consistent with the NOx SIP Call. As pointed out in the Delaware Phase II attainment document, UAM simulations performed with the OTAG run2 boundary conditions exhibited attainment of the 1-hour ozone NAAQS for Delaware portion of the modeling domain. Delaware hereby commits to adopt control measures consistent with the NOx reductions assumed in its Phase II attainment plan.

3.3 Additional Measures

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, with the assumption that the EPA identified amount is correct.

3.4 Mid-Course Review

EPA requires from Delaware an enforceable commitment to conduct a mid-course review and evaluation based on air quality and emissions trends. The mid-course review could show that 1) the adopted control measures are sufficient to reach attainment by the area's attainment date, or 2) that additional control measures are necessary. EPA will provide guidance to identify an indicator as to whether a state is on track toward attainment within the prescribed time limits. The indicator will solely rely on air quality data plus a review of past modeling or emission controls implemented prior to the time of mid-course review. Delaware hereby commits to conduct a mid-course review and evaluation based on air quality and emissions trends.

3.5 Clean Air Act Measures

EPA requires that states adopt and submit rules for all previously required CAAA mandated measures for the specific area classification including measures needed for the 15% and 9% RPPs. Delaware adopted all necessary CAAA measures needed for 15% and 9% RPPs through the 2002 RPP. The EPA has already approved Delaware's 15% Plan. The 1999 RPP (amended) was submitted in June, 1999. It contained fully adopted measures and is awaiting EPA approval. The 2002 RPP has been through the public hearing process and will be submitted in the near future. It contains fully adopted measures. The 2005 RPP is under development and will be submitted before December, 2000. It will contain fully adopted measures.

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Section 6010 (7 Del.C. Section 6010)

REGISTER NOTICE

- 1. TITLE OF THE REGULATIONS:**
POST 1999 Title V Permit Fees
- 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**
 1. Pursuant to Senate Bill 207, effective June 16, 1999, the Department shall publish each source name, Base Fee information, and User Fee information in the Delaware Register.

2. These Post 1999 Title V fees will be charged to facilities during 2000, 2001, and 2002.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS:

7 Del. C., Chapter 60 Section 6097
Clean Air Act Amendments of 1990

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

None

6. NOTICE OF PUBLIC COMMENT:

N/A

7. PREPARED BY:

Craig A. Koska, 11/9/99

SE Q #	Facility Name	Base Fee	User Fee	Total Fee
1	Allen Family Foods, Inc	\$18,000	\$2,000	\$20,000
2	Allens Milling Company	\$18,000	\$23,000	\$23,000
3	Allied Signal, Inc	\$7,500	\$1,000	\$8,500
4	American International Building	\$3,000	\$1,000	\$4,000
5	American Minerals, Inc	\$7,500	\$1,000	\$8,500
6	Ametek, Inc /Haveg Division	\$7,500	\$2,000	\$9,500
7	Amtrak Wilmington Maintenance Facility	\$7,500	\$1,000	\$8,500
8	Arlon, Inc	\$3,000	\$1,000	\$4,000
9	Atlantic Aviation Corporation	\$18,000	\$1,000	\$19,000
10	Avecia, Inc	\$3,000	\$1,000	\$4,000
11	Camdel Metals Corporation	\$18,000	\$1,000	\$19,000
12	Christiana Hospital	\$7,500	\$5,000	\$12,500
13	Christiana Materials	\$3,000	\$1,000	\$4,000
14	CIBA Specialty Chemicals Corp.	\$39,500	\$5,000	\$44,500
15	Citisteel USA	\$39,500	\$5,000	\$44,500
16	City of Dover - Mckee Run Power Plant	\$18,000	\$40,000	\$58,000
17	City of Dover, Van Sant Generating Sta.	\$18,000	\$1,000	\$19,000
18	City of Seaford - Electric	\$7,500	\$2,000	\$9,500
19	Clean Earth of New Castle	\$18,000	\$1,000	\$19,000
20	Computer Science Corp.	\$3,000	\$1,000	\$4,000
21	Crowell Corporation	\$3,000	\$1,000	\$4,000
22	Crown Paper Company	\$3,000	\$2,000	\$5,000

23	Dade Behring Inc	\$3,000	\$1,000	\$4,000
24	Daimler Chrysler Corporation	\$39,500	\$10,000	\$49,500
25	Dana Railcar Service, Inc	\$3,000	\$1,000	\$4,000
26	DE Solid Waste Authority Cherry Island	\$7,500	\$2,000	\$9,500
27	DE Solid Waste Authority, Pigeon Point	\$7,500	\$2,000	\$9,500
28	DE Solid Waste Authority, Sandtown	\$7,500	\$1,000	\$8,500
29	DE Solid Waste Authority, Southern	\$7,500	\$1,000	\$8,500
30	Delaware Correctional Center-Smyrna, DE	\$7,500	\$2,000	\$9,500
31	Delaware Hospital for the Chronically Ill	\$3,000	\$1,000	\$4,000
32	Delaware Recyclable Products, Inc.	\$3,000	\$2,000	\$5,000
33	Delaware State University	\$7,500	\$1,000	\$8,500
34	Delaware Terminal Company	\$7,500	\$1,000	\$8,500
35	Delaware Trust Bldg., Wilm.	\$3,000	\$2,000	\$5,000
36	Delmarva Power - Hay Road Power Complex	\$39,500	\$10,000	\$49,500
37	Delmarva Power Christiana Substation	\$7,500	\$1,000	\$8,500
38	Delmarva Power Edge Moor	\$39,500	\$100,000	\$139,500
39	Delmarva Power Indian River	\$39,500	\$100,000	\$139,500
40	Delmarva Power Madison Street	\$7,500	\$1,000	\$8,500
41	Delmarva Power, Delaware City	\$7,500	\$1,000	\$8,500
42	Delmarva Power, West Substation	\$7,500	\$1,000	\$8,500
43	Department of Corrections, Ganderhill	\$7,500	\$10,000	\$17,500
44	Diamond Materials, LLC	\$3,000	\$1,000	\$4,000
45	Dover Air Force Base	\$18,000	\$5,000	\$23,000
46	Dover Products Company	\$3,000	\$1,000	\$4,000
47	Draper Canning	\$7,500	\$5,000	\$12,500
48	Dupont Chestnut Run	\$7,500	\$5,000	\$12,500
49	Dupont Edge Moor	\$39,500	\$10,000	\$49,500
50	Dupont Experimental Station	\$39,500	\$10,000	\$49,500
51	Dupont Hospital for Children	\$7,500	\$5,000	\$12,500
52	Dupont Newport / Holly Run	\$3,000	\$1,000	\$4,000
53	Dupont Seaford	\$18,000	\$100,000	\$118,000
54	Dupont Stine - Haskell Research Center	\$18,000	\$5,000	\$23,000
55	Dupont Wilmington Office Buildings	\$7,500	\$5,000	\$12,500
56	E-A-R Specialty Composites Corporation	\$18,000	\$1,000	\$19,000
57	Eastern Shore Natural Gas	\$3,000	\$2,000	\$5,000

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58	Edgemore Materials - Hot Mix Plant	\$3,000	\$1,000	\$4,000
59	First State Power Mgt.	\$18,000	\$100,000	\$118,000
60	Flair-New Castle Inc	\$7,500	\$1,000	\$8,500
61	FMC Corporation	\$18,000	\$1,000	\$19,000
62	Formosa Plastics Corporation	\$39,500	\$5,000	\$44,500
63	FP International Inc.	\$18,000	\$2,000	\$20,000
64	GAC, Seaford Inc.	\$3,000	\$4,000	\$4,000
65	General Chemical Corporation	\$39,500	\$40,000	\$79,500
66	General Clothing Company, Inc.	\$7,500	\$1,000	\$8,500
67	General Motors Wilmington	\$39,500	\$10,000	\$49,500
68	Hanover Foods Corp., Clayton	\$7,500	\$1,000	\$8,500
69	Hardcore Composites (Div of Harris Specialities)	\$3,000	\$1,000	\$4,000
70	Hercules Incorporated, Research Center	\$18,000	\$5,000	\$23,000
71	Hirsh Industries, Inc.	\$7,500	\$2,000	\$9,500
72	I. A. Construction Corp., Gumboro	\$3,000	\$1,000	\$4,000
73	IKO Production, Wilmington	\$3,000	\$2,000	\$5,000
74	ILC Dover, Inc.	\$18,000	\$1,000	\$19,000
75	Inland Paperboard and Packaging	\$7,500	\$2,000	\$9,500
76	International Petroleum Corp of Delaware	\$7,500	\$2,000	\$9,500
77	Justin Tanks, L.L.C.	\$7,500	\$1,000	\$8,500
78	Kaneka Delaware Corp.	\$39,500	\$2,000	\$41,500
79	Kent County Waste Water Treatment Fac.	\$7,500	\$1,000	\$8,500
80	Kent General Hospital	\$7,500	\$1,000	\$8,500
81	Kraft Foods Inc.	\$18,000	\$2,000	\$20,000
82	Lafarge Corporation	\$18,000	\$10,000	\$28,000
83	Laidlaw Corporation	\$7,500	\$1,000	\$8,500
84	Lewes Electric Department	\$3,000	\$1,000	\$4,000
85	MacDermid Inc.	\$7,500	\$2,000	\$9,500
86	Maritrans	\$18,000	\$40,000	\$58,000
87	Materials Recovery, Inc	\$3,000	\$2,000	\$5,000
88	MBNA (Dupont Louviers)	\$3,000	\$4,000	\$4,000
89	Medal L.P., Air Liquide	\$7,500	\$2,000	\$9,500
90	Metachem Products	\$39,500	\$10,000	\$49,500
91	Milford Memorial Hospital	\$3,000	\$1,000	\$4,000
92	Motiva Enterprise Marketing Terminal	\$7,500	\$2,000	\$9,500
93	Motiva Enterprises Llc, Delaware City Plant	\$39,500	\$225,000	\$264,500
94	Mountaire Farms Feedmill, Frankford	\$3,000	\$2,000	\$5,000

95	Mountaire Farms, Selbyville	\$7,500	\$5,000	\$12,500
96	Multi-tech, Inc.	\$7,500	\$2,000	\$9,500
97	Nanticoke Homes, Inc.	\$18,000	\$2,000	\$20,000
98	Nanticoke Memorial Hospital	\$3,000	\$1,000	\$4,000
99	New Castle Hot Mix, Inc.	\$3,000	\$1,000	\$4,000
100	New London Textile Inc	\$3,000	\$1,000	\$4,000
101	Noramco of Delaware, Inc.	\$3,000	\$2,000	\$5,000
102	NVF Company, Yorklyn	\$7,500	\$12,500	\$12,500
103	Occidental Chemical Corp.	\$18,000	\$2,000	\$20,000
104	Orient Chemical Corporation	\$3,000	\$1,000	\$4,000
105	Pac Polymers	\$3,000	\$1,000	\$4,000
106	Pat's Support Inc.	\$3,000	\$1,000	\$4,000
107	Perdue Farms Inc., Georgetown	\$18,000	\$5,000	\$23,000
108	Perdue Farms Incorporated, Milford	\$3,000	\$2,000	\$5,000
109	Perdue Farms, Bridgeville	\$3,000	\$5,000	\$8,000
110	Playtex Apparel, Inc., Plant 3	\$3,000	\$1,000	\$4,000
111	Playtex Products, Inc - Plant 1	\$3,000	\$2,000	\$5,000
112	Playtex Products, Inc. - Plant 4	\$3,000	\$1,000	\$4,000
113	Printpack, Inc.	\$18,000	\$5,000	\$23,000
114	Procter & Gamble Dover Wipes Company	\$7,500	\$5,000	\$12,500
115	PTFE Compounds Inc., New Castle	\$3,000	\$2,000	\$5,000
116	Pure Green Industries	\$3,000	\$1,000	\$4,000
117	R. E. Peirson Construction Co.	\$3,000	\$1,000	\$4,000
118	Reichhold	\$39,500	\$5,000	\$44,500
119	Rodel, Inc	\$18,000	\$5,000	\$23,000
120	Sea Watch International, Ltd	\$3,000	\$2,000	\$5,000
121	Spi Polyols, Inc.	\$39,500	\$10,000	\$49,500
122	St Francis Hospital	\$3,000	\$1,000	\$4,000
123	Sun Company Inc	\$39,500	\$40,000	\$79,500
124	Tilcon Delaware, Inc - Bay Road	\$3,000	\$2,000	\$5,000
125	Tilcon Delaware, Inc., Georgetown	\$3,000	\$2,000	\$5,000
126	Tilcon Portable Crusher	\$3,000	\$1,000	\$4,000
127	Tilcon, Terminal Avenue	\$3,000	\$1,000	\$4,000
128	Tilcon, Horsepond Road, Dover	\$3,000	\$1,000	\$4,000
129	Townsend's, Inc. Agri-products Group	\$18,000	\$40,000	\$58,000
130	Uniqema	\$18,000	\$19,000	\$19,000
131	Unisource Worldwide, Inc.	\$3,000	\$2,000	\$5,000
132	University of Delaware, Newark	\$18,000	\$5,000	\$23,000
133	Veterans Administration Hospital	\$7,500	\$1,000	\$8,500

134	Vlasic Foods, Int'l	\$3,000	\$2,000	\$5,000
135	Vpi Mirrex Corporation	\$18,000	\$2,000	\$20,000
136	W. L. Gore & Assoc Inc, Otts Chapel	\$3,000	\$1,000	\$4,000
137	W. L. Gore & Assoc Inc, Paper Mill Road	\$3,000	\$1,000	\$4,000
138	Westvaco Cpd Newark	\$7,500	\$2,000	\$9,500
139	Wilmington Hospital	\$7,500	\$1,000	\$8,500
140	Wilmington Piece Dye	\$7,500	\$1,000	\$8,500
141	Wilmington Recycling, L.L.C., Marsh Lane	\$3,000	\$1,000	\$4,000
142	Wilmington Waste Water Treatment Plant	\$7,500	\$1,000	\$8,500
143	Zeneca Pharmaceuticals, Inc - HQ Fairfax	\$7,500	\$2,000	\$9,500

POST 1999 TITLE V FEES – INTRODUCTION

Pursuant to Senate Bill 207, which became effective June 16, 1999, the attached tables were to be published in the Delaware Register. The purpose of this publishing is to allow individual Title V sources to be aware of the fee amounts which will be billed starting January 1, 2000. The new fee structure will be used to assess Title V fees for the years 2000, 2001, and 2002. Any questions should be directed to the Air Quality Management Section at (302) 739 – 4791.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

The Delaware Board of Nursing in accordance with 24 Del. Code, Subsection 1906(1) has proposed to revise certain sections of Articles II, V, VI, VIII, and X of the Rules and Regulations regulating the Practice of Nursing in the State of Delaware that address nursing education programs, assistance with self-administration of medications, licensure examinations, the practice of nursing as an Advanced Practice Nurse in the State of Delaware, and disciplinary proceedings.

A public hearing will be held on Wednesday, January 12, 2000 at 9:00 a.m., in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed revised section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover, DE 19904, (302) 739-4522, ext. 215 or 216. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be at the public hearing.

DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, December 16, 1999 at 2:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE LOTTERY OFFICE**

The Lottery proposes the following amendments:

1. Regulation 2.0 would be amended to clarify the definition of "technology provider" to include vendors providing services to the video lottery agents or the Lottery.
2. Regulations 4.1 and 4.2 would be amended to clarify the licensing process for technology providers, consistent with the amendment to the "technology provider" definition in Regulation 2.0.
3. Regulation 5.1 regarding Lottery contracts with

technology providers would be amended to reference the applicable section of the procurement chapter in title 29, chapter 69.

4. Regulation 5.2 regarding contracts with technology providers would be amended to include new Regulations 5.2.1 and 5.2.2. This amendment would reorder the existing Regulation to clarify the contractual provisions for technology providers who do or do not manufacture video lottery machines.

5. Regulation 5.11 regarding technology provider duties would be amended to require: 1) supervision of employees in compliance with Lottery rules; 2) prompt reporting of violations of laws to the Lottery; 3) compliance with all other requirements specified by the Director.

6. Regulation 6.35 would be amended to require video lottery agents to file with the Director copies of all video lottery related contracts in excess of \$1,000 and to notify the Director of any contract with a vendor subject to the Lottery's licensure procedures.

7. Regulation 8.2 would be amended to add new regulations 8.2.1 through 8.2.5. Regulation 8.2.1 through 8.2.2 would require a video lottery agent to file financial reports as required by the Lottery. Regulation 8.2.4 would allow the Lottery to prescribe the reporting forms to be used by the video lottery agents for reporting purposes. Regulation 8.2.5 would specify that video lottery agents must meet the minimum requirements of the Lottery's internal control procedures.

The Lottery will receive written public comments from December 1, 1999 through December 30, 1999. Comments should be sent to Wayne Lemons, Director-Delaware Lottery, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. The Lottery will conduct a public hearing on Wednesday, December 22, 1999 at 10:00 a.m. at the Delaware Lottery Office, 1575 McKee Road, Second Floor Conference Room, Dover, De. Copies of the proposed rules can be obtained from the Lottery office at the above address.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

The Delaware 1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO

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

The 1990 CAAA requires states with non-attainment areas for ground-level ozone to develop comprehensive periodic emission inventories of ozone precursor pollutants (volatile organic compounds, nitrogen oxides, and carbon dioxide) once every three years after 1990. These emission inventories are purely technical and informational documents. However, states are required to incorporate them into the State Implementation Plan (SIP). Consequently, these periodic emission inventories must be made available for public review and public hearing, and submitted to EPA. This is the second of these inventories covering all three Delaware counties for the 1996 calendar year and ozone season.

3. NOTICE OF PUBLIC COMMENT:

A public hearing is scheduled for Tuesday, January 4, 2000, at 6:30 P.M., in the Richardson and Robbins Building, DNREC Auditorium on Kings Highway in Dover, Delaware.

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**
REGISTER NOTICE
1. TITLE OF THE REGULATIONS:

Delaware 1996 milestone demonstration for kent and new castle counties: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone.

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

The Clean Air Act Amendments of 1990 (CAAA) requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision for each of the milestone years (1996, 1999, 2002, and 2005) to demonstrate that the actual emissions of volatile organic compounds (VOC) and/or oxides of nitrogen (NOx) in Kent and New Castle Counties do not exceed the required emission targets specified in Delaware's Rate-of-Progress Plans. The document proposed herein is for the milestone year of 1996, and thus termed as Delaware's 1996 Milestone Demonstration.

3. NOTICE OF PUBLIC COMMENT:

Public hearing will be held on January 4, 2000, at 6:00pm in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE
REGISTER NOTICE
1. TITLE OF THE REGULATION

Tidal Finfish Regulations

2. 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. TFR No. 4 SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASON is proposed to be amended to adjust the 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.

TFR No. 6 STRIPED BASS LIMITS; RECREATIONAL FISHING SEASONS; METHOD OF TAKE; CREEL LIMIT; POSSESSION LIMIT is proposed to be amended to close the recreational fishery during the period May 10 through June 30 **OR** to reduce the recreational creel limit to one fish per person per day except for 24 days in November when the creel limit would remain at two per person per day **OR** to amend TFR No. 7. STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS by increasing the recreational minimum size limit from 28 inches to 30 inches. In combination with one of the above three options for the recreational fishery, it is proposed to amend. TFR No. 7 to incorporate a commercial slot size limit of 20 inches to 32 inches instead of a 20-inch minimum size limit. Any one of the three options to reduce the recreational fishery in combination with the commercial slot limit will reduce the fishing mortality by 14% on striped bass that measure 28 inches which is required in 2000 by the Striped Bass Fishery Management Plan.

TFR No. 10 WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS is proposed to be amended to change the 1999 dates when it was illegal to take weakfish with any gear other than a hook and line in the Delaware Bay and ocean to the corresponding calendar dates in 2000. These dates involve 35 days.

TFR No. 23, BLACK SEA BASS SIZE LIMITS; TRIP LIMITS; SEASONS; QUOTAS is proposed to be amended to reduce the commercial quarterly trip limits to 9000 lbs., 3000 lbs., 2000 lbs. and 3000 lbs. The quarterly quotas will not change but the lower trip limits should prevent the quarterly quota from being exceeded and requiring the fishery to be closed.

TFR No. 25, ATLANTIC SHARKS is proposed to be amended to place a minimum size limit of 54 inches on large coastal, pelagic and small coastal sharks and reduce the

recreational creel limit to one per vessel. It is also proposed to place 14 more shark species into the prohibited species category under the management unit.

TFR No. 26 AMERICAN SHAD AND HICKORY SHAD; CREEL LIMITS is proposed to be amended to prohibit the possession of any shad taken from the Nanticoke River in order to restore the spawning shad population.

3. 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, Delaware at 7:30 PM on Tuesday, December 21, 1999. The record will remain open for written comments until 4:30 PM on December 29, 1999.

**DELAWARE RIVER BASIN
COMMISSION**

P.O. Box 7360 West Trenton

The Delaware River Basin Commission will meet on Wednesday, December 8, 1999, in West Trenton, New Jersey. For more information contact Pamela M. Bush at (609) 883-9500 extension 203.

DIVISION OF FISH AND WILDLIFE

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

Wildlife & Non-Tidal Fishing Regulations

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

Amendments are being proposed to: 1) modify the season for the taking of diamondback terrapin; 2) restrict the collection and sale of "native wildlife" species; 3) identify the native reptiles and amphibians that may be collected for noncommercial purposes; 4) update the regulation relating to the registration of native reptiles and amphibians owned prior to the effective date of the regulation limiting their possession; 5) change the title of WR-6 to "Game Preserves"; 6) update and formally adopt a list of endangered species for the State; and 7) create a slot length limit coupled with a revised size and possession limit to protect the State's spawning population of smallmouth bass.

3. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on January 11, 2000, at 7:30 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Division of Fish and Wildlife no later than 4:30 p.m. on January 25, 2000, and should be addressed to H. Lloyd Alexander, Wildlife Administrator, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901.

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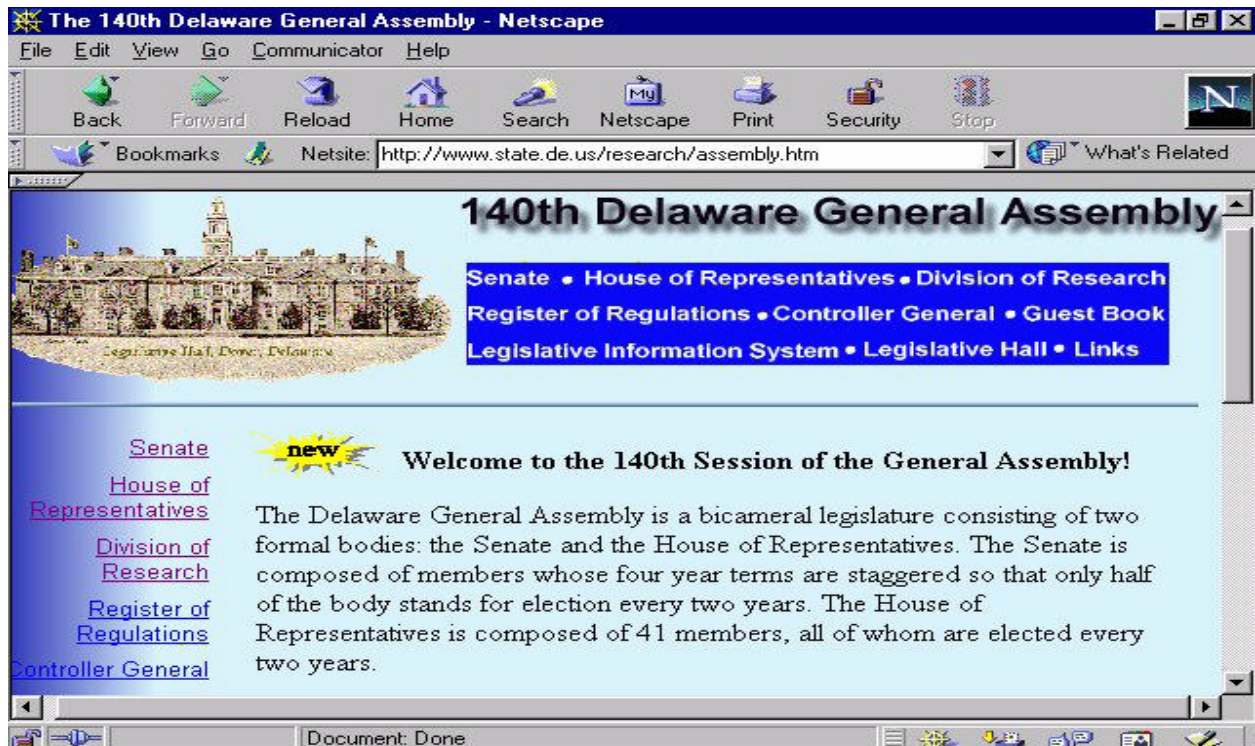
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