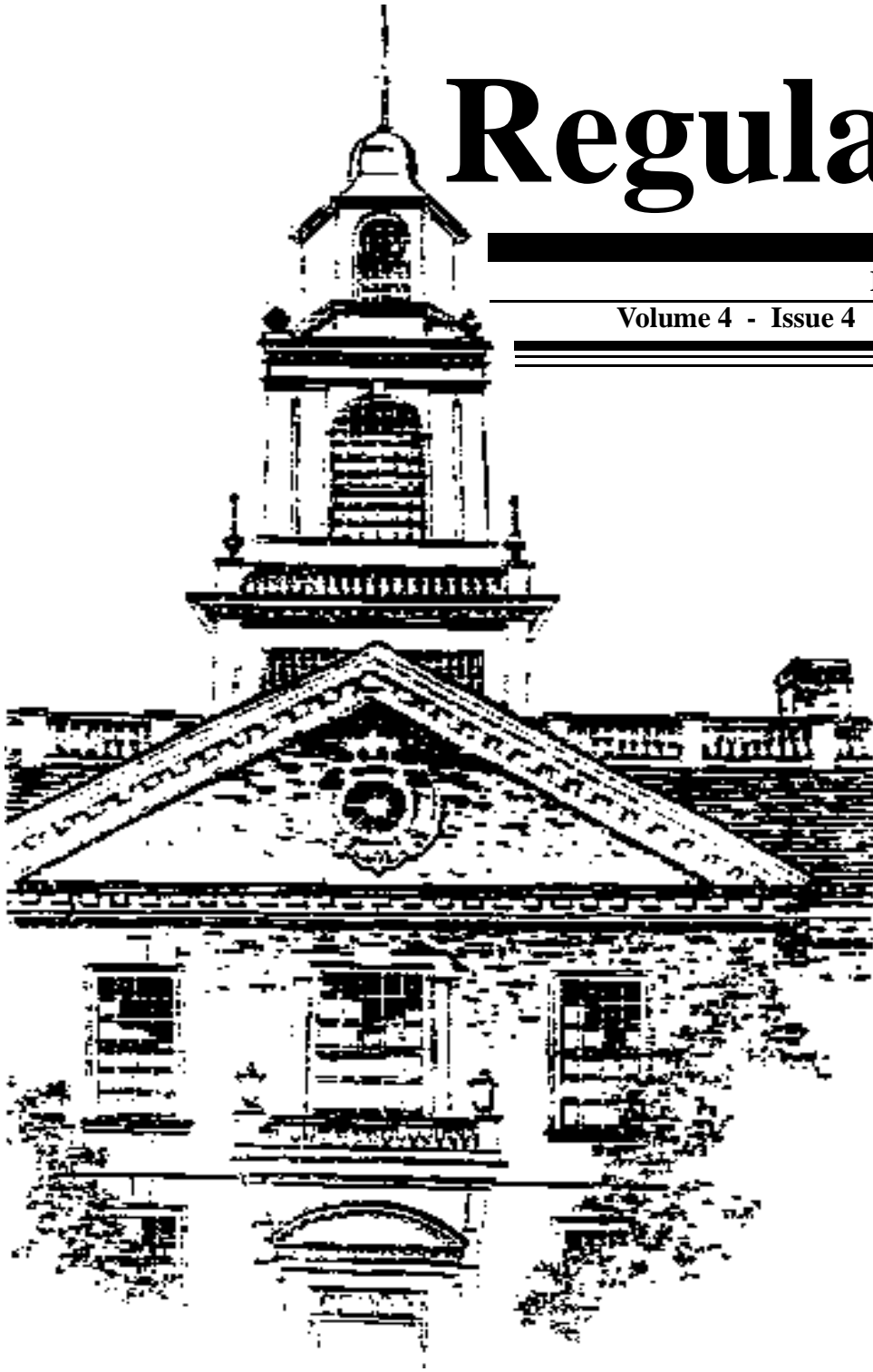

Delaware Register of Regulations



Issue Date: October 1, 2000

Volume 4 - Issue 4

Pages 591 - 759

IN THIS ISSUE:

Regulations:

Emergency

Proposed

Final

Governor

Appointments

General Notices

Calendar of Events &

Hearing Notices



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 September 15, 2000.

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

3 DE Reg. 737 - 742 (12/1/99)

Refers to Volume 3, pages 737 - 742 of the Delaware Register issued on December 1, 1999.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

William S. Montgomery, Director, Division of Research; **Walter G. Feindt**, Deputy Director; **Jeffrey W. Hague**, Registrar of Regulations; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Alex W. Mull**, Assistant Registrar; **Deborah A. Porter**, Administrative Secretary; **Virginia L. Potts**, Administrative Assistant; **Barbara Ryan**, Public Information Clerk; **Ted Segletes**, Paralegal; **Don Sellers**, Printer; **Thom Shiels**, Legislative Attorney; **Marguerite P. Smith**, Public Information Clerk; **Alice W. Stark**, Legislative Attorney; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

Cumulative Tables..... 596

716 Permanent Files of School Districts..... 635
1101 Standards for School Buses,..... 637

EMERGENCY

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF SERVICES FOR AGING AND ADULTS
WITH PHYSICAL DISABILITIES**

Establishment of Delegation of Power of Relative
Caregivers to Consent to Medical Treatment
of Minors..... 599
Establishment Of Delegation of Power of Relative
Caregivers to Consent for Registering
Minors for School..... 600

**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

Tidal Finfish Regulation No.23 Black Sea Bass Size
Limit; Trip Limits; Seasons; Quotas..... 602
Tidal Finfish Regulation, No. 27, Spiny Dogfish, Closure
of Fishery..... 603

PROPOSED

**DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION**

Board of Pharmacy, Reg. XV..... 605
Examining Board of Physical Therapists..... 607

DEPARTMENT OF AGRICULTURE

Nutrient Management Certification Regulations.. 609
Nutrient Management, Regulations Governing the
Processing of Complaints of Violations..... 612

DEPARTMENT OF EDUCATION

307 Private Business and Trade Schools..... 614
510 Computer Literacy Amendments to the Graduation
Requirements, Repeal of..... 626
522 Visual and Performing Arts..... 634
524 Physical Education..... 634
525 Requirements for Vocational-Technical Education
Programs..... 634

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF SERVICES FOR AGING AND ADULTS
WITH PHYSICAL DISABILITIES**

Establishment of Delegation of Power of Relative
Caregivers to Consent to Medical Treatment
of Minors 656
Establishment Of Delegation of Power of Relative
Caregivers to Consent for Registering
Minors for School..... 657

DEPARTMENT OF INSURANCE

Regulation 81, Prompt Payment of Settled Claims..... 659

**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

Freedom of Information Act Regulations..... 660

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

2002 Rate-of-Progress Plan for Kent & New
Castle Counties..... 664

FINAL

**DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION**

Board of Nursing..... 672
Board of Examiners in Optometry..... 674
Board of Pharmacy, Regulation V, Dispensing..... 682
Board of Podiatry..... 688
Board of Medical Practice, Respiratory Care Advisory
Council..... 699

**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Reg. No. 38, Emission Standards for Hazardous Air
Pollutants For Source Categories, Subparts
M and N..... 707

GOVERNOR

Appointments..... 716

DNREC, 2005 Rate-of-Progress Plan For Kent
And New Castle Counties: For Demonstrating
Progress toward Attainment of the 1-Hour
National Ambient Air Quality Standard for
Ground Level Ozone, Notice of Public Hearing .. 759

GENERAL NOTICES

**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Delaware Phase II Attainment Demonstration For The
Philadelphia-Wilmington-Trenton Severe Ozone
Nonattainment Area..... 718

2005 Rate-of-Progress Plan For Kent And New
Castle Counties: For Demonstrating Progress
Toward Attainment of the 1-Hour National
Ambient Air Quality Standard for Ground
Level Ozone..... 720

**CALENDAR OF EVENTS/HEARING
NOTICES**

Board of Pharmacy, Notice of Public Hearing..... 756

Examining Board of Physical Therapists, Notice
of Public Hearing..... 756

Dept. of Agriculture, Nutrient Management Certification
Regulations, Notice of Public Hearing..... 756

State Board of Education, Notice of
Monthly Meeting..... 757

Div. of Services for Aging and Adults with Physical
Disabilities, Establishment of Delegation of Power of
Relative Caregivers to Consent to Medical
Treatment of Minors, Notice of Public
Comment Period..... 757

Div. of Services for Aging and Adults with Physical
Disabilities, Establishment Of Delegation of Power
of Relative Caregivers to Consent for Registering
Minors for School..... 757

Dept. of Insurance, Notice of Public Hearing..... 758

DNREC, Freedom of Information Act Regulations
Notice of Public Hearing..... 758

DNREC, 2002 Rate-of-Progress Plan for Kent &
New Castle Counties, Notice of Public Hearing... 758

DNREC, Delaware Phase II Attainment Demonstration
For The Philadelphia-Wilmington-Trenton Severe
Ozone Nonattainment Area..... 759

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

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

DEPARTMENT OF ADMINISTRATIVE SERVICES**Division of Professional Regulation**

Board of Cosmetology & Barbering.....	4	DE Reg.	329 (Final)
Board of Examiners of Psychologists.....	4	DE Reg.	275 (Prop.)
Board of Funeral Services.....	4	DE Reg.	157 (Final)
Board of Medical Practice, Respiratory Care Advisory Council.....	4	DE Reg.	14 (Prop.)
Board of Nursing.....	4	DE Reg.	274 (Prop.)
Board of Nursing, Advance Practice Nurses, Independent Practice and/or Independent Prescriptive Authority.....	4	DE Reg.	296 (Final)
Board of Pharmacy, Reg. V Dispensing.....	4	DE Reg.	8 (Prop.)
Board of Pharmacy, Reg. I, Pharmacist Licensure Requirements, Reg. II Grounds for Disciplinary Proceeding, and Reg. V Dispensing.....	4	DE Reg.	163 (Final)
			4 DE Reg. 247 (Errata)
Board of Professional Counselors of Mental Health.....	4	DE Reg.	267 (Prop.)
Examining Board of Physical Therapists.....	4	DE Reg.	21 (Prop.)
Gaming Control Board, Regulations Governing Bingo, Section 1.03 (10).....	4	DE Reg.	334 (Final)

DEPARTMENT OF AGRICULTURE

Delaware Standardbred Breeders' Fund Program.....	4	DE Reg.	37 (Prop.)
Harness Racing Commission	4	DE Reg.	6 (Errata)
Amend Rules 3.2.8.3; 6.3.2; 7.6.6; 7.6.13; 7.6.14; 7.6.15; 8.3.5.4; and 8.4.3.5.10.....	4	DE Reg.	336 (Final)
Rules 6.3.3.13 and 8.3.5.9.4.....	4	DE Reg.	259 (Errata)
Thoroughbred Racing Commission			
30 Rule Amendments.....	4	DE Reg.	173 (Final)

DEPARTMENT OF EDUCATION

Certification Speech Language Pathologist.....	4	DE Reg.	184 (Final)
Children with Disabilities.....	4	DE Reg.	43 (Prop.)
Content Standards, 500.1.....	4	DE Reg.	343 (Final)
DSSAA, Official Handbook.....	4	DE Reg.	185 (Final)
Educational Programs for Students with Limited English Proficiency.....	4	DE Reg.	71 (Prop.)
Extension of the Use of the Limited Standard Certification for Middle Level Mathematics and Science and an Extension of the Use of the Secondary Science Certificate for Middle Level Science.....	4	DE Reg.	222 (Final)
Michael C. Ferguson Achievement Awards Scholarship.....	4	DE Reg.	224 (Final)
School Custodians.....	4	DE Reg.	225 (Final)
Student Testing Program.....	4	DE Reg.	69 (Prop.)
Supportive Instruction (Homebound).....	4	DE Reg.	75 (Prop.)
			4 DE Reg. 344 (Final)

DEPARTMENT OF FINANCE**Division of Revenue**

Technical Memo. 2000-02, Duty to Report Sales of Cigarette Products made by Non Participating Manufacturers.....	4	DE Reg.	346 (Final)
---	---	----------------	-------------

Office of the State Lottery

Delaware Lottery & Video Lottery, Introduction, Sections 13, 16, 18, 19 & 29.....4 **DE Reg.** 78 (Prop.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Mental Retardation

Eligibility Criteria.....4 **DE Reg.** 228 (Final)

Division of Public Health

Conrad State 20/J-1 Visa Waiver Program.....4 **DE Reg.** 349 (Final)

Division of Services for Aging and Adults with Physical Disabilities

Establishment of Delegation of Power of Relative Caregivers to

Consent to Medical Treatment of Minors.....4 **DE Reg.** 263 (Emer.)

4 **DE Reg.** 283 (Prop.)

Establishment of Delegation of Power of Relative Caregivers to

Consent for Registering Minors for School.....4 **DE Reg.** 264 (Emer.)

4 **DE Reg.** 284 (Prop.)

Division of Social Services

DSSM 4006.1, Excluded Income, DSSM 8030.1, Excluded Income, DSSM 9059,

Income Exclusions, DSSM 11003.9.1, Countable Income,

DSSM 14710, Income.....4 **DE Reg.** 229 (Final)

4004.6, Minor Student Earned Income.....4 **DE Reg.** 89 (Prop.)

10004.3, Sanction Period and Penalty, 10004.3.1, Information Coordination.....4 **DE Reg.** 89 (Prop.)

14300 Citizenship and Alienage.....4 **DE Reg.** 91 (Prop.)

14320.1 Medicaid Eligibility for Qualified Aliens.....4 **DE Reg.** 92 (Prop.)

14320.3 Medicaid Eligibility Not Based on Date of Entry into U.S.....4 **DE Reg.** 92 (Prop.)

14330.2 Eligibility for State Funded Benefits (Nonqualified Aliens).....4 **DE Reg.** 92 (Prop.)

14380 Documentation of Citizenship or Alien Status.....4 **DE Reg.** 93 (Prop.)

14400 Acceptable Evidence of U.S. Citizenship, Repeal of.....4 **DE Reg.** 93 (Prop.)

14410 Acceptable Evidence of Qualified Alien Status.....4 **DE Reg.** 93 (Prop.)

15120.1.2 Child Support Cooperation.....4 **DE Reg.** 95 (Prop.)

18100.3 Fair Hearings.....4 **DE Reg.** 95 (Prop.)

Delaware Prescription Assistance Program (DPAP), Eligibility Policy.....4 **DE Reg.** 95 (Prop.)

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

Division of Air and Waste Management

Air Quality Management Section

Reg. No. 38, Emission Standards for Hazardous Air Pollutants for

Source Categories, Subparts M and N.....4 **DE Reg.** 286 (Prop.)

Waste Management Section

Solid Waste Regulations.....4 **DE Reg.** 101 (Prop.)

Division of Fish and Wildlife

Tidal Finfish Reg. No. 7, Striped Bass Possession Size Limit; Exceptions.....4 **DE Reg.** 229 (Final)

Division of Water Resources

Regulations Governing the Control of Water Pollution.....4 **DE Reg.** 103 (Prop.)

DEPARTMENT OF PUBLIC SAFETY

Board of Examiners of Private Investigators & Private Security Agencies

Employment Notification.....4 **DE Reg.** 361 (Final)

DEPARTMENT OF TRANSPORTATION

Toll Exemption Policy.....4 **DE Reg.** 294 (Prop.)

Traffic Calming Manual.....4 **DE Reg.** 105 (Prop.)

GOVERNOR'S OFFICE

Appointments & Nominations.....4 **DE Reg.** 233

4 **DE Reg.** 367

Executive Order No. 79, Relating to Community-based Alternatives
for Individuals with Disabilities.....4 **DE Reg.** 231

Executive Order No. 80, Establishing the Council on Deaf and Hard
of Hearing Equality and other Related Matters.....4 **DE Reg.** 365

Symbol Key

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

Emergency Regulations

Under 29 **Del.C.** §10119, if an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by 29 **Del.C.** §10115, then the following rules shall apply: (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable; (2) The order adopting, amending or repealing a regulation shall state in writing the reasons for the agency's determination that such emergency action is necessary; (3) the order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days; (4) When such an order is issued without any of the public procedures otherwise required or authorized by Chapter 101 of Title 29, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES****DIVISION OF SERVICES FOR AGING AND ADULTS
WITH PHYSICAL DISABILITIES**

Statutory Authority: 13 Delaware Code,
Sections 707 and 708 (13 Del.C. §§707, 708)

In the Matter Of: |
Regulations on Establishment |
Of Delegation of Power of |
Relative Caregivers to |
Consent to Medical |
Treatment of Minors |
13 **Del.C.** §707,708

Nature of the Proceedings

Delaware Health and Social Services has determined that a threat to the public welfare exists if regulations are not promulgated immediately to allow grandparent and relative caregivers who do not have custody or guardianship to approve medical treatment for children in their care. Failure to do so in a timely manner creates the opportunity for minor medical problems to become more serious due to lack of medical treatment.

Summary/purpose of Emergency Regulations

The promulgation of these regulations will put 13 Del.C. §707 and 708 into effect so that grandparents and relative caregivers without custody or guardianship can approve medical treatment for children in their care. Promulgation of these regulations will allow the law to

establish a system known to providers and consumers throughout the state, encourage well child Doctor's visits, visits to the Doctor before a condition worsens, and fewer visits to hospitalemergency rooms.

EMERGENCY REGULATIONS;**I. Definitions for terms used in 13 Del.C. section 707(a):**

1.(a) Medical treatment includes the use of prescription drugs.

Disease – a pathological condition of a body part, an organ, or a system resulting from various causes, such as infection, genetic defect, or environmental stress, and characterized by an identifiable group of signs or symptoms or life.

Pathology – the medical science concerned with all aspects of disease with an emphasis on the essential nature, causes, and development of abnormal conditions, as well as with the structural and functional changes that result from disease processes. It is also the anatomical or functional manifestations of a disease.

(1)(b) Public clinics include school wellness centers.

This authorization also applies to medical care provided in schools that do not have wellness centers as well as medical care required at school-related activities.

II. Definition for terms used in 13 Del.C. section 708:

(1) Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minors (also known as Caregivers' Medical Authorization) – An affidavit of written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation, such as an officer of the

court or other person who has been duly authorized to do so.

III. Reasonable effort to locate the parent(s), guardian, or custodian of the child shall include option 1, which is required, and a choice of either option 2, 3, or 4.

(1) Certified mail receipt of a written notice from the caregiver that he or she intends to take medical responsibility for the child. The notice should be sent to the last known address of the parent(s), custodian, or guardian. Proof of this step will be the notice and the return receipt saying that the letter was not deliverable because no one by that name lives at this address.

(2) The caregiver or someone acting in his or her place makes an actual visit to the last known address of the parent(s), custodian, or guardian. The individual making his visit will need to describe what was found at this address and to whom he or she spoke regarding the missing parent(s), custodian, or guardian.

(3) Contact with social service agencies, place of employment, health care provider, or friends verified by a written statement signed by that party confirming that the location of the parent(s), custodian, or guardian is unknown.

(4) Other documents or confirmations that show the parent(s), custodian, or guardian cannot be found.

IV. Affidavit:

Delaware Health and Social Services will maintain the Caregivers' Medical Authorization form. Anyone who wishes to obtain this form may do so by contacting Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) or their local school district office. Only the Caregivers' Medical Authorization form developed by DSAAPD shall be used.

FINDING OF FACT

The Department finds that these regulations should be promulgated in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof. Such petitions or other written comments must be forwarded by October 31, 2000, to Carol Boyer, Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities, 1901 North Du Pont Highway, New Castle, Delaware, 19720.

THEREFORE, IT IS ORDERED, that these regulations be adopted on an emergency basis, without prior notice or hearing, and shall become effective immediately.

Gregg C. Sylvester, MD, September 21, 2000
Secretary

**DIVISION OF SERVICES FOR AGING AND ADULTS
WITH PHYSICAL DISABILITIES**

Statutory Authority: 14 Delaware Code,
Section 202 (14 Del.C. §202)

In the Matter Of:
Regulations on Establishment
Of Delegation of Power of
Relative Caregivers to
Consent for Registering
Minors for School
14 Del.C. § 202

Nature of the Proceedings

Delaware Health and Social Services has determined that a threat to the public welfare exists if regulations are not promulgated immediately to allow grandparent and relative caregivers who do not have custody or guardianship to register children in their care for school. Failure to do so will create undue hardship to those caregivers who seek to fulfill their obligation to register their children for school in accordance with Delaware Code.

Purpose and Summary of Emergency Order

The promulgation of these regulations will put 14 Del.C. §202 in effect so that grandparents and relative caregivers without custody or guardianship can register children in their care for school. Doing so will put these caregivers in compliance with 27 Del.C. §2702, which states that children "between five years of age and sixteen years of age" shall be enrolled in a free public school.

TEXT OF EMERGENCY REGULATIONS:

I. Definitions for terms used in 14 Del.C. section 202:

Establishment of Delegation of Power of Relative Caregivers to Consent for Registering Minors for School (also known as Caregivers' School Authorization) (found in subsection (e)(1) c of section 202)– An affidavit of written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation, such as an officer of the court or a notary public or other person who has been duly authorized so to act.

II. Proof of relationship and Proof of caregiving: (found in subsection (2)(f)(1))

There must be two different forms of documentation, one from each column. One must show proof of relationship and the other proof of caregiving. These documents, or other

similar documents as approved by the school district, must be presented for registration.

PROOF OF RELATIONSHIP	PROOF OF CAREGIVING
Birth certificate of caregiver, the adult child, and birth certificate of the child.	
Medical records where a caregiver is required to give approval, such as shots. Such records must show the relationship between the caregiver and the child.	Medical records where a caregiver's authorization to give approval for services such as shots was acceptable.
A Will which lists the child and the relationship between the caregiver and child.	
Insurance for the caregiver or child which includes the relationship between the caregiver and child.	
A letter from a social worker, lawyer, religious leader, or previous school district which verifies the relationship of the child to the caregiver.	A letter from a social worker, lawyer, religious leaders, or neighbor confirming the child is being cared for by the caregiver.
Free and Reduced lunch program application.	
Child is listed as occupant in an apartment or other housing and his/her relationship to the caregiver is included.	Child is listed as occupant in an apartment or other housing and his/her relationship to the caregiver is given.
Caregiver receives Child-only Temporary Aid for Needy Families (TANF) grant for this child.	Caregiver received Child-only Temporary Aid for Needy Families (TANF) grant for this child.
Child claimed on Federal Income Tax return.	Child claimed on Federal Income Tax return.

Caregiver receives Earned Income Tax Credit for the child.	Caregiver receives Earned Income Tax Credit for the child.
	Child's Social Security survivor death benefits are received by the caregiver for the child.
Hospital, clinic, or Public Health records showing the relationship between the caregiver and the child.	Hospital, clinic, or Public Health records where a caregiver's authorization to give approval for services such as shots was acceptable.
Division of Services for Children, Youth and their Families' records specifying the relationship between the caregiver and child.	Division of Services for Children, Youth and their Families' records showing that the caregiver is the contact for this child.
Military or veterans records which specify relationship	
Or other documents as approved by the school district.	Or other documents as approved by the school district.

III. Reasonable effort to locate the parent(s), guardian, or custodian of the child shall include option 1, which is required, and a choice of either option 2, 3, or 4.

(1) Certified mail receipt of a written notice from the caregiver that he or she intends to take school responsibility for the child. The notice should be sent to the last known address of the parent(s), custodian, or guardian. Proof of this step will be the notice and the return receipt saying that the letter was not deliverable because no one by that name lives at this address.

(2) The caregiver or someone acting in his or her place makes an actual visit to the last known address of the parent(s), custodian, or guardian. The individual making this visit will need to describe what was found at this address and to whom he or she spoke regarding the missing parent(s), custodian, or guardian.

(3) Contact with social service agencies, place of employment, health care provider, or friends verified by a written statement signed by that party confirming that the location of the parent(s), custodian, or guardian is unknown.

(4) Other documents or confirmations that show the parent(s), custodian, or guardian cannot be found.

IV. Affidavit:

Delaware Health and Social Services will develop the Caregivers' School Authorization form. Anyone who wishes to obtain this form may do so by contacting Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) or their local school district office. Only the Caregivers' School Authorization form developed by DSAAPD shall be used.

FINDING OF FACT

The Department finds that these regulations should be promulgated in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof. Such petitions or other written comments must be forwarded by October 31, 2000, to Carol Boyer, Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities, 1901 North Du Pont Highway, New Castle, Delaware, 19720.

THEREFORE, IT IS ORDERED, that these regulations be adopted on an emergency basis, without prior notice or hearing, and shall become effective immediately.

Gregg C. Sylvester, MD, September 21, 2000
Secretary

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

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

**Adoption of Amendment to Tidal Finfish Regulation No.
23 without notice of hearing to reduce the possession
limit on Black Sea Bass.**

Order No. 200-FW-0043

1. AUTHORITY

Pursuant to 29 Del.C., §10119, the Department of Natural Resources and Environmental Control is adopting an amendment to Tidal Finfish Regulation No.23 BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS without prior notice or public hearing to reduce the commercial possession limit for the fourth quarter (October 1-December 31) from 3000 pounds to 2000 pounds and to

1000 pounds when 50% of the fourth quarter quota is projected to be taken. 7 Del.C., § 903(e)(2)(a) authorizes the Department to promulgate regulations concerning species of finfish that spend part or all of their life cycle within the tidal waters of the state; provided, that such regulations are consistent with interstate fishery management plans developed for the protection and conservation of said finfish.

2. REASONS FOR EMERGENCY ORDER

The Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Management Board approved emergency action for this year's fourth quarter black sea bass fishery. The Board's actions were taken in consultation with the Mid-Atlantic Fishery Management Council. The primary reason for this action is to maintain the integrity of the black sea bass conservation program, while allowing for the fullest utilization of the resource by commercial fishermen year-round.

Black Sea Bass is jointly managed by the Commission, through its Black Sea Bass Fishery Management Plan (FMP), and the Council, through Amendment 9 to the Summer Flounder, Scup and Black Sea Bass FMP. These plans manage the commercial black sea bass fishery through a quota that is divided among four periods-Quarter I (January-March), Quarter II (April-June), Quarter III (July-September), and Quarter IV (October-December). Commercial black sea bass landings are monitored weekly to ensure the timely closure of the fisheries once the quota for each period is landed. Both plans set out a series of trip limits that are designed to extend the quota throughout the quota period, thereby, maximizing the benefits of the available quota.

The Atlantic Coastal Fisheries Cooperative Management Act (1993) requires states to comply with fishery management plans adopted by the Atlantic States Marine Fisheries Commission.

3. EFFECTIVE DATE OF ORDER

This order shall take effect at 12:01 AM on October 1, 2000 and shall remain in effect until 12:00 PM on December 31, 2000.

4. PETITIONS FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for reconsideration or revision of this order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, this 6th day of September, 2000 that the above referenced amendment to Tidal Finfish Regulation No. 23, a copy of which is attached hereto, is adopted pursuant to 29, Del. C. § 10119.

Nicholas A. DiPasquale
Secretary, Department of Natural Resources and Environmental Control

Be it adopted by the Department of Natural Resources and Environmental Control the following amendment to Tidal Finfish Regulation No. 23.

Section 1. Amend Tidal Finfish Regulation No. 23, BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS, in subsection (c) by striking the number and word "3,000 lbs." as they appear in "Fourth Quarter (October, November and December)- 3,000 lbs." and substitute in lieu thereof the number and words "2,000 lbs. with a reduction to 1,000 lbs. when 50% of the quota for the fourth quarter is projected to be taken."

Section 2. This amendment to Tidal Finfish Regulation No. 23 shall become effective on October 1, 2000 and shall remain in effect until 12:00 PM on December 31, 2000.

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 (*Centropristis striata*) that measures less than ten (10) inches, total length.

b) Open **See 2 DE Reg 1900 (4/1/99)**

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) - 9,000 lbs.

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

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

Fourth Quarter (October, November and December) - ~~3,000 lbs.~~ 2,000 lbs. with a reduction to 1,000 lbs. when 50% of the quota for the fourth quarter is projected to be taken.

"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."

See 3 DE Reg 1088 (2/1/00)

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 23.3 after the date in said quarter that the National Marine Fisheries Services determines that quarter's quota is filled."

See 1 DE Reg 1772 (5/1/98)

DIVISION OF FISH & WILDLIFE

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

Adoption of a Tidal Finfish Regulation without notice of hearing to close the commercial harvest of Spiny Dogfish.

Order No. 2000-FW-0042

1. AUTHORITY

Pursuant to 29 Del.C. §10119, the Department of Natural Resources and Environmental Control is adopting a new Tidal Finfish Regulation No. 27 without prior notice or public hearing to close the commercial fishery for spiny dogfish. 7 Del.C. §903 authorizes the Department to promulgate regulations concerning species of finfish that spend part or all of their life cycle within the tidal waters of the State; provided, that such regulations are consistent with interstate fishery management plans developed for the protection and conservation of said finfish or are consistent with fishery management plans approved by the U.S. Secretary of the Department of Commerce for the protection and conservation of said finfish.

2. REASONS FOR EMERGENCY ORDER

The Atlantic States Marine Fisheries Commission's Spiny Dogfish and Coastal Shark Management Board took emergency action on August 21, 2000 to close state waters to the commercial harvest, landing and possession of spiny dogfish. The Board's action was taken to compliment the closure of federal waters to the harvest, landing and possession of spiny dogfish which became effective August 1, 2000. The federal closure, implemented under the federal Spiny Dogfish Fishery Management Plan is the result of the fishery over harvesting its commercial quota for the first semiannual period (April 1 - September 30) of this fishing year. The Board acted to close a potential loophole in the federal plan that allows the continued harvest of spiny dogfish from non-federally permitted fishermen in state waters.

This emergency action also stems from the State's concern for the status of the spiny dogfish resource. Preliminary stock assessment data indicate a continued decline of the adult female biomass and an erosion of the biomass of intermediate-sized spiny dogfish recruits for the fourth consecutive year which may indicate recruitment failure.

The states' authority to take emergency action on spiny dogfish is provided through the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Program Charter. While in effect, the emergency action is treated as an amendment to a fisheries management plan and contains a compliance date for implementation of the emergency by the states. For this emergency action, states are required to implement their closures by October 15, 2000.

3. EFFECTIVE DATE OF ORDER

This order shall take effect at 12:01 AM on October 15, 2000 and shall remain in effect for 120 days.

4. PETITIONS FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for reconsideration or revision of this order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, the 6th day of September, 2000, that the above referenced Tidal Finfish Regulation No. 27, a copy of which is attached hereto, is adopted pursuant to 29 Del.C. §10119.

Nicholas A. DiPasquale, Secretary

Department of Natural Resources and Environmental Control

Be it adopted by the Department of Natural Resources and Environmental Control, the following Tidal Finfish Regulation No. 27.

Section 1. Add a new Tidal Finfish Regulation to read as follows:

“TIDAL FINFISH REGULATION NO. 27 SPINY DOGFISH; CLOSURE OF FISHERY

It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish, *Squalus acanthias*.”

Section 2. This Tidal Finfish Regulation, No. 27 shall become effective on October 1, 2000 and shall remain in effect for 120 days.

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 PHARMACY**

Statutory Authority: 24 Delaware Code,
Section 2509 (24 Del.C. 2509)

PLEASE TAKE NOTICE, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to adopt new Regulation XV to provide comprehensive requirements which will govern automated systems in community, institutional, and long term care pharmacy settings.

A public hearing will be held on the Proposed changes on November 15, 2000 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed Regulation. Written comment can be submitted at any time prior to the hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

Regulation XV
Automated Pharmacy Systems

A. Purpose and Scope

1. The purpose of this regulation is to recognize the use of automated pharmacy systems in community,

institutional, and long term care pharmacy settings.

B. Definitions

1. "Automated Pharmacy Systems" include, but are not limited to, mechanical systems that perform operations or activities, other than compounding or administration, relative to storage, packaging, dispensing, or distribution of medications, and which collects, controls, and maintains all transaction information.

C. Automated Pharmacy Systems – General Requirements

1. Personnel

a. Duties and Responsibilities of the Pharmacist-in-Charge

1. The Pharmacist-in-Charge has the following responsibilities:

(a) Assuring that the Automated Pharmacy System is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards.

(b) Implementing an ongoing quality assurance program that monitors performance of the Automated Pharmacy System, which is evidenced by written policies and procedures developed by the pharmacy.

(c) Providing the Board with 60 days prior written notice of the installation, removal, substantive change of Automated Pharmacy Systems. Such notice must include, but is not limited to:

(i) the name and address of the pharmacy;

(ii) the location of the automated equipment; and

PROPOSED REGULATIONS

(iii) the identification of the responsible pharmacist.

(iv) policies and procedures for system operations (for initial installations).

(d) Obtaining written approval and authorization from the Board of Pharmacy prior to implementation.

2. Pharmacy Practice

a. Automated Pharmacy Systems

(1) Automated Pharmacy Systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Board of Pharmacy, and licensed health care facilities where legally permissible and shall comply with the following provisions:

(a) Documentation as to type of equipment, serial numbers, content, policies and procedures, and location shall be maintained on-site in the pharmacy for review by an agent of the Board of Pharmacy. Such documentation shall include, but is not limited to:

(i) Name and address of the pharmacy and/or licensed health care facility where the Automated Pharmacy System(s) is being used;

(ii) Manufacturer's name and model;

(iii) Description of how the device is used;

(iv) Quality assurance procedures to determine continued appropriate use of the automated device; and

(v) Policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access, and malfunction.

(b) Automated pharmacy Systems shall be used only in setting where there is an established program of pharmaceutical care that ensures medication orders are reviewed by a pharmacist in accordance with established policies and procedures and good pharmacy practice.

(c) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(d) Automated Pharmacy Systems shall have adequate security systems and procedures, evidenced by written policies and procedures, to:

(i) Prevent unauthorized access and to comply with Federal and State regulations; and

(ii) Maintain patient confidentiality.

(e) Records and/or electronic data kept by Automated Pharmacy Systems shall meet the following requirements:

(i) All events involving the contents of the Automated Pharmacy System must be recorded electronically; and

(ii) Records must be maintained by

the pharmacy and must be readily available to the Board. Such records must be maintained for a period of 2 years and shall include:

((a) identity of system accessed;

((b) identification of the individual accessing the system;

((c) type of transaction;

((d) name, strength, dosage form, and quantity of the drug accessed;

((e) name of the patient for whom the drug was ordered; and

((f) such additional information as the pharmacist-in-charge may deem necessary.

(f) Access to and limits on access (e.g., security levels) to the Automated Pharmacy System must be defined by policy and procedures and must comply with State and Federal regulations.

(g) The pharmacist-in-charge shall be responsible for:

(i) Assigning, discontinuing, or changing access to the system.

(ii) Ensuring that access to the medication complies with State and Federal regulations.

(iii) Ensuring that the Automated Pharmacy System is filled/stocked accurately and in accordance with established, written policies and procedures that ensure accuracy.

(h) The filling/stocking of all medication in the Automated Pharmacy System shall be accomplished by qualified personnel under the supervision of a licensed pharmacist.

(i) Community/Outpatient Pharmacy – A final check by the pharmacist is required after the medication is placed in the final container prior to dispensing and administration to the patient.

(ii) Hospital/Institution – Unit based or centralized dispensing requires the same level of supervision required in Regulation IX - B3 which states: "Supportive personnel may be utilized in assisting the pharmacist. These persons must be supervised by a registered pharmacist who is present within the hospital and is responsible for the activities of those persons".

(i) A record of medication filled/stocked into an Automated Pharmacy System shall be maintained and shall include identification of the persons filling/stocking and checking for accuracy.

(j) All containers of medications stored in Automated Pharmacy System shall be packaged and labeled in accordance with Federal and State laws and regulations.

(k) All aspects of handling controlled substances shall meet the requirements of all State and Federal laws and regulations.

(l) The Automated Pharmacy System shall provide a mechanism for securing and accounting for

medications removed from and subsequently returned to the Automated Pharmacy System, all in accordance with existing State and Federal law.

(m) The Automated Pharmacy System shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing State and Federal law.

Revised July 13, 2000

DIVISION OF PROFESSIONAL REGULATION
STATE EXAMINING BOARD OF PHYSICAL
THERAPISTS

Statutory Authority: 24 Delaware Code,
Section 2604(1) (24 **Del.C.** 2604(1))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2604(1), the Delaware State Examining Board of Physical Therapists proposes to revise its rules and regulations. Two of the proposed changes modify two treatment options that support personnel are permitted to perform. Another proposed change clarifies the extent to which a licensee may modify a treatment prescription. The proposed regulations serve to implement or clarify specific sections of 24 **Del.C.** Chapter 26.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, November 21, 2000 at 6:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 739-4522.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

1.0 DEFINITIONS

1.1 Consultation (24 Del. C. § 2612)

1.1.1 Consultation in direct access. A physician must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in

these rules and regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal physician. If the patient does not have a personal physician, the Physical Therapist is to offer the patient at least three physicians from which to choose. The referral to a physician after the initial thirty day period must not be in conflict with 24 Del. C. § 2616 (a)(8) which deals with referral for profit. If no physician consult has been made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a physician consult.

1.1.2 Consultation with written prescription from a physician, dentist, podiatrist, or chiropractor. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

1.2 Direct Supervision (24 Del. C. § 2611 (a))

1.2.1 Direct supervision in connection with a Physical Therapist practicing under a temporary license means:

1.2.1.1 a licensed Physical Therapist supervisor shall be on the premises when the individual with a temporary license is practicing and

1.2.1.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed Physical Therapist supervisor.

1.2.2 Direct supervision in relation to a Physical Therapist Assistant with less than one (1) year experience means a Physical Therapist shall be on the premises at all times and see each patient.

1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that a Physical Therapist Assistant must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.

1.2.4 The Physical Therapist is responsible for the actions of the Physical Therapist Assistant when under his/her supervision. All supervision must be documented.

1.2.5 Direct supervision in connection with an Athletic Trainer means a Physical Therapist shall be on the premises at all times in a clinical setting and see every patient.

1.2.6 At no time may a Physical Therapist supervise more than 2 Physical Therapist Assistants, 2 Athletic Trainers or 1 Physical Therapist Assistant and 1 Athletic Trainer. A Physical Therapist may only supervise 1 Physical Therapist Assistant off site. Athletic Trainers must

be supervised on site.

1.2.7 Direct supervision in connection with support personnel means a licensed Physical Therapist or Physical Therapist Assistant shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed.

1.3 On site or on premises (24 Del. C. § 2602 (5)), in connection with supervision of a Physical Therapist Assistant or Athletic Trainer, means that the Physical Therapist Assistant or Athletic Trainer must be in the same physical building as the supervising Physical Therapist. On site or on premises does not refer to attached buildings.

1.4 Support personnel (24 Del.C. § 2615) means a person(s) who performs certain routine, designated physical therapy tasks under the direct supervision of a licensed Physical Therapist or Physical Therapist Assistant. There shall be documented evidence of sufficient in-service training to assure safe performance of the duties assigned to the support personnel.

1.5 Unprofessional Conduct (24 Del.C. § 2616 (7)). Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which proceeding actual injury to a patient need not be established. 24 Del.C. § 2616 (7). Such unprofessional conduct shall include, but not be limited to, the following:

1.5.1 - Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.

1.5.2 - The Physical Therapist who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.

1.5.3 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs prohibited activities is guilty of unprofessional conduct.

1.5.4 - The Physical Therapist or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.

1.5.5 - Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

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

1.5.7 - Inaccurately recording, falsifying, or altering a patient or facility record.

1.5.8 - Committing any act of verbal, physical, mental or sexual abuse of patients.

1.5.9 - Assigning untrained persons to perform functions which are detrimental to patient safety, for which

they are not adequately trained or supervised, or which are not authorized under these rules and regulations.

1.5.10 - Failing to supervise individuals to whom physical therapy tasks have been delegated.

1.5.11 - Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

1.5.12 - Violating the confidentiality of information concerning the patient.

1.5.13 - Failing to take appropriate action in safeguarding the patient from incompetent health care practice.

1.5.14 - Practicing physical therapy as a Physical Therapist or Physical Therapist Assistant or athletic training as an Athletic Trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.

1.5.15 - Practicing as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer when physical or mental ability to practice is impaired by alcohol or drugs.

1.5.16 - Diverting drugs, supplies or property of a patient or a facility.

1.5.17 - Allowing another person to use his/her license.

1.5.18 - Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer.

1.5.19 - Impersonating any applicant or acting as proxy for the applicant in a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer licensing examination.

1.5.20 - Continuing to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a physician consult.

1.5.21 - Substantially modifying a treatment prescription without consulting the referring physician.

1.5.22 - Failing to comply with the mandatory continuing education requirements of 24 Del. C. § 2607 (a) and Section 7 of these rules and regulations.

5.0 SUPPORT PERSONNEL (24 Del. C. § 2615)

5.1 Treatments which may be performed by support personnel under direct supervision are:

5.1.1 ambulation

5.1.2 functional activities

5.1.3 transfers

5.1.4 routine follow-up of specific exercises

5.1.5 hot or cold packs

5.1.6 whirlpool/Hubbard tank

5.1.7 contrast bath

5.1.8 infrared

5.1.9 paraffin bath

5.1.10 ultra sound

5.2 Exceptions - A support person may perform:

5.2.1 patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and

5.2.2 set up and preparation of patients requiring treatment using Physical Therapist modalities.

5.3 Prohibited Activities - support personnel may not perform:

5.3.1 evaluation, or

5.3.2 treatments other than those listed in Section 5.1.

DEPARTMENT OF AGRICULTURE

NUTRIENT MANAGEMENT PROGRAM

Statutory Authority: 3 Delaware Code,
Section 2221 (3 **Del.C.** 2221)

PLEASE TAKE NOTICE that, pursuant to 3 **Del.C.** §2221, the Department of Agriculture has developed, in conjunction with the Delaware Nutrient Management Commission, and proposes to adopt regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to land or water, or who are involved in providing advice or consultation regarding the same, and regulations governing the investigation and resolution of complaints concerning alleged violations of Delaware's nutrient management laws (3 **Del.C.** Chapter 22) or regulations developed thereunder. These regulations are proposed to meet the mandate set forth in 3 **Del.C.** Chapter 22 and put into effect the purpose of that chapter to help improve and maintain the quality of Delaware's ground and surface waters in the interest of the overall public welfare. These proposals represent new substantive and procedural regulations in areas not previously regulated, and their term shall be permanent unless subsequently amended or repealed in accordance with the Administrative Procedures Act (29 **Del.C.** Chapter 101).

Public hearings on these proposed regulations shall be held on the following dates and locations:

- October 24, 2000 (Tuesday) at 6:00 pm, Messick's Community Building, 8314 Vernon Road, Harrington, DE 19952;
- October 26, 2000 (Thursday) at 6:00 pm, Gumboro Volunteer Fire Company, RD3, Route 26, Gumboro, DE 19966; and
- November 2, 2000 (Thursday) at 6:00 pm, Townsend Volunteer Fire Company, 107 Main Street, Townsend, DE 19734.

The Department of Agriculture, in conjunction with the Delaware Nutrient Management Commission, will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Department and the Commission in care of William R. Rohrer, Nutrient Management Program Administrator, at the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901. The final date to submit written comments shall be at the public hearing on November 2, 2000. It is requested that anyone wishing to present verbal comments at a public hearing contact Mr. Rohrer at the above address or by calling (302) 739-4811 or (800) 282-8685 (within Delaware only). To accommodate all who wish to speak at these meetings, limits on the length of verbal comments may be necessary. For this reason, it is requested that anyone wishing to present verbal comments bring a written copy as well. Copies of the proposed regulations may be obtained by contacting Mr. Rohrer, or on the Department of Agriculture's website at <http://www.state.de.us/deptagri>.

Notice of the public hearing will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

DELAWARE DEPARTMENT OF AGRICULTURE **NUTRIENT MANAGEMENT CERTIFICATION** **REGULATIONS**

Developed with the Guidance, Advice and Consent of
the Delaware Nutrient Management Commission.

PREAMBLE

These regulations have been developed pursuant to Title 3, Chapter 22, of the Delaware Code. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to lands or water, or who are involved in providing advice or consultation regarding such application of nutrients. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

A. AUTHORITY.

These regulations are promulgated pursuant to the authority provided by Section 2221, Chapter 22, Title 3, of the Delaware Code.

B. PURPOSE.

The purpose of these regulations is to establish certification requirements for certain generators or handlers

of nutrients, or who engage in advising or consulting with others regarding the formulation, application, or scheduling of nutrients within the State of Delaware.

C. DEFINITIONS.

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

1. "Animal Feeding Operation" or "AFO" means any area or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period.

2. "Animal unit" shall be as defined by the United States Department of Agriculture Natural Resources Conservation Service, and is approximately 1,000 lbs. "average" live body weight.

3. "Applicant" means any person seeking a certificate from the Commission.

4. "Apply, applying", or any derivation of the word "apply", as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic and/or inorganic nutrients.

5. "Certification" means the recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in these regulations.

6. "Commercial nutrient handler" means a person who applies organic or inorganic nutrients to lands or waters in the State as a component of a commercial or agricultural business in exchange for a fee or service charge.

7. "Commercial processor" means any individual, partnership, corporation, association or other business unit that controls, through contracts, vertical integration or other means, several stages of production and marketing of any agricultural commodity.

8. "Commission" or "DNMC" means the Delaware Nutrient Management Commission.

9. "Credit" represents a unit of measuring education for certification as defined by the Commission and is dependent upon such factors as curricula intensity and class time.

10. "Direct Supervision" refers to actions by a person who is certified with the State Nutrient Management Program and directs individuals within the same organization/company in applying nutrients. Direct supervisors hold responsibility for nutrient application actions for those under his/her supervision.

11. "Nutrient consultant" means a person who is engaged in the activities of advising or consulting with another person who is required to have a certificate under these regulations, regarding the formulation, application, or scheduling of organic or inorganic nutrients within the State. Provided, however, any employee of any federal, State or local government agency or the University of Delaware, or

other organization duly recognized by the Commission for such purpose, who provides advice or consultation in his/her capacity as such an employee, without compensation, shall not be deemed to be a nutrient consultant unless such advice and consultation constitutes a direct and substantial part of a nutrient management plan developed pursuant to these regulations.

12. "Nutrient generator" means a person who owns or operates a facility within the State that produces organic or inorganic nutrients.

13. "Nutrient Management Plan" or "plan" means a plan by a certified nutrient consultant to manage the amount, placement, timing, and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

14. "Nutrients" means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

15. "Person" means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

16. "Private nutrient handler" means a person in the State who applies organic or inorganic nutrients to lands or waters he/she owns, leases, or otherwise controls.

17. "Program Administrator" or "Nutrient Management Program Administrator" means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program.

18. "Secretary" means the Secretary of the Delaware Department of Agriculture or his/her designee.

19. "State Nutrient Management Program" or "SNMP" means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

D. CERTIFICATION CATEGORIES AND ACTIVITIES REQUIRING CERTIFICATION.

1. No later than January 1, 2004, any person who engages in any of the following activities must have the applicable certificate or certificates required by and issued pursuant to these regulations, as follows:

a. Nutrient generator certification - A nutrient generator who owns or operates any animal feeding operation in excess of eight animal units must have a nutrient generator certificate.

b. Private nutrient handler certification - A private nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters owned, leased, or otherwise controlled by such handler must have a private nutrient handler certificate.

c. Commercial nutrient handler certification - A commercial nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters of the state

must have a commercial nutrient handler certificate.

d. Nutrient consultant certification - A nutrient consultant who is engaged in the provision of nutrient management advice or the formulation of a nutrient management plan or in nutrient management planning as it relates to the application or disposal of nutrients at or from a specific site in the State of Delaware must have a nutrient consultant certificate.

2. These certification requirements shall not apply to individuals who perform services under the direct supervision of a certified person, provided that the certified person assures that such individuals act in accordance with the standards or practices which the certified person would follow if such person performed the service. Nor shall the certification requirements of this section apply to persons who utilize a person certified under these regulations to conduct the activities identified in this section, provided that such persons do not engage in any of the activities themselves and the certified person is certified at the time the activities are undertaken.

3. Conditional certifications may be issued for any reason specified by the Commission and shall be issued for periods not to exceed one year.

E. CERTIFICATION REQUIREMENTS.

Any person who seeks a certification shall file with the Commission an application on a form provided by the Commission, along with the application fee. The minimum requirements for the certifications follow.

1. Nutrient generator certificates - To obtain a nutrient generator certificate, the applicant must take and successfully complete at least 6 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

2. Private nutrient handler- To obtain a private nutrient handler certificate, the applicant must take and successfully complete at least 9 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

3. Commercial nutrient handler - To obtain a commercial nutrient handler certificate the following criteria must be satisfied:

a. The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

b. The applicant must pass a written test approved by the Commission.

4. Nutrient consultant - To obtain a nutrient consultant certificate the following criteria must be satisfied:

a. The applicant must take and successfully

complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

b. The applicant must pass a written test approved by the Commission.

F. RECIPROCITY.

Notwithstanding the requirements of Section E, supra, any person may obtain a certificate under these regulations if all the following requirements are satisfied.

1. The applicant must submit an application for the applicable certificate on a form provided by the Commission, along with the application fee.

2. The applicant must have a valid certificate or equivalent authorization, such as a license for the certificated activity, from another state or organization that requires qualifications at least as rigorous as those required under these regulations and approved by the Commission.

3. The applicant must pass a test approved by the Commission related to specific Delaware Nutrient Management requirements. The Commission may in its sole discretion waive this test requirement.

G. CONTINUING EDUCATION.

1. After a certificate is issued, the certificate holder must take and successfully complete continuing education courses approved by the Commission or Program Administrator in accordance with the following:

a. Nutrient generator - 6 credits of continuing education in each three-year period following the issuance of the certification.

b. Private nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.

c. Commercial nutrient handlers - 9 credits of continuing education in each three-year period following the issuance of the certification.

d. Nutrient consultants - 8 credits of continuing education each year following the issuance of the certification.

2. Failure to satisfy the continuing education requirements may result in the revocation of a certificate or non-renewal of the certificate.

3. Any dispute regarding continuing education credits may be directed to the Commission which will determine whether a hearing is necessary to resolve the dispute.

H. DURATION OF CERTIFICATES AND CERTIFICATION FEES.

1. Certificates normally will be issued and renewed for periods of three years for nutrient generators, private nutrient handlers, and commercial nutrient handlers. Certified nutrient consultants will be issued and renewed certifications

annually.

2. Certificate fees are due with the application. The fee for a one-year certificate issued to nutrient consultants shall be \$100.00. The certificate fee for commercial nutrient handlers for a three-year certificate shall be \$150.00.

3. No fee will be charged for certification of a nutrient generator or a private nutrient handler.

I. SUSPENSIONS, MODIFICATIONS, AND REVOCATIONS.

The Commission may, after notice and opportunity for hearing, suspend, modify, or revoke any certificate where the Commission has reasonable grounds to believe that the certificate holder is responsible for violations of the nutrient management statute (Title 3, Chapter 22, of the Delaware Code) or Commission regulations. The Commission shall furnish the person accused of a violation with notice of the time and place of the hearing, which notice shall be served personally or by registered mail directly to such person's place of business or last known address with postage fully paid no sooner than 10 days but within 21 days of the time fixed for the hearing.

J. CERTIFICATION RENEWALS.

1. At least 60 days before the expiration of a certificate, the certificate holder shall file an application with the Commission for renewal of the certificate, along with the certification fee.

2. Nutrient consultants must file with the application and fee evidence that the consultant prepared at least one nutrient management plan during the preceding three-year period. If no such plan was prepared, the certificate shall not be renewed.

3. The certificate holders must also supply with the application and renewal fee evidence that they have complied with the continuing education and record keeping and reporting requirements contained in these regulations.

4. Absent good cause for failure to timely file an application for renewal in compliance with these requirements, the certificate holder must reapply for the certificate in the same manner required for the issuance of the original certificate.

5. Decisions to refuse renewal of a certificate shall be final and conclusive unless appealed to the Commission pursuant to Section 2262, Chapter 22, of the Delaware Code.

K. APPEALS TO THE SECRETARY.

All decisions of the Commission under this regulation shall be final and conclusive unless appealed to the Secretary pursuant to Section 2263, Chapter 22, of the Delaware Code. Provided, however, that the denial of a certificate pursuant to Sections 2243 or 2245, Chapter 22, of the Delaware Code shall first be appealed to the Commission which shall hold a hearing.

L. RECORD KEEPING.

1. Nutrient generators shall record and keep the following available for inspection by the Secretary or the Commission:

a. A contemporaneously recorded log that contains the dates, approximate quantities, locations, and disposition (stored, shipped, etc.) of nutrients that are applied to land or transported from land owned, leased or otherwise controlled by the Nutrient Generator.

b. A copy of any applicable nutrient management plan.

2. Private nutrient handlers shall record and keep the following available for inspection by the Secretary or the Commission:

a. A contemporaneously recorded log showing the dates, locations, approximate quantities, acreage and methods of nutrient application.

b. A copy of any applicable nutrient management plan.

3. Commercial nutrient handlers shall prepare and keep available for inspection by the Secretary or the Commission, a contemporaneously recorded log showing the dates, locations, approximate quantities, acreage, and methods of nutrient application.

4. Nutrient consultants shall prepare and/or keep available for inspection by the Secretary or the Commission, copies of any written materials prepared by the nutrient consultants or at their direction that establish how nutrients are to be managed at specific sites within Delaware, such as nutrient management plans.

5. The information required in this section shall be kept and maintained for a period of 6 years.

M. EFFECTIVE DATE.

These regulations shall become effective on , 2000.

REGULATIONS GOVERNING THE PROCESSING OF COMPLAINTS OF VIOLATIONS

Developed with the Guidance, Advice and Consent of the Delaware Nutrient Management Commission.

PREAMBLE

These regulations have been developed pursuant to Title 3, Chapter 22, of the Delaware Code. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the investigation and resolution of complaints concerning alleged violations of the statute or regulations. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of

the Commission.

PART A. AUTHORITY.

These regulations are promulgated pursuant to the authority provided by Sections 2221 and 2260, Chapter 22, Title 3, of the Delaware Code.

PART B. PURPOSE.

These regulations establish processes for the filing, investigation, and resolution of complaints against any person who allegedly has violated the Nutrient Management Law, Title 3, Chapter 22, of the Delaware Code, or regulations promulgated pursuant thereto.

PART C. DEFINITIONS.

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

1. "Administrator," "Program Administrator," or "Nutrient Management Program Administrator" means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program, or his or her designee.

2. "Certificate" means recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in regulations adopted by the Department of Agriculture with the Commission's approval.

3. "Chairman" means the Chairman of the Delaware Nutrient Management Commission.

4. "Commission" means the Delaware Nutrient Management Commission.

5. "Person" means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

PART D. COMPLAINTS AND INVESTIGATIONS.

1. Any person wishing to file a complaint with the Commission against any person regarding an alleged violation of the Nutrient Management Law, or any regulation promulgated pursuant thereto, shall direct such complaint to the Nutrient Management Program Administrator.

2. Complaints must be in writing and include at least the following information:

- a) name of complainant;
- b) information on how the Administrator may contact the complainant; and
- c) sufficient information to identify the location of the alleged violation, the nature thereof, and any other material fact known to the complainant that supports the complaint.

3. The Commission and the Administrator shall not investigate or respond to anonymous complaints, and, when

requested, shall keep confidential the identity of complainants.

4. The Administrator shall provide the members of the Commission with a copy of any complaint that complies with the above section 2 requirements as soon as practicable, but no later than within 14 days of receipt of the complaint. A copy of any complaint that does not comply with the section 2 requirements shall, if possible, be returned to the complainant with an explanation of how the complaint is deficient.

5. Unless otherwise directed by the Chairman or the Commission, the Administrator shall conduct an investigation sufficient to determine if the complaint appears to have any merit and whether there is a possible means of resolving it. If the Administrator determines that the complaint may be meritorious, the alleged violator(s) shall be informed of the complaint and provided an opportunity to respond.

6. The Administrator shall prepare a report and present it to the Commission that relates his/her investigative findings and recommendations.

7. If the Administrator's report indicates that the complaint appears not to have any merit or that for any other reason enforcement action is not warranted, the Commission may dismiss the complaint.

8. If the report indicates that a resolution has been tentatively agreed to by the alleged violator(s) and the Administrator, the Commission may authorize approval of the resolution, pursue another acceptable resolution, or hold a hearing on the complaint.

9. The dismissal of a complaint or any other resolution approved by the Commission without holding a hearing shall take place at a public meeting of the Commission and before any complaint is dismissed or any resolution is approved by the Commission, any interested person shall be provided an opportunity to explain to the Commission why such action should not be taken or why a hearing should be held.

PART E. HEARINGS.

1. A hearing shall be held on any complaint if it is requested by an interested party or the Commission determines in its sole discretion to hold a hearing.

2. Requests for a hearing may be made at any time before the Commission authorizes a disposition of the case without a hearing.

3. Any request for a hearing shall be in writing, unless made at the Commission meeting at which the case disposition is considered, and shall include a statement of how the person requesting the hearing may be affected by the resolution of the case.

4. The Commission shall send not less than 10 days written notice of any hearing to the alleged violator(s) and any other person who has requested notification.

5. All hearings shall be conducted by the

Commission. Interested persons shall be provided an opportunity to present relevant evidence that is not unduly repetitive. Formal rules of evidence need not be observed within the discretion of the Commission.

6. A record of the hearing shall be kept by the Commission until all appeal periods are exhausted and shall include all the evidence presented to the Commission.

7. The Commission's decision shall recite:

(a) its findings of fact;

(b) the manner in which the Commission construed the law and applied it to the facts;

(c) any remunerative action a violator must take or has taken;

(d) any fine a violator must pay pursuant to Department regulations and a reference to the applicable regulations; and

(e) any revocation, suspension or modification to any certificate that has occurred.

8. Any decision of the Commission made pursuant to PART E. shall be final and conclusive unless a party to such hearing shall appeal the decision within 15 days of receipt of notice thereof.

DEPARTMENT OF EDUCATION

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

Educational Impact Analysis Pursuant To 14 Del.C., Section 122(d)

RULES, REGULATIONS AND PROCEDURES OF THE DELAWARE STATE BOARD OF EDUCATION FOR THE APPROVAL OF PRIVATE BUSINESS AND TRADE SCHOOLS IN DELAWARE

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary of Education seeks to amend the regulations, Rules Regulations and Procedures of the Delaware State Board of Education for the Approval of Private Business and Trade Schools in Delaware. The amendments bring the regulation in line with the existing processes and procedures for approving Private Business and Trade Schools and eliminate the language that was repeated from the *Delaware Code*. The name of the regulation has been shortened to Private Business and Trade Schools and a section on Complaints has been added. The amendments also reflect that the Department of Education, by legislative

changes made to 14 *Del.C.* Chapter 85, is now the approving entity rather than the State Board of Education.

C. IMPACT CRITERIA

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

The amended regulations address procedures for approving private business and trade schools, not academic standards.

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

The amended regulations address procedures for approving private business and trade schools, not equity issues.

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

The amended regulations address procedures for approving private business and trade schools, not health and safety issues.

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

The amended regulations do address the legal rights of students attending private business and trade schools.

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

The amended regulations do not affect local school districts.

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 do not affect local school districts.

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 private business and trade schools now rests completely with the Department of Education.

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 regulations?

The *Del. C.* requires that regulations be developed to carry out the mandates in Title 14 Chapter 85, *Private Business and Trade Schools*.

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.

RULES REGULATIONS AND PROCEDURES
of the Delaware State Board of Education
for the Approval of
PRIVATE BUSINESS AND TRADE SCHOOLS
IN DELAWARE

February 1998

FOR FURTHER INFORMATION, CONTACT:

John J. Valenzano
Administrator of Programs
Private Business and Trade Schools
Department of Education
P.O. Box 1402, Dover DE 19903-1403

FOREWORD

This document contains two sets of statements. The paragraphs using the regular margin and frequently introduced by § numbers or numerical designation 1, 2, 3, etc., are from Delaware Code, Title 14, Chapter 85, and are the full text of the law.

The paragraphs that are indented from both margins and carry (a) or (b) designations in parentheses are Rules and Regulations of the Delaware State Board of Education. These rules and regulations are designed to interpret, provide for administration, or fill gaps in the law. Rules and Regulations of the State Board of Education have the force of law until supplanted by a new rule, a ruling by the Attorney General, the action of a court, or the enactment of a new law.

† All private business or trade schools including correspondence schools located in or sending agents into Delaware, and serving pupils in Delaware are affected by

this policy.

2. A Certificate of Approval (license) is required by law to authorize business in Delaware.

3. A surety bond for the protection of the contractual rights of the students is required. (See Attached)

4. An adequate refund policy is mandatory. [See 14 Del. C. § 8505 (a) (3) and (4)]

5. Any Delaware law regarding a customer "cooling off period" is applicable.

6. The original filing fee is \$100 while the renewal fee is \$50 per year.

7. Agents of schools must be registered, pay a fee of \$10 for each calendar year, and carry photo identification. Renewal for Agents is \$5 for each calendar year.

8. Advertising must meet the requirements of Delaware Code.

9. Causes for refusal to grant or to revoke a certificate are listed in sections 8525, 8526 and 8527.

10. A school may not discriminate because of race, color, creed, age, sex or national origin.

11. Hearings are provided for in the case of the refusal to issue or renew, or action to revoke a Certificate of Approval.

12. Certain appeals may be made to the Superior Courts in Delaware.

13. Institutions chartered under Delaware Code, Title 8, §125 prior to July 18, 1972 and apprenticeship and training programs offered or conducted by persons, partnerships, joint ventures, corporations, political subdivisions, employers or employment associations for their employees or prospective employees or by labor organizations or associations of employees for their members or apprentices shall be exempt from the provisions of this chapter.

14. All non-public postsecondary institutions authorized, approved or licensed by the State Board of Education to operate in the State of Delaware, must establish a means of providing for a repository for permanent student records for schools which cease to operate.

15. Date of Application. Any institution (except as may be provided for in §8528 of this chapter) planning to solicit applicants in the State of Delaware shall apply for Certificate of Approval at least ninety (90) days prior to the anticipated date of any solicitation, or the presentation of classes, whichever is earlier.

16. Certification Less Than One Year. An initial Certificate of Approval shall expire on December 31 in the calendar year of issue. The full application fee shall be charged for all initial approvals.

Delaware Code, Title 14, Chapter 85
PRIVATE BUSINESS AND TRADE SCHOOLS

See:
§ 8501. Definitions

- § 8502. Advisory Committee on Private Business and Trade Schools
- § 8503. Necessity for Certificate of Approval — Person Eligible — Nontransferability — Display — Approved Lists
- § 8504. Application for Certificate — Contents
- § 8505. Application — Commitments — Bonding, — Refund Policy, School Inspection, Advertising and Solicitation
- § 8506. Signing of Application
- § 8507. Restriction of Certificate to Fields Indicated in Application — Supplementary Applications
- § 8508. Filing Fees — Renewal Fees
- § 8509. Business or Trade School Agent — Permits — Application — Contents Fees — Separate Permits
- § 8510. Issuance of Pocket Cards Upon Approval of Application — Contents
- § 8511. Annual Renewal of Certificate
- § 8512. Issuance, Revocation, Renewal or Restoration of Certificates upon Action and Report of Board
- § 8513. Rules and Regulations
- § 8514. Prohibition Against Advertising School or Soliciting Students Without Board Authorization
- § 8515. Procedure for Approval of Applications and Programs
- § 8516. Grounds for Refusal to Issue, Renew, or to Revoke Certificates or Permits
- § 8517. Investigations by Board Upon its own Motion or Upon Verified Complaint — Opportunity for Correction
- § 8518. Hearings*
- § 8519. Power to Subpoena and Administer Oaths
- § 8520. Powers of the Board
- § 8521. Board to Provide Stenographer — Record of Proceedings — Transcripts — Costs
- § 8522. Service of Board's Report Upon Respondent — Motion for Rehearing Time — Surrender of Certificate
- § 8523. Forfeiture of Bond
- § 8524. Appeal to Superior Court — Provisions of Administrative Review — Act to Govern — Certification of Record
- § 8525. Unlawful Acts of School Employees not Ground for Revocation of Certificate — Exception
- § 8526. Penalties for Violations
- § 8527. Incorporated Institution
- § 8528. Previously Existing Schools — Temporary Authorization
- § 8529. Certain Schools Exempt
- § 8530. Disposition of Permanent Student Records

APPENDIX

- § 8518. *Regulations for the Conduct of Hearings before the State Board of Education — Notarized Statement of Revenue Subject to Bond

§ 8501. Definitions

As used in this chapter, unless the context otherwise requires:

"Private business school," "private trade school," "trade school," or "school," means an educational institution privately owned and operated for profit or non-profit by an owner, partnership, or corporation, offering business or trade and industrial courses for which tuition may or may not be charged, and which may include those courses usually associated with business training schools, trade schools, specialized skill training schools or institutes, and other related subjects of a similar character or subjects of general education when they contribute values to the objectives of the course of study. Classes or courses may be identified by reference to Vocational Education and Occupations, published by the United States Office of Education, or The Dictionary of Occupational Titles, published by the United States Department of Labor; or lists prepared and promulgated from time to time by the Delaware State Board of Education, and in every case by evaluation of the information presented in the application required by §8504, §8507, and other applicable sections of this Title. Classes in any of the subjects herein referred to which are taught or coached in homes or elsewhere, are included in the term "school."

"Board" means the State Board of Education;

"Secretary" means the Secretary of Education;

"Agent" means a person employed by a school as defined herein, whether such school is located within or outside Delaware, to act as an agent, solicitor, broker, or independent contractor to directly procure students or enrollees for such school by solicitation in any form made at any place in this State other than the office or place of business of the school.

RULES AND REGULATIONS:

(a) Institutions or schools referred to in this Section shall include Correspondence Schools.

(b) Guidance for administration of this Act is contained in the law and the following rules:

(1) Correspondence School courses offered as post high school courses in trade or business subjects, and high school introductory courses such as Typing I, shall be included without regard for the age or the prior educational attainment of the student.

(2) Multi-curricular school programs leading primarily to a wage earning capacity require certification.

(3) The distinguishing characteristics of a program shall be the potential for wage earning. For example, a school training persons to drive a motor vehicle in preparation for a State of Delaware operators license, need not be certified under this Act. A school training persons to become drivers of commercial vehicles shall require certification.

(4) In implementing the definition of "Agent," it will be required that any agent for soliciting enrollees in Delaware must be properly registered and identified in accordance with the Delaware Statute or Rules and Regulations of the State Board of Education even though the institution he represents does not conduct classes within the State of Delaware.

§ 8502. Advisory Committee on Private Business and Trade Schools

The Secretary of Education in his capacity as Executive Secretary to the State Board of Education shall appoint an Advisory Committee of five persons whose function it shall be to advise the State Superintendent relative to the administration of this Act and through him to advise the State Board of Education in regard to policies concerning the conduct of private business schools serving clients in the State of Delaware.

One of the members of the Committee shall be an executive or managerial person in a private business school in the State; one shall be a person occupied in commerce or industry in this State in an executive or managerial position; one shall be an executive or managerial person in a private trade school in the State; one shall be the president of the Delaware Technical and Community College system; and one shall have, for at least five years, occupied managerial positions concerned primarily with the use of computers.

Members of the Advisory Committee, except the president of the Delaware Technical and Community College shall serve for rotating terms of four years.

Members of the Advisory Committee shall receive no salary or compensation for the performance of Committee duties but shall be entitled to reimbursement for expenses incurred in carrying out the assignments of the Committee. The rate of such expenses shall be in accordance with any statutes from time to time promulgated by the State of Delaware or according to Rules and Regulations adopted by the State Board of Education.

§ 8503. Necessity for Certificate of Approval — Person Eligible — Nontransferability — Display — Approved Lists

No person, partnership or corporation, whether its main office be located within or outside the State of Delaware, shall conduct a private school or classes as herein defined, or instruct individuals in business or trade subjects in this State, without having been issued a certificate of approval by the Board. A person, partnership or corporation shall be qualified to receive a certificate of approval who complies with every standard, rule, and regulation of the Board pertaining to this Act, who pays the fee for a certificate of approval, and whose school, after an examination conducted under the direction of the Board, is approved by the Board. Such certificates of approval are not transferable.

The certificate of approval shall be prominently

displayed at some place on the premises of the school open to the inspection of all interested persons.

The Board shall maintain, open to public inspection, a list of schools approved under this Act and may annually publish such list.

RULES AND REGULATIONS:

(a) ~~Necessity for Certificate of Solicitation of Students in Delaware By a Non-Delaware Institution. Any institution meeting the general definitions of this Act which actively seeks clients from the State of Delaware, or who sends an agent or agents into the State of Delaware to solicit clients, must comply with the provisions of the Act in regard to the certifying of agents. (See § 8509)~~

(b) ~~On-Site Evaluation. On-site evaluation may be required by the State Board of Education of any institution applying for a Certificate of Approval. Any evaluation required shall be conducted by a team of at least three persons appointed by the Secretary of Education.~~

(c) ~~On-Site Evaluation Possible Waivers. On-site evaluation of an institution may be waived by the Secretary of Education if the institution is accredited by a regional or national accrediting association recognized by the State Board of Education. Similar waiver may be issued if the institution is certified by the State Education Agency of another state. The waiver may be set aside by the Secretary of Education if complaints from Delaware applicants so warrant. The State Board of Education of Delaware shall periodically publish a list of approved accrediting agencies acceptable for consideration of a waiver.~~

(d) ~~New Institution On-Site Evaluation. An application may be received and a Certificate of Approval issued to a proposed new institution before it is in operation for which an on-site evaluation is not possible. On-site evaluation shall be required of such an institution in connection with an application for renewal of the Certificate of Approval.~~

(e) ~~Evaluation Expenses. On-site evaluation at the expense of the institution shall not be demanded by the State Board of Education more frequently than each fifth year; except that following any proposal or action to suspend or revoke a certificate, the Board may require an on-site evaluation.~~

(f) ~~List of Schools Approved Publication and Distribution. On at least two occasions each calendar year including one each in January and August, the Secretary of Education shall prepare and publish a list of private business and trade schools reviewed by the State Department of Public Instruction and recommended to the State Board of Education for approval under the provisions of this chapter. This list shall include at least two categories: (1) Schools approved for the current calendar year, (2) Schools disapproved for the current calendar year with distinction to be shown between those schools disapproved for initial inclusion and those schools for which approval has been~~

revoked. The list may also include schools known to exist in Delaware but not included within the jurisdiction of this Act and thus not eligible for either approval or disapproval by the Board.

In accordance with the provisions of the Act the published list of schools shall be available to anyone making inquiry and requesting a copy. In addition to the general availability of the list it shall be distributed to at least the following:

(1) News media originating in Delaware for Delaware circulation.

(2) The Superintendent of Schools, High School Principals and guidance counselors in all public and nonpublic high schools in Delaware.

(3) The general administrative officials and the administrators of the placement services in the institutions of higher education in Delaware.

(4) A list of industrial personnel, employers, employment agencies, and other citizens who may from time to time request that this list be shared with them on a mailing list basis, or that in the judgment of the Secretary of Education should be made aware of the list.

§ 8504. Application for Certificate - Contents.

Every person, partnership or corporation desiring to obtain a certificate of approval shall make a verified application to the Board, setting forth the following information:

1. The title or name of a school, together with ownership and controlling officers thereof;
2. The specific fields and courses of instruction which will be offered;
3. The place or places where such instruction will be given and a description of the physical and sanitary facilities thereof;
4. A specific listing of the equipment available for instruction in each field and course;
5. The educational and teaching qualifications of instructors and supervisors;
6. The financial resources available to equip and maintain the school;
7. The entrance requirements for admission to each program offered by the school, and a copy or example of the instrument or instruments used to test for admission to each program.

(a) If an institution admits as a regular student a person who does not have a high school diploma or its equivalent, the institution shall determine, at the time of admission, whether that person has the ability to benefit from the education or training the institution offers.

(b) An institution shall determine whether a person described in paragraph (a) of this section has the requisite ability by administering to the person a nationally recognized, standardized, or industry developed test

approved by the Secretary of the U.S. Department of Education and shall include the test and results in the student's permanent record file; or by providing evidence that an assessment of the person's basic skills and aptitudes has been conducted and that the assessment indicates that the person has the ability to benefit from the education or training the institution offers and shall include the method used and results in the student's permanent record file.

§ 8505. Application Commitments.

(a) Each application for a certificate of approval shall also contain the following commitments:

(1) To conduct the school in accordance with standards, rules and regulations from time to time established by the Board;

(2) To agree to provide a surety company bond for the protection of the contractual rights of students in such form and amount as will meet the approval of the Board and written by a company authorized to do business in this State. Such bonds shall be deposited with the Secretary of State. The amount of the surety bond shall be determined in accordance with Subsection (b) of this Section, except that in no case shall the surety bond of a business and trade school covered by this Chapter be for less than \$5,000 per calendar year.

(3) (a) As a condition for granting certification each school must maintain a cancellation and settlement policy which must provide a full refund of all monies paid by a student if:

(1) the student cancels the enrollment agreement or contract within 72 hours (until midnight of the third day excluding Saturdays, Sundays, and legal holidays) after the enrollment contract is signed by the prospective student;

(2) the enrollment of the student was procured as the result of any misrepresentation in advertising, promotional materials of the school, or representations by the owner or representative of the school.

(b) As a condition for granting certification, each school must maintain a policy for the refund of the unused portion of tuition, fees, and other charges in the event the student, after expiration of the 72-hour cancellation privilege, fails to enter the course, or withdraws, or is discontinued therefrom at any time prior to completion, and such policy must provide:

(1) refunds for private business and trade school courses will be based on the period of enrollment computed on the basis of course time expressed in clock hours;

(2) the effective date of the termination for refund purposes in private business and trade schools will be the earliest of the following:

(A) the last date of attendance, if the student is terminated by the school;

(B) the date of receipt of written notice from the student;

(C) ten school days following the last date of attendance;

(3) if tuition is collected in advance of entrance, and if, after expiration of the 72-hour cancellation privilege, the student does not enter the private business and trade school, not more than \$100 shall be retained by the school;

(4) for the student who enters a private business and trade school course of not more than 12 months in length, terminates or withdraws, the school may retain \$100 of tuition and fees and the minimum refund of the remaining tuition will be;

(A) After 0.01% enrollment time of the course, 80 percent of the remaining tuition;

(B) After 5% to 9.9% enrollment time of the course, 70 percent of remaining tuition;

(C) After 10% to 14.9% enrollment time of the course, 60 percent of the remaining tuition;

(D) After 15% to 24.9% enrollment time of the course, 55 percent of the remaining tuition;

(E) After 25% to 49.9% enrollment time of the course, 30 % of the remaining tuition;

(F) After 50% or more enrollment time of the course, the student may be considered obligated for the full tuition.

Enrollment time is the time elapsed between the actual starting date and the date of the student's last day of physical attendance in the school.

(5) for private business and trade courses more than 12 months in length, the refund shall be applied to each 12-month period, or part thereof separately;

(6) refunds of items of extra expense to the student, such as instructional supplies, books, student activities, laboratory fees, service charges, where these items are separately stated and shown in the date furnished the student before enrollment, will be made in a reasonable manner acceptable to the administrator;

(7) refunds based on enrollment in private business and trade schools will be totally consummated within 30 days after the effective date of termination;

(8) refunds for correspondence courses will be computed on the basis of the number of lessons in the course;

(9) the effective date of the termination for refund purposes in correspondence courses will be the earliest of the following:

(A) the date of notification to the student if the student is terminated;

(B) the date of receipt of written notice from the student;

(C) the end of the third calendar month following the month in which the student's last lesson

assignment was received unless notification has been received from the student that he wishes to remain enrolled;

(10) if tuition is collected before any lessons have been completed, and if, after expiration of the 72-hour cancellation privilege, the student fails to begin the course, not more than \$50 shall be retained by the school;

(11) in cases of termination or withdrawal after the student has begun the correspondence course, the school may retain \$50 of tuition and fees, and the minimum refund policy must provide that the student will be refunded the pro rata portion of the remaining tuition fees and other charges that the number of lessons completed and serviced by the school bears to the total number of lessons in the course;

(12) refunds based on enrollment in correspondence schools will be totally consummated within 30 days after the effective date of termination.

(e) In lieu of the refund policy herein set forth, for programs of instruction not regularly offered to the general public, the State Board of Education may, for good cause shown, amend, modify, substitute and/or alter the terms of such policy due to the specialized nature and objective of the subject school's course of instruction.

(d) If a course of instruction is discontinued by the school and this prevents the student from completing the course, all tuition and fees paid are then due and refundable.

(4) Agree that within the 72 hours grace period reserved for cancellation as provided in subdivision (3) above, the school will not discount count any evidence of indebtedness given by a student applicant, or on his behalf, or in any other way place such evidence of indebtedness into the hands of a holder in due course;

(5) To permit the Board to inspect the school or classes thereof from time to time; and to make available to the Board, at any time when required to do so, information pertaining to the activities of the school required for the administration of this chapter;

(6) That all advertising and solicitation will be free from misrepresentation, deception or fraud, and that no fraudulent or deceptive statements shall be made as to possible future employment opportunities or wage expectations.

(b) The amount of the surety bond required of a private business or trade school shall be determined as follows:

(1) The following private business and trade schools shall only be required to post a bond in the amount of \$5,000:

(a) Schools which only solicit students in the State and which do not receive any revenues for services provided within the State; and

(b) Schools which do not receive revenue directly from their students for tuition or any other services. Revenue received by such schools cannot be generated by

guaranteed student loans and/or state or federal student grants.

(2) All other private business and trade schools which operate in or from the State, or who render services to students within the State, shall provide a bond in an amount equal to the highest anticipated gross prepaid tuition for students enrolled on any given day in the calendar year for which a certificate of approval is requested. This amount shall include monies paid by all students regardless of their state of residence.

(3) Surety bonds may only be cancelled during or at the end of any annual term by the bonding agency by giving 45 days prior notice in writing by certified mail, return receipt requested, to the Administrator, Private Business and Trade Schools, Vocational Division, State Department of Public Instruction, State of Delaware, P.O. Box 1402, Dover, Delaware 19903.

§ 8506. Signing of Application

Each application for a certificate of approval shall be signed by the applicant. If the applicant is a partnership, it shall be signed by each member thereof. If the applicant is a corporation, it shall be signed by any officer thereof.

§ 8507. Restriction of Certificate to Fields Indicated in Application - Supplementary Applications

Any certificate of approval issued shall be restricted to the fields or courses specifically indicated in the application for a certificate of approval. The holder of a certificate shall present a supplementary application, as may be directed by the Board for approval of additional fields or courses, in which it is desired to offer instruction during the effective period of the certificate of approval.

§ 8508. Filing Fees - Renewal Fees

Each original application for a certificate of approval shall be accompanied by a filing fee to be determined by the Board, which fee shall include the cost of investigation and issuance of the original certificate of approval, if the application is approved. There shall be an annual renewal fee to be determined by the Board. No fee shall be charged for a supplementary application for the approval of additional fields or courses of instruction. Fees, charges or fines within the provisions of this chapter shall be deposited to the General Fund of the State of Delaware.³

[*The original enactment of this chapter included an appropriation of \$5,000 to cover cost of administration other than salary or wages. Expenses when incurred would be for contractual services, travel or equipment.]

RULES AND REGULATIONS:

(a) The filing fee for any new applicant institution (including any temporary or original - 1973) shall be One Hundred Dollars (\$100.00).

(b) The annual renewal fee shall be Fifty Dollars (\$50.00).

(c) When an institution ceases to be certified for a period longer than twelve calendar months, the new applicant fee shall be charged for re-certification.

(d) If an institution makes any material changes in its operation such as, but not limited to, a change in name, or corporate structure, or financial structure, the institution shall be required to apply as a new institution.

(e) The fees charged as filing and renewal fees are not refundable.

(f) Any costs associated with on-site evaluation of an institution, permits issued to agents of an institution, conduct of hearings or preparation of transcripts, shall be the responsibility of the institution, and shall be paid to the vendor or the contractor who renders the service.

(g) Failure to pay any renewal fee or cost within thirty (30) days of the issuance of a statement may be cause for suspension or revocation of the certificate.

(h) The fees required by this regulation shall not be considered a substitute or any other fee license or permit required by any other agency in the State of Delaware; nor shall such other fees, licenses, or permits be accepted in lieu of the fees herein described.

§ 8509. Business or Trade School Agent Permits - Application - Contents - Fees - Separate Permits

Every agent representing a school as herein defined, whether located in the State of Delaware or without, shall make application for an agent's permit to the Board, in writing, upon forms prepared and furnished by the Board.

Each application shall state the name of the school which the applicant will represent, contain evidence of the honesty, truthfulness, and integrity of the applicant, shall be verified under oath by him, and shall be accompanied by the recommendation of two reputable persons, certifying that the applicant is truthful, honest, and of good reputation, and recommending that a permit, as an agent, be granted to the applicant. The fee for an original permit, as an agent, shall be determined by the Board, and there shall be an annual renewal fee determined by the Board. A separate permit shall be obtained for each school represented by an agent.

RULES AND REGULATIONS:

(a) Each applicant for a permit to serve as an agent shall submit with his application a fee in the amount of Ten Dollars (\$10.00) for the first application. This fee will be required for each institution represented by any one agent. The fee for renewal of the permit to serve as an agent shall be Five Dollars (\$5.00) for each institution represented by the agent. The agent shall present a second application for a permit to serve as an agent in conjunction with the application for certification by the second institution that he will represent. The fees required in this regulation shall be in

addition to service fees charged by the Division of Motor Vehicles, Department of Public Safety.

(b) Each agent shall apply for a permit each year at the same time that the institution he is to represent makes application for a Certificate of Approval. In the case of an institution not conducting classes in Delaware but sending agents into Delaware, the application for an agent's permit must be accompanied by a notarized verification of employment from the institution he is to represent. No permit shall be issued for a period of more than twelve calendar months. No agent shall perform the function of his assignment and solicit Delaware enrollees in the institution until he has been issued the appropriate identification permit required in Delaware Code, Title 14, § 8510.

(c) The discontinuance of the certification of an institution for any cause shall make invalid all agent permits for that institution.

(d) The discharge or resignation of any agent shall be reported immediately to the State Board of Education through its designated officer.

(e) To the extent that any situation warrants the State Board of Education shall be

(f) In any instance where the owner of an institution indicates that he plans to serve as his own agent, separate fee for the agent permit will be waived, but the permit must be obtained. Any additional agents must obtain permits as otherwise described.

~~§ 8510 Issuance of Pocket Cards Upon Approval of Application - Contents~~

The Board, upon approval of an application for or renewal of a permit, shall prepare and deliver to each agent a pocket card which, among other things, shall contain the name and address of the agent and of the employing school, and shall certify that the person, whose name appears thereon, is an authorized agent of the school.

~~RULES AND REGULATIONS:~~

(a) The pocket card shall be a card designed and issued by the State Department of Public Instruction for completion at one of the Inspection Lanes of the Division of Motor Vehicles of the Department of Public Safety. The card will include, in addition to items required in § 8510, a photo and the signature of the agent, and shall be secured in a laminated jacket. The three dollar (\$3.00) fee for this card shall be paid by the agent at the Inspection Lane where the photograph will be made and the card completed.

~~§ 8511 Annual Renewal of Certificate~~

Each school and each agent that continues as such shall annually, during the month of December, renew its or his certificate of approval and pay the required annual renewal fee. Every certificate of approval which has not been renewed during the month of December, in each year, shall

expire on the following first day of January.

~~RULES AND REGULATIONS:~~

(a) ~~The renewal requirement applies to an agent's permit as well as to an institution's certificate of approval.~~

~~§ 8512. Issuance, Revocation, Renewal or Restoration of Certificates Upon Action and Report of Board~~

~~No certificate of approval shall be issued, revoked, renewed or restored, except upon the action and report in writing of a majority of the Board. The Board shall preserve a written report of its findings and recommendations.~~

~~RULES AND REGULATIONS:~~

(a) ~~This section includes the agent's permit as well as the institution's Certificate of Approval.~~

~~§ 8513. Rules and Regulations~~

~~In addition to standards provided for hereunder, the Board shall make and enforce reasonable rules and regulations as shall be necessary for the proper administration and enforcement of this Act.~~

~~§ 8514. Prohibition Against Advertising School or Soliciting Students Without Board Authorization~~

~~Prior to the establishment of a private business or trade school and the issuance of a certificate of approval therefore, no person shall advertise such a school or solicit prospective students for such a school unless such person has applied for and received from the Board authorization to conduct such activity.~~

~~RULES AND REGULATIONS:~~

(a) ~~All advertising by an institution subject to Delaware Code, Title 14, Chapter 85, shall be in accordance with the Statutes, Rules and Regulations for advertising as supervised through the Department of Community Affairs and Economic Development, Division of Consumer Affairs.~~

~~§ 8515. Procedure for Approval of Applications and Programs~~

~~The Board shall provide such rules and regulations as are necessary to direct applicants for a certificate of approval in the preparation of a statement of the existing or planned educational programs and managerial organization and financial status of the applicant school. Upon receipt of any application, prepared in accordance with the provisions of this Chapter, the Board shall provide for the review of that application and shall, within 90 days of its receipt, notify the applicant that the application is approved or disapproved or that further negotiation will be afforded toward the goal of approval.~~

~~§ 8516. Grounds for Refusal to Issue Renew or to Revoke~~

Certificates or Permits

In addition to any other cause herein set forth, the Board may refuse to issue, or to renew, or may revoke any certificate of approval or permit for any combination of the following causes:

(1) Violation of any provision of this Act or any rule or regulation made by the Board;

(2) Furnishing of false, misleading or incomplete information to the board or failure to furnish information requested by the Board;

(3) If any person who signed an application has entered a plea of nolo contendere or been found guilty of any crime involving moral turpitude;

(4) If any person, who signed an application, is found by competent medical authority to be addicted to the use of any narcotic drug, other than a drug currently prescribed for treatment or who has been found mentally incompetent;

(5) Violation of any commitment made in an application for a certificate of approval;

(6) Presenting to prospective students information relating to the school, or to employment opportunities or opportunities for enrollment in institutions of higher learning after entering into or completing courses offered by the school, which is false, misleading or fraudulent;

(7) Failure to provide or maintain premises or equipment in a safe and sanitary condition as required by laws, regulations or ordinances applicable at the location of the school;

(8) Refusal by an agent to display his permit upon demand of a prospective student, the Board or its representative, or any other interested person;

(9) Failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered or to retain a sufficient and qualified instructional and administrative staff;

(10) Conduct of instruction in a course or field which has not been approved by the Board for the particular school;

(11) Refusal to admit applicants solely on account of race, color, creed, age, or sex.

RULES AND REGULATIONS:

(a) The provisions of Delaware Code, Title 14, § 8516 are hereby extended to include "National Origin" or any other provisions set forth in the United States Civil Rights Act of 1964 as subsequently amended, or any State of Delaware statute relating to the rights of an individual.

§ 8517. Investigations by Board Upon Its Own Motion or Upon Verified Complaint — Opportunity for Correction

The Board may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts which, if proved, would constitute grounds for refusal or revocation under this Act, investigate the actions of any applicant or any person or persons holding or claiming to

hold a certificate or permit.

However, before proceeding to a hearing on the question of whether a certificate of approval shall be refused or revoked for any cause enumerated in Section 8516, exclusive of those causes enumerated in paragraphs three and four of that section, the Board may grant a reasonable time to the holder of or applicant for a certificate of approval to correct the situation. If within such time, the situation is corrected, no further action, leading to refusal or revocation shall be taken.

RULES AND REGULATIONS:

(a) — In view of an apparent conflict between the statutory statement in § 8516 "...for any combination of the following" and § 8517 "...for any cause enumerated in § 8516..." it is the rule of the State Board of Education that § 8516 shall be administered to mean "...for any one or combination..."

§ 8518. Hearings

Any applicant for a Certificate or for the renewal of a Certificate, who is refused issue of that Certificate or its renewal, may appeal for hearing before the State Board of Education in accordance with the authority granted to the Board to conduct such hearings in Delaware Code, Title 14, Chapter 1, § 121 and § 129, and such other sections as may be found applicable.*

*See Appendix

§ 8519. Power to Subpoena and Administer Oaths

The Board, over the signature of any member thereof, is authorized to subpoena and bring before the Board any person or persons in this State and to take testimony, either orally or by deposition or by exhibit, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in civil cases in Superior Courts of this State.

Any member of the Board may administer oaths to witnesses at any hearing which the Board is authorized by law to conduct.

§ 8520. Powers of the Board

Upon the application of the respondent or complainant, the Board, may by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the Board in any hearing it is authorized to conduct, and the Board may compel obedience to its order to proceedings for contempt in the Superior Court.

§ 8521. Board to Provide Stenographer — Record of Proceedings — Transcripts Costs

The Board shall provide a stenographer to take down the testimony and preserve a record of all proceedings at the

hearing of any case involving the refusal to issue or renew, or the revocation of a certificate or permit. The notice of hearing, complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report and orders of the Board shall be the record of such proceedings. The Board shall furnish a transcript of such record to any person or persons interested in such hearing upon payment therefore, the amount to be determined by the Board; provided, that the charge for any part of such transcript ordered and paid for previous to the writing of the original record therefore shall be determined by the Board.

~~§ 8522. Service of Board's Report Upon Respondent—Motion for Rehearing—Time—Surrender of Certificate~~

~~In any case involving the refusal to issue or renew or the revocation of a certificate or permit, a copy of the Board's report shall be served upon the respondent, either personally or by registered mail as provided in this Act for the service of the notice of hearing. Within 20 days after such service, the respondent may present to the Board a motion in writing for a rehearing, which written motion shall specify the particular grounds therefore. In the event no such motion for rehearing be filed, then upon the expiration of the time specified for filing a motion for rehearing, or in the event such motion be filed and denied, then upon such denial, the chairman may enter an order in accordance with recommendations of the Board. If such applicant or registrant shall order and pay for a transcript of the record, as provided in this Act, the time elapsing thereafter and before such transcript is ready for delivery shall not be counted as part of such 20 days.~~

~~Upon the revocation of a certificate or permit, the holder shall be required to surrender such certificate or permit to the Board, and upon failure or refusal to do so, the Board shall have the right to seize the same.~~

~~§ 8523. Forfeiture of Bond~~

~~If any school certified, pursuant to this chapter, should fail to provide the services called for in a contract or agreement with a student, as determined by the Superior Court of the State of Delaware, the bond prescribed by § 8505 (a) (2) of this chapter, or any part thereof, shall be forfeited, and the proceeds distributed by the Board in such manner as justice and the circumstances require.~~

~~RULES AND REGULATIONS:~~

~~(a) It is the interpretation of the Board that the phrase "fail to provide the services called for in a contract or agreement with a student," means "fail to substantially provide the essential services. . . ."~~

~~§ 8524. Appeal to Superior Court—Provisions of Administrative Review—Act to Govern Certification of~~

~~Record~~

~~Any person affected by a final administrative decision of the Board may have such decision reviewed judicially by the Superior Court of the county wherein such person resides, or in the case of a corporation, wherein the registered office is located. If the plaintiff in the review proceeding is not a resident of this State, the venue shall be in any County of this State.~~

~~Service of summons issued in such review proceedings may be had upon any member of the Board. The Board shall not be required to certify the record of the proceeding unless the plaintiff, in the review proceedings, shall first pay to the Board a sum to be determined by the Board for every page of such record. Exhibits shall be certified without cost.~~

~~§ 8525. Unlawful Acts of School Employees Not Ground for Revocation of Certificate—Exception~~

~~Any unlawful act or violation of any of the provisions of this Act upon the part of any agent or employee of a business or trade school shall not be cause for the revocation of the certificate of approval unless it shall appear to the satisfaction of the Board that any one or more of the controlling officers, members or managing employees had guilty knowledge thereof.~~

~~§ 8526. Penalties for Violations~~

~~Any person or corporation violating the provisions of this Act shall, if a person, be punished by a fine of not to exceed \$500, or by imprisonment for a period not to exceed one year, or both such fine and imprisonment; and, if a corporation, shall be punished by a fine of not to exceed \$1,000. Any officer or agent of a corporation or member, or agent of a co-partnership, or association, shall be subject to the penalties herein prescribed for individuals; and the State's Attorney for the county where such offense is committed shall prosecute all persons violating the provisions of this Act upon proper complaint being made.~~

~~The Superior Court shall have exclusive jurisdiction of violations of this chapter.~~

~~RULES AND REGULATIONS:~~

~~(a) It is the interpretation of the Board that the phrase "Any person or corporation violating the provisions of this Act" shall mean, "Any person or corporation violating the essential provisions of this Act shall, . . ."~~

~~§ 8527. Incorporated Institution~~

~~Any applicant seeking incorporation under the Delaware Code, Title 8, in order to conduct a private business or trade school within the State of Delaware shall, first, seek approval as an applicant to conduct a business or trade school in accordance with the provisions of this chapter. Upon approval of such application and the issuance of a certificate to conduct a private business or trade school, the~~

State Board of Education shall notify the Secretary of State of such approval. At any time that a Certificate of Approval is denied or revoked by the State Board of Education, the applicant for that Certificate shall no longer be authorized to conduct classes as a private business or trade school in the State of Delaware, other provisions of a Corporate Charter notwithstanding.

§ 8528. Previously Existing Schools — Temporary Authorization

Any institution as herein defined that was established and presenting courses or classes in Delaware prior to the effective date of this Act and that is not incorporated in Delaware, or that was incorporated in Delaware without authority to grant a degree, shall be granted temporary approval by the Board for a period not to exceed one year after that date. During the one year of temporary authorization the school shall carry out all necessary steps for compliance with this chapter. No extension of the period of temporary authorization shall be granted except to allow necessary time for the State Department of Public Instruction to complete the review and analysis herein required.

RULES AND REGULATIONS:

(a) ~~New Institutions~~ — Any institution requesting certification in Delaware that had not conducted classes or courses in Delaware prior to July 18, 1972, shall be required to meet all requirements for certification prior to the issuance of any Certificate of Approval.

§ 8529. ~~Certain Schools Exempt~~

Any institution whose main facilities are located in the State of Delaware and which was approved by the State Board of Education in compliance with Delaware Code, Title 8, § 125*, prior to the enactment of this chapter shall be exempt from the provisions of this chapter. Apprenticeship and training programs offered or conducted by persons, partnerships, joint ventures, corporations, political subdivisions, employers or employer associations for their employees or prospective employees or by labor organizations or association of employees for their members or apprentices shall be exempt from the provisions of this chapter.

* Referring to degree-granting institutions.

§ 8530. ~~Disposition of Permanent Student Records by Postsecondary Institutions~~

(a) ~~Notwithstanding any exemptions to the contrary in this Chapter, all postsecondary institutions authorized, approved or licensed by the State Board of Education to operate in the State of Delaware under this Chapter or under Section 125, Title 8 prior to discontinuing operation, shall perform the following duties:~~

(1) ~~Notify in writing the State Board of Education and all currently enrolled students of the decision to cease operation;~~

(2) ~~Notify in writing all currently enrolled students, and students enrolled during the five prior years, that information concerning permanent student records may be obtained from the State Board of Education.~~

~~(3) Convey all permanent student records to the State Board of Education, or to another location designated by the Board for safekeeping and for reproduction as requested by the students.~~

(b) As used in this section, 'permanent student records' shall mean all those documents that are necessary to provide a meaningful record of student performance and financial aid and shall include, but not be limited to, the following:

(1) ~~Academic records, including written evaluations, competency assessments, etc.~~

(2) ~~Catalogues~~

(3) ~~Change of grade forms~~

(4) ~~Class lists, including original grade sheet~~

(5) ~~Commencement programs/graduation lists~~

(6) ~~Schedules of classes~~

(7) ~~Financial aid transcripts and supporting documents.~~

307 Private Business and Trade Schools

1.0 Definitions. For purposes of this regulation,

1.1 "Department" means the Delaware Department of Education.

1.2 "Private business and trade school" and "school" have the same meaning as in 14 Del. C. §8501(1).

1.3 "Agent" has the same meaning as in 14 Del. C. §8501(4).

1.4 "Agent card" shall mean the pocket card provided for in 14 Del.C. §8510.

2.0 General Provisions

2.1 The distinguishing characteristic of a private business or trade school shall be the potential for wage earning by its graduates.

2.2 Private business and trade schools shall include:

2.2.1 correspondence school courses offered as post high school courses in trade or business subjects; and

2.2.2 programs that may also be available as high school introductory courses in trade or business subjects, without regard for the age or the prior educational attainment of the student.

2.3 A private business and trade school which actively seeks enrollees from the State of Delaware, or which sends an agent or agents into the State of Delaware to solicit enrollees, shall ensure that each of its agents maintains a current agent permit issued by the Department.

2.4 The term "agent" shall include individuals who

solicit enrollees in Delaware even though the institution the agent represents does not conduct classes within the State of Delaware.

2.5 All advertising by a private business and trade school shall be in accordance with the statutes, rules and regulations for advertising administered and supervised by the Department of Justice Consumer Protection Division.

3.0 Certificates of Approval

3.1 Applications for an initial certificate of approval to conduct a private business and trade school, and for annual renewal of such certificates, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.

3.2 A private business and trade school offering more than one program of instruction must have each program approved by the Department.

3.3 The Department may conduct an on-site evaluation of any applicant for a certificate of approval or for renewal of a certificate of approval. The Secretary of Education may waive an on-site evaluation if the applicant is accredited by a regional or national accrediting association recognized by the Department, or is certified to conduct a similar program or school by the state education agency of another state with comparable standards for such schools.

3.4 If a private business and trade school makes any material change in its operation, such as, but not limited to, corporate structure or financial structure, the school shall notify the Department of the change within thirty days. The school shall also identify the change in its next renewal application.

3.5 The fees charged as filing and renewal fees are not refundable.

4.0 Agent Permits

4.1 Applications for an initial agent permit, and for renewal of such permits, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.

4.2 An agent representing more than one private business and trade school must apply for separate permits for each such school.

4.3 Agents shall apply to renew their permit(s) each year at the same time that the school or schools the agent represents make application to renew their respective certificates of approval. In the case of a school not conducting classes in Delaware, but sending agents into Delaware, the application for an agent's permit must be accompanied by a notarized verification of employment from the school represented and must be received by the

Department on or before the expiration of the current permit. No permit shall be issued for a period of more than twelve calendar months.

4.4 No agent shall solicit Delaware enrollees on behalf of the private business and trade school represented until the Department issues the appropriate agent card.

4.5 The lapse, suspension, revocation, or non-renewal of a private business and trade school's certificate of approval for any cause shall terminate all agent permits for that institution.

4.6 A school shall report the discharge or resignation of any agent to the Department within thirty days.

4.7 The fee for the agent permit will be waived for the owner or chief executive officer of a private business and trade school who also serves as its agent. Each such individual must still apply for and obtain the agent permit. Any additional agents must obtain permits as otherwise described.

4.8 The fees charged as filing and renewal fees are not refundable.

5.0 Complaints

5.1 Each private business and trade school shall adopt a policy and procedures to address complaints by its students. The school's catalog shall contain its complaint policy and procedures or a reference to where the policy and procedures can be obtained.

5.2 In addition to the complaint procedures adopted by a private business and trade school for its students, the Department will investigate complaints by any person alleging facts which, if true, would constitute grounds for refusing or revoking a certificate of approval or an agent permit.

5.2.1 Such complaints must be in writing and verified by the signature of the person making the complaint. Oral, anonymous or unsigned complaints will not be investigated.

5.2.2 A copy of the written complaint will be provided to the affected private business and trade school or agent for their written response. The Department may require that the complainant provide written permission for the Department to forward the complaint to the school or agent.

5.2.2.1 If, after reviewing the school or agent's response, the Department concludes that there is insufficient evidence to believe that the school or agent has violated applicable law or a standard, rule or regulation of the Department, the Department may close the complaint without further investigation. In such case, the Department will notify the complainant and the school or agent of this conclusion and provide the complainant with a copy of the school or agent's response.

5.2.2.2 If, after reviewing the school or agent's response, the Department concludes that there is

sufficient evidence to believe that the school or agent has violated applicable law or a standard, rule or regulation of the Department, the Department may continue its investigation or begin revocation or other action against the school or agent as the Department determines appropriate. The Department may also continue its investigation or begin revocation or other action if the school or agent fails to respond to a complaint within the time established by the Department.

5.3 The Department may also investigate circumstances which would constitute grounds for refusing or revoking a certificate of approval or an agent permit on its own initiative.

6.0 Denials and Revocations of Certificates and Permits

6.1 In view of an apparent conflict between the statutory statement in 14 *Del.C.* §8516 (“for any combination of the following”) and 14 *Del. C.* §8517 (“for any cause enumerated in §8516”), the Department interprets and shall administer Section 8516 to mean that a certificate of approval or an agent permit may be denied or revoked “for any one or combination” of the causes identified in that Section.

7.0 Bonds

7.1 Applications for an initial certificate of approval shall include evidence that the required surety bond is valid through at least December 31 of the year of initial approval. Thereafter, applications for renewal of certificates shall include evidence that the required surety bond is valid from January 1 through December 31 of the year for which the certificate is requested.

7.2 The amount of the surety bond required of a school shall be determined as provided in 14 *Del. C.* §8505(b). In no event shall a bond be for less than \$5,000 per calendar year.

7.3 The Department interprets and shall administer the phrase “fail to provide the services called for in a contract or agreement with a student,” as used in 14 *Del. C.* Section 8523 to mean “fail to substantially provide the essential services.”

7.4 Forfeiture

7.4.1 In the event a surety bond is forfeited, the Department shall notify the students identified on the last available school roster of their right to submit a claim for reimbursement. Such students shall have thirty days from the date they are notified by the Department to submit a claim for reimbursement. Claims received more than thirty days after the Department’s notification shall not be considered.

7.4.2 Other students wishing to submit a claim for reimbursement must contact the Department within thirty days of the school’s closing to submit their claim for reimbursement. Claims received more than thirty days after

the school’s closing shall not be considered.

7.4.3 Claims for reimbursement shall be submitted and documented as directed by the Department. The Department shall consider only appropriately documented claims in distributing the proceeds of any surety bond.

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

ELEMENTARY EDUCATION, MIDDLE LEVEL EDUCATION, AND HIGH SCHOOL SECTIONS OF THE HANDBOOK FOR K-12 EDUCATION

A. TYPE OF REGULATORY ACTION REQUESTED Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary of Education seeks the approval of the State Board of Education to selectively amend and repeal the remaining regulations in II. Elementary Education, III. Middle Level Education, and IV. High School from the *Handbook for K-12 Education* and to repeal Regulation 510, Computer Literacy Amendments to the Graduation Requirements from the *Regulations of the Department of Education*. The recommended changes are as follows:

II. Elementary Education:

Amend D.2. Visual and Performing Arts, and D.5 Physical Education, for inclusion in the amended K-12 regulations recommended for Visual and Performing Arts and for Physical Education.

Repeal sections A.1. Grade Level, B. Kindergarten Position Statement, C. Purpose, D. Programs, numbers 3, 6, 7, and 8 and E. Time Allotments, because they are technical assistance statements.

Repeal sections D. Programs, numbers 1 and 4, because they simply repeat sections of the existing regulations on Content Standards and on Comprehensive Health and Family Life Education.

III. Middle Level Education:

Amend A.1 and 2, Middle Level Education Policy, by eliminating all of the policy except for the second part of the first paragraph in A.2 starting with the words “Beginning and newly employed teachers administrators and counselors” and ending with “needs of Adolescent students”. Because of the existence of the state content standards and the performance indicators that clearly define academic requirements for all grade levels and the Neighborhood Schools Bill which permits numerous grade level

configurations, this regulation has become too prescriptive as to the design of a middle school. The remaining requirement for Middle Level certification is needed to support the regulations on certification for middle level educators and in addition, action by the Secretary and State Board is not required because this part of the regulation must first be acted on by the Professional Standards Board.

Amend 2.b Visual and Performing Arts, and 2.e. Physical Education, for inclusion in the amended K-12 regulations for Visual and Performing Arts and for Physical Education.

Amend 2.f. Home Economics (which includes Technology Education), by changing the reference to all vocational programs and amending the existing regulation, 525 Requirements for Vocational Education Programs by adding this statement as 3.0.

Repeal sections B.1. and 2.c. because they are technical assistance statements and repeal 2.a. and d. because they simply repeat sections of the existing regulations on Content Standards and on Comprehensive Health and Family Life Education.

IV. High School:

Amend A.1 Purpose, and A.2 Credit Requirements, to simplify the regulation by eliminating the chart and clarifying what are the exact credit requirements beginning with the graduating class of 2000.

Amend 3.b. Visual and Performing Arts, and 3.f. Physical Education, for inclusion in the amended K-12 regulations for Visual and Performing Arts and for Physical Education.

Repeal sections 3.c., d. and g., because they are technical assistance statements and repeal 3.a. and e. because they simply repeat sections of the existing regulations on Content Standards and on Comprehensive Health and Family Life Education.

In addition, repeal regulation 510, Computer Literacy Amendments to the Graduation Requirements from the *Regulations of the Department of Education* as it is now included as a definition in 1.1.2 in the recommended regulation Credit Requirements for High School Graduation.

With the approval of these amendments and repeals, the review of Sections II, III and IV of the *Handbook for K-12 Education* is completed. There are only two remaining regulations requiring action, one in Section I, Policy for the Safe Surplus Chemical Management and Disposal in the Delaware Public School System, and one in the Appendix, Procedures Related to the Collection, Maintenance and Disclosure of Student Data. Section V was completed last year.

C. IMPACT CRITERIA

1. Will the amended regulations help improve student

achievement as measured against state achievement standards?

The amended regulations clarify student program requirements that do effect student achievement.

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

The amended regulations address student program requirements, not equity issues.

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

The amended regulations address student program requirements, not health and safety issues.

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

The amended regulations address student program requirements, 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 regulation?

The amendments are needed to update and clarify the issues addressed.

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

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

H. ELEMENTARY EDUCATION

A. ELEMENTARY SCHOOL ORGANIZATIONS

1. GRADE LEVEL

In Delaware, elementary schools come in many configurations: kindergarten through sixth; K-3; 4-6; and so on. Whatever the organization or structure, the basic goal is to provide a program of rich learning experiences, not just in preparation for the next grade, but for becoming a life-long learner. Indeed, the very foundation of all future learning is provided in the elementary school.

B. KINDERGARTEN POSITION STATEMENT

1. As the kindergarten child embarks on his/her first step into the schooling process, the unique characteristics of this age child dictate a program of rich learning experiences, not just in preparation for the next grade, but for becoming a life-long learner. The program should provide continuity for experiences which promote growth, challenge thinking, instill a love for learning, and equally encourage the development of cognitive, affective and psychomotor skills. The value of the program is in providing opportunities for maximizing the growth and development of the whole child. Children must be allowed to be children—they have the right to childhood.

2. Because of these beliefs the following statements would be reflective of education provided kindergarten children in Delaware. Therefore, a kindergarten should be a place where:

a. Children experience a planned, child-centered environment that encourages learning through exploration and discovery...

... rather than a sit-down-be-quiet classroom dominated by desks, paper, workbooks, and often improperly used technology.

b. Children experience opportunities to make choices and decisions...

... rather than participate in activities where children are not given the opportunity to choose.

c. Children use concrete materials which allow for individual differences and natural variations in each one's ability to perform...

... rather than being required to perform the same task, reach the same level of performance, and accomplish the same objectives.

d. Children experience activities which

permit more than one right answer. Divergent thinking should be developed and encouraged through use of open-ended materials and many informal conversations among the children and with adults...

... rather than learn in a place where the day's activities are largely dominated by worksheets and formal teacher-led discussions requiring predetermined responses.

e. Children's own language, background, experiences, and stages of development form the basis of the reading and writing activities...

... rather than the children being required to learn to read only through the use of a commercially produced reading program.

f. Children learn to enjoy the books and to appreciate literary language through a daily story time, creative dramatics, library experiences, and repeated opportunities to hear and learn simple rhymes and other poems...

... rather than a place where the day is too short for story time and the opportunity to appreciate literature is neglected.

g. Children participate in daily, planned activities which foster both gross and fine motor development. Activities such as running, jumping, bouncing balls, lacing cards, hammering nails, playing with clay, etc. are encouraged...

... rather than inappropriate or trivial tasks which exceed their ability such as forming letters correctly on lined paper.

h. Children develop mathematical understanding through the use of familiar manipulatives such as sand, water, unit blocks, counters, and other concrete materials...

... rather than using pencil and paper tasks that demand a single response answer.

i. Children's curiosity about natural, familiar elements forms the basis of scientific observations, experimentation, and conclusions. Both planned and spontaneous interaction with real objects such as plants, animals, rocks, soil, water, etc., is considered to be essential...

... rather than a place where science is included only when time permits or where the books describe outcomes and teachers do the experiments.

j. Experimentation, enjoyment and appreciation of varied forms of music are encouraged on a daily basis...

... rather than a place where music is included only when time permits or the music specialist works with the class.

k. Many forms of art expression are encouraged through the use of a wide assortment of media integrated within the daily curriculum. The final product is never as important as the process of creating...

... rather than a place where art usually consists of copying a model, coloring a ditto, or cutting and pasting a pattern, and/or where art is delegated to the specialist.

l. Parents and school personnel work cooperatively to build a partnership between home and school that will support the child throughout the school experience...

... rather than a place where parents feel removed from their child's experience.

m. The mental and physical well-being of each child is of paramount importance. Different levels of ability and development are expected, valued and accepted...

... rather than a place where external pressures for group achievement, especially as measured by group achievement tests, are more important than the individual needs of children.

n. All the activities are planned to promote a positive self image and positive attitudes toward school and peers...

... rather than a place where the child's worth is measured only by his or her ability to conform to unrealistic or impractical expectations.

o. Play is respected for its value as an appropriate and essential learning medium for children of his age...

... rather than a place where play is de-emphasized because the child "played enough" in preschool and should now be ready for "real" learning.

p. The curriculum is organized around topics of interest to young children and skills are integrated into children's natural exploration of the selected topics...

... rather than a place where skills are taught in isolation and the "curriculum" is the next page in the workbook or the next letter of the alphabet.

q. Children's knowledge and skills are measured over the year through teacher observations, anecdotal records, parent questionnaires, and formal assessment instruments...

... rather than through a standardized, paper-pencil instrument implemented during one week in the spring or fall.

(State Board Approved January 1990)

C. PURPOSE

1. Elementary schools are characterized by: an emphasis on teaching students rather than teaching disciplines; multi-disciplinary instructional approaches; lessons designed to foster cooperation rather than competition; careful monitoring of student progress, and a clear and comprehensive curricular progression. The elementary classroom is committed to both the cognitive and affective learning success of students.

In the education of the elementary child, value must be placed on:

a. a humanistic climate that fosters a positive self concept;

b. a range of tasks that addresses the individual abilities and interests of children to promote successful experiences;

c. a developmental program that moves only from the concrete (hands-on) tasks to the abstract when there are valid indications that the child is ready;

d. an attitude that children have an innate drive and ability to learn;

e. an integrated curriculum rather than emphasis on facts and skills taught in isolation;

f. parents, teachers and support staff working together for the educational growth and success of each child; and

g. a commitment to foster the natural inquisitiveness and sense of wonder most young children bring to school.

D. PROGRAMS

1. PROGRAMS IN ENGLISH LANGUAGE ARTS, MATHEMATICS, SCIENCE AND SOCIAL STUDIES

a. Elementary school programs in English language arts, mathematics, science and social studies must be aligned with the state content standards as adopted by the State Board of Education in June, 1995.

2. VISUAL AND PERFORMING ARTS (Music, Visual Arts, Theatre and Dance)

a. All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the elementary grades, kindergarten through four.

b. Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated they will be adopted in June, 1997.

3. GIFTED AND TALENTED EDUCATION

a. Refer to Programs for Gifted and Talented Students in the State of Delaware, an annual publication for specific district and higher education program offerings. Also, see "Low-Cost Options for Students with Special Gifts & Talents" (Appendix E) and "Program Standards for Gifted and Talented Programs in the State of Delaware" (Appendix F).

4. HEALTH AND FAMILY LIFE EDUCATION

a. Health education is a means of enabling the individual to use the skills of decision-making, critical thinking, and self-discipline to undertake a more active role in the maintenance and improvement of one's social, physical, and emotional health. While many persons enjoy better health and an increased life span due to research, improved medical care, and new drugs, their future vitality, productivity, and longevity will depend on the choices they

make each day about diet, exercise, safety, and use of tobacco, alcohol, and drugs.

b. Health instruction is mandated in the Delaware Code, Title 14, Chapter 122 "...requiring that all pupils of all public elementary schools and all public high schools of the state be instructed in physiology and hygiene with special reference to the effects of alcoholic drinks, stimulants, and narcotics upon the human system."

e. The Comprehensive Health and Family Life Education Policy requires thirty (30) hours of Health and Family Life Education in each grade K-4 of which ten (10) hours in each grade must address Drug/Alcohol Education. In grades 5 and 6, thirty five (35) hours of Health and Family Life Education are required in each grade of which fifteen (15) hours must address Drug/Alcohol Education. (See Page A-55 of the Handbook for this policy, State Board Approved September 1987, Revised July 1990)

5. PHYSICAL EDUCATION

a. The primary goal of the elementary physical education program is to have students acquire the fundamental skills necessary for their participation in team or group activities, free play, and health-related physical fitness.

b. Classes should be learning laboratories in which students are involved in the important task of learning about themselves and others through movement.

c. The program should be student centered, with a special focus on problem-solving and exploratory methods applied to a wide range of activities.

d. Students should have freedom of choice, but be guided by the teacher toward predetermined goals.

e. This suggested time allotment will serve as a basis in the formulation of the daily or weekly schedule depending on the school organization:

Vigorous Physical Activity--

1st and 2nd grade 30 minutes daily

3rd, 4th, 5th and 6th grade 30 minutes

daily

f. A major part of physical education should be directed play involving team or group activities, while 30 minutes per week may be supervised free play. Directed play involves selected activities to teach desirable skills while free play is permitting the children a choice of activities under the supervision of the teacher.

6. SAFETY

a. Elementary school safety instruction should include experiences through which students learn to make wise choices when injury to self or others occurs.

b. Effective teaching should be based on an awareness of the safety needs of the individual with a positive approach so as not to instill fear.

c. Lessons on safety should be integrated into most subject areas with a variety of experiences designed to develop and reinforce desirable attitudes,

knowledge and skills.

d. Areas receiving special focus should include school bus safety, pedestrian safety, bicycle safety, fire prevention, general school safety, and disaster preparedness.

7. TECHNOLOGY EDUCATION

a. Elementary school technology education activities are designed to assist in the attainment of educational goals within the total elementary school program. These activities orient students to technology, develop personal psychomotor skills, and refine attitudes concerning technological literacy and impact on society.

b. Technology activities should be integrated with the total elementary school curriculum and should provide students with experiences that reinforce the goals for quality education and provide them with concrete, practical experiences that reinforce their curriculum. In addition, the use of a team approach, on a part-time or full-time basis, will provide a more effective elementary school technology education program.

8. CAREER AWARENESS

a. Career awareness should be an integral part of all elementary school programs. The most desirable approach seems to be the incorporation of career awareness education into the already existing curriculum and elementary guidance counselors can play a significant role in assisting teachers with the task.

b. Students learn best those things which they see as important to them. Exploring careers is directly relevant to the lives of young people. Relating traditional subject matter to careers adds meaning to the study of those subjects. There are few students who are not interested in the following questions. Who am I? What can I do? How do I become . . . ? The total curriculum can even be designed to revolve around what people do for a living and questions about the work world in general.

e. The place of the traditional areas of curriculum are not reduced in importance with a career education program. They become more meaningful to the students since they are no longer studied as a means to an end. The basic elementary curriculum becomes a part of the career awareness program and the career awareness program contributes relevancy to a basic education.

E. TIME ALLOTMENTS

1. Time allotments for all programs are determined in accordance with the priorities established by each school and/or school district providing that such priorities are based on identified needs.

III. MIDDLE LEVEL EDUCATION

A. MIDDLE LEVEL EDUCATION POLICY

1. PHILOSOPHY

The State Board of Education recognizes that Middle Level Education is special and unique in the state's

educational system. As such, it is a broad-based program that provides young adolescents with a positive environment during their transition years. It emphasizes the development of the student in the academic, physical, social and emotional realms within a community of learning and caring.

The State Board of Education also recognizes that those who administer effective middle level programs and those who teach and work in them should be appropriately educated for, and personally committed to, the process of helping each student succeed and become future oriented.

2. REQUIREMENTS FOR MIDDLE LEVEL EDUCATION PROGRAMS

By September, 1996, every public school in Delaware with students in consecutive grades within the range of grades 5 through 8 shall organize those students into middle level programs either as separate schools or as a separate school within a school. Additionally, Beginning and newly employed teachers, administrators and counselors who work in middle level programs shall, by September, 1998, hold either a middle level endorsement or certificate. This endorsement and/or certificate will assure that the middle level educator has knowledge of the middle level curriculum and instructional strategies as well as an understanding of the nature and needs of young adolescent students.

The following are the essential components of a program designed to meet the learning styles and developmental needs of middle level students. These components of effective Middle Level Education shall be implemented by all reorganized middle level schools.

a. A comprehensive core curriculum for all students with a planned sequence of concepts and skills including, but not limited to: communication skills, multicultural literacy, humanities, social sciences, mathematics, natural sciences, fine and performing arts, critical/creative thinking, family life/parenting education, health and wellness education, technological literacy and the exploration of occupational and personal interests.

b. Grouping of students into smaller heterogeneous learning communities within the larger school.

c. Interdisciplinary teams of teachers who share responsibility for instruction of the same students, integrate subject matter, and collaborate to meet changing developmental and instructional student needs.

d. Counseling, mentoring and career exploration programs designed to assist students with personal and future decision making, particularly decisions related to high school program choices.

e. Co-curricular activities, including opportunities for volunteerism, which are varied and related to the current interests and developmental stages of middle

level students.

f. Staff development programs designed specifically for middle level practitioners based upon the unique needs of middle level students and programs.

g. A school climate where positive relationships with adults and other students create an atmosphere conducive to personal and academic growth as well as a sense of security and structure.

h. Cooperative relationships with health and social service agencies which provide students with the health and family support systems.

i. Partnerships emphasizing a supportive role be developed and maintained with families, business and industry, agencies serving youth and their families, elementary and high school staff and students, and higher education institutions, to help assure the success of middle level students.

The Department of Public Instruction shall provide technical assistance to the districts and schools to assure an effective transition and to help schools organize their programs. Program Guidelines for Middle Level Education will serve as the basis for operating, evaluating, and organizing middle level education.

(State Board Approved April 1991, Revised March 1995)

B. PROGRAMS

1. MIDDLE LEVEL PROGRAMS

a. English/Language Arts

b. Math

c. Science

d. Social Studies

e. Visual and Performing Arts

f. Foreign Language

g. Gifted and Talented Education

h. Health and Family Life Education

i. Physical Education

j. Pre-Vocational-Technical Education
Orientation/Exploration

k. Home Economics and Family Life/
Parenting Education

l. Technology Education

2. ADDITIONAL MIDDLE SCHOOL REQUIREMENTS

a. Programs In English Language Arts, Mathematics, Science and Social Studies

(1) Middle level school programs in English language arts, mathematics, science and social studies must be aligned with the state content standards as adopted by the State Board of Education in June, 1995.

b. Visual and Performing Arts (music, visual arts, theatre, dance)

(1) All schools must provide a program of study in the visual and performing arts as a part of the

curriculum to meet the educational and cultural needs of students in each of the middle level grades, five through eight.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are approved by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

e. Gifted and Talented Education

(1) Refer to Programs for Gifted and Talented Students in the State of Delaware, an annual publication for specific district and higher education program offerings. Also, see "Low-Cost Options for Students with Special Gifts & Talents" (Appendix E) and "Program Standards for Gifted and Talented Programs in the State of Delaware" (Appendix F).

d. Comprehensive Health Education and Family Life Education

Based on the Comprehensive Health Education and Family Life Education Policy, Health and Family Life Education must be provided in grades 5 and 6 for thirty-five (35) hours in each grade of which fifteen (15) hours in each grade must address Drug/Alcohol Education. In grades 7 and 8, separate from other subject areas, there must be 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 sixty (60) hours are provided in one year at grade 7 or 8, an additional fifteen (15) hours of Drug and Alcohol Education must be provided in the other grade. (See Page A-55 of the Handbook for this Policy, State Board Approved September 1987, Revised July 1990)

e. Physical Education

Physical education must be offered at least two class periods per week for a year or five days a week for a semester in both grades 7 and 8. (State Board Approved February 1985)

f. Home Economics

Program offerings in home economics and technology education must be available to all students in middle school to insure that they have the exploratory experience and elective studies to develop their special interest skills. It is essential that these programs be staffed by certified home economics and technology education teachers.

IV. HIGH SCHOOL

A. REGULAR HIGH SCHOOL PROGRAMS

1. PURPOSE

High school includes a Program of Studies primarily associated with grades 9 through 12 and represents an organizational structure which undertakes to provide learning activities and experiences designed to meet the varying educational needs, interests, and aspirations of students with varying abilities. Such a comprehensive

objective requires a program of studies flexibly arranged and organized to provide as much individualization of learning as possible. The units of credit required for graduation represent programs of study contributing to the educational and career development of every student. In addition, there should be activities designed to provide opportunities for leadership, for individual and group participation and cooperation, and for the pursuit of the special interests and needs of the students.

2. CREDIT REQUIREMENTS

a. Graduation Requirements for the Graduating Class of 1997 Through 2001.

¹Computer Literacy. One credit in Computer Literacy will be required beginning with the graduating class of 1999. The intent of the requirement is to ensure that all Delaware high school graduates are proficient with the productive uses of computers. A unit of credit toward graduation should be granted at any point when the student can demonstrate competency in the required skill areas either through an integrated approach or a specific course or a demonstration of accumulated knowledge over the student's educational career.

²One credit in the visual and performing arts will be required beginning with the graduating Class of 2001 reducing the "additional academic, visual and performing arts, foreign language or vocational education" coursework category to 2 1/2 credits. This requirement will take effect following the adoption of the content standards for the Visual and Performing Arts and pending a review of this credit requirement by the State Board of Education before June, 1998. (Approved State Board of Education August, 1996.)

³Career Pathways and Additional Academic, Visual and Performing Arts, Foreign Language and/or Vocational Technical Education Coursework. A "career pathway" is a planned program of sequenced or specialized courses designed to develop knowledge and skills in a particular career area. Students may use the Additional Academic, Visual and Performing Arts, Foreign Language and/or Vocational Technical Education Coursework (including Junior ROTC as an option) to pursue individual academic interests. The credits in these two categories will eventually replace the elective credits.

It is expected that all students will develop a graduation plan as part of their 8th grade experience.

b. Graduation Requirements Set by Local School Boards

Local school boards may establish requirements over and above the minimum credits prescribed by the State Board of Education.

e. Carnegie Unit of Credit

A minimum of 135 hours of actual classroom instruction or a demonstration of competency is

required for one Carnegie unit of credit.

3. SPECIFIC PROGRAM REQUIREMENTS

a. Programs in English Language Arts, Mathematics, Science and Social Studies

High school programs in English language arts, mathematics, science, and social studies must be aligned with the state content standards as adopted by the State Board of Education in June, 1995.

b. Visual and Performing Arts (Music, Visual Arts, Theatre, and Dance)

(1) All high schools should provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of all students as well as those students wishing to pursue indepth study or a career in the visual and performing arts.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

c. Foreign Language

(1) In order to meet college entrance requirements all college bound high school students must take at least two years of the same foreign language in order to accumulate two units of credit in a foreign language.

d. Gifted and Talented Education

(1) Refer to Programs for Gifted and Talented Students in the State of Delaware, an annual publication for specific district and higher education program offerings. Also, see "Low-Cost Options for Students with Special Gifts & Talents" (Appendix E) and "Program Standards for Gifted and Talented Programs in the State of Delaware" (Appendix F).

e. Health

(1) Health Education may be taught at any grade level from 9-12 in order to accumulate 1/2 credit. The 1/2 credit is earned apart from the requirement for physical education and health instruction associated with other subjects and must incorporate state standards for 9-12 health education programs. Fifteen (15) hours of this 1/2 credit course must address Drug/Alcohol Education and in each of the remaining three grades, fifteen (15) hours of Drug/Alcohol Education must be provided for all students. (See Page A-55 of the Handbook for this Policy, State Board Approved September 1987, Revised July 1990)

(2) The time equivalent for 1/2 credit for health education shall be a minimum of 60 clock hours of instruction during a semester or the course of a school year.

f. Physical Education

(1) Physical education shall be a requirement for any two years during grades nine through twelve with a maximum of 1/2 unit of credit earned per year. Provision for makeup and accumulation of required credit should be provided at the ninth through twelfth grade levels.

(2) Physical education should be offered

as an elective for ninth through twelfth grade students.

(3) The high schools may establish their physical education program of instruction within these guidelines:

(a) providing instruction on a five-day week basis for a full semester;

(b) providing instruction for a minimum of three days per week for the entire school year;

(c) providing instruction on a flexible basis equivalent to three instructional periods per week or rotating two periods one semester and three the next semester; and

(d) providing instruction on a variable basis equivalent to 3 instructional classes per week during the school year.

(4) The physical education program should emphasize the concept of lifetime sports and be adapted to both individual and group physical education needs. All schools should conscientiously develop a meaningful elective program in physical education.

(5) In addition to the one unit of credit required for graduation, a student may receive only one unit of elective credit for a maximum total of two credits in physical education.

(a) Objectors must submit to the administrative head of the school an affidavit stating reasons for being excused from this activity.

(b) Pupils may be excused from physical education if they have a certified excuse from a qualified physician or they have objections based on religious beliefs to various rhythmical activity.

(State Board Approved February 1985)

(See The School Nurse: A Guide to Responsibilities for additional information and specific forms. Revised September 1991)

g. Technology Education

All high schools should provide a program in Technology Education, grades 9 - 12. This program should include as a minimum, technology foundations and technology transfer and assessment. To meet the students' needs to become technologically literate citizens, the senior high technology education program should be comprehensive and emphasize the application of mathematical and scientific principles. Students wishing to develop transferable skills or increased adaptability and diversification for employment, life, or further education will benefit from one of the Technology Education program's offerings containing a sequence of at least two courses. The high school programs should complement the middle level curriculum and offer sequential courses which build on previously learned content for reinforcement of technology content skills and applied knowledge.

510 Computer Literacy Amendments to the Graduation Requirements

1.0 One credit in Computer Literacy shall be required beginning with the graduating class of 1999. The intent of the requirement is to ensure that all Delaware high school graduates are proficient with the productive uses of computers. A unit of credit toward graduation should be granted at any point when the student can demonstrate competency in the required skill areas either through an integrated approach or a specific course or a demonstration of accumulated knowledge over the student's educational career.

511 Credit Requirements for High School Graduation

1.0 No public school student shall be granted a State of Delaware Diploma unless such student shall have successfully completed a minimum of twenty-two credits in order to graduate including:

4 credits in English Language Arts, 3 credits in mathematics, 3 credits in science, 3 credits in social studies, 1 credit in physical education, 1/2 credit in health, 1 credit in computer literacy, 3 credits in a career pathway, and 3 1/2 credits in elective courses.

1.1 Definitions:

1.1.1 "Credit" means a minimum of 135 hours of actual classroom instruction or a demonstration of competency.

1.1.2 "Credit for Computer Literacy" means credit granted toward graduation at any point when the student can demonstrate competency in the required skill areas either through an integrated approach, a specific course, or a demonstration of accumulated knowledge over the student's educational career.

1.1.3 "Career Pathway" means a planned program of sequenced or specialized courses designed to develop knowledge and skills in a particular career or academic area.

2.0 Local school boards may establish requirements over and above the minimum number of credits required by the State Department of Education.

522 Visual and Performing Arts

1.0 Each school shall provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of all students as well as those students wishing to pursue in-depth study or a career in the visual and performing arts.

524 Physical Education

1.0 Each school shall have a Physical Education Program

1.1 Programs in grades 1-6 shall at a minimum be 90 minutes per week.

1.2 Programs in both grades 7 and 8 shall be offered for at least two class periods per week for a year or five days a week for a semester.

1.3 Physical Education Programs shall be a requirement for any two years during grades 9 through 12 with a maximum of 1/2 unit of credit earned per year. Provision for makeup and accumulation of required credit should be provided at the ninth through twelfth grade levels.

1.3.1 Physical Education should be offered as an elective for ninth through twelfth grade students.

1.3.2 In addition to the one unit of credit required for graduation, a student may receive only one unit of elective credit for a maximum total of two credits in physical education.

1.4 Pupils may be excused from physical education if they have a certified excuse from a qualified physician or they have objections based on religious beliefs to various rhythmical activity.

525 Requirements for Vocational-Technical Education Programs

1.0 All Vocational-Technical Education Programs shall meet the provisions of Delaware's State Plan for Vocational Education and meet the provisions of the content standards approved by the Department of Education or, if there are no approved state content standards, meet local program standards approved by the Department of Education.

2.0 All local school districts offering state approved vocational-technical education programs shall:

2.1 have the approval of the Department of Education before implementing new programs. New programs of a similar nature may not be approved where enrollment may compete with already existing programs.

2.2 have adequate funding to support and sustain the instructional program.

2.3 employ teachers certified in vocational-technical education program areas.

2.4 make provisions for meeting the unique needs of all students.

2.5 establish and maintain an active advisory committee which includes labor and management personnel to assist in the development and operation of the program.

2.6 use present and projected labor market information, available from the Delaware Occupational Information Coordinating Committee, to determine the need for new and continuing vocational-technical education programs.

2.7 survey local business and industry to determine their occupational needs and the availability of placement and employment opportunities for program completers.

2.8 survey the student population to determine their occupational interests and needs.

2.9 organize and financially support vocational-technical student organizations as integral components of

vocational-technical education programs in public schools that complement and enrich instruction. The following vocational student organizations are affiliated in Delaware:

2.9.1 Business Professionals of America (BPA)

2.9.2 Technology Student Association (TSA)

2.9.3 Distributive Education Clubs of America (DECA), an association of marketing students

2.9.4 Future Homemakers of America (FHA/HERO)

2.9.5 The National Future Farmers of America (FFA) Organization

2.9.6 Vocational Industrial Clubs of America (VICA)

2.10 integrate related academic content into individual vocational-technical courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals.

2.11 schedule trade and industrial education programs, when offered, for a minimum of two consecutive periods a day or the equivalent, five days a week for two or more years. Trade and Industry programs are highly specialized and are conducted in comprehensive vocational-technical school districts. Any exception must be requested in writing showing just cause, and be approved by the Department of Education.

2.12 establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a vocational-technical education program in a Vocational-Technical School District.

2.13 use equipment and facilities comparable to that used by local business and industry for which the vocational-technical program is preparing students.

2.14 schedule Department of Education and Delaware Advisory Council on Career and Vocational Education program review and monitoring visits upon request.

3.0 Exploratory Vocational Technical Education Programs

3.1 All Middle Schools/Junior High schools shall provide programs in Vocational Technical Education, staffed by certified vocational teachers, to insure that students have the experience necessary to develop their special interests and their career exploration skills.

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

716 PERMANENT FILES OF SCHOOL DISTRICTS

A. TYPE OF REGULATORY ACTION REQUESTED
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary of Education seeks to amend regulation 716 Permanent Files of School Districts, from the *Regulations of the Department of Education*. The amendments include changing the title to Maintenance of Local School District Personnel Records to better reflect the intent of the regulation and changing sections 1.7.1 and 1.7.2 to reflect changes in procedure made by the Delaware Public Archives, formally the Bureau of Archives and Records Management. The Delaware Public Archives is also retaining records for 60 years instead of 40 years and the *Delaware Code* gives them the authority to change the number of years that records must be retained.

C. IMPACT CRITERIA

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

The amended regulations address records retention issues, not academic achievement.

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

The amended regulations address records retention 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 records retention 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 record retention 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 regulation?

The regulations are necessary to clarify the responsibilities of the school districts concerning records management.

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 of compliance with the amended regulations.

716 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. A secured copy of the records 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 a secured system and updated annually. The secured copy of the records 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.)~~

716 Maintenance of Local School District Personnel Records

1.0 Definitions

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.

2.0 Records for all school district employees shall be kept up to date including:

2.1 Salary data records for each year of employment in the school district. (Total salary paid identified as fiscal or calendar year.); and

2.2 Records that show sick leave days earned and used and the number of days available at any time; and

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

3.0 Each school district shall keep the records referred to in section 2.0 above for all employees for at least sixty years following termination of employment.

3.1 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 in accordance with Delaware Public Archives (DPA) School Districts General Records Retention Schedule and prepared for storage according to DPA's Records Management Handbook "Preparation of Records for Short-Term Storage." Records may remain in their original format and will then be transferred to DPA and retained in storage for 57 years. Local District Records Officers and Authorized Agents may request files from storage in accordance with DPA's procedures for requesting files. At the end of the retention period, the documents will be destroyed in accordance with DPA's destruction procedures.

3.2 The style and form of the records shall be at the discretion of the local school districts, except that records transferred to the Delaware Public Archives for storage must be in a format acceptable to DPA. Individual local school districts may elect to have their records recorded onto a different type of media at district expense, in accordance with DPA guidelines.

3.2.1 The information referred to above shall be maintained and available for any employee or former employee seeking information concerning their own employment records for a period of 60 years after termination of employment. (It is recommended that for the convenience of employees and former employees that school districts develop an alphabetically arranged file showing the name of each employee and the disposition of his or her records.)

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(d)**1101 STANDARDS FOR SCHOOL BUSES**

A. TYPE OF REGULATORY ACTION REQUESTED
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 1101 Standards for School Buses, found in the *Regulations of the Department of Education*. The amendments add 2.1.9.2 concerning heaters on school buses back into the regulations. It was inadvertently left out when the regulations were revised but has continued to be used in the bidding process. The amendments also add a new section 2.4.1 on strobe lights for school buses. This change was mandated through legislative action in House Bill 442 as amended by House amendment #1 during the 1999-2000 legislative session.

C. IMPACT CRITERIA

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

The amended regulation addresses standards for school buses, not achievement standards.

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

The amended regulations address standards for school buses, not issues concerning an equitable education.

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

The amended regulations help to ensure that students' health and safety are protected through the standards for school buses.

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

The amended regulations address standards for school buses, 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 standards for school buses must be in regulation.

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

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

1101 Standards for School Buses

1.0 Bus Chassis Standards

1.1 Air Cleaner

1.1.1 The engine intake air cleaner system shall be furnished and properly installed by the chassis manufacturer to meet engine manufacturer's specifications.

1.1.2 The intake air system for diesel engines shall have an air cleaner restriction indicator properly installed by the chassis manufacturer to meet engine specifications.

1.2 Axles: The front and rear axle and suspension systems shall have gross axle weight rating at ground commensurate with the respective front and rear weight loads that will be imposed by the bus.

1.3 Brakes

1.3.1 The braking system shall include the service

brake, an emergency brake that is a part of the service brake system and controlled by the service brake control, and a parking brake.

1.3.2 Buses using air or vacuum in the operation of the brake system shall be equipped with warning signals, readily audible and visible to the driver, that will give a continuous warning when the air pressure available in the system for braking is 60 psi (pounds per square inch) or less or the vacuum in the system available for braking is eight (8) inches of mercury or less. An illuminated gauge shall be provided that will indicate to the driver the air pressure in pounds per square inch or the inches of mercury vacuum available for the operation of the brakes.

1.3.2.1 Vacuum-assist brake systems shall have a reservoir used exclusively for brakes that shall adequately ensure a full stroke application that loss in vacuum shall not exceed 30 percent with the engine off. Brake systems on gas-powered engines shall include suitable and convenient connections for the installation of a separate vacuum reservoir.

1.3.2.2 Any brake system with a dry reservoir shall be equipped with a check-valve or equivalent device to ensure that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored dry air or vacuum shall not be depleted by the leakage or failure. All buses with an air brake system shall be equipped with an air dryer.

1.3.2.3 Buses using a hydraulic-assist brake shall be equipped with warning signals, readily audible and visible to the driver, that will provide continuous warning in the event of a loss of fluid flow from primary source and in the event of discontinuity in that portion of the vehicle electrical system that supplies power to the backup system.

1.3.2.4 The brake lines and booster-assist lines shall be protected from excessive heat and vibration and installed in a manner which prevents chafing.

1.3.2.5 All brake systems shall be designed to permit visual inspection of brake lining wear without removal of any chassis components.

1.3.2.6 Antilock brake systems for either air or hydraulic brakes shall include control of all axles in compliance with FMVSS 105 or 121.

1.4 Bumper Front

1.4.1 All school buses shall be equipped with a front bumper. The front bumper shall be furnished by the chassis manufacturer as part of the chassis on all types of chassis unless there is a specific arrangement between the chassis manufacturer and body manufacturer that the body manufacturer will furnish the front bumper.

1.4.2 Unless an energy absorbing bumper is used, the front bumper shall be of pressed steel channel or equivalent material at least 3/16" thick and not less than 8" wide (high) and shall extend beyond forward-most part of the body, grille, hood, and fenders and shall extend to outer

edges of the fenders at the bumper's top line.

1.4.3 Front bumper, except breakaway bumper ends, shall be of sufficient strength to permit pushing a vehicle of equal gross vehicle weight without permanent distortion to the bumper, chassis, or body.

1.4.4 The bumper shall be designed or reinforced so that it will not deform when the bus is lifted by a chain that is passed under the bumper (or through the bumper if holes are provided for this purpose) and attached to both tow eyes. For the purpose of meeting this standard, the bus shall be empty and positioned on a level, hard surface and both tow eyes shall share the load equally.

1.4.5 If an optional energy-absorbing front bumper is used, it shall meet the strength requirements in the 1995 National Standards.

1.5 Certification: Chassis manufacturer will, upon request, certify to the state agency having pupil transportation jurisdiction that their product meets minimum standards on items not covered by certification issued under requirements of the National Traffic and Motor Vehicle Safety Act.

1.6 Clutch

1.6.1 Clutch torque capacity shall be equal to or greater than the engine torque output.

1.6.2 A starter interlock shall be installed to prevent actuation of the starter if the clutch is not depressed.

1.7 Color

1.7.1 Chassis, including wheels and front bumper, shall be black. Body cowl, hood, and fenders shall be in National School Bus Yellow (NSBY). The hood may be painted with non-reflective paint. (See Appendix B, 1995 National Standards)

1.7.2 Demountable rims, if used, may be, silver, gray or black as received from the wheel manufacturer.

1.8 Daytime Running Lights: Exterior head lamps and parking lamps may be provided with a switch to automatically operate said lamps when the vehicle's ignition is engaged. This switch, if furnished shall not engage while the starter is engaged. If this switch is designed to provide reduced illumination under normal operating conditions, a means whereby the head lamps and parking lamps can be engaged at full power shall be provided.

1.9 Drive Shaft: Drive shaft shall be protected by a metal guard or guards around the circumference of the drive shaft to reduce the possibility of its whipping through the floor or dropping to the ground if broken.

1.10 Electrical System

1.10.1 Battery

1.10.1.1 Storage battery shall have minimum cold cranking capacity rating equal to the cranking current required for 30 seconds at 0 degrees Fahrenheit (-17.8⁰ C) and a minimum reserve capacity rating of 120 minutes at 25 amps. Higher capacities may be required depending upon

optional equipment and local environmental conditions.

1.10.1.2 Since all batteries are to be secured in a sliding tray in the body, chassis manufacturers shall temporarily mount the battery on the chassis frame, except that van conversion or cutaway front-section chassis may be manufacturer's standard configuration. In these cases, the final location of the battery and the appropriate cable lengths shall be according to the SBMI Design Objectives Booklet, 1990 edition, or as mutually agreed upon by the chassis and body manufacturer. In all cases, however, the battery cable provided with the chassis shall have sufficient length to allow some slack.

1.10.2 Alternator

1.10.2.1 All Type A buses and Type B buses up to 15,000 lbs. GVWR shall have a minimum 60 ampere alternator.

1.10.2.2 Types A-I and Type B buses over 15,000 lbs. GVWR and all types C and D buses shall be equipped with a heavy-duty truck or bus-type alternator meeting SAE J 180, having a minimum output rating of 100 amperes. Alternators of 100 through 145 ampere design shall produce a minimum of 50 amperes output at engine idle speed.

1.10.2.3 All buses equipped with an electrical power lift shall have a minimum 130 ampere alternator.

1.10.2.4 Direct-drive alternator is permissible in lieu of belt drive. Belt drive shall be capable of handling the rated capacity of the alternator with no detrimental effect on other driven components.

1.10.2.5 Refer to SBMI Design Objectives, 1990 edition for estimating required alternator capacity.

1.10.3 Wiring

1.10.3.1 All wiring shall conform to current applicable recommended practices of the Society of Automotive Engineers (SAE).

1.10.3.1.1 All wiring shall use a standard color and number coding and each chassis shall be delivered with a wiring diagram that illustrates the wiring of the chassis.

1.10.3.2 Chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or in an accessible location in the engine compartment of vehicles designed without a cowl, that shall contain the following terminals for the body connections:

1.10.3.2.1 Main 100 amp body circuit

1.10.3.2.2 Tail lamps

1.10.3.2.3 Right turn signal

1.10.3.2.4 Left turn signal

1.10.3.2.5 Stop lamps

1.10.3.2.6 Back up lamps

1.10.3.2.7 Instrument panel lights (rheostat controlled by head lamp switch)

1.10.4 Circuits

1.10.4.1 An appropriate identifying diagram

(color and number coded) for electrical circuits shall be provided to the body manufacturer for distribution to the end user.

1.10.4.2 Headlight system must be wired separately from the body-controlled solenoid.

1.11 Exhaust System

1.11.1 Exhaust pipe, muffler and tailpipe shall be outside the bus body compartment and attached to the chassis so as not to damage any other chassis component.

1.11.2 Tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing.

1.11.3 Chassis manufacturers shall furnish an exhaust system with tailpipe of sufficient length to exit the rear of the bus or at the left side of the bus body no more than 18" forward of the front edge of the rear wheel house opening. If designed to exit at the rear of the bus, the tailpipe shall extend at least five inches beyond the end of the chassis frame. If designed to exit to the side of the bus, the tailpipe shall extend at least 48.5 inches (51.5 inches if the body is to be 102 inches wide) outboard from the chassis centerline.

1.11.3.1 On Types C and D vehicles, the tailpipe shall not exit beneath a fuel fill or emergency door exit.

1.11.3.2 Type A and B chassis may be furnished with the manufacturer's standard tailpipe configuration.

1.11.4 Exhaust system on a chassis shall be adequately insulated from the fuel system.

1.11.5 Muffler shall be constructed of corrosion-resistant material.

1.11.6 The exhaust system on vehicles equipped with a power lift unit may be routed to the left of the right frame rail to allow for the installation of a power lift unit on the right side of the vehicle.

1.12 Fenders, Front-Type C Vehicles

1.12.1 Total spread of outer edges of front fenders, measured at fender line, shall exceed total spread of front tires when front wheels are in straight-ahead position.

1.12.2 Front fenders shall be properly braced and free from any body attachments.

1.13 Frame

1.13.1 Frame or equivalent shall be of such design and strength characteristics as to correspond at least to standard practice for trucks of the same general load characteristics which are used for highway service.

1.13.2 Any secondary manufacturer that modifies the original chassis frame shall guarantee the performance of workmanship and materials resulting from such modification.

1.13.3 Frames shall not be modified for the purpose of extending the wheel base.

1.13.4 Holes in top or bottom flanges or side units of the frame, and welding to the frame, shall not be permitted

except as provided or accepted by chassis manufacturer.

1.13.5 Frame lengths shall be provided in accordance with SBMI Design Objectives, 1990 edition, except where body and chassis manufacturer are the same or have established mutual design criteria for the vehicle.

1.14 Fuel Tank

1.14.1 Fuel tank or tanks having a 30 gallon capacity with a 25 gallon actual draw shall be provided by the chassis manufacturer. The tank shall be filled and vented to the outside of the body, in a location where accidental fuel spillage will not drip or drain on any part of the exhaust system.

1.14.2 No portion of the fuel system which is located outside the engine compartment, except the filler tube, shall extend above the top of the chassis frame rail. Fuel lines shall be mounted to obtain maximum possible protection from the chassis frame.

1.14.3 Fuel filter with replaceable element shall be installed between the fuel tank and engine.

1.14.4 Fuel tank installation shall be in accordance with SBMI Design Objectives, 1990 edition, and all Federal Motor Vehicle Safety Standards in effect on the date of manufacture of the bus.

1.14.4.1 Fuel tank(s) may be mounted between the chassis frame rails or outboard of the frame rails on either the left or right side of the vehicle.

1.14.5 The actual draw capacity of each fuel tank shall be 83% of the tank capacity.

1.14.6 Unless specific agreement has been made between the body and chassis manufacturers, fuel tanks and filler spouts shall not be located in spaces restricted by SBMI Design Objectives, 1990 edition.

1.14.7 Installation of alternative fuel systems, including fuel tanks and piping from tank to engine, shall comply with all applicable fire codes and applicable Federal Motor Vehicle Safety Standards in effect on the date of manufacture of the bus.

1.14.7.1 Installation of LPG tanks shall comply with National Fire Protection Association (NFPA) 58. Installation of other alternative fuel tanks shall comply with applicable NFPA standards.

1.14.8 Fuel gauges must be calibrated for size of tank used. If more than one tank is used, there must be a gauge for each tank.

1.15 Governor

1.15.1 An engine governor and/or road speed governor is/are permissible.

1.15.2 When engine is remotely located from driver, the governor shall be set to limit engine speed to maximum revolutions per minute recommended by engine manufacturer, and a tachometer shall be installed so the engine speed may be known to the driver.

1.16 Heating System, Provision For: The chassis engine shall have plugged openings for the purpose of

supplying hot water for the bus heating system. The openings shall be suitable for attaching 3/4 inch pipe thread/hose connector. The engine shall be capable of supplying water having a temperature of at least 170 degrees Fahrenheit at a flow rate of 50 pounds per minute at the return end of 30 feet of one inch inside diameter automotive hot water heater hose. (SBMI Standard No. 001--Standard Code for Testing and Rating Automotive Bus Hot Water Heating and Ventilating Equipment.)

1.17 Horn: Bus shall be equipped with horn or horns of standard make with each horn capable of producing a complex sound in bands of audio frequencies between 250 and 2,000 cycles per second and tested in accordance with SAE J-377.

1.18 Instruments and Instrument Panel

1.18.1 Chassis shall be equipped with the following instruments and gauges. (Lights in lieu of gauges are not acceptable, except as noted):

1.18.1.1 Speedometer

1.18.1.2 Odometer which will give accrued mileage (to seven digits), including tenths of miles.

1.18.1.3 Voltmeter: Ammeter with graduated charge and discharge, with ammeter and its wiring compatible with generating capacities, is permitted in lieu of voltmeter.

1.18.1.4 Oil pressure gauge

1.18.1.5 Water temperature gauge

1.18.1.6 Fuel gauge

1.18.1.7 Upper beam headlight indicator

1.18.1.8 Brake indicator gauge (vacuum or air): Light indicator in lieu of gauge is permitted on vehicle equipped with hydraulic-over-hydraulic brake system.

1.18.1.9 Turn signal indicator

1.18.1.10 Glow-plug indicator light where appropriate

1.18.2 All instruments shall be easily accessible for maintenance and repair.

1.18.3 Instruments and gauges shall be mounted on the instrument panel so that each is clearly visible to the driver while seated in a normal driving position in accordance with SBMI Design Objectives, 1990 edition.

1.18.4 Instrument panel shall have lamps of sufficient candlepower to illuminate all instruments and gauges and shift selector indicator for automatic transmission.

1.19 Oil Filter: An oil filter with a replaceable element shall be provided and connected by flexible oil lines if not a built-in or an engine-mounted design. The oil filter shall have a capacity of at least one (1) quart.

1.20 Openings: All openings in the floorboard or firewall between chassis and passenger compartment, such as for gearshift selector and parking brake lever, shall be sealed.

1.21 Passenger Load

1.21.1 Actual gross vehicle weight (GVW) is the sum of the chassis weight, plus the body weight, plus the driver's weight, plus total seated pupil weight. (For purposes of calculation, the driver's weight is 150 pounds and the pupil weight is 120 pounds per pupil.)

1.21.2 Actual gross vehicle weight (GVW) shall not exceed the chassis manufacturer's GVWR for the chassis nor shall the actual weight carried on any axle exceed the chassis manufacturer's GVWR.

1.21.3 Manufacturer's GVWR shall be furnished in duplicate (unless more are requested) by manufacturers to the Delaware Department of Education. The Department of Education shall, in turn, transmit such ratings to other state agencies responsible for development or enforcement of state standards for school buses.

1.22 Power and Grade Ability: GVWR shall not exceed 185 pounds per published net horsepower of the engine at the manufacturer's recommended maximum number of revolutions per minute.

1.23 Shock Absorbers: The bus shall be equipped with double-action shock absorbers compatible with manufacturer's rated axle capacity at each wheel location.

1.24 Springs

1.24.1 The capacity of springs or suspension assemblies shall be commensurate with the chassis manufacturer's GVWR.

1.24.2 Steel leaf rear springs shall be a progressive rate or multi-stage design. Front leaf springs shall have a stationary eye at one end and shall be protected by a wrapped leaf in addition to the main leaf.

1.25 Steering Gear

1.25.1 The steering gear shall be approved by the chassis manufacturer and designed to ensure safe and accurate performance when the vehicle is operated with maximum load and at maximum speed.

1.25.2 If external adjustments are required, steering mechanism shall be accessible to accomplish same.

1.25.3 No changes shall be made in the steering apparatus which are not approved by the chassis manufacturer.

1.25.4 There shall be a clearance of at least 2 inches between the steering wheel and cowl, instrument panel, windshield, or any other surface.

1.25.5 Power steering is required and shall be of the integral type with integral valves.

1.25.6 The steering system shall be designed to provide a means for lubrication of all wear-points, if wear-points are not permanently lubricated.

1.26 Throttle: The force required to operate the throttle shall not exceed 16 pounds throughout the full range of accelerator pedal travel.

1.27 Tires and Rims

1.27.1 Tires and rims of the proper size and tires with a load rating commensurate with chassis manufacturer's

gross vehicle weight rating shall be provided. The use of multi-piece rims and/or tube-type tires shall not be permitted.

1.27.2 Dual rear tires shall be provided on Type A-I, Type B, Type C, and Type D buses.

1.27.3 All tires on a vehicle shall be of the same size, and the load range of the tires shall meet or exceed the GVWR as required by FMVSS 120.

1.27.4 If the vehicle is equipped with a spare tire and rim assembly, it shall be the same size as those mounted on the vehicle.

1.27.5 If a tire carrier is required, it shall be suitably mounted in an accessible location outside the passenger compartment.

1.28 Tow Eyes or Hooks: Tow eyes or hooks shall be furnished and attached so as not to project beyond the front bumper. Tow eyes or hooks attached to the frame chassis shall be furnished by the chassis manufacturer. This installation shall be in accordance with the chassis manufacturer's standards.

1.29 Transmission

1.29.1 Automatic transmissions shall have no fewer than three forward speeds and one reverse speed. The shift selector shall provide a detent between each gear position when the gear selector quadrant and shift selector are not steering column mounted.

1.29.2 In manual transmissions, second gear and higher shall be synchronized except when incompatible with engine power. A minimum of three forward speeds and one reverse speed shall be provided.

1.30 Turning Radius

1.30.1 A chassis with a wheelbase of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, curb-to-curb measurement.

1.30.2 A chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44 1/2 feet, curb-to-curb measurement.

1.31 Undercoating: The chassis manufacturers or their agent shall coat the undersides of steel or metallic-constructed front fenders with a rust-proofing compound for which compound manufacturers have issued notarized certification of compliance to chassis builder that the compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B, using modified tests.

2.0 Bus Body Standards

2.1 Aisle

2.1.1 All emergency doors shall be accessible by a 12" minimum aisle. Aisle shall be unobstructed at all times by any type of barrier, seat, wheelchair or tiedown.

2.1.2 A 2" white line shall separate the driver compartment from the passenger compartment.

2.1.3 The seat backs shall be slanted sufficiently to

give aisle clearance of 15" at tops of seat backs.

2.2 Back-Up Warning Alarm: An automatic audible alarm shall be installed behind the rear axle and shall comply with the published Backup Alarm Standards (SAE 994), providing a minimum of 112 dBA for rubber-tired vehicles.

2.3 Battery Compartment

2.3.1 When the battery is mounted as described in the chassis section, the body manufacturer shall securely attach the battery on a slide-out or swing-out tray in a closed, vented compartment in the body skirt, so that the battery is accessible for convenient servicing from the outside. Battery compartment door or cover shall be hinged at front or top, and secured by an adequate and conveniently-operated latch or other type fastener. On all Type A buses, one or both batteries may be mounted in the engine compartment in an accessible location.

2.3.2 Buses may be equipped with a battery shut-off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

2.4 Bumper (Front)

2.4.1 On a Type "D" school bus, if the chassis manufacturer does not provide a bumper, it shall be provided by the body manufacturer. The bumper will conform to the standards in the chassis section.

2.4.2 If an optional energy-absorbing front bumper is used, it shall meet the strength requirements in the 1995 National Standards.

2.5 Bumper (Rear)

2.5.1 Bumper shall be pressed steel channel or equivalent material, at least 3/16" thick, and shall be a minimum of 8" wide (high) on Type A-II and a minimum of 9 1/2" wide (high) on Types A-I, B, C, and D buses and of sufficient strength to permit being pushed by another vehicle without permanent distortion.

2.5.2 Bumper shall be wrapped around back corners of the bus. It shall extend forward at least 12", measured from the rear-most point of the body at the floor line and shall be flush mounted to body side or protected with an end panel.

2.5.3 Bumper shall be attached to the chassis frame in such a manner that it may be easily removed. It shall be so braced as to withstand impact from a rear or side impact. It shall be so attached as to discourage hitching of rides.

2.5.4 Bumper shall extend at least 1" beyond rear-most part of body surface measured at the floor line.

2.5.5 If an optional energy-absorbing rear bumper is used, it shall meet the strength requirements of the 1995 National Standards.

2.6 Ceiling: See Insulation and Interior, Body section.

2.7 Certification: Body manufacturer shall, upon request, certify to the Delaware Department of Education, that their product meets state standards on items not covered by certification issued under requirements of the National Traffic and Motor Vehicle Safety Act.

2.8 Chains (Tire): See Wheelhousing, Body section.

2.9 Color

2.9.1 The school bus body shall be painted National School Bus Yellow (NSBY).

2.9.2 The body exterior paint trim, bumper, lamp hoods, emergency door arrow, and lettering shall be black.

2.10 Communications: Buses shall be equipped with a radio or telephonic communication device. It will be added by the school district, school, or contractor.

2.11 Construction

2.11.1 Construction shall be of prime commercial quality steel or other metal or material with strength at least equivalent to all steel, as certified by the bus body manufacturer.

2.11.2 Construction shall be reasonably dust-proof and watertight.

2.11.3 Body joints present in that portion of the Type A-II school bus body furnished exclusively by the body manufacturer shall conform to the performance requirements of FMVSS 221. This does not include the body joints created when body components are attached to components furnished by the chassis manufacturer.

2.12 Crossing Control Arm

2.12.1 Buses shall be equipped with a crossing control arm mounted on the right side of the front bumper, which shall not open more than 90°.

2.12.2 All components of the crossing control arm and all connections shall be weatherproofed.

2.12.3 The crossing control arm shall incorporate system connectors (electrical, vacuum, or air) at the gate and shall be easily removable to allow for towing of the bus.

2.12.4 The crossing control arm shall meet or exceed SAE Standard J1133.

2.12.5 The crossing control arm shall be constructed of noncorrosive or nonferrous material or treated in accordance with the body sheet metal standard (see METAL TREATMENT).

2.12.6 There shall be no sharp edges or projections that could cause hazard or injury to students.

2.12.7 The crossing control arm shall extend approximately 72" from the front bumper when in the extended position.

2.12.8 The crossing control arms shall extend simultaneously with the stop arm(s) by means of the stop arm controls.

2.13 Defrosters

2.13.1 Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog and snow.

2.13.2 The defrosting system shall conform to SAE Standards J381 and J382.

2.13.3 The defroster and defogging system shall be

capable of furnishing heated outside ambient air, except the part of the system furnishing additional air to the windshield, entrance door and stepwell may be of the recirculating air type.

2.13.4 Auxiliary fans are not considered defrosting or defogging systems and are described under "Ventilation."

2.13.5 Portable heaters shall not be used.

2.14 Doors

2.14.1 Service door shall be in the driver's control, and designed to afford easy release and provide a positive latching device on manual operating doors to prevent accidental opening. When a hand lever is used, no part shall come together that will shear or crush fingers. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation. If a power-assisted door is used, the actuation switch shall be to the right of the steering wheel (in the same position as the manual handles).

2.14.2 Service door shall be located on the right side of the bus, opposite and within direct view of driver.

2.14.3 Service door shall have a minimum horizontal opening of 24" and a minimum vertical opening of 68". Type A-II vehicles shall have a minimum opening area of 1200 square inches.

2.14.4 Service door shall be a split-type, sedan-type, or jack-knife type. (Split-type door includes any sectioned door which divides and opens inward or outward.) If one section of a split-type door opens inward and the other opens outward, the front section shall open outward.

2.14.5 Lower as well as upper door panels shall be of approved safety glass. Bottom of each lower glass panel shall not be more than 10" from the top surface of bottom step. Top of each upper glass panel shall not be more than 3" from the top of the door. Type A vehicles shall have an upper panel (windows) of safety glass with an area of at least 350 square inches.

2.14.6 Vertical closing edges on split-type or folding-type entrance doors shall be equipped with flexible material to protect children's fingers. Type A-II vehicles may be equipped with chassis manufacturer's standard entrance door.

2.14.7 There shall be no door to left of driver on Type B, C or D vehicles. All Type A vehicles may be equipped with chassis manufacturer's standard door.

2.14.8 All doors shall be equipped with padding at the top edge of each door opening. Padding shall be at least 3" wide and 1" thick and extend the full width of the door opening.

2.15 Driver Compartment

2.15.1 Driver's seat supplied by the body company shall be a high back seat with a minimum seat back adjustment of 15 degrees, not requiring the use of tools, and with a head restraint to accommodate a 95th percentile adult male, as defined in FMVSS 208. The driver's seat shall be

secured with nuts, bolts, and washers or flanged-headed nuts.

2.15.2 Driver seat positioning and range of adjustments shall be designed to accommodate comfortable actuation of the foot control pedals by 95% of the male/female adult population.

2.16 Emergency Exits

2.16.1 Emergency door(s) and other emergency exits shall comply with the requirements of FMVSS 217 and any of the requirements of these standards that exceed FMVSS 217.

2.16.2 Emergency door requirements

2.16.2.1 Upper portion of the emergency door shall be equipped with approved safety glazing, exposed area of which shall be at least 400 square inches. The lower portion of the rear emergency doors on Types A-I, B, C, and D vehicles shall be equipped with a minimum of 350 square inches of approved safety glazing.

2.16.2.2 There shall be no steps leading to an emergency door.

2.16.2.3 The words "EMERGENCY DOOR," in letters at least 2" high, shall be placed at the top of or directly above the emergency door, or on the door in the metal panel above the top glass, both inside and outside the bus.

2.16.2.4 The emergency door(s) shall be equipped with padding at top edge of each door opening. Padding shall be at least 3" wide and 1" thick, and extend the full width of the door opening.

2.16.2.5 The side emergency door, if installed, must meet the requirements as set forth in FMVSS 217, regardless of its use with any other combination of emergency exits. There shall be a clear aisle leading to it i.e., flip seats shall not be used.

2.16.2.6 There shall be no obstruction higher than 1/4 inch across the bottom of any emergency door opening.

2.16.3 Emergency exit requirements: Types A, B, C, and D vehicles shall be equipped with a total number of emergency exits as follows for the indicated standard seating capacities of vehicles (See below). Exits required by FMVSS 217 may be included to comprise the total number of exits specified.

0 to 42 Passenger = 1 emergency exit per side and 1 roof hatch.

43 to 78 Passenger = 2 emergency exits per side and 2 roof hatches.

79 to 90 Passenger = 3 emergency exits per side and 2 roof hatches.

2.16.4 Each emergency exit above shall comply with FMVSS 217. These emergency exits are in addition to the rear emergency door or exit.

2.16.5 In addition to the audible warning required on emergency doors by FMVSS 217, additional emergency

exits shall also be equipped with an audible warning device.

2.17 Emergency Equipment

2.17.1 Fire Extinguisher

2.17.1.1 The bus shall be equipped with at least one UL approved pressurized, dry chemical fire extinguisher complete with hose. Extinguisher shall be mounted in a bracket, located in the driver's compartment and readily accessible to the driver and passengers. A pressure gauge shall be mounted on the extinguisher and be easily read without moving the extinguisher from its mounted position.

2.17.1.2 The fire extinguisher shall have a total rating of 2A10BC or greater. The operating mechanism shall be sealed with a type of seal which will not interfere with the use of the fire extinguisher.

2.17.2 First-aid kit

2.17.2.1 The bus shall have a removable moisture-proof and dust-proof first aid kit in an accessible place in the driver's compartment. It shall be properly mounted and identified as a first aid kit. The location for the first aid kit shall be marked.

2.17.2.2 Minimum contents include:

Units	Qty. per unit
2	12 - 1" x 3" adhesive bandages
1	2 - 2" bandage compress
1	1 - 4" bandage compress
1	1 - non-sterile triangular bandages approximately 40" x 36" x 54" with 2 safety pins
1	1 -eye kit with 2 sterile eye pads and 1 oz. wash
1	3 - burn ointment, 1/8 oz.
1	5 - ammonia inhalants
1	5 - PVP antiseptic swabs
1	5 - insect sting swabs

2.17.3 Body fluid clean-up kit: Each bus shall have a removable and moisture-proof body fluid clean-up kit accessible to the driver. It shall be properly mounted and identified as a body fluid clean-up kit. Contents of body fluid clean-up kit shall include the following:

2.17.3.1 1- 16 oz. bottle of 70% rubbing alcohol or 10% solution of bleach

2.17.3.2 1- plastic trash bag with tie, minimum of 12" x 12"

2.17.3.3 2- pairs of latex disposable gloves

2.17.3.4 10- paper towels, approximately 10 1/2" x 12 1/2"

2.17.4 Warning devices: Each school bus shall contain at least three (3) reflectorized triangle road warning devices mounted in an accessible place. These devices must meet requirements in FMVSS 125.

2.17.5 If any emergency equipment is mounted in an enclosed compartment, refer to the 1995 National Standards.

2.18 Floor

2.18.1 Floor in under-seat area, including tops of wheelhousing, driver's compartment and toeboard, shall be covered with rubber floor covering or equivalent, having a minimum overall thickness of .125". The driver's area on all Type A buses may be manufacturer's standard flooring and floor covering.

2.18.2 Floor covering in aisles shall be of aisle-type rubber or equivalent, wear-resistant and ribbed. Minimum overall thickness shall be .187" measured from tops of ribs.

2.18.3 Floor covering must be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be a type recommended by the manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.

2.18.4 On Types A-I, B, C and D buses a screw-down plate that is secured and insulated shall be provided to access the fuel tank sending unit.

2.19 Heaters

2.19.1 Heater shall be a hot-water type.

2.19.2 Every bus with a capacity of 36 or more shall have 2 heaters at the front: 1 to the left of the driver, and 1 to the right of the driver near the entrance door, and 1 heater in the rear portion of the bus.

2.19.2 3 If only one heater is used, it shall be fresh-air or combination fresh-air and recirculation type.

2.19.3 4 If more than one heater is used, additional heaters may be recirculating air type.

2.19.4 5 The heating system shall be capable of maintaining bus interior temperatures as specified in SAE test procedure J2233.

2.19.5 6 All heaters installed by body manufacturers shall bear a name plate that indicates the heater rating in accordance with SBMI Standard No. 001. The plate shall be affixed by the heater manufacturer and shall constitute certification that the heater performance is as shown on the plate.

2.19.6 7 Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or any sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hoses shall conform to SAE Standard J20c. Heater lines on the interior of bus shall be shielded to prevent scalding of the driver or passengers.

2.19.7 8 Each hot water system installed by a body manufacturer shall include one shut-off valve in the pressure line and one shut-off valve in the return line with both valves at the engine in an accessible location, except that on all Types A and B buses, the valves may be installed in another accessible location.

2.19.8 9 There shall be a water flow regulating valve installed in the pressure line for convenient operation

by the driver while seated.

2.19.9 10 Accessible bleeder valves shall be installed in an appropriate place in the return lines of body company-installed heaters to remove air from the heater lines.

2.19.10 11 Access panels shall be provided to make heater motors, cores, and fans readily accessible for service. Outside access panel may be provided for the driver's heater.

2.20 Hinges: All exposed metal door hinges subject to corrosion shall be designed to allow lubrication to be channeled to the center 75% of each hinge loop.

2.21 Identification

2.21.1 Body shall bear words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of body or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Letters shall conform to "Series B" of Standard Alphabets for highway signs. "SCHOOL BUS" lettering shall have a reflective background, or as an option, may be illuminated by backlighting. All lettering on NSBY surfaces shall be black, and lettering on black surfaces shall be NSBY or white.

2.21.2 Bus identification number shall be displayed on the sides, on the rear, and on the front.

2.21.3 Other lettering, numbering, or symbols which may be displayed on the exterior of the bus, shall be limited to:

2.21.3.1 District or company name or owner of the bus may be displayed.

2.21.3.2 Bus identification number on the top of the bus, in addition to required numbering on sides, rear, and front.

2.21.3.3 The location of the battery(ies) identified by the word "BATTERY" or "BATTERIES" on the battery compartment door in 2" lettering.

2.21.3.4 Lettering to identify the fuel type at the fuel filler location (2" letters maximum).

2.21.3.5 Symbols or letters near the service door displaying information for identification by the students of the bus or route served. Such symbols or lettering, if used, shall not exceed 36 square inches in size.

2.21.3.6 Symbols identifying the bus as equipped for or transporting students with special needs (see Specially Equipped School Bus section).

2.22 Inside Height: Inside body height shall be 72" or more, measured metal to metal, at any point on longitudinal center line from front vertical bow to rear vertical bow. Inside body height of Type A buses shall be 62" or more.

2.23 Insulation

2.23.1 Thermal insulation shall be fire-resistant, UL approved, and approximately 1 1/2" thick with minimum R-value of 5.5. Insulation shall be installed to prevent sagging.

2.23.2 If floor insulation is required, it shall be

either 5 ply nominal 5/8" thick plywood, or a material of equal or greater strength and insulation R value, and it shall equal or exceed properties of the exterior-type softwood plywood, C-D Grade as specified in standard issued by U.S. Department of Commerce. When plywood is used, all exposed edges shall be sealed. Type A-II buses may be equipped with nominal 1/2" thick plywood meeting above requirements.

2.24 Interior

2.24.1 Interior of bus shall be free of all unnecessary projections, which include luggage racks and attendant hand rails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If ceiling is constructed to contain lapped joints, forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and/or tow chains. (See Storage Compartment, Body section)

2.24.2 The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

2.24.3 Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in the 1995 National Standards.

2.25 Lamps and Signals

2.25.1 Interior lamps shall be provided which adequately illuminate aisle and stepwell. Stepwell light shall be illuminated by a service door operated switch, to illuminate only when headlights and clearance lights are on and service door is open.

2.25.2 Body instrument panel lights shall be controlled by an independent rheostat switch.

2.25.3 School bus alternately flashing signal lamps:

2.25.3.1 Bus shall be equipped with two red lamps at the rear of vehicle and two red lamps at the front of the vehicle. Lamps may be the sealed beam or halogen type.

2.25.3.2 In addition to the four red lamps described above, four amber lamps shall be installed so that one amber lamp is located near each red signal lamp, at same level, but closer to vertical centerline of bus. The system of red and amber signal lamps shall be wired so that amber lamps are energized manually, and red lamps are automatically energized (with amber lamps being automatically de-energized) when stop signal arm is extended or when bus service door is opened. An amber pilot light and a red pilot light shall be installed adjacent to the driver controls for the flashing signal lamp to indicate to the driver which lamp system is activated.

2.25.3.3 Area around lens of each alternately flashing signal lamp and extending outward approximately

3" shall be black in color. In installations where there is no flat vertical portion of body immediately surrounding entire lens of lamp, a circular or square band of black approximately 3" wide, immediately below and to both sides of the lens, shall be black in color on body or roof area against which signal lamp is seen (from distance of 500 feet along axis of vehicle). Visors or hoods with an appropriate black background to fit the shape of the lights and roofcap are required and shall have a minimum depth of 4".

2.25.3.4 Red lamps shall flash at any time the stop signal arm is extended.

2.25.3.5 All flashers for alternately flashing red and amber signal lamps shall be enclosed in the body in a readily accessible location.

2.25.4 Turn signal and stop/tail lamps:

2.25.4.1 Bus body shall be equipped with amber rear turn signal lamps that are at least 7" in diameter and meet SAE specifications. These signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. Turn signal lamps are to be placed as wide apart as practical and their centerline shall be approximately 8" below the rear windows. Type A-II conversion vehicle lamps must be at least 21 square inches in lens area. All turn signal lens shall be amber in color.

2.25.4.2 Buses shall be equipped with amber side-mounted turn signal lights. The turn signal lamp on the left side shall be mounted rearward of the stop signal arm and the turn signal lamp on the right side shall be mounted rearward of the service door.

2.25.4.3 Buses shall be equipped with four combination red stop/tail lamps:

2.25.4.3.1 Two combination lamps with a minimum diameter of 7", or if a shape other than round, a minimum 38 square inches of illuminated area shall be mounted on the rear of the bus just inside the turn signal lamps.

2.25.4.3.2 Two combination lamps with a minimum diameter of 4", or if a shape other than round, a minimum 12 square inches of illuminated area shall be placed on the rear of the body between the beltline and the floor line. Rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated. Type A-II buses with bodies supplied by chassis manufacturer may have manufacturer's standard stop and tail lamps.

2.25.4.4 All buses shall be equipped with a transistorized monitor which monitors the front and rear lamps of the school bus. The monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse or circuit breaker against any short circuit or intermittent shorts.

2.25.4.5 Body markers shall be the armored type.

2.25.4.6 Backup lamps: Bus body shall be equipped with two white rear backup lamp signals that are at least 4" in diameter or, if a shape other than round, a minimum of 13 square inches of illuminated area, meeting SAE specifications. If backup lamps are placed on the same line as the brake lamps and turn signal lamps, they shall be to the inside.

2.26 Metal Treatment

2.26.1 All metal used in construction of bus body shall be zinc-coated or aluminum-coated or treated by equivalent process before bus is constructed. Included are such items as structural members, inside and outside panels, door panels and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts.

2.26.2 All metal parts that will be painted shall be, in addition to above requirements, chemically cleaned, etched, zinc-phosphate-coated and zinc-chromate or epoxy primed or conditioned by equivalent process.

2.26.3 In providing for these requirements, particular attention shall be given lapped surfaces, welded connections of structural members, cut edges punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subjected to abrasion during vehicle operation.

2.26.4 As evidence that above requirements have been met, samples of materials and sections used in construction of the bus body subjected to 1,000-hour salt spray test as provided for in latest revision of ASTM Standard B-117 shall not lose more than 10 percent of material by weight.

2.27 Mirrors

2.27.1 Interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing which retains the glass in the event of breakage. Mirror shall have rounded corners and protected edges. All Type A buses shall have a minimum of a 6" x 16" mirror and Types B, C, and D buses shall have a minimum of a 6" x 30" mirror.

2.27.2 Each school bus shall be equipped with exterior mirrors meeting the requirements of FMVSS 111. Mirrors shall be easily adjustable, but shall be rigidly braced so as to reduce vibration.

2.28 Mounting

2.28.1 Chassis frame shall support rear body cross member. Bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such manner as to prevent shifting or separation of the body from the chassis under severe operating conditions.

2.28.2 Insulation material shall be placed at all contact points between body and chassis frame on Types A-I, B, C, and D buses, and shall be so attached to the chassis

frame or body that it will not move under severe operating conditions.

2.29 Overall Length: Overall length of bus shall not exceed 40 feet, excluding accessories.

2.30 Overall Width: Overall width of bus shall not exceed 96", excluding accessories. Delaware Law (21 Del. Code, §4363b) states that the body, excluding mirrors, shall have a minimum width of 75 inches and a minimum height of 79 inches from road surface to top of roof.

2.31 Public Address System: There shall be installed a public address amplifier specifically designed for vehicular applications with a minimum power output of not less than 5 watts sine-wave power. Such system shall consist of an on-off switch, volume control, and an inside-outside speaker selector switch. Additionally, it shall have an outside speaker completely weather-proofed a minimum 7 watt power capability and two interior dynamic speakers with a minimum diameter of 4 inches. These speakers shall be located above the window line, to the rear of the driver, and shall not project more than 1/2 inch from the interlining of the bus. There shall be no sharp edges or corners which could cause injury to a passenger. The front speaker shall be approximately 5 feet to the rear of the driver, and the rear speaker shall be in the back portion of the bus. The outside speaker shall be located on the front of the cowl under the hood or other suitable location under the hood.

2.32 Reflective Material (see Appendix B of the 1995 National Standards)

2.32.1 Front and/or rear bumper may be marked diagonally 45 degrees down to centerline of pavement with 2" ±1/4" wide strips of non-contrasting reflective material.

2.32.2 Rear of bus body shall be marked with strips of reflective NSBY material to outline the perimeter of the back of the bus using material which conforms with the requirements of FMVSS 571.131 Table 1. The perimeter marking of rear emergency exits per FMVSS 217 and/or the use of reflective "SCHOOL BUS" signs partially accomplish the objective of this requirement. To complete the perimeter marking of the back of the bus, strips of at least 1 3/4" reflective NSBY material shall be applied horizontally above the rear windows and above the rear bumper extending from the rear emergency exit perimeter marking outward to the left and right rear corners of the bus; and vertical strips shall be applied at the corners connecting these horizontal strips.

2.32.3 "SCHOOL BUS" signs, if not of lighted design, shall be marked with reflective NSBY material comprising background for lettering of the front and/or rear "SCHOOL BUS" signs.

2.32.4 Sides of bus body shall be marked with reflective NSBY material at least 1 3/4" in width, extending the length of the bus body and located (vertically) between the floor line and the beltline.

2.33 Rub Rails

2.33.1 There shall be one rub rail located on each

side of bus approximately at seat level which shall extend from rear side of entrance door completely around bus body (except emergency door or any maintenance access door) to point of curvature near outside cowl on left side.

2.33.2 There shall be one rub rail located approximately at floor line which shall cover the same longitudinal area as upper rub rail, except at wheelhousing, and shall extend only to radii of right and left rear corners.

2.33.3 Both rub rails shall be attached at each body post and all other upright structural members.

2.33.4 Both rub rails shall be 4" or more in width in their finished form, shall be of 16-gauge steel or suitable material of equivalent strength, and shall be constructed in corrugated or ribbed fashion.

2.33.5 Both rub rails shall be applied outside body or outside body posts. Pressed-in or snap-on rub rails do not satisfy this requirement. For Type A-II vehicles using chassis manufacturer's body, or for Types A-I, B, C and D buses using rear luggage or rear engine compartment, rub rails need not extend around rear corners.

2.33.6 There shall be a rub rail or equivalent bracing located horizontally at the bottom edge of the body side skirts.

2.34 Seat Belt for Driver: A Type 2 lap belt/shoulder harness seat belt shall be provided for the driver. The assembly shall be equipped with an emergency locking retractor (ELR) for the continuous belt system. On all buses except Type A equipped with standard chassis manufacturer's driver's seat, the lap portion of the belt shall be guided or anchored to prevent the driver from sliding sideways under it. The lap belt/shoulder harness shall be designed to allow for easy adjustment in order to fit properly and effectively protect drivers varying from 5th percentile female to 95th percentile male.

2.35 Seat and Crash Barriers

2.35.1 All seats shall have a minimum depth of 15". All seat backs shall be a minimum of 24" high and a minimum 20" from seating reference point. There shall be a minimum of 8" clearance between the last seat and the rear of the bus.

2.35.2 In determining seating capacity of bus, allowable average rump width shall be:

2.35.2.1 13" where 3-3 seating plan is used.

2.35.2.2 15" where 3-2 seating plan is used.

2.35.3 All restraining barriers and passenger seats shall be constructed with materials that enable them to meet the criteria contained in the School Bus Seats Upholstery Fire Block Test (See Appendix B of the 1995 National Standards).

2.35.4 Each seat leg shall be secured to the floor by a minimum of two (2) bolts, washers, and nuts. Flange-head nuts may be used in lieu of nuts and washers, or seats may be track-mounted in conformance with FMVSS 222. If track seating is installed, the manufacturer shall supply minimum

and maximum seat spacing dimensions applicable to the bus, which comply with FMVSS 222. This information shall be on a label permanently affixed to the bus.

2.35.5 All seat frames attached to the seat rail shall be fastened with two (2) bolts, washers and nuts or flange-headed nuts.

2.35.6 Type A-II school bus bodies shall be equipped with restraining barriers conforming to FMVSS 222.

2.36 Steps

2.36.1 First step at service door shall be not less than 10" and not more than 14" from the ground when measured from top surface of the step to the ground, based on standard chassis specifications, except that on Type D vehicles, the first step at the service door shall be 12" to 16" from the ground.

2.36.2 Step risers shall not exceed a height of 10". When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.

2.36.3 Steps shall be enclosed to prevent accumulation of ice and snow.

2.36.4 Steps shall not protrude beyond the side body line.

2.36.5 A suitable device (or devices) shall be designed and installed to prevent injury or fatality to passengers from being dragged. At least one such device shall assist passengers during entry or egress, and be of such design to eliminate entanglement.

2.37 Step Treads

2.37.1 All steps, including floor line platform area, shall be covered with 3/16" rubber floor covering or other materials equal in wear and abrasion resistance to top grade rubber.

2.37.2 Metal back of tread, minimum 24-gauge cold roll steel, shall be permanently bonded to ribbed rubber; grooved design shall be such that said grooves run at 90-degree angles to long dimension of step tread.

2.37.3 3/16" ribbed step tread shall have a 1 1/2" white nosing as an integral piece without any joint.

2.37.4 Rubber portion of step treads shall have the following characteristics:

2.37.4.1 Special compounding for good abrasion resistance and high coefficient of friction.

2.37.4.2 Flexibility so that it can be bent around a 1/2" mandrel both at 130 degrees Fahrenheit and 20 degrees Fahrenheit without breaking, cracking, or crazing.

2.37.4.3 Show a durometer hardness 85 to 95.

2.38 Stirrup Steps: There shall be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning the windshield and lamps except when the windshield and lamps are easily accessible from the ground. Steps are permitted in or on the front bumper, in lieu of the stirrup steps, if the windshield and lamps are easily

accessible for cleaning from that position.

2.39 Stop Signal Arm: The stop signal arm(s) shall comply with the requirements of FMVSS 131.

2.40 Storage Compartment: A storage container for tools, tire chains, and/or tow chains may be located either inside or outside the passenger compartment but, if inside, it shall have a cover (seat cushion may not serve this purpose) capable of being securely latched and fastened to the floor, convenient to either the service or emergency door.

2.41 Strobe Light

2.41.1 A white flashing strobe light shall be installed on the roof of all school buses manufactured after January 1, 2001. It shall be located from 4 to 6 feet from the rear of the roof edge (except air conditioned buses with roof-top evaporators), within 1 foot of centerline, and behind all other roof equipment. The strobe shall extend above the roof between 4 1/2 to 6 3/4 inches, and the light shall be 12 to 16 joules with a clear lens emitting light 360 degrees around its vertical axis.

2.41.2 The light shall be wired to activate when the amber alternately flashing signal lamps are activated, continuing through the full loading or unloading cycle, with an override switch to allow activation of the strobe light during inclement weather.

2.41.3 A pilot light shall be included to indicate when the light is in operation

2.42 Sun Shield

2.41.1 2.42.1 Interior adjustable transparent sun shield not less than 6" X 30" for Types B, C, and D vehicles, with a finished edge, shall be installed in a position convenient for use by driver.

2.41.2 2.42.2 On all Type A buses the sun shield shall be manufacturer's standard.

2.42 2.43 Traction Assisting Devices

2.42.1 2.43.1 If traction assisting devices are used, sanders shall:

2.42.1.1 2.43.1.1 be of hopper cartridge-valve type

2.42.1.2 2.43.1.2 have metal hopper with all interior surfaces treated to prevent condensation of moisture

2.42.1.3 2.43.1.3 be of at least 100 pound (grit) capacity

2.42.1.4 2.43.1.4 have cover on filler opening of hopper, which screws into place, sealing unit airtight

2.42.1.5 2.43.1.5 have discharge tubes extending to front of each rear wheel under fender

2.42.1.6 2.43.1.6 have no-clogging discharge tubes with slush-proof, non-freezing rubber nozzles

2.42.1.7 2.43.1.7 be operated by an electric switch with telltale pilot light mounted on the instrument panel

2.42.1.8 2.43.1.8 be exclusively driver controlled

2.42.1.9 2.43.1.9 have gauge to indicate that

hopper needs refilling when it is down to one-quarter full

~~2.42.2~~ 2.43.2 Automatic traction chains may be installed.

~~2.43~~ 2.44 Undercoating

~~2.43.1~~ 2.44.1 Entire underside of bus body, including floor sections, cross member and below floor line side panels, shall be coated with rust-proofing compound for which compound manufacturer has issued notarized certification of compliance to the bus body builder that compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520b using modified test procedures* for following requirements:

~~2.43.1.1~~ 2.44.1.1 salt spray resistance-pass test modified to 5% salt and 1000 hours

~~2.43.1.2~~ 2.44.1.2 abrasion resistance-pass

~~2.43.1.3~~ 2.44.1.3 fire resistance-pass

*Test panels to be prepared in accordance with paragraph 4.6.12 of TT-C-520b with modified procedure requiring that test be made on a 48-hour air cured film at thickness recommended by compound manufacturer.

~~2.43.2~~ 2.44.2 Undercoating compound shall be applied with suitable airless or conventional spray equipment to recommended film thickness and shall show no evidence of voids in cured film.

~~2.44~~ 2.45 Ventilation

~~2.44.1~~ 2.45.1 Auxiliary fans (2) shall meet the following requirements:

~~2.44.1.1~~ 2.45.1.1 Fans for left and right sides shall be placed in a location where they can be adjusted for maximum effectiveness and do not obstruct vision to any mirror, the roadway, or students outside the bus. Note: All Type A buses may be equipped with one fan.

~~2.44.1.2~~ 2.45.1.2 Fans shall be a nominal 6" diameter.

~~2.44.1.3~~ 2.45.1.3 Fan blades shall be covered with a protective cage. Each fan shall be controlled by a separate switch.

~~2.44.2~~ 2.45.2 Body shall be equipped with a suitably controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions, without having to open windows except in extremely warm weather.

~~2.44.3~~ 2.45.3 Static-type non-closeable exhaust ventilation shall be installed in low-pressure area of roof.

~~2.44.4~~ 2.45.4 Roof hatches designed to provide ventilation, regardless of the exterior weather conditions, may be provided.

~~2.45~~ 2.46 Wheelhousing

~~2.45.1~~ 2.46.1 The wheelhousing opening shall allow for easy tire removal and service.

~~2.45.2~~ 2.46.2 The wheelhousing shall be attached to floor sheets in such a manner as to prevent any dust, water or fumes from entering the body. Wheelhousing shall be

constructed of at least 16-gauge steel.

~~2.45.3~~ 2.46.3 The inside height of the wheelhousing above the floor line shall not exceed 12".

~~2.45.4~~ 2.46.4 The wheelhousing shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels.

~~2.45.5~~ 2.46.5 No part of a raised wheelhousing shall extend into the emergency door opening.

~~2.46~~ 2.47 Windows

~~2.46.1~~ 2.47.1 Each full side window, other than emergency exits designated to comply with FMVSS 217, shall provide an unobstructed emergency opening of at least 9" but not more than 13" high and 22" wide, obtained by lowering window. One side window on each side of the bus may be less than 22" wide.

~~2.46.2~~ 2.47.2 Optional tinted and/or frost-free glazing may be installed in all doors, windows, and windshields consistent with federal, state, and local regulations.

~~2.47~~ 2.48 Windshield Washers: A windshield washer system shall be provided.

~~2.48~~ 2.49 Windshield Wipers

~~2.48.1~~ 2.49.1 A windshield wiping system, two-speed or variable speed, with an intermittent feature, shall be provided.

~~2.48.2~~ 2.49.2 The wipers shall be operated by one or more air or electric motors of sufficient power to operate wipers. If one motor is used, the wipers shall work in tandem to give full sweep of windshield.

~~2.49~~ 2.50 Wiring

~~2.49.1~~ 2.50.1 All wiring shall conform to current SAE standards.

~~2.49.2~~ 2.50.2 Circuits:

~~2.49.2.1~~ 2.50.2.1 Wiring shall be arranged in circuits, as required, with each circuit protected by a fuse or circuit breaker. A system of color and number coding shall be used and an appropriate identifying diagram shall be provided to the end user along with the wiring diagram provided by the chassis manufacturer. The wiring diagrams shall be specific to the bus model supplied and include any changes to wiring made by the body manufacturer. Chassis wiring diagrams shall also be supplied to the end user. A system of color and number coding shall be used on buses. The following body interconnecting circuits shall be color coded as noted:

FUNCTION	COLOR
Left Rear Directional Light	Yellow
Right Rear Directional Light	Dark Green
Stoptlights	Red
Back-up Lights	Blue
Taillights	Brown
Ground	White
Ignition Feed, Primary Feed	Black
The color of cables shall correspond to SAE J	

1128.

~~2.49.2.2~~ 2.50.2.2 Wiring shall be arranged in at least six regular circuits as follows:

~~2.49.2.2.1~~ 2.50.2.2.1 Head, tail, stop (brake) and instrument panel lamps

~~2.49.2.2.2~~ 2.50.2.2.2 Clearance and stepwell lamps (stepwell lamp shall be actuated when service door is opened)

~~2.49.2.2.3~~ 2.50.2.2.3 Dome lamp

~~2.49.2.2.4~~ 2.50.2.2.4 Ignition and emergency door signal

~~2.49.2.2.5~~ 2.50.2.2.5 Turn signal lamps

~~2.49.2.2.6~~ 2.50.2.2.6 Alternately flashing signal lamps

~~2.49.2.3~~ 2.50.2.3 Any of the above combination circuits may be subdivided into additional independent circuits.

~~2.49.2.4~~ 2.50.2.4 Whenever heaters and defrosters are used, at least one additional circuit shall be installed.

~~2.49.2.5~~ 2.50.2.5 Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

~~2.49.2.6~~ 2.50.2.6 Each body circuit shall be coded by number or letter on a diagram of circuits and shall be attached to the body in a readily accessible location.

~~2.49.3~~ 2.50.3 The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

~~2.49.4~~ 2.50.4 All wiring shall have an amperage capacity exceeding the design load by at least 25%. All wiring splices are to be done at an accessible location and noted as splices on wiring diagram.

~~2.49.5~~ 2.50.5 A body wiring diagram, of a size which can be easily read, shall be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel.

~~2.49.6~~ 2.50.6 The body power wire shall be attached to a special terminal on the chassis.

~~2.49.7~~ 2.50.7 All wires passing through metal openings shall be protected by a grommet.

~~2.49.8~~ 2.50.8 Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors, which shall be water-resistant and corrosion-resistant.

3.0 Standards for Specially Equipped School Buses

3.1 General Requirements

3.1.1 School buses designed for transporting students with special transportation needs shall comply with the 1995 National Standards and with Federal Motor Vehicle Safety Standards applicable to their GVWR category.

3.1.2 Any school bus to be used for the transportation of children who are confined to a wheelchair or other mobile positioning device, or who require life support equipment which prohibits use of the regular service entrance, shall be equipped with a power lift, unless a ramp is needed for unusual circumstances related to passenger needs.

3.2 Aisles: All school buses equipped with a power lift shall provide a 30" aisle leading from any wheelchair/mobility aid position to at least one emergency door and the lift area.

3.3 Glazing: Tinted glazing may be installed in all doors, windows, and windshields consistent with federal, state, and local regulations.

3.4 Identification: Buses with power lifts used for transporting individuals with disabilities shall display below the window line the International Symbol of Accessibility. Such emblems shall be white on blue background, shall not exceed 12 inches in size, and shall be of a high-intensity reflectorized material meeting U.S. Department of Transportation's Federal Highway Administration (FHWA) FP-85 Standards.

3.5 Passenger Capacity Rating: The passenger capacity of a school bus is defined as the maximum standard seating capacity of that bus.

3.6 Power Lifts and Ramps

3.6.1 Power lift shall be located on the right side of the bus body when not extended.

3.6.1.1 A ramp device may be used in lieu of a mechanical lift if the ramp meets all the requirements of the Americans with Disability Act (ADA) as found in 36 CFR §1192.23 © Vehicle ramp. (See Appendix D, 1995 National Standards).

3.6.1.2 A ramp device which does not meet the specifications of ADA but does meet the specifications of paragraph 3 of this section may be installed and used, when, and only when a power lift system is not adequate to load and unload students having special and unique needs. A readily accessible ramp may also be installed for emergency exit use. If stowed in the passenger compartment, the ramp must be properly secured and located away from general passenger contact. It must not obstruct or restrict any aisle or exit while in its stowed or deployed position.

3.6.1.3 All vehicles covered by this specification shall provide a level-change mechanism or boarding device (e.g., lift or ramp) complying with paragraph b. or c. of this section and sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location.

3.6.2 Vehicle lift

3.6.2.1 Design load. The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall

have a safety factor of at least 6 (six), based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least 3 (three), based on the ultimate strength of the material.

Lift capacity. The lifting mechanism and platform shall be able to lift a minimum 800 pounds.

3.6.2.2 Controls: Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside the bus. The controls should be interlocked with the vehicle brakes, transmission, or door, or shall provide other appropriate mechanisms or systems to ensure the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. The lift shall deploy to all levels (i.e., ground, curb, and intermediate positions) normally encountered in the operating environment. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

3.6.2.2.1 Exception: Where the lift is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., "rotary lift"), the requirements of this paragraph prohibiting the lift from being stowed while occupied shall not apply if the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

3.6.2.3 Emergency operation: The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary lift and is intended to be stowed while occupied. No manual emergency operation shall require more than 2 (two) minutes to lower an occupied wheelchair to ground level.

3.6.2.4 Power or equipment failure: Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12" per second or their dropping of an occupant in the event of a single failure of any load carrying component.

3.6.2.5 Platform barriers: The lift platform shall be equipped with barriers to prevent any of the wheels

of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform which extends beyond the vehicle in its raised position shall have a barrier a minimum 1 ½" high. Such barriers shall not interfere with maneuvering into or out of the aisle. The loading-edge barrier (outer barrier), which functions as a loading ramp when the lift is at ground level, shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it. The outer barrier of the lift shall automatically raise or close, or a supplementary system shall automatically engage, and remain raised, closed, or engaged at all times that the platform is more than 3" above the roadway or sidewalk and the platform is occupied. Alternatively, a barrier or system may be raised, lowered, opened, closed, engaged, or disengaged by the lift operator, provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed or the supplementary system is engaged.

3.6.2.6 Platform surface: The platform surface shall be free of any protrusions over ¼" high and shall be slip resistant. The platform shall have a minimum clear width of 32" from the platform to 30" above it, and a minimum clear length of 48" measured from 2" above the surface of the platform to 30" above the surface of the platform.

3.6.2.7 Platform gaps: Any openings between the platform surface and the raised barriers shall not exceed 5/8" in width. When the platform is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward lift platform edge and the vehicle floor shall not exceed ½ inch horizontally and 5/8 inch vertically. Platforms on semi-automatic lifts may have a hand hold not exceeding 1 ½" by 4 ½" located between the edge barriers.

3.6.2.8 Platform entrance ramp: The outboard entrance ramp or loading-edge barrier used as a ramp and the transition plate from the inboard edge of the platform to the vehicle floor shall not exceed a slope of 1:8, measured on level ground, for a maximum rise of 3", and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to 1/4". Thresholds between 1/4" and 1/2" high shall be beveled with a slope no greater than 1:2.

3.6.2.9 Platform deflection: The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees (exclusive of vehicle roll or pitch) in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26" by 26" test pallet at the centroid of the platform.

3.6.2.10 Platform movement: No part of the platform shall move at a rate exceeding 6" per second during lowering and lifting an occupant, and shall not exceed 12"

per second during deploying or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration when occupied shall be 0.3 g.

3.6.2.11 Boarding direction: The lift shall permit both inboard and outboard facing of wheelchair and mobility aid users.

3.6.2.12 Use by standees: Lifts shall accommodate persons using walkers, crutches, canes or braces, or who otherwise have difficulty using steps. The platform may be marked to indicate a preferred standing position.

3.6.2.13 Handrails: Platforms on lifts shall be equipped with handrails on two sides, which move in tandem with the lift, and which shall be graspable and provide support to standees throughout the entire lift operation. Handrails shall have a usable component at least 8" long with the lowest portion a minimum 30" above the platform and the highest portion a maximum 38" above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1 ¼" and 1 ½" or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than 1/8". Handrails shall be placed to provide a minimum 1 ½" knuckle clearance from the nearest adjacent surface. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

3.6.2.14 Circuit breaker: A re-settable circuit breaker shall be installed between power source and lift motor if electrical power is used. It shall be located as close to the power source as possible, but not within the passenger/driver compartment.

3.6.2.15 Excessive pressure: Lift design shall prevent excessive pressure that could damage the lift system when the platform is fully lowered or raised, or that could jack the vehicle.

3.6.2.16 Documentation: The following information shall be provided with each vehicle equipped with a lift:

3.6.2.16.1 A phone number where information can be obtained about installation, repair, and parts. (Detailed written instructions and a parts list shall be available upon request.)

3.6.2.16.2 Detailed instructions regarding use of the lift and readily visible when the lift door is open, including a diagram showing the proper placement and positioning of wheelchair/mobility aids on lift.

3.6.2.17 Training materials: The lift manufacturer shall make available training materials to ensure the proper use and maintenance of the lift. These may include instructional videos, classroom curriculum,

system test results, or other related materials.

3.6.2.18 Identification and certification: Each lift shall be permanently and legibly marked or incorporate a non-removable label or tag which states that it conforms to all applicable requirements of the current National Standards for School Buses. In addition, the lift manufacturer, or an authorized representative, upon request of the original titled purchaser, shall provide a notarized Certificate of Conformance, either original or photocopied, which states that the lift system meets all the applicable requirements of the 1995 National Standards.

3.6.3 Vehicle ramp

3.6.3.1 If a ramp is used, it shall be of sufficient strength and rigidity to support the special device, occupant, and attendant(s). It shall be equipped with a protective flange on each longitudinal side to keep special device on the ramp.

3.6.3.2 Floor of ramp shall be constructed of non-skid material.

3.6.3.3 Ramp shall be equipped with handles and be of weight and design to permit one person to put ramp in place and return it to its storage place.

3.6.3.4 Ramps installed in raised floor buses by manufacturers may be used for emergency evacuation purposes. They shall not be used as a substitute for a lift when a lift is capable of servicing the need.

3.7 Regular Service Entrance

3.7.1 On power-lift equipped vehicles, step shall be the full width of the stepwell, excluding the thickness of doors in open position.

3.7.2 A suitable device at the front and rear of the step well shall be provided to assist passengers during entry or egress. This device shall allow for easy grasping or holding and shall have no openings or pinch points which might entangle clothing, accessories or limbs.

3.8 Restraining Devices

3.8.1 On power-lift equipped vehicles, seat frames may be equipped with attachments or devices to which belts, restraining harnesses or other devices may be attached. Attachment framework or anchorage devices, if installed, shall conform to FMVSS 210.

3.8.2 Seat belt assemblies, if installed, shall conform to FMVSS 209.

3.8.3 Child restraint systems, which are used to facilitate the transportation of children who in other modes of transportation would be required to use a child, infant, or booster seat, shall conform to FMVSS 213 and 222.

3.9 Seating Arrangements: Flexibility in seat spacing to accommodate special devices shall be permitted to meet passenger requirements. All seating shall be forward-facing.

3.10 Securement and Restraint System for Wheelchair/Mobility Aid and Occupant: For purposes of better understanding the various aspects and components of this section, the term *securement* or phrase *securement system* is

used exclusively in reference to the device(s) which secure the wheelchair/mobility aid. The term *restraint* or phrase *restraint system* is used exclusively in reference to the device(s) used to restrain the occupant of the wheelchair/mobility aid. The phrase *securement and restraint system* is used to refer to the total system which secures and restrains both the wheelchair/mobility aid and the occupant.

3.10.1 Securement and restraint system—general

3.10.1.1 The Wheelchair/Mobility Aid Securement and Occupant Restraint System shall be designed, installed, and operated to accommodate passengers in a forward-facing orientation within the bus and shall comply with all applicable requirements of FMVSS 222. Gurney-type devices shall be secured parallel to the side of each bus.

3.10.1.2 The securement and restraint system, including the system track, floor plates, pockets, or other anchorages shall be provided by the same manufacturer, or be certified to be compatible by manufacturers of all equipment/systems used.

3.10.1.3 When a wheelchair/mobility aid securement device and an occupant restraint share a common anchorage, including occupant restraint designs that attach the occupant restraint to the securement device or the wheelchair/mobility aid, the anchorage shall be capable of withstanding the loads of both the securement device and occupant restraint applied simultaneously, in accordance with FMVSS 222. (See §2 and §3 of this section.)

3.10.1.4 When a wheelchair/mobility aid securement device (webbing or strap assembly) is shared with an occupant restraint, the wheelchair/mobility aid securement device (webbing or strap assembly) shall be capable of withstanding a force twice the amount as specified in §4.4(a) of FMVSS 209. (See §2 and §3 of this section.)

3.10.1.5 The bus body floor and sidewall structures where the securement and restraint system anchorages are attached shall have equal or greater strength than the load requirements of the system(s) being installed.

3.10.1.6 The occupant restraint system shall be designed to be attached to the bus body either directly or in combination with the wheelchair/mobility aid securement system, by a method which prohibits the transfer of weight or force from the wheelchair/mobility aid to the occupant in the event of an impact.

3.10.1.7 When an occupied wheelchair/mobility aid is secured in accordance with the manufacturer's instructions, the securement and restraint system shall limit the movement of the occupied wheelchair/mobility aid to no more than 2" in any direction under normal driving conditions.

3.10.1.8 The securement and restraint system shall incorporate an identification scheme which will allow for the easy identification of the various components and

their functions. It shall consist of one of the following, or combination thereof:

3.10.1.8.1 The wheelchair/mobility aid securement (webbing or strap assemblies) and the occupant restraint belt assemblies shall be of contrasting color or color shade.

3.10.1.8.2 The wheelchair/mobility aid securement device (webbing or strap assemblies) and occupant restraint belt assemblies shall be clearly marked to indicate the proper wheelchair orientation in the vehicle, and the name and location for each device or belt assembly, i.e., front, rear, lap belt, shoulder belt, etc.

3.10.1.9 All attachment or coupling devices designed to be connected or disconnected frequently shall be accessible and operable without the use of tools or other mechanical assistance.

3.10.1.10 All securement and restraint system hardware and components shall be free of sharp or jagged areas and shall be of a non-corrosive material or treated to resist corrosion in accordance with §4.3(a) of FMVSS 209.

3.10.1.11 The securement and restraint system shall be located and installed such that when an occupied wheelchair/mobility aid is secured, it does not block access to the lift door.

3.10.1.12 A device for storage of the securement and restraint system shall be provided. When the system is not in use, the storage device shall allow for clean storage of the system, shall keep the system securely contained within the passenger compartment, shall provide reasonable protection from vandalism, and shall enable the system to be readily accessed for use.

3.10.1.13 The entire securement and restraint system, including the storage device, shall meet the flammability standards established in FMVSS 302.

3.10.1.14 Each securement device (webbing or strap assembly) and restraint belt assembly shall be permanently and legibly marked or incorporate a non-removable label or tag which states that it conforms to all applicable FMVSS requirements, as well as, the 1995 National Standards. In addition, the system manufacturer, or an authorized representative, upon request by the original titled purchaser, shall provide a notarized Certificate of Conformance, either original or photocopied, which states that the wheelchair/mobility aid securement and occupant restraint system meets all of the requirements as specified in FMVSS 222 and the 1995 National Standards.

3.10.1.15 The following information shall be provided with each vehicle equipped with a securement and restraint system:

3.10.1.15.1 A phone number where information can be obtained about installation, repair, and parts. (Detailed written instructions and a parts list shall be available upon request).

3.10.1.15.2 Detailed instructions

regarding use, including a diagram showing the proper placement of the wheelchair/mobility aids and positioning of securement devices and occupant restraints, including correct belt angles.

3.10.1.16 The system manufacturer shall make available training materials to ensure the proper use and maintenance of the wheelchair/mobility aid securement and occupant restraint system. These may include instructional videos, classroom curriculum, system test results, or other related materials.

3.10.2 Wheelchair/mobility aid securement system

3.10.2.1 Each securement system location shall consist of a minimum of four anchorage points. A minimum of two anchorage points shall be located in front of the wheelchair/mobility aid and a minimum of two anchorage points shall be located in the rear. The securement anchorages shall be attached to the floor of the vehicle and shall not interfere with passenger movement or present any hazardous condition.

3.10.2.2 Each securement system location shall have a minimum clear floor area of 30" by 48". Additional floor area may be required for some applications. Consultation between the user and the manufacturer is recommended to ensure adequate area is provided.

3.10.2.3 The securement system shall secure common wheelchair/mobility aids and shall be able to be attached easily by a person having average dexterity and who is familiar with the system and wheelchair/mobility aid.

3.10.2.4 As installed, each securement anchorage shall be capable of withstanding a minimum force of 3,000 pounds (13,344 Newtons) when applied as specified in FMVSS 222. When more than one securement device share a common anchorage, the anchorage shall be capable of withstanding the force indicated above, multiplied by the number of securement devices sharing that anchorage.

3.10.2.5 Each securement device, if incorporating webbing or a strap assembly, shall comply with the requirements for Type 1 safety belt systems, in accordance with §4.2, §4.3, and §4.4(a) of FMVSS 209.

3.10.2.6 The securement system shall secure the wheelchair/mobility aid in such a manner that the attachments or coupling hardware will not become detached when any wheelchair/mobility aid component deforms, when one or more tires deflate, and without intentional operation of a release mechanism (e.g., a spring clip on a securement hook).

3.10.2.7 Each securement device (webbing or strap assembly) shall be capable of withstanding a minimum force of 2,500 pounds when tested in accordance with FMVSS 209.

3.10.2.8 Each securement device (webbing or strap assembly) shall provide a means of adjustment, of manufacturer's design, to remove slack from the device or assembly.

3.10.3 Occupant Restraint System

3.10.3.1 A Type 2A occupant restraint system which meets all applicable requirements of FMVSS 209 and 210 shall provide for restraint of the occupant.

3.10.3.2 The occupant restraint system shall be made of materials which do not stain, soil, or tear an occupant's clothing, and which are resistant to water damage and fraying.

3.10.3.3 Each restraint system location shall have not less than one anchorage, of manufacturer's design, for the upper end of the upper torso restraint.

3.10.3.3.1 The anchorage for each occupant's upper torso restraint shall be capable of withstanding a minimum force of 1,500 pounds (6,672 Newtons) when applied as specified in FMVSS 222.

3.10.3.4 Each wheelchair/mobility aid location shall have not less than two floor anchorages for the occupant pelvic and the connected upper torso restraint.

3.10.3.4.1 Each floor anchorage shall be capable of withstanding a minimum force of 3,000 pounds (13,344 Newtons) when applied as specified in FMVSS 222.

3.10.3.4.2 When more than one occupant restraint share a common anchorage, the anchorage shall be capable of withstanding a minimum force of 3,000 pounds (13,344 Newtons) multiplied by the number of occupant restraints sharing the common anchorage in accordance with FMVSS 222.

3.10.3.5 Each floor and wall anchorage which secures the occupant restraint to the vehicle and which is not permanently attached, shall be of a "positive latch" design, and shall not allow for any accidental disconnection.

3.10.4 Dynamic Testing

3.10.4.1 The wheelchair/mobility aid securement and occupant restraint system shall be subjected to, and successfully pass, a dynamic sled test at a minimum impact speed/deceleration of 30 mph/20g's.

3.10.4.2 The dynamic test shall be performed by experienced personnel using an impact simulator with proven ability to provide reliable, accurate, and test results which can be replicated.

3.10.4.3 The dynamic test shall be performed in accordance with the procedures set forth in Appendix A of SAE J2249 "Test for Frontal Impact Crash Worthiness."

3.10.4.4 The wheelchair/mobility aid used for testing purposes shall be a rigid, reusable surrogate wheelchair that complies with the requirements of Appendix D of SAE J2249 "Specification for Surrogate Wheelchair."

3.10.4.5 The dynamic test shall be performed using system assemblies, components and attaching hardware which are identical to the final installation in type, configuration and positioning. The body structure at the anchorage points may be simulated for the purpose of the sled test.

3.10.4.6 When tested, the wheelchair/mobility

aid securement and occupant restraint system shall pass the criteria specified in Section 6.2 of SAE J2249 "Performance Requirements of Frontal Sled Impact Test." Following is an abridged summary of the criteria. (See Appendix D, 1995 National Standards)

3.10.4.6.1 Retain the test dummy in the test wheelchair and on the test sled with the test wheelchair in an upright position.

3.10.4.6.2 Not show any fragmentation or complete separation of any load carrying part.

3.10.4.6.3 Not allow the horizontal excursions of the test dummy and the test wheelchair to exceed specified limits.

3.10.4.6.4 Prevent the test wheelchair from imposing forward loads on the test dummy.

3.10.4.6.5 Allow removal of the test dummy and the test wheelchair, subsequent to the test, without the use of tools.

3.11 Special Light: Doorways in which lifts are installed, shall have, when lift is to be used, at least 2 foot-candles of illumination measured on the floor of the bus immediately adjacent to the lift, and on the lift, when deployed at the vehicle floor level.

3.12 Special Service Entrance

3.12.1 Power lift-equipped bodies shall have a special service entrance to accommodate the power lift.

Exception: If the lift is designed to operate within the regular service entrance, and is capable of stowing such that the regular service entrance is not blocked in any way, and that persons entering or exiting the bus are not impeded in any way, a special service entrance shall not be required.

3.12.2 The special service entrance and door shall be located on the right side of the bus and shall be designed so as not to obstruct the regular service entrance.

3.12.3 The opening may extend below the floor through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and give the same strength as other floor openings.

3.12.4 A drip molding shall be installed above the opening to effectively divert water from entrance.

3.12.5 Door posts and headers from entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for special service entrance.

3.13 Special Service Entrance Doors

3.13.1 A single door or double doors may be used for the special service entrance. They shall have rub rails.

3.13.2 A single door shall be hinged to the forward side of the entrance unless doing so would obstruct the regular service entrance. If, due to the above condition, the door is hinged to the rearward side of the doorway, the door shall utilize a safety mechanism which will prevent the door from swinging open should the primary door latch fail. If

double doors are used the system shall be designed to prevent the door(s) from being blown open by the wind resistance created by the forward motion of the bus, and/or incorporate a safety mechanism to provide secondary protection should the primary latching mechanism(s) fail.

3.13.3 All doors shall have positive fastening devices to hold doors in the open position.

3.13.4 All doors shall be weather sealed.

3.13.5 When manually-operated dual doors are provided, the rear door shall have at least a one-point fastening device to the header. The forward-mounted door shall have at least three-point fastening devices. One shall be to the header, one to the floor line of the body, and the other shall be into the rear door. The door and hinge mechanism shall be of a strength that is greater than or equivalent to the emergency exit door.

3.13.6 Door materials, panels and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering and other exterior features shall match adjacent sections of the body.

3.13.7 Each door shall have windows set in rubber which are visually similar in size and location to adjacent non-door windows. Glazing shall be of same type and tinting (if applicable) as standard fixed glass in other body locations.

3.13.8 Door(s) shall be equipped with a device that will actuate an audible or flashing signal located in the driver's compartment when door(s) is not securely closed and ignition is in "on" position.

3.13.9 A switch shall be installed so that the lifting mechanism will not operate when the lift platform door(s) is closed.

3.13.10 Special service entrance doors shall be equipped with padding at the top edge of the door opening. Padding shall be at least 3" wide and 1" thick and extend the full width of the door opening.

See 1 DE Reg. 473 (11/1/97)

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES**

Statutory Authority: 13 Delaware Code, Sections 707 and 708 (13 Del.C. §§707, 708)

Regulations on Establishment
Of Delegation of Power of
Relative Caregivers to
Consent to Medical
Treatment of Minors
13 Del.C. §707,708

Nature of the Proceedings

Delaware Health and Social Services has implemented on an emergency basis the below proposed regulations and is now accepting comments in preparation for adoption of these changes on a permanent basis.

Summary/Purpose of Regulations

The promulgation of these regulations will put 13 Del.C. §707 and 708 into effect so that grandparents and relative caregivers without custody or guardianship can approve medical treatment for children in their care. Promulgation of these regulations will allow the law to establish a system known to providers and consumers throughout the state, encourage well child Doctor's visits, visits to the Doctor before a condition worsens, and fewer visits to hospital emergency rooms.

Notice of Comment Period

Copies of the proposed regulations are available for review by appointment at the following locations:

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical Disabilities
Herman M. Holloway Sr. Campus
Administration Building, Annex
1901 N DuPont Highway
New Castle, DE

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical Disabilities
Milford State Service Center
18 North Walnut Street
First Floor
Milford, DE 19963

Contact Carol Boyer at 577-4791 or 1-800-223-9074 to make arrangements.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

Carol Boyer
Delaware Health & Social Services
Division of Services for Aging and
Adults with Physical Disabilities
Administration Bldg., Annex
1901 N DuPont Highway
New Castle, DE 19720

Such comments must be received by close of business on Thursday, October 31, 2000.

I. Definitions for terms used in 13 Del.C. section 707(a):

1.(a) Medical treatment includes the use of prescription drugs.

Disease – a pathological condition of a body part, an organ, or a system resulting from various causes, such as infection, genetic defect, or environmental stress, and characterized by an identifiable group of signs or symptoms or life.

Pathology – the medical science concerned with all aspects of disease with an emphasis on the essential nature, causes, and development of abnormal conditions, as well as with the structural and functional changes that result from disease processes. It is also the anatomical or functional manifestations of a disease.

(1)(b) Public clinics include school wellness centers.

This authorization also applies to medical care provided in schools that do not have wellness centers as well as medical care required at school-related activities.

II. Definition for terms used in 13 Del.C. section 708:

(1) Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minors (also known as Caregivers’ Medical Authorization) – An affidavit of written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation, such as an officer of the court or other person who has been duly authorized to do so.

III. Reasonable effort to locate the parent(s), guardian, or custodian of the child shall include option 1, which is required, and a choice of either option 2, 3, or 4.

(1) Certified mail receipt of a written notice from the caregiver that he or she intends to take medical responsibility for the child. The notice should be sent to the last known address of the parent(s), custodian, or guardian. Proof of this step will be the notice and the return receipt saying that the letter was not deliverable because no

one by that name lives at this address.

(2) The caregiver or someone acting in his or her place makes an actual visit to the last known address of the parent(s), custodian, or guardian. The individual making this visit will need to describe what was found at this address and to whom he or she spoke regarding the missing parent(s), custodian, or guardian.

(3) Contact with social service agencies, place of employment, health care provider, or friends verified by a written statement signed by that party confirming that the location of the parent(s), custodian, or guardian is unknown.

(4) Other documents or confirmations that show the parent(s), custodian, or guardian cannot be found.

IV. Affidavit:

Delaware Health and Social Services will maintain the Caregivers’ Medical Authorization form. Anyone who wishes to obtain this form may do so by contacting Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) or their local school district office. Only the Caregivers’ Medical Authorization form developed by DSAAPD shall be used.

**DIVISION OF SERVICES FOR AGING AND ADULTS
WITH PHYSICAL DISABILITIES**

Statutory Authority: 14 Delaware Code,
Section 202 (14 Del.C.§202)

Regulations on Establishment
Of Delegation of Power of
Relative Caregivers to
Consent for Registering
Minors for School
14 Del.C. § 202

Nature of the Proceedings

Delaware Health and Social Services has implemented on an emergency basis the below proposed regulations and is now accepting comments in preparation for adoption of these changes on a permanent basis.

Summary/purpose of Regulations

The promulgation of these regulations will put 14 Del.C. §202 in effect so that grandparents and relative caregivers without custody or guardianship can register children in their care for the school year beginning September 2000. Doing so will put these caregivers in compliance with 27 Del.C. §2702, which states that children “between five years of age and sixteen years of age” shall be enrolled in a free public school.

PROPOSED REGULATIONS

Notice Of Comment Period

Copies of the proposed regulations are available for review by appointment at the following locations:

Delaware Health and Social Services
 Division of Services for Aging and Adults with Physical Disabilities
 Herman M. Holloway Sr. Campus
 Administration Building, Annex
 1901 N DuPont Highway
 New Castle, DE

Delaware Health and Social Services
 Division of Services for Aging and Adults with Physical Disabilities
 Milford State Service Center
 18 North Walnut Street
 First Floor
 Milford, DE 19963

Contact Carol Boyer at 577-4791 or 1-800-223-9074 to make arrangements.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

Carol Boyer
 Delaware Health & Social Services Division of Services for Aging and Adults with Physical Disabilities
 Administration Bldg., Annex
 1901 N DuPont Highway
 New Castle, DE 19720

Such comments must be received by close of business on Thursday, October 31, 2000.

I. Definitions for terms used in 14 Del.C. section 202:

Establishment of Delegation of Power of Relative Caregivers to Consent for Registering Minors for School (also known as Caregivers' School Authorization) (found in subsection (e)(1) c of section 202)– An affidavit of written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation, such as an officer of the court or a notary public or other person who has been duly authorized so to act.

II. Proof of relationship and Proof of caregiving: (found in subsection (2)(f)(1))

There must be two different forms of documentation, one from each column. One must show proof of relationship and the other proof of caregiving. These documents, or other

similar documents as approved by the school district, must be presented for registration.

<u>PROOF OF RELATIONSHIP</u>	<u>PROOF OF CAREGIVING</u>
<u>Birth certificate of caregiver, the adult child, and birth certificate of the child.</u>	
<u>Medical records where a caregiver is required to give approval, such as shots. Such records must show the relationship between the caregiver and the child.</u>	<u>Medical records where a caregiver's authorization to give approval for services such as shots was acceptable.</u>
<u>A Will which lists the child and the relationship between the caregiver and child.</u>	
<u>Insurance for the caregiver or child which includes the relationship between the caregiver and child.</u>	
<u>A letter from a social worker, lawyer, religious leader, or previous school district which verifies the relationship of the child to the caregiver.</u>	<u>A letter from a social worker, lawyer, religious leaders, or neighbor confirming the child is being cared for by the caregiver.</u>
<u>Free and Reduced lunch program application.</u>	
<u>Child is listed as occupant in an apartment or other housing and his/her relationship to the caregiver is included.</u>	<u>Child is listed as occupant in an apartment or other housing and his/her relationship to the caregiver is given.</u>
<u>Caregiver receives Child-only Temporary Aid for Needy Families (TANF) grant for this child.</u>	<u>Caregiver received Child-only Temporary Aid for Needy Families (TANF) grant for this child.</u>
<u>Child claimed on Federal Income Tax return.</u>	<u>Child claimed on Federal Income Tax return.</u>

<u>Caregiver receives Earned Income Tax Credit for the child.</u>	<u>Caregiver receives Earned Income Tax Credit for the child.</u>
	<u>Child's Social Security survivor death benefits are received by the caregiver for the child.</u>
<u>Hospital, clinic, or Public Health records showing the relationship between the caregiver and the child.</u>	<u>Hospital, clinic, or Public Health records where a caregiver's authorization to give approval for services such as shots was acceptable.</u>
<u>Division of Services for Children, Youth and their Families' records specifying the relationship between the caregiver and child.</u>	<u>Division of Services for Children, Youth and their Families' records showing that the caregiver is the contact for this child.</u>
<u>Military or veterans records which specify relationship</u>	
<u>Or other documents as approved by the school district.</u>	<u>Or other documents as approved by the school district.</u>

III. Reasonable effort to locate the parent(s), guardian, or custodian of the child shall include option 1, which is required, and a choice of either option 2, 3, or 4.

(1) Certified mail receipt of a written notice from the caregiver that he or she intends to take school responsibility for the child. The notice should be sent to the last known address of the parent(s), custodian, or guardian. Proof of this step will be the notice and the return receipt saying that the letter was not deliverable because no one by that name lives at this address.

(2) The caregiver or someone acting in his or her place makes an actual visit to the last known address of the parent(s), custodian, or guardian. The individual making his visit will need to describe what was found at this address and to whom he or she spoke regarding the missing parent(s), custodian, or guardian.

(3) Contact with social service agencies, place of employment, health care provider, or friends verified by a written statement signed by that party confirming that the location of the parent(s), custodian, or guardian is unknown.

(4) Other documents or confirmations that show the parent(s), custodian, or guardian cannot be found.

IV. Affidavit:

Delaware Health and Social Services will develop the Caregivers' School Authorization form. Anyone who wishes to obtain this form may do so by contacting Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) or their local school district office. Only the Caregivers' School Authorization form developed by DSAAPD shall be used.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 & 2312 (18 Del.C. 311, 2312)

The Delaware Insurance Department proposes a new regulation that requires the prompt payment of claims settled by insurance companies either pursuant to a legal action or otherwise.

The public may obtain a copy of the proposed regulation from the Delaware Insurance Department, Rodney Building, 841 Silver Lake Boulevard, Dover, DE 19904. The contact person is Kathy Gravell who can be reached at the aforementioned address or by telephone at (302) 739-4251 ext. 121. The Department of Insurance will accept written comments from October 1, 2000 through November 30, 2000. A public hearing will be held at the Delaware Insurance Department, Rodney Building, 841 Silver Lake Boulevard, Dover on Wednesday, November 15, 2000 at 10:00 p.m.

No other regulations are impacted by this regulation. The Delaware Insurance Department derives its authority to adopt this regulation through 18 Del.C. §§311 and 2312.

REGULATION NO. 81
PROMPT PAYMENT OF SETTLED CLAIMS

Table of Contents

1.0 Authority
2.0 Scope
3.0 Purpose
4.0 Prompt Payment
5.0 Settlement of Claims
6.0 Procedure and Penalties
7.0 General Business Practice
8.0 Separability
9.0 Causes of Action and Defenses
10.0 Effective Date

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del. C. §§ 311 and

2312, and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 *Del. C.* Chapter 101.

2.0 Scope

This regulation will apply to all insurers that settle claims either pursuant to a legal action or otherwise.

3.0 Purpose

The purpose of this regulation is to ensure prompt payment of claims pursuant to the settlement of claims by insurance carriers as required by 18 *Del. C.* § 2304(16)(f).

4.0 Prompt Payment

For the purpose of this regulation prompt payment is defined as remittance of the check within thirty (30) days from the date of agreement or final order by the court.

5.0 Settlement of Claims

The language in 18 *Del. C.* § 2304 (16)(f) requires good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The aforementioned section also applies in those instances where a case is settled prior to a hearing but pursuant to an action filed in court. Once liability has been resolved and an amount agreed upon or ordered by the court the carrier is required to make prompt payment.

6.0 Procedure and Penalties

6.1 In the event that a carrier does not remit prompt payment pursuant to the settlement of a claim and the Department has determined that the carrier has done so in bad faith and with such frequency as to indicate a general business practice, the Department shall file an action against the carrier pursuant to the Administrative Procedures Act. The commissioner may take all of the following actions:

6.1.1 Award interest on the amount of the claim from the date the claim was settled or ordered, in an amount equal to the prime rate of interest plus 3%.

6.1.2 Fine the insurer according to the provisions outlined in 18 *Del. C.* § 329.

6.1.3 Fine any person(s) involved with the claim and/or settlement according to the provisions outline in 18 *Del. C.* §2308(a)(1).

7.0 General Business Practice

7.1 Within a 36 month period, three instances of a carrier's failure to pay a claim or bill for services promptly, as defined in section 2 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del. C.* §2304 (16)(f).

7.2 The 36 month period established in paragraph 7.1 above shall be measured based upon the date the amount was agreed upon or ordered by the court.

8.0 Separability

If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

9.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 *Del. C.* § 2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 *Del. C.* § 2304(16).

10.0 Effective Date

This regulation shall become effective 30 days after the Commissioner's signature.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

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

REGISTER NOTICE SAN # 99-22

1. **TITLE OF THE REGULATIONS:**
FREEDOM OF INFORMATION ACT REGULATION
2. **BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**
The purpose of this regulation is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Natural Resources and Environmental Control ("the Department") pursuant to 29 **Del.C.** Chapter 100, the Freedom of Information Act ("FOIA"). It is the Department's goal in establishing this regulation to maximize the amount of information available to the public, establish a reasonable fee structure for copying public records, and to streamline procedures used to disseminate this information.
3. **POSSIBLE TERMS OF THE AGENCY ACTION:**
None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

29 Delaware Code, Chapter 100

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

None

6. NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed regulation will extend through November 2, 2000. Interested parties may submit comments in writing during this time frame to: Susan Baker, DNREC/DAWM, 89 Kings Highway, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, October 26, 2000 beginning at 6:30 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

7. PREPARED BY:

Susan S. Baker, (302) 739-4791, September 12, 2000

FOIA REGULATION**1. Purpose**

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

This regulation applies to the Department in dealing with requests from the public for information as set forth in the Freedom of Information Act. This regulation does not apply to the Department in its normal course of business with Federal, State, or local agencies, nor to private parties (corporate or individual) with whom the Department is conducting business (permit, contractual agreement, licenses, etc.), provided the public records are germane to the business being conducted.

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

2. Definitions

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

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

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

"Responsible Official" means:

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

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

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

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

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

3. Availability of Records**3.1 Access**

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

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

3.1.c The Department shall make all requested records available for review by requestor unless such records or portions of records are determined by the Secretary to be confidential in accordance with Section 6 of this regulation

or otherwise exempted from disclosure as records deemed non-public pursuant to 29 **Del.C.** §10002(d).

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

3.2 Department Records Review

3.2.a Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non-public are removed.

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

- (1) the document's author,
- (2) the addressee,
- (3) the date of the document,
- (4) the title of the document or a brief explanation of the document's contents, and
- (5) the statutory exemption.

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

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

4. Record Request and Response Procedures

4.1 Form of Request

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

- (1) The request does not adequately describe the records;
- (2) The request requires the Department to perform research or to assemble information not previously compiled; or
- (3) Reasons set forth in Section 3.1.d. or as addressed in other areas of this regulation not specified here.

4.2 Reproduction of Records

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

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

(2) If over 25 pages are requested to be copied the Department may arrange to copy and mail the records to

the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.

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

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

(5) Fragmentation of requests shall not be allowed.

5. Fees

5.1 Administrative Fees:

5.1.a Charges for administrative fees include:

- (1) Staff time associated with processing FOIA requests;
- (2) Locating and reviewing files;
- (3) Monitoring file reviews;
- (4) Generating computer records (electronic or print-outs); and
- (5) Preparing logs of records deemed non-public.

5.1.b Calculation of Administrative Charges:

Administrative charges will be calculated as follows:

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

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

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

5.2.a Standard Sized, Black and White Copies

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

- (1) 8.5" x 11";
- (2) 8.5" x 14"; and
- (3) 11" x 17"

5.2.b Oversized Copies/Printouts

The charge for copying oversized public records (including, but not limited to: blueprints, engineering drawings, GIS print-outs, and maps) shall be as follows:

- (1) 24" x 26" - \$2.00 each;
- (2) 24" x 36" - \$3.00 each;
- (3) 30" x 42" - \$5.00 each; and
- (4) all copies larger than 30" x 42" shall be

calculated at the rate of \$0.60 per square foot.

5.2.c Color Copies/Printouts

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

- (1) 8.5" x 11" - \$1.00 per page;
- (2) 8.5" x 14" - \$1.50 per page;
- (3) 11" x 17" - \$2.00 per page; and
- (4) all color copies larger than 11" x 17"

(including, but not limited to: blueprints, engineering drawings, photographic imagery, GIS print-outs, and maps) shall be calculated at the rate of \$2.50 per square foot.

5.2.d Microfilm and/or Microfiche Printouts

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

5.2.e Electronically Generated Records

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

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

5.2.f Other Copying Fees

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

5.3 Payment

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

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

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

5.3.d Department personnel will maintain a receipt register and, upon request, provide the requestor with a receipt when payment is received.

6. Requests for Confidentiality

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

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

6.1 Procedure

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

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

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

(3) Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and

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

6.1.b The following information shall be submitted:

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

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

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

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

pursuant to this privilege.

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

(1) the Responsible Official notified the Department in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and

(2) the later submission identifies with particularity the prior confidentiality determination; and

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

(4) the later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.

6.2 Criteria

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

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

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

(3) No statute specifically requires disclosure of the information;

(4) A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and

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

6.3 Final Determination

The Secretary will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Secretary's determination.

6.3.a If the Secretary determines that disclosure of the information would violate 29 Del.C. §10002(d)(2), the information will be deemed confidential indefinitely.

6.3.b If the Secretary finds that the information is not entitled to confidential treatment, the information will be considered public.

6.4 Defense of Secretary's Determination

6.4.a Verification of Information

There will be instances in which the Secretary

may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The Secretary relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.

6.4.b Information Determined Confidential

If the Secretary makes a confidentiality determination that certain information is entitled to confidential treatment, and the Department is sued by a requestor for disclosure of that information, the Department will:

(1) Notify each affected party of the suit;

(2) Call upon each affected party to furnish assistance where necessary in preparation of the Department's defense;

(3) Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.

DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del.C. Chp. 60)

REGISTER NOTICE

SAN # 2000-10

1. TITLE OF THE REGULATIONS:

AMENDMENTS TO DELAWARE 2002 RATE-OF-PROGRESS PLAN FOR KENT AND NEW CASTLE COUNTIES: For Demonstrating 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) for the period from 2000 to 2002 to demonstrate how to achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NOx), which are major precursors to form ozone. This plan, termed as Delaware's 2002 Rate-of-Progress Plan, was submitted to EPA in February 2000. The document proposed herein amends the 2002 RPP with respect to the VOC emission reductions from the wastewater treatment plant at Motiva Enterprises in New Castle County.

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:

A public hearing will be held on November 14, 2000 at 6:00 PM in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

7. PREPARED BY:

Frank F. Gao, Project Leader, (302) 739-4791, September 12, 2000

Table 1-15 (Amended)	
Target Levels of VOC and NOx Emissions in 2002 (in TPD)	4
Table 2-13 (Amended)	
VOC and NOx Emission Reductions Required in the 2002 RPP (in TPD)	4
Table 3-8 (Amended)	
VOC Emission Control Measures and Expected Emission Reductions for the 2002 RPP	6
Table 4-1 (Amended)	
Projections of NOx Emissions with RE of 97% for Sources Affected by OTC MOU Phase II Regional Controls	8
Table 4-2 (Amended)	
Summary of Contingency Measures and Emission Reductions	10

*** PLEASE NOTE: THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT AND NOT THE REGISTER.**

List of References

1. *Federal Clean Air Act*, 42 U.S.C.A. §7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.
2. *The Delaware 2002 Rate-of-Progress Plan for Kent and New Castle Counties*, Department of Natural Resources and Environmental Control, Dover, Delaware, February 2000.
3. *Delaware Regulations Governing the Control of Air Pollution, Regulation 24 Section 28*, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, Updated to March 8, 1995.
4. *Delaware Regulations Governing the Control of Air Pollution, Regulation 37: NOx Budget Program*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, December 1997.

1. Introduction

Under the Clean Air Act Amendments of 1990 (CAAA, Reference 1), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) of the ground-level ozone. The CAAA requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) for every three years after 1996 to demonstrate how to achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NOx), which are major precursors to form the ground-level ozone. Thus, these SIPs are termed as Rate-of-Progress Plans (RPPs). Delaware's 2002 Rate-of-Progress Plan, which

AMENDMENTS TO
Delaware 2002 Rate-of-Progress Plan
for Kent and New Castle Counties
For Demonstrating
Progress Toward Attainment of the National Ambient Air
Quality Standard for Ground-Level Ozone

Submitted by
Delaware Department of Natural Resources and
Environmental Control
Dover, Delaware
September 2000



Table of Contents	Page
1. Introduction	1
2. Reevaluation of VOC Emission Reductions from Motiva's Wastewater Treatment Plant	2
3. Reevaluation of VOC and NOx Emission Targets and Required Reductions in 2002	4
4. Amendments to Contingency Plan of the 2002 Rate-of-Progress Plan	7
5. Amendments to Appendix N of the 2002 Rate-of-Progress Plan	10
Attachment 1	12

List of Tables	Page
-----------------------	-------------

covers the three-year period from 2000 to 2002, was submitted to EPA in February 2000 (Reference 2). The plan will be referred to hereafter as the 2002 Rate-of-Progress Plan or simply the 2002 RPP.

The document proposed herein is to amend Delaware's 2002 RPP according to a recent settlement agreement between Delaware Department of Natural Resources and Environmental Control (DNREC) and Motiva Enterprises LLC (Attachment 1). According to this agreement, DNREC decides to remove 180 tons per year (TPY) of VOC emission reductions from Motiva's Wastewater Treatment Plant. The amendments proposed herein include: (1) reevaluating VOC emission reductions from Motiva's wastewater treatment plant, (2) reevaluating VOC and NO_x emission targets and required reductions in the 2002 RPP, (3) amending the contingency plan of the 2002 RPP, and (4) amending Appendix N of the 2002 RPP.

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, Air Quality Management Section (AQM), under the direction of Darryl D. Tyler, Section Administrator. The working responsibility for this document falls within the Planning and Community Protection (PCP) Branch of AQM, under the management of Raymond H. Malenfant, Program Manager. The following staff members of PCP's Airshed Assessment and Improvement (AAI) Program are instrumental for this document:

Principal Author and Project Leader:
Frank F. Gao, Ph.D., P.E., Environmental Engineer

Technical Editing Reviewer:
Alfred R. Deramo, Environmental Planner

Quality Assurance Reviewer:
Mohammed A. Majeed, Ph.D., P.E.,
Environmental Engineer

Comments and/or questions regarding this document should be addressed to F. Gao at (302)739-4791, Air Quality Management Section, DAWM-DNREC, 156 South State Street, Dover, Delaware 19901, or at e-mail address fgao@state.de.us.

2. Reevaluation of VOC Emission Reductions from Motiva's Wastewater Treatment Plant

In order to comply with the Federal Benzene Waste Rule and Section 28 of Delaware Air Pollution Control Regulation 24 (hereafter referred to as Regulation 24.28, Reference 3), Motiva Enterprises (formerly Star Enterprise) in New Castle County planned to implement a number of process modifications and emission controls to its waste

water treatment plant prior to 1996. Those modifications and controls include:

- (1) Oily Water Sewer: Using passive ventilation through carbon canisters for active manholes and sealing inactive manholes.
- (2) CPI Separator: Sealing the existing fixed roof, adding a nitrogen blanket, and passively venting emissions to a carbon absorption canister.
- (3) API Separator: Using a combination of fixed and floating covers and venting emissions to a carbon absorption canister.
- (4) Equalization Tanks: Covering with floating roofs.
- (5) Spill Diversion Tank: Covering with a floating roof.
- (6) Dissolved Air Flotation Unit: Retrofitting with fixed roof covers and venting emissions to a control device.

The total VOC emission from the wastewater treatment plant in 1990 was estimated to be 848.4 TPY (Appendix I of the 2002 RPP). As a result of implementing the above controls, VOC emission reductions could be achieved. Upon an agreement between DNREC and Motiva (Attachment 1), Delaware decides not to take 180 TPY VOC emission reductions from the equalization tanks and spill dispersion tank as reduction credits in the 2002 RPP.

The 180 TPY VOC reduction is estimated with respect to the 1990 base year. It cannot be simply subtracted from the 2002 total VOC emission reductions projected in Part III of the 2002 RPP. Instead, steps similar to those used in Section 3 of Appendix I of the 2002 RPP should be applied to the sources that produce this reduction, namely, the equalization tanks and spill diversion tank. Delaware conducts the following analysis to determine the 2002 VOC emission reduction resulting from the 180 TPY emission in 1990.

The 1990 base year VOC emission from Motiva's wastewater treatment plant ($EMIS_{1990}$) can be expressed as

$$EMIS_{1990} = EMIS_{1990CRED} + EMIS_{1990NONCR} \quad (1)$$

where $EMIS_{1990CRED}$ is the emissions from which reduction credits will be taken in 2002, and $EMIS_{1990NONCR}$ is the emissions from which the reductions will not be taken as credit in 2002. The 2002 current control projection is

$$EMIS_{CC2002} = EMIS_{1990} \times GF = EMIS_{1990CRED} \times GF + EMIS_{1990NONCR} \times GF \quad (2)$$

where GF is the growth factor. The first part of Eq. 2 is the credit portion and the second part is the non-credit portion. The 2002 control strategy projection is

$$\begin{aligned}
 EMIS_{CS2002} = & EMIS_{1990CRED} \times GF \times (1 - \\
 CE_{CRED}\% \times RE\%) + & \\
 EMIS_{1990NONCR} \times GF \times (1 - & CE_{NONCR}\% \times RE\%) \\
 (3) &
 \end{aligned}$$

where $CE_{CRED}\%$ is the control efficiency of the credited sources and $CE_{NONCR}\%$ is the control efficiency for the non-credited sources. Again, the first part of Eq. 3 is the credit portion and the second part is the non-credit portion. The emission reduction in 2002 (ER_{2002}) is

$$\begin{aligned}
 ER_{2002} = & EMIS_{CC2002} - EMIS_{CS2002} = ER_{2002CRED} + \\
 ER_{2002NONCR} & \\
 = & EMIS_{1990CRED} \times GF - EMIS_{1990CRED} \times GF \times (1 - \\
 CE_{CRED}\% \times RE\%) + & \\
 EMIS_{1990NONCR} \times GF - & EMIS_{1990NONCR} \times GF \times (1 - \\
 CE_{NONCR}\% \times RE\%) & (4)
 \end{aligned}$$

The emission reduction from the credited sources is

$$\begin{aligned}
 ER_{2002CRED} = & EMIS_{CC2002CRED} - EMIS_{CS2002CRED} \\
 = & EMIS_{1990CRED} \times GF - EMIS_{1990CRED} \times GF \\
 \times (1 - CE_{CRED}\% \times RE\%) & (5)
 \end{aligned}$$

The emission reduction from the non-credited sources is

$$\begin{aligned}
 ER_{2002NONCR} = & EMIS_{CC2002NONCR} - \\
 EMIS_{CS2002NONCR} & \\
 = & EMIS_{1990NONCR} \times GF - EMIS_{1990NONCR} \times \\
 GF \times (1 - CE_{NONCR}\% \times RE\%) & (6)
 \end{aligned}$$

For the credited sources, the total 1990 emission can be obtained from Table M-1 (Appendix I of the 2002 RPP) minus 180 TPY, that is, $848.4 - 180 = 668.4$ TPY, or 1.832 TPD. The controlled emission from these sources has been calculated previously (Table M-2 of Appendix I of the 2002RPP), that is, 0.308 TPD. Thus, the control efficiency for the credited sources is

$$CE_{2002CRED} = \frac{1.832 - 0.308}{1.832} \times 100\% = 83.3\% \quad (7)$$

Applying Eq. 5 and assuming an 80% rule effectiveness, the emission reduction credit can be calculated as

$$\begin{aligned}
 ER_{2002CRED} = & EMIS_{CC2002CRED} - EMIS_{CS2002CRED} \\
 = & 1.832 \times 1.08 - 1.832 \times 1.08 \times (1 - 83.3\% \times 80\%) \\
 = & 1.979 - 0.660 = 1.319 \text{ TPD}
 \end{aligned}$$

The VOC emission reduction of 1.319 TPD is the reduction credit to be used in Delaware's 2002 RPP. This

reduction credit will replace the original 1.722 TPD credit in the 2002 RPP (page 3-39).

3. Reevaluation of VOC and NOx Emission Targets and Required Reductions in 2002

As explained in the 2002 RPP (Section 1.4), the VOC emission target in 2002 is the sum of control strategy projections for all VOC sources, which is 101.139 TPD. Due to the change in VOC emission reduction from Motiva's wastewater treatment plant ($1.722 - 1.319 = 0.403$ TPD), the VOC emission target in 2002 becomes 101.542 TPD (i.e., $101.139 + 0.403 = 101.542$ TPD). This will reduce the creditable VOC emission reductions of 7.877 TPD to 7.474 TPD, which is 5.62% of the adjusted baseline (Please see Table 1-13 on page 1-22 of the 2002 RPP). Thus, the percentage of NOx emission reductions that can be used to substitute VOC emission reductions becomes 3.38% (i.e., $9.00\% - 5.62\% = 3.38\%$). The required NOx emission reduction from the adjusted baseline can be calculated to be 5.354 TPD (Please see page 1-23 for calculation details). The NOx emission target in 2002 will then become 143.120 TPD. All new numbers presented herein will replace their corresponding original numbers in the 2002 RPP.

The new required VOC and NOx emission reductions, and the new VOC and NOx emission target levels in 2002 are presented in the amended Table 1-15 (The amended Table 1-15 should replace the original Table 1-15 on page 1-24 of the 2002 RPP).

**Table 1-15 (Amended)
Target Levels of VOC and NOx Emissions in 2002 (in TPD)**

Description	VOC	NOx	
1999 Target Level	110.206	148.964	(a)
Emission Reduction for Rate-of-Progress	7.474	5.354	(b)
Fleet Turnover Correction for 1999-2002	1.190	0.490	(c)
Target Level for 2002	101.542	143.120	(d)=(a)-(b)-(c)

Due to the above changes in VOC and NOx emission target levels, the required emission reductions from the uncontrolled emission projections need to be amended, as shown in the amended Table 2-13 (The amended Table 2-13 should replace the original Table 2-13 on page 2-18 of the 2002 RPP).

PROPOSED REGULATIONS

Table 2-13 (Amended)
VOC and NOx Emission Reductions Required in the
2002 RPP (in TPD)

VOC Emissions			NOx Emissions		
Target Level	Current Control Projection	Required Reduction	Target Level	Current Control Projection	Required Reduction
(a)	(b)	(c)=(b)-(a)	(d)	(e)	(f)=(e)-(d)
101.542	165.277	63.735	143.120	186.881	43.761

Due to the changes discussed above, the VOC emission reductions in Table 3-8 (page 3-25 of the 2002 RPP) will be amended as follows: (1) the expected VOC emission reduction under Federal Benzene Waste Rule and Delaware Air Regulation 24.28 (regarding Motiva's wastewater treatment plant) shall be changed from 1.722 TPD to 1.319 TPD, and (2) the total expected VOC reduction from all sources shall be changed from 64.138 TPD to 63.735 TPD. Those changes are reflected in the amended Table 3-8 (The amended Table 3-8 should replace the original Table 3-8 on page 3-25 and page 3-26 of the 2002 RPP). Comparison of the total expected VOC emission reduction to the required reduction shows that the VOC emission control measures proposed in the 2002 RPP are adequate to meet the rate-of-progress requirements on VOC emission reduction.

Comparison of the expected total NOx reduction in Table 3-9 (page 3-27 of the 2002 RPP) and the required NOx reduction in the amended Table 2-13 indicates that the control measures proposed in the original 2002 RPP are still adequate to meet the rate-of-progress requirements on NOx emission reduction. In addition, the NOx control measures will produce a 1.042 TPD surplus credit (44.803 - 43.761 = 1.042 TPD). Delaware decides to use this NOx reduction surplus in the amended contingency plan of the 2002 RPP, which is discussed in the following section.

Table 3-8 (Amended)
VOC Emission Control Measures and Expected
Emission Reductions for the 2002 RPP

Control Measures And Regulations	Expected VOC Emission Reduction		
	Kent	New Castle	Total NAA
Point Source Controls			
RACT "Catch-Ups" in Kent County:			
Solvent Metal Cleaning	0.547	N/A	0.547
Surface Coating of Metal Furniture	0.037	N/A	0.037
Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufact. Equip.	0.004	N/A	0.004
New RACT Regulations:			

Bulk Gasoline Marine Tank Vessel Loading Facilities	N/A	1.896	1.896
SOCMI Reactor Processes and Distillation Operations	N/A	0.026	0.026
Batch Processing Operations	0.393	0.038	0.431
Offset Lithography	N/A	0.085	0.085
Aerospace Coatings	0.003	0.004	0.007
Industrial Cleaning Solvents	N/A	0.518	0.518
Non-CTG RACT	0.159	0.221	0.380
Federal Benzene Waste Rule and Delaware Air Regulation 24.28			
	N/A	1.319	1.319
Other Delaware Regulations:			
Sanitary Landfills	0.071	0.274	0.345
Irreversible Process Changes	0.754	1.210	1.964
Total VOC Reductions from Point Sources	1.968	5.591	7.559
Stationary Area Source Controls			
RACT "Catch-Ups" in Kent County:			
Solvent Metal Cleaning	0.136	N/A	0.136
Cutback Asphalt	0.026	N/A	0.026
New and Revised RACT Regulations:			
Stage I Vapor Recovery-Gas. Disps. Facil.	0.493	0.159	0.652
Emulsified Asphalt	0.026	0.027	0.053
Motor Vehicle Refinishing	0.266	1.058	1.324
Offset Lithography	0.080	0.001	0.081
Aerospace Coatings	N/A	0.033	0.033
Stage II Vapor Recovery	0.447	1.435	1.882
Other Delaware Regulations:			
Open Burning	1.844	5.987	7.831

Federal Rules			
Consumer Products	0.192	0.765	0.957
Architectural Coatings	0.269	1.071	1.340
Total VOC Reductions from Area Sources	3.779	10.536	14.315
Off-Road Mobile Source Controls			
Reformulated Fuel	0.008	0.025	0.033
New Emis. Standards:			
For Small Spark Ignition Engines	0.976	3.091	4.067
For Compression Ignition Engines	0.232	0.500	0.732
For Marine Engines	0.013	1.006	1.019
Total VOC Reductions from Off-Road Sources	1.229	4.622	5.851
On-Road Mobile Source Controls			

FMVCP and RVP	5.960	13.970	19.930
Tier I Vehicle Emissions Standards	1.570	2.710	4.280
a. Basic I/M for Kent County	1.210	N/A	1.210
b. ATP and Pressure Test for Kent			
ATP and Pressure Test for New Castle	N/A	4.300	4.300
Reformulated Fuel	1.390	4.490	5.880
LEV Program	0.070	0.340	0.410
Total VOC Reductions from On-Road Sources	10.200	25.810	36.010
Total VOC Reductions from All Controls	17.176	46.559	63.735

RE value of 97% can be obtained and used for estimating emissions from the affected NOx sources (Please see the next section). Applying the new *RE* of 97% to all affected NOx sources, the projections of their NOx emissions in 2002 can be reevaluated as shown in Table 4-1 (Amended) (The amended Table 4-1 should replace the original Table 4-1 on page 4-6 and page 4-7 of the 2002 Rate-of-Progress Plan).

4. Amendments to Contingency Plan of the 2002 Rate-of-Progress Plan

In the Contingency Plan of the 2002 RPP (Part IV), Delaware applied an improved rule effectiveness (*RE*) factor of 92% to the NOx sources covered by the OTC Regional NOx Controls (through Delaware Regulation 37, Reference 4). Since Regulation 37 has been promulgated for more than two years, further analysis of the regulation indicates that an

Table 4-1 (Amended)
Projections of NOx Emissions with RE=97% for Sources Affected by OTC MOU Phase II Regional Controls

Plant Name***	Point	Source SCC	1990 Emission (TPD)	1990 Emission Baseline (Ton/5month)	MOU Phase II Emission Allowance (Ton/5month)	2002 Current Control Projection (TPD)	2002 Control Strategy Projection (TPD)	Emission Reduction (TPD)
Delmarva Power Delaware City	002	2-01-001-01	0.003	0.6	2.0	0.003	0.011	-0.008
Delmarva Power Edge Moor New Castle County	001	2-01-001-01	0.012	0.7	2.0	0.011	0.035	-0.024
	002	1-01-002-12	4.552	655.8	242.0	4.180	1.730	2.450
		1-01-004-04						
		1-01-005-01						
	003	1-01-002-12 1-01-004-04 1-01-005-01 1-01-006-04	8.009	928.7	346.0	8.660	3.073	5.586
004	1-01-004-01 1-01-005-01 1-01-006-01	12.138	1,436.0	650.0	15.667	5.659	10.008	
Delmarva Power Hay Road New Castle County	001	2-01-001-01	0.575	49.0	50.0	0.774	0.605	0.169
		2-01-002-01						
New Castle County	002	2-01-001-01	0.329	33.6	35.0	0.440	0.353	0.087
		2-01-002-01						
Dover Electric McKee Run Kent County	001	1-01-004-01	0.903	91.6	73.0	0.703	0.741	-0.038
		1-01-005-01						
		1-01-006-01						
	002	1-01-004-01	0.429	56.3	45.0	0.473	0.353	0.120

PROPOSED REGULATIONS

		1-01-005-01						
		1-01-006-01						
	003	1-01-004-01	2.980	411.7	186.0	3.788	1.386	2.402
		1-01-005-01						
		1-01-006-01						

First State Power	001	1-02-002-19	1.431	201.2	203.0	1.588	1.487	0.101
Kent County		1-02-004-05						
Motiva Enterprises	006	3-06-001-06	0.370	104.3	105.0	0.399	0.383	0.016
Delaware City		3-06-001-11						
New Castle County	019	3-06-001-06	0.137	20.1	21.0	0.147	0.147	0.001
	034	3-06-001-06	0.470	69.5	71.0	0.507	0.494	0.013
	067	1-01-004-01	1.354	229.0	94.0	1.295	0.573	0.723
		1-01-007-01						
	068	1-01-004-01	4.241	588.5	207.0	4.581	1.537	3.044
		1-01-007-01						
		1-01-008-01						
	069	1-01-004-01	4.301	647.4	228.0	4.645	1.560	3.085
		1-01-007-01						
		1-01-008-01						
	070	1-01-004-01	4.324	610.7	216.0	4.670	1.575	3.095
		1-01-007-01						
		1-01-008-01						
	074	3-06-001-06	0.263	116.7	118.0	0.284	0.273	0.010
Total Reductions	(TPD)							30.84

* The OTC Phase II NO_x Control Strategy has been implemented in Delaware via Delaware Air Pollution Regulation 37, as amended in March 1999. This table does not include four small sources of Delmarva Power (Christiana Substations 1 and 2, Madison Street Substation, and West Substation). The NO_x emissions from these four small sources were not included in Delaware's 1990 Base Year Emission Inventory because they were smaller than the 25 TPY threshold.

** A negative sign indicates an actual emission increase.

*** Plant names changes since 1990: (1) First State Power Point 001 was formerly Kraft General Foods Point 001. (2) Motiva Enterprises was formerly Star Enterprise. Motiva's Point 067 was formerly Delmarva Power's Point 001 at Delaware City.

As shown in Table 4-1 (Amended), applying the improved *RE* of 97% will produce a total NO_x emission reduction of 30.84 TPD. If compared with the total

reduction of 27.22 TPD obtained with the default *RE* of 80% (Table 3-17 in Part III of the 2002 RPP), the additional reduction will be 3.62 TPD (i.e., 30.84 – 27.22 = 3.62). It should be pointed out that this additional 3.62 TPD NO_x emission reduction can be obtained through *RE* improvement without any further rule-making activities at both State and federal levels.

A summary of the contingency measures and the associated additional VOC and NO_x emission reductions are presented in Table 4-2 (Amended) (The amended Table 4-2 should replace the original Table 4-2 on page 4-8 of the 2002 RPP). As shown in Table 4-2 and in the discussions above, the total VOC emission reduction for contingency purpose is 0.58 TPD, which is equal to the required reduction. The total NO_x emission reduction proposed herein for contingency purpose is greater than the required reduction. Therefore, the amended contingency plan meets the contingency requirements set forth by EPA under CAAA.

**Table 4-2 (Amended)
Summary of Contingency Measures and Emission
Reductions**

<u>Contingency Measures</u>	<u>Emission Reduction (TPD)</u>	
	<u>VOC</u>	<u>NOx</u>
Stage II Vapor Rec. with Annual Inspection	0.58	-
<u>Required VOC Emission Reductions</u>	<u>0.58</u>	<u>-</u>
NOx Controls in Peak Ozone Season- <i>RE</i> Improvement on NOx Regional Control Rule	-	1.04 3.62
Total NOx Emission Reduction	-	4.66
Required NOx Emission Reductions-		4.07

Attachment 1

**Settlement Agreement between Motiva Enterprises LLC
and Delaware Department of Natural Resources and
Environmental Control.**

(A hard copy of this attachment is available upon request. Written request should be addressed to F. Gao, Air Quality Section, DNREC, 156 South State Street, Dover, DE 19901, or through fax at (302)739-3106, or via e-mail at fgao@state.de.us)

5. Amendments to Appendix N of the 2002 Rate-of-Progress Plan

As discussed in the previous section, Delaware proposes an *RE* of 97% to be used in the contingency plan for estimating emissions from NOx sources covered by Regulation 37. The following amendments, and the analyses on which the amendments are made, will replace (1) Section C, Item 4, page N-3 of Appendix N of the 2002 RPP, and (2) Total Score from Questionnaire, page N-4 of Appendix N of the 2002 RPP.

(1) Section C, Item 4

The answer is 4a. YES and a score of 10 is assigned.

The selection is made based on the following judgements:

(1) Since Regulation 37 became effective in May 1999, no source has been found to be out of compliance.

(2) The severe noncompliance penalty provision (Sect. 18.a. of Regulation 37) and the trading program will enable quick correction measures for any noncompliance case.

(2) Total Score from the Questionnaire

A: 15 of 15; **B:** 15 of 15; **C:** 24 of 25; **D:** 43 of 45.

Total Score = 15 + 15 + 24 + 43 = 97 of 100 maximum score.

Thus, the *RE* is assessed to be 97%. This *RE* value of 97% will be used in projecting NOx emissions from sources covered by Regulation 37 in the contingency plan of Delaware's 2002 Rate-of-Progress Plan.

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.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 Del.C. §1906(1))
24 Delaware Code, Chapter 19A (Article VI(d))
(24 Del.C. Ch. 19A (Article VI(d)))

In Re:		
Adoption of Regulations		Order
Related to the Administration		
Of the Nurse Licensure Compact		

WHEREAS, pursuant to 24 *Del. C.* § 1906(1) and 24 *Del. C.* Chapter 19A (Article VI (d)), the Board of Nursing (the "Board") proposed to adopt amendments to its rules and regulations, to establish rules and regulations for the implementation of the Nurse Licensure Compact as more specifically set forth in the Notice appearing in the *Delaware Register of Regulations*, Vol. 4, Issue 2, published Tuesday, August 1, 2000; and,

WHEREAS, pursuant to 29 *Del. C.* § 10115, notice was given to the public that a hearing would be held on September 13, 2000 at 9:00 a.m. in Dover, Delaware to consider the proposed amendments; and,

WHEREAS, the notice invited the public to submit comments orally or in writing regarding the proposed

amendments; and,

WHEREAS, the hearing was held on September 13, 2000 as duly noticed, at which a quorum of the Board was present; and,

WHEREAS, there were no written comments submitted at the public hearing and no adverse written comments were received prior to or at the hearing; and,

WHEREAS, the Board has considered the testimony of the Board's Executive Director concerning the proposed new regulations and finds they serve to appropriately define primary state of residence, outline the process of licensure issuance, list limitations on the multi-state licensure privilege, and provide levels of access, reporting requirements and review opportunities of the information system with regard to the Nurse Licensure Compact enacted by Delaware General Assembly and signed into law by the Governor on June 23, 2000.

NOW, THEREFORE, based on the Board's authority to adopt and revise rules and regulations pursuant to 24 *Del. C.* § 1906(1) and the Board's authority to enact rules and regulations under the Nurse Licensure Compact (24 *Del. C.* ch. 19A), it is the decision of the Board to adopt the proposed Compact rules and regulations, as initially published in the Register of Regulations, a copy of which are attached hereto as Exhibit "A" and incorporated herein. The effective date of this Order is ten (10) days from the date of its publication in the Delaware Register of Regulations, pursuant to 29 *Del. C.* § 10118(e). The addition will be designated as Section 14 of the Rules and Regulations.

IT IS SO ORDERED this 13th day of September, 2000.

**Board of Nursing
(authenticated by a quorum of the Board):**

Till Purnell
Debora Boyle-Borkowski, RN, APN
Emma Lou Browning, Public Member
Robert Lawson, Public Member
Jan Monihan, RN, M.Ed.
Gwelliam Hines, LPN
Shelia MCMahon, RN, MSN
Sallie Seger, LPN
Janet West, RN, MSN
Pamela Andreade, RN, MS, President
Deborah Maichle, RN, MSN, Vice-President

14.0 Nurse Licensure Compact Rules and Regulations

24 Del. C., Chapter 19A, Articles 6D and 8C of the Nurse Licensure Compact grant authority to the Compact Administrators to develop uniform rules to facilitate and coordinate implementation of the Compact.

14.1 Definition of terms in the Compact:

14.1.1 For the Purpose of the Compact:

14.1.1.1 "Board" means party state's regulatory body responsible for issuing nurse licenses.

14.1.1.2 "Information system" means the coordinated licensure information system.

14.1.1.3 "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

14.1.1.4 "Public" means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

14.1.2 Other terms used in these rules are to be defined as in the Interstate Compact.

14.2 Issuance of a license by a Compact party state.

14.2.1 For the purpose of this Compact:

14.2.1.1 A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

14.2.1.1.1 Driver's license with a home address;

14.2.1.1.2 Voter registration card displaying a home address; or

14.2.1.1.3 Federal income tax return declaring the primary state of residence.

(Statutory basis: 24 Del. C., Chapter 19A, Articles 2E, 4C, and 4D)

14.2.1.2 A nurse changing primary state of

residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty(30) days. (Statutory basis: 24 Del. C., Chapter 19A, Articles 4B, 4C, and 4D[1])

14.2.1.3 The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty-(30) day period in section 2b shall be stayed until resolution of the pending investigation.

(Statutory basis: 24 Del. C., Chapter 19A, Article 5[B])

14.2.1.4 The former home state license shall no longer be valid upon the issuance of a new home state license. (Statutory basis: 24 Del. C., Chapter 19A, Article 4D[1])

14.2.1.5 If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state's laws and rules.

14.3 Limitations on multi-state licensure privilege.

Home state Boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards. (Statutory basis: 24 Del. C., Chapter 1902A)

14.4 Information System.

14.4.1 Levels of access

14.4.1.1 The Public shall have access to nurse licensure information limited to:

14.4.1.1.1 the nurse's name,

14.4.1.1.2 jurisdiction(s) of licensure,

14.4.1.1.3 license expiration date(s),

14.4.1.1.4 licensure classification(s) and status(es),

14.4.1.1.5 public emergency and final disciplinary actions, as defined by contributing state authority, and

14.4.1.1.6 the status of multi-state licensure privileges.

14.4.1.2 Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.

14.4.1.3 Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority. (Statutory basis: 24 Del. C., Chapter 19A,

Article 7G)

14.4.2. The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten (10) business days correct inaccurate data to the Information System. (Statutory basis: 24 Del. C., Chapter 19A, Article 7G)

14.4.3 The Board shall report to the Information System within ten (10) business days

14.4.3.1 disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority).

14.4.3.2 dismissal of complaint, and

14.4.3.3 changes in status of disciplinary action, or licensure encumbrance. (Statutory basis: 24 Del. C., Chapter 19A, Article 7B)

14.4.4 Current significant investigative information shall be deleted from the Information System within ten(10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint. (Statutory basis: 24 Del. C., Chapter 19A, Articles 7B, 7F)

14.4.5 Changes to licensure information in the Information System shall be completed within ten (10) business days upon notification by a Board. (Statutory basis: 24 Del. C., Chapter 19A, Articles 7B, 7F)

DIVISION OF PROFESSIONAL REGULATION

BOARD OF EXAMINERS IN OPTOMETRY

Statutory Authority: 24 Delaware Code,
Section 2104(1) (24 Del.C. 2104(1))

PLEASE TAKE NOTICE THAT THE BOARD OF EXAMINERS IN OPTOMETRY HAS REVISED ITS RULES AND REGULATIONS TO STRIKE THE DEFINITIONS OF “PREMISES” AND “SUPERVISION” FROM RULE 1.0 OF ITS RULES AND REGULATIONS. THIS REVISION IS MADE BECAUSE THESE DEFINITIONS ARE INCONSISTENT WITH THE DEFINITIONS OF THESE TERMS SET FORTH IN THE BOARD’S STATUTES, 24 DEL.C. §2118, AS AMENDED EFFECTIVE JULY 13, 2000. THIS CHANGE TO THE BOARD’S RULES WAS APPROVED BY THE BOARD AT ITS AUGUST 17, 2000 MEETING, WITHOUT FORMAL PUBLIC HEARING, AS THIS CHANGE IS EXEMPT FROM THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

AS IT IS AN “[A]MENDMENT[] TO EXISTING REGULATIONS TO MAKE THEM CONSISTENT WITH CHANGES IN BASIC LAW BUT WHICH DO[ES] NOT OTHERWISE ALTER THE SUBSTANCE OF THE REGULATIONS” 29 DEL.C. §10113(B)(5).

In RE: |
Adoption of Rules and |
Regulations |

Order Adopting Rules and Regulations

AND NOW, this 17th day of August, 2000, in accordance with 29 Del.C. §10118 and for the reasons stated hereinafter, the Board of Examiners in Optometry of the State of Delaware (hereinafter “the Board”) enters this Order adopting Rules and Regulations.

Nature of the Proceedings

The Board proposes to revise portions of Rules 4.0 and 11.0 regarding therapeutic licensing for reciprocity applicants, pursuant to its authority under 24 Del.C. §2104(1). Notice of the public hearing on the Board’s proposal was published in the Delaware *Register of Regulations* on May 1, 2000 and in two Delaware newspapers of general circulation, all in accordance with 29 Del.C. §10115. The public hearing was held as noticed on June 15, 2000. The Board deliberated on the proposed revisions following the public hearing and unanimously voted to adopt the rule revisions as published. This is the Board’s Decision and Order ADOPTING the revisions to its Rules and Regulations.

Evidence and Information Submitted at Public Hearing

The Board received no written comments in response to the notice of its intention to adopt the proposed rule revisions regarding therapeutic reciprocity. No public comment was received at the June 15, 2000 public hearing.

Findings of Fact and Conclusions

24 Del.C. §2109 allows for licensure by reciprocity for qualifying applicants licensed by another jurisdiction. §2109 specifically provides that applicants who are licensed in states with requirements for basic licensure equivalent to Delaware’s requirements, but which do not have equivalent standards for therapeutic licensure, must complete the requirements set forth in 24 Del.C. §2108(b) in order to obtain therapeutic licensure in Delaware. The Board’s proposed rules clarify that the intent of “therapeutic equivalency” was that the classes of therapeutic drugs

authorized for use in the reciprocal state (the state in which the applicant is already licensed) must be at least equivalent to those authorized for use in Delaware.¹

This interpretation is evidenced by documents and minutes from the Board's Sunset review in 1995. For instance, the minutes of the February 22, 1995 Joint Sunset Committee Meeting and the Board's March 29, 1995 letter response to the preliminary draft Sunset report reflect discussion of the differences among states in the use by optometrists of various therapeutic drugs. The final report of the Sunset Committee explained that applicants from states with lesser therapeutic standards would be required to meet the conditions of 24 Del.C. §2108 in order to obtain reciprocity. Recognizing that the statutory language of §2109 is somewhat unclear as to the meaning of "standards" to qualify for therapeutic licensing, the Board's proposed rule 4.5 clearly states that that term, as used in §2109, refers to the extent of therapeutic practice allowed to optometrists in Delaware, as set forth in 24 Del.C. §2101(b). This clarification will implement 24 Del.C. §2109 and will protect the public by ensuring that all practitioners reciprocally licensed in Delaware will have an understanding of and experience in prescribing the drugs which he or she will be authorized to use and prescribe under the Delaware license. If the out of state practitioner does not have equivalent therapeutic experience, he or she will be required to meet the conditions of 24 Del.C. §2108.

The proposed rules also specify (Rule 11.4) that the 40 hours of clinical experience obtained pursuant to §2108(b) must be obtained within the past 24 months prior to application in Delaware. This will ensure that the practitioners' experience and skills are up to date. The Board finds this to be critical due to continuing changes and advancements in therapeutics.

As outlined in the preceding section, the public was given the required notice of the Board's intention to adopt a regulation and was offered an adequate opportunity to provide the Board with comments on the proposed regulation. In summary, the Board concludes that the proposed additions to Rules 4.0 and 11.0 are necessary for the enforcement of 24 Del.C. Chapter 21, and for the full and effective performance of the Board's duties under that Chapter. The Board also finds that adopting the regulations as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health of the general public, particularly the recipients of optometric services. The Board, therefore, adopts the proposed amendments to its Rules and Regulations, as set forth in

1. Therapeutically certified Delaware optometrists are permitted to use and prescribe those classes of drugs set forth at 24 Del.C. §2101(b)(2) and (3).

Exhibit "A" attached hereto.

Order

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

1. The proposed amendments to the Board's Rules and Regulations are *approved and adopted* in the exact text attached hereto as Exhibit "A".
2. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 Del.C. §10118(e).
3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

By Order of the Board of Examiners in Optometry (as authenticated by a quorum of the Board):

Michele Haranin, O.D., President, Professional Member
Phyllis E. Chambers, O.D., Secretary, Professional Member
Susan Betts, O.D., Professional Member
Mark Metzelaar, Public Member
Marina Ney, Public Member

Board of Examiners in Optometry

- 1.0 Definitions
- 2.0 Qualifications and Examinations
- 3.0 Internship
- 4.0 Reciprocity
- 5.0 Use of Diagnostic Drugs
- 6.0 Use of Therapeutic Drugs
- 7.0 Minimum Standards of Practice
- 8.0 Ethics
- 9.0 Hearings
- 10.0 Continuing Education Requirements
- 11.0 Therapeutic Certification
- 12.0 Unprofessional Conduct
- 13.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 DEFINITIONS

Dispensing: The practice of optometry shall include the dispensing of contact lenses. "Dispensing" shall be defined as: "Contact lens dispensing" means the fabrication, ordering, mechanical adjustment, dispensing, sale and delivery to the consumer of contact lenses. Contact lenses must be dispensed in accordance with a written contact lens prescription from a licensed physician or optometrist which includes lens curvature, diameter, power, material, manufacturer and an expiration date not to exceed one year,

together with appropriate instructions for the care and handling of the lenses. The term does not include the taking of any measurements of the eye or the cornea and evaluating the physical fit of the contact lenses.

Duly licensed: For purposes of 24 Del.C. §2106(a) and these regulations, the term “duly licensed” shall be defined as: a person who satisfies the applicable requirements under 24 Del.C. §§2107, 2108, 2110 and 2111 (or alternatively §2109 and §2111), and who has been issued a license in good standing in accordance with §2112. A person holding a valid temporary license shall not be deemed to be duly licensed for purposes of Chapter 21, Title 24 and these regulations, and may only engage in the practice of optometry as outlined in §2110 and Section 3 of these regulations.

~~[Premises: For purposes of 24 Del.C. §2118(b) and these regulations, the phrase “on the same premises” shall be defined as: being within the immediate physical boundaries of the office of the licensed supervising practitioner. The “office” of the licensed supervising practitioner shall not include space, within a building or structure owned or leased by the licensed supervising practitioner, in which the licensed supervising practitioner does not engage in the practice of medicine, osteopathy, ophthalmology or optometry.]~~

~~Supervision: For purposes of 24 Del.C. §2118(b) and these regulations, the term “supervision” shall be defined as: the physical presence of the licensed practitioner at some time during the fitting for the purpose of evaluating and verifying the contact lens fit and the patient’s ocular health.]~~

2.0 QUALIFICATIONS AND EXAMINATIONS

2.1 Every candidate for registration must meet the following qualifications:

2.1.1 Have received a degree of “Doctor of Optometry” from a legally incorporated and accredited optometric college or school which has been approved by the appropriate accrediting body of the American Optometric Association.

2.1.2 Pass the substantive and clinical examinations required by 2.2 of these regulations.

2.1.3 Complete the internship required by 24 Del.C. §2110 and Section 3 of these regulations. An individual is duly licensed after completing the internship requirement as well as all the other requirements in §2107 of this statute. (For reciprocal applicants, see Section 4 of these regulations.)

2.1.4 All applicants for therapeutic licensure must be CPR certified for both children and adults. All therapeutic optometrists must keep their CPR certification for both children and adults current.

2.1.5 Has not engaged in conduct that would constitute grounds for disciplinary action, and has no

unresolved disciplinary proceedings pending in this or any other jurisdiction. It shall be the responsibility of the candidate to submit to the Board a certified statement of good standing from each jurisdiction where he/she is currently or has been previously licensed.

2.2 Every candidate shall pass, at a score determined by the National Board of Examiners in Optometry, the substantive and clinical portions of the examination given by the National Board of Examiners in Optometry. The clinical examination given by the National Board of Examiners in Optometry may be taken as part of the National Board Examination or as a separate clinical skills and/or TMOD examination given by the National Board of Examiners in Optometry as the State Board shall designate.

3.0 INTERNSHIP

3.1 An internship is a course of study in which applicants receive part of their clinical training in a private practice setting under the supervision of a licensed optometrist or ophthalmologist. An active, licensed Optometrist or Ophthalmologist may act as a supervisor. Any applicant’s participation in such an internship program must be approved by the Board and is subject to the following terms and conditions:

3.1.1 A letter from the practitioner with whom the applicant will be interning stating the goals, duties and the number of hours he/she will be working. If the applicant is not doing his/her internship with a therapeutically certified optometrist or ophthalmologist, he/she must also complete an additional one hundred (100) hours of clinical internship with a therapeutically certified Optometrist, Medical doctor or Osteopathic physician.

3.1.2 Each applicant who will be participating in the internship program must provide the name and address of the supervisor and the dates of the internship for approval by the Board before the internship may begin.

3.1.3 A letter must be received by the Board from the supervisor verifying the completion of the internship.

3.1.4 For purposes of this Section and 29 Del.C. §2110, the term “duration” shall be defined as “a period of no less than six (6) months and no greater than the period ending on the date of the next Board meeting following the end of the six (6) month period.” No intern may practice on a temporary license beyond the duration of the internship.

3.2 Subject to the approval requirements stated above, a candidate’s internship requirements may be satisfied while the candidate is a member of the Armed Forces if he/she:

3.2.1 Functions as a fully credentialed therapeutically certified optometric practitioner; and (for purposes of this Section equivalent to the Air Force regulations).

3.2.2 Performs his optometric duties on a full-time basis in a completely equipped eye clinic.

3.3 Full-time: minimum of 35 hours per week.

3.4 All supervisors must supervise the interns on a one-to-one basis whenever an applicant performs a task which constitutes the practice of optometry. No supervisor may be a supervisor for more than one intern, or student extern, at a time. Only one intern shall be permitted in any practice for any period of time.

3.5 All acts which constitute the practice of optometry under 24 Del.C. §2101(a) may be performed by the intern only under the following conditions:

3.5.1 The supervisor shall be on the premises and immediately available for supervision at all times;

3.5.2 All intern evaluations of any patient shall be reviewed by the supervisor prior to final determination of the patient's case before the patient leaves the premises; and

3.5.3 A supervisor shall at all times effectively supervise and direct the intern.

3.6 A violation of any of the conditions enumerated in this rule may be grounds for the Board to revoke their approval of an internship program. The Board may also revoke its approval of an internship program if it determines that either the supervising optometrist or the intern has engaged in any conduct described by 24 Del.C. §2113(a). Furthermore, any violation of the terms of this rule by a supervising optometrist who is a licensed optometrist shall be considered unprofessional conduct and a violation of 24 Del.C. §2113(a)(7).

4.0 RECIPROCITY (ENDORSEMENT)

4.1 The Board shall waive the internship requirement for an applicant holding a valid license to practice optometry, issued by another jurisdiction, and who has practiced for a minimum of five years in such other jurisdiction with standards of licensure which are equal to or greater than those of 24 Del.C. Ch. 21 and grant a license by reciprocity to such applicant. The five years of practice experience must be obtained in state(s) with licensure standards at least equal to those of Delaware. The applicant shall contact the Healthcare Integrity Protection Data Bank/National Practitioner Data Bank requesting that verification be sent to the Board regarding his/her licensure status. In addition, the applicant shall contact each jurisdiction where he/she currently is licensed, or has been previously licensed, or otherwise authorized to practice optometry, and request that a certified statement be provided to the Board stating whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved.

4.2 Applicants from jurisdictions which have the same basic qualifications for licensure as this State, but do not have essentially comparable or higher standards to qualify for 'therapeutic' licensing, shall be required to meet the

conditions of subsections (a) and (b), 24 Del.C. §2108.

~~4.3 "Standards" as used in this Section are defined in Rules 6.0 & 7.0 of these regulations.~~

4.3 ~~In addition,~~ The applicant shall include, as part of the application, copies of state licensing and/or practice statutes and regulations pertaining to the practice of Optometry for each the jurisdiction through which he/she is seeking reciprocity or claiming qualifying practice experience.

4.4 "Standards of licensure," as used in 24 Del.C. §2109, shall refer to the qualifications of applicants set forth at §2107.

4.5 The "standards to qualify for 'therapeutic' licensing," as used in 24 Del.C. §2109 with regard to therapeutic reciprocity, shall refer to the standards of diagnostic and therapeutic practice as set forth in 24 Del. C. §2101(b).

4.6 An applicant shall not be licensed by reciprocity as a Delaware therapeutically certified optometrist unless:

4.6.1 He/she demonstrates that the state in which he/she is therapeutically certified allows the use and prescription of diagnostic and therapeutic drugs which is at least equivalent to that permitted under a Delaware therapeutic optometrist license as set forth in §2101(b), OR

4.6.2 He/she has met the requirements of §2108(a) and (b) and Rule 11.0.

5.0 USE OF DIAGNOSTIC DRUGS

5.1 Licensees who have been duly authorized by the Board may, for diagnostic purposes only, make use of the following classes of topical ophthalmic drugs: (1) anesthetics, (2) mydriatics, (3) cycloplegics, and (4) miotics; provided, however, that any such authorization by the Board shall not be construed as authorizing any licensee to dispense or issue a prescription for diagnostic drugs.

5.2 Authorization by the Board under this regulation shall be evidenced by an appropriate designation on the certificate of registration and license.

5.3 The provisions of Section 5.1 shall not preclude a licensee from using: ancillary diagnostic agents including, but not limited to dyes, schirmer strips, etc.

6.0 USE OF THERAPEUTIC DRUGS

6.1 Therapeutically certified optometrists may use and/or prescribe the following pharmaceutical agents for the treatment of ocular diseases and conditions:

- 6.1.1 Topical and oral administration:
 - 6.1.1.1 Antihistamines and decongestants
 - 6.1.1.2 Antiglaucoma
 - 6.1.1.3 Analgesics (non-controlled)
 - 6.1.1.4 Antibiotics
- 6.1.2 Topical administration only:
 - 6.1.2.1 Autonomics
 - 6.1.2.2 Anesthetics

6.1.2.3 Anti-infectives, including antivirals and antiparasitics

6.1.2.4 Anti-inflammatories

6.2 Authorization by the Board under this regulation shall be evidenced by an appropriate designation on the certificate of registration and license.

7.0 MINIMUM STANDARDS OF PRACTICE

7.1 Equipment

7.1.1 Acuity chart

7.1.2 Ophthalmoscope

7.1.2.1 Direct

7.1.2.2 Indirect

7.1.3 Keratometer

7.1.4 Biomicroscope

7.1.5 Tonometer

7.1.6 Gonioscope

7.1.7 Access to Visual Field

7.1.8 Access to Retinal Camera

7.1.9 Phoropter

7.2 Examination and Treatment

7.2.1 General Examination:

7.2.1.1 Case history

7.2.1.2 Acuity measure

7.2.1.3 Internal tissue health evaluation

7.2.1.4 External tissue health evaluation

7.2.1.5 Refraction

7.2.1.6 Tonometry

7.2.1.7 Visual fields (in appropriate cases)

7.2.1.8 Retinal photos (in appropriate cases)

7.2.1.9 Treatment, recommendations and

directions to the patients, including prescriptions

7.2.1.10 Name of attending optometrist

7.2.2 During a contact lens examination:

7.2.2.1 Assessment of corneal curvature

7.2.2.2 Acuity through the lens

7.2.2.3 Directions for the care and handling

of lenses and an explanation of the implications of contact lenses with regard to eye health and vision

7.2.2.4 Name of attending optometrist

7.2.2.5 Assessment of contact lens fit

7.2.3 During a follow-up contact lens examination:

7.2.3.1 Assessment of fit of lens

7.2.3.2 Acuity through the lens

7.2.3.3 Name of attending optometrist

7.2.3.4 Ocular health assessment

7.3 A complete record of examinations and treatment shall be kept in a current manner.

8.0 ETHICS

8.1 It shall be the ideal, the resolve and the duty of all licensees to:

8.1.1 Keep the visual welfare of the patient

uppermost at all times.

8.1.2 Promote in every possible way, better care of the visual needs of mankind.

8.1.3 Enhance continuously their educational and technical proficiency to the end that their patients shall receive the benefits of all acknowledged improvements in vision and eye care.

8.1.4 See that no person shall lack for visual care, regardless of his financial status.

8.1.5 Advise the patient whenever consultation with an optometric colleague or reference for other professional care seems advisable.

8.1.6 Hold in professional confidence all information concerning a patient and use such data only for the benefit of the patient.

8.1.7 Conduct themselves as exemplary citizens.

8.1.8 Maintain their offices and their practices in keeping with current professional standards of care.

8.1.9 Promote and maintain cordial and unselfish relations with members of their own profession and other professionals for the exchange of information to the advantage of mankind.

8.1.10 Maintain adequate records on each patient for a period of not less than five years from the date of the most recent service rendered.

8.2 A licensee must honor a patient's request to forward the patient's complete prescription and ophthalmic or contact lens specification to another licensed physician of medicine, osteopath, optometrist, or a nationally registered contact lens technician working under the direct supervision of an optometrist, ophthalmologist or osteopathic physician, if all financial obligations to the licensee have been satisfied. It shall be the obligation of a licensee to tender to a patient upon request his/her final prescription for ophthalmic lenses or contact lens(es) specification, if all financial obligations to the licensee have been satisfied. For purposes of this section, a final prescription or specification results when a patient is released to routine follow-up care. No licensee shall be required to tender a contact lens prescription beyond one (1) year from the date the contact lens(es) were dispensed.

8.3 It shall be considered unlawful for a licensee to delegate to a lay individual, whether an employee or not, any act or duty which would require, on the part of such individual, professional judgment. The fitting of contact lenses, tonometry, refraction, treatment of eye disease, low vision and vision therapy, etc. shall not be so delegated unless under the direct supervision of the licensee.

8.4 No licensee shall do anything inconsistent with the professional standards of the optometric and allied health professions.

8.5 No licensee shall use unethical, misleading or unprofessional advertising methods, including, but not limited to: baiting patients to purchase materials in

exchange for free or reduced fees for professional services.

8.6 No licensee when using the doctor title shall qualify it in any other way than by use of the word "optometrist". He/she may, however, when not using the prefix, use after his/her name the "O.D." degree designation, consistent with other provisions of 24 **Del.C.** Ch. 21.

8.7 No licensee shall practice in or on premises where any materials, other than those necessary to render his professional services, are dispensed to the public.

8.8 No licensee shall locate in a merchandising store or practice his profession among the public as the agent, employee or servant of, or in conjunction with either directly or indirectly, any merchandising firm, corporation, lay firm or unlicensed individual.

8.9 No licensee shall practice his profession in conjunction with, or as an agent or employee of an ophthalmic merchandising business (commonly known as "opticians") either directly or indirectly in any manner. Nor shall any licensee use any name other than the name recorded in the files of the State Board for his optometric registration and licensure.

8.10 Corporations, except those allowed under Chapter 6 of Title 8 of the Delaware Code, lay firms and unlicensed individuals are prohibited from the practice of optometry directly or indirectly and from employing, either directly or indirectly, registered and licensed optometrists to examine the eyes of their patients. Licensees so employed will be considered guilty of unprofessional conduct, and in violation of 24 **Del.C.** §2113(a)(3) and (6).

8.11 No licensee shall hold himself forth in such a way as to carry the slightest intimation of having superior qualifications or being superior to other optometrists, unless he is qualified by a specialty board approved by the State Board.

8.12 No licensee holding an official position in any optometric organization shall use such position for advertising purposes or for self-aggrandizement.

8.13 Since the law states that a certificate must be displayed in every office where the profession of optometry is practiced, and since no certificate for branch offices has previously been issued, the State Board shall issue branch office certificates with the words "Branch Office" thereon emblazoned under the registry number, with the certificate being a duplicate of that originally issued.

8.14 A violation of any of the provisions of these regulations will be considered to be unprofessional conduct.

9.0 HEARINGS

9.1 All complaints shall be referred to the Division of Professional Regulation for investigation and a contact person from the Board will be appointed at the next meeting.

9.2 Hearings are conducted in accordance with the Administrative Procedures Act.

10.0 CONTINUING EDUCATION REQUIREMENTS

10.1 All persons licensed to practice Optometry in the State of Delaware shall be required to acquire 12 hours of continuing education every two years. All therapeutic licensed optometrists shall be required to acquire an additional 12 hours of therapeutics and management of ocular disease and keep their CPR certification for both children and adults current. No practice management courses will be accepted.

10.2 These continuing optometric education requirements are necessary for licensure every two years.

10.3 Licensees will be required to comply before May 1 of odd numbered years.

10.4 It shall be the responsibility of the candidate for relicensure to submit to the appropriate State of Delaware agency evidence of his/her compliance with these requirements. The appropriate state agency shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the continuing education requirements stated herein, along with other fees and documents required. Failure to be notified by such agency shall not relieve licensee from this obligation.

10.5 Self-Reported Study

10.5.1 Non-therapeutic - Of the 12 hours biennial requirement for non-therapeutic licensees, a maximum of 2 hours may be fulfilled by self-reported study.

10.5.2 Therapeutic - Of the 24 hours biennial requirement for therapeutic licensees, a maximum of 4 hours may be fulfilled by self-reported study.

10.5.3 Self-reported study may include:

10.5.3.1 Reading of Optometric journals

10.5.3.2 Optometric tape journals

10.5.3.3 Optometric audiovisual material

10.5.3.4 Other materials given prior approval by the Board.

Proof of completion from the sponsoring agency is required for credit.

10.6 Any new licensee shall be required to complete continuing education equivalent to one hour for each month between the date of licensure and the biennial renewal date. The first twelve (12) hours of pro-rated continuing education must be in the treatment and management of ocular disease.

10.7 Continuing Education courses given by the following organizations will receive credit. Meetings of (Scientific Session Portion Only)

10.7.1 American Optometric Association

10.7.2 Delaware Optometric Association

10.7.3 American Academy of Optometry

10.7.4 Recognized state regional or national optometric societies

10.7.5 Schools and colleges of Optometry

10.7.6 Meetings of other organizations as may be approved by the Board.

10.7.7 COPE-approved courses (with the exception of Practice Management courses)

10.8 Failure to Comply. When the State Board of Examiners in Optometry deems someone to be deficient in continuing education requirements, the license will be revoked. In the event that any optometrist licensed in this State fails to meet continuing education requirements, his or her license shall be revoked, except when proven hardship makes compliance impossible. The Board shall reinstate such license upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

10.9 Licensure--Renewal

10.9.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

10.9.2 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee in addition to the prescribed renewal fee.

10.9.3 Any licensee who intends not to renew his/her license because he/she retired from practice or has ceased practice in the State of Delaware, shall so indicate such reason(s) on the renewal application. Failure to do so will result in the Board taking mandatory action to revoke the license.

10.10 Exemptions

An exemption may be granted to any optometrist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, etc.

11.0 THERAPEUTIC CERTIFICATION

11.1 The examination identified in 24 Del.C. §2108(b) is the national examination administered by the Association of Regulatory Boards of Optometry (ARBO) for treatment and management of ocular disease. A copy of the certificate representing passage of the examination must be submitted with the application for therapeutic licensure.

11.2 All applicants for therapeutic licensure must be

CPR certified for both children and adults. All optometrists must keep their CPR certification for both children and adults current.

11.3 For applicants currently licensed in Delaware and applicants for reciprocal licensure pursuant to the requirements of §2108, 40 hours of treatment and management of ocular disease training may be accumulated with a therapeutically certified optometrist, a medical doctor, or an osteopathic doctor. Proof of 40 hours of treatment and management of ocular disease training must be submitted in writing by the supervising doctor. ~~by letter.~~ If an applicant's supervisor is a therapeutically certified optometrist practicing in a state other than Delaware, proof of similar therapeutic practice standards ~~licensing requirements~~ in the other state must be submitted.

11.4 Applicants must have completed their forty (40) hours of clinical experience within twenty-four (24) months of their initial application for therapeutic licensure. No clinical experience older than 24 months (prior to application) will be accepted for therapeutic certification.

~~11.5 The same reciprocity rules apply for therapeutic licensing as for other optometry licensing.~~

11.5 All newly licensed optometrists shall be required to be therapeutically certified. Their six month internship should be done with a therapeutically certified optometrist, M.D. or D.O. However, if a therapeutically certified optometrist, M.D. or D.O. is not available, the intern may do an internship with a non-therapeutically certified optometrist, provided the intern complete an additional 100 hours of clinical experience in the treatment and management of ocular disease supervised by a therapeutically certified optometrist, M.D. or D.O. during their internship.

~~11.7 For applicants not currently licensed in Delaware (Refer to Reciprocity).~~

12.0 UNPROFESSIONAL CONDUCT

A violation of any of the provisions of these regulations will be considered to be unprofessional conduct.

13.0 VOLUNTARY TREATMENT OPTION FOR CHEMICALLY DEPENDENT OR IMPAIRED PROFESSIONALS

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

13.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the

individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

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

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

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

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

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

13.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating

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

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

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

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

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

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

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

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

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

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

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

DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHARMACY

Statutory Authority: 24 Delaware Code,
Section 2509 (24 Del.C. 2509)

In Re: |
The Rules and Regulations |
Authority - 24 Del.C. §2509 |

A Public Hearing was held to receive comments on August 9, 2000 at the regularly scheduled meeting of the State Board of Pharmacy. The Board considered proposed changes to Regulation V as published in the Register of Regulations, Vol. 4, Issue 1, July 1, 2000.

Summary of the Evidence and Information Submitted

The following is a summary of the written and verbal comments received:

Hieu T. Tran, Pharm.D., is the Legislative Chair of the Delaware Society of Health System Pharmacists. He testified about the important role of the pharmacist at the bedside of the patient. Technology provides more efficient use of the pharmacist's time without compromising safety. He recommended that the Board review the recommendations of the Automation Subcommittee and delineate between retail and institutional settings before taking any action.

John Yeager, R.Ph, is the Director of Pharmacy,

Nanicoke Health Systems, which is converting to a Pyxis 2000 machine similar to the one used by Bayhealth. The changeover will permit a shift of pharmacists to clinical duties. He is concerned about the effects of the proposed Regulation V and recommends that hospital systems be exempt at least until the issue is addressed by the Automation Subcommittee.

Suzanne Raab-Long is the Vice President of Professional Services for the Delaware Health Care Association. The members of the Association have concern about the effect of proposed Regulation V on automation. Automation promotes higher efficiency using fewer personnel and these are important issues as insurance carriers reduce payments. She noted that there is a difference between retail and hospital or long term care settings that is not addressed in proposed Regulation V. In long term care or hospital settings medication is administered by a licensed health care professional. She recommended adding the following language:

“Unit based or centralized automated pharmacy systems in a hospital setting are not considered a final container.”

Karen Nishi is the Director of Regulatory Affairs at Pyxis Corporation. She recommended that the pharmacist in charge be the person to decide who does the final check and it should vary among settings. She noted that in a hospital setting there is an intervening health care person, usually a registered nurse who does a 5 point check to make sure it is the correct patient, medication, time, dose, and route. The Board should make regulations specific for retail or hospital pharmacies.

Findings of Fact

It is the Board's responsibility to promulgate regulations that will protect the public health, safety and welfare. 24 Del. C. § 2501. The dispensing of medications falls within its responsibility. 24 Del. C. § 2511. There has been a loophole in the regulatory scheme since the Board interpreted its regulations with respect to the final check by a pharmacist. *Bayhealth Medical Center v. State of Delaware*, Board of Pharmacy (February 9, 2000). It is important that the loophole is closed expeditiously. The Board also recognizes that there are circumstances in certain settings where an exemption from the final check by a pharmacist would be efficient and not detrimental to the welfare of the public. Accordingly the proposed language clarifies the final check as follows:

“a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will

be a final check by a licensed pharmacist prior to dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.”

It is not appropriate to offer a blanket exemption, rather a case by case analysis of each system and its performance is necessary. The Board expects to offer a temporary exemption for a trial period and examine the actual frequency of errors. The Board also could revoke an exemption if it becomes apparent that an error rate demonstrates a risk to the public. For clarity, the change in Regulation V includes a new definition of the term “container.”

The dissenting board member thought the Board should wait until the Automation Subcommittee’s work was complete before any final rule was promulgated. The subcommittee expects to have a final recommendation for the meeting in September.

Decision and Effective Date

The Board, having a quorum of seven, adopts the change to Regulation V to become effective 10 days following final publication in the Register of Regulations. Two of the members whose terms expired were replaced prior to the signing of the order.

Text and Citation

The text of the Regulations hereby promulgated is as it appeared in the Register of Regulations, Vol. 4, Issue 1, July 1, 2000.

State Board of Pharmacy

Calvin Freedman, R. Ph, President
Maryanne Holzapfel, R. Ph.
Ruth Melvin
Charles Davis

Dissenting

Yvonne Brown, R. Ph., Vice President

Date: September 13, 2000

Regulation V. Dispensing

A. Definitions

1. Dispensing - To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that

delivery.

2. Pertinent Patient Medication Information - Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

3. Delivery - The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

4. Agent - An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

5. New Medication - A medication not previously dispensed by the pharmacy for the ultimate user.

6. Patient Counseling - The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

7. Compounding - The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including the reconstitution of powders for administration and the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFDCa Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.

8. Supportive personnel - A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

9. Cell - Any container which holds the medication for automatic dispensing.

10. Prescription - An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

11. Automated Data Processing System (ADP) - A system utilizing computer software and hardware for the purposes of recordkeeping.

12. CRT - Cathode Ray Tube used to impose visual information on a screen.

13. Computer - Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

14. Controlled Substance - Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

15. Downtime - That period of time when a computer is

not operable.

16. Prescriber - A practitioner authorized to prescribe and acting within the scope of this authorization.

17. Prescription - A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

18. Facsimile (FAX) Prescription - A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

19. Reduced to Writing

a. For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;

b. For a refill authorization, it may be handled as a new prescription as in (a) above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

c. If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described in (a).

20. Regulatory Agency - Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

21. Printout - A hard copy produced by computer that is readable without the aid of any special device.

22. Stop Date - A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

23. Common Data Base - A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.

24. Final Container - is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.

B. The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program.

1. Receive oral prescriptions and reduce them immediately to writing.

2. Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

3. Record refill dates and initials of the dispensing pharmacist on the prescription (or on another appropriate uniformly maintained readily retrievable record such as the medication records.)

C. Patient Counseling

1. Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern may conduct a prospective drug review before refilling a prescription to the extent deemed appropriate by the pharmacist or pharmacy intern in his/her professional judgment. Such review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

2. Except when a prescriber requests that information regarding a prescribed drug not be given to a specific patient, a pharmacist or a pharmacy intern under the direct supervision of a pharmacist shall, with each new medication dispensed, provide counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

- a. the name and description of the prescribed drug;
- b. the dosage and the dosage form;
- c. the method and route of administration;
- d. the duration of the prescribed drug therapy;
- e. any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;
- f. common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;
- g. patient techniques for self-monitoring of the drug therapy;
- h. proper storage;
- i. prescription refill information;
- j. the action to be taken in the event of a missed dose; and
- k. current over-the-counter medication use.

3. This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or

other appropriate health care provider.

4. Nothing in this section requires a pharmacist or pharmacy intern under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling. The record must indicate who made the offer to counsel.

5. If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

6. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use.

7. The pharmacist who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the pharmacist.

D. Supportive personnel

1. Qualifications and training

a) The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

b) The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

- 1) general drug and dosage form knowledge
- 2) medical terminology
- 3) pharmaceutical calculations
- 4) prescription labeling requirements
- 5) general filling/dispensing responsibilities
- 6) patient profile record system requirements
- 7) requirements for patient counseling
- 8) confidentiality
- 9) safety practices
- 10) inventory functions
- 11) knowledge of applicable State and Federal Statutes and Regulations
- 12) other site-specific parameters

c) The general content of the training program must be maintained in the policy and procedure manual.

d) Documentation of successful training in specific areas by oral or written evaluation will be

maintained and will be available for inspection by the Board of Pharmacy.

2. Supervision

Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

3. Activities allowed

a) Supportive personnel will be allowed to perform only those duties permitted by this regulation.

b) Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

- 1) Obtaining the medication from stock.
- 2) Typing the label after the pharmacist has interpreted the directions.

3) Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that ~~such selection is properly checked by the pharmacist before the dose is authorized.~~ a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will be a final check by a licensed pharmacist prior to dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.

c) Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. All compounding must be in compliance with FFCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

- 1) The formulation is developed by the pharmacist before proceeding with the compounding.
- 2) The compounding ingredients are checked by the pharmacist before proceeding with the compounding.
- 3) Every weight and measurement is checked by the pharmacist before proceeding with the compounding.
- 4) The finished product is checked by the pharmacist before dispensing.
- 5) A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

d) Only supportive personnel or persons being trained as supportive personnel as required by this

regulation, may perform the activities defined by this regulation.

E. Automatic Dispensing Devices

If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

F. Authorization for renewal of prescriptions

A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

G. Mandatory Patient Profile Record System

1. A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

2. The following information shall be recorded by a pharmacist or designee:

- a. The family name and first name of the person for whom the medication is intended (the patient);
- b. The address of the patient and phone number;
- c. The patient's age, or date of birth, and gender;
- d. The original date the medication is dispensed pursuant to the receipt of a physician's prescription;
- e. The number or designation identifying the prescription;
- f. The prescriber's name;
- g. The name, strength, quantity, directions and refill information of the drug dispensed;
- h. The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;
- i. If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.
- j. Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

3. The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-

counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

4. Upon receipt of a new prescription, a pharmacist or pharmacy intern under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the physician.

5. A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

H. Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

1. Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

- a. The request comes from a registered pharmacist.
- b. The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation V, and includes the first and last name of the pharmacist transmitting the information.
- c. The prescription used for refills must be clearly identified as a copy.
- d. The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.
- e. The copy shows the last date of dispensing.
- f. Only the actual number of refills remaining are indicated.
- g. A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

2. A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

3. Written copies of prescriptions are for information only and are not valid for refilling.

I. Automated Data Processing Systems

1. PROFILES

When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation V must be met.

2. PRESCRIPTION (Drug Order) INFORMATION

Prescription information (drug order) shall include, but not be limited to:

- a. Original dispensing date
- b. Name and address of patient (patient location if in an institution)
- c. Name of prescriber
- d. DEA number of prescriber in the case of a controlled substance
- e. Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed
- f. Renewals authorized
- g. Directions of use for patient

3. RECORDS OF DISPENSING

Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:

- a. Quantity dispensed
- b. Date of dispensing
- c. Serial Number (or equivalent if an institution)
- d. The identification of the pharmacist responsible for dispensing
- e. Record of renewals to date
- f. Name and strength of medicine

4. RECORD RETRIEVAL (DOCUMENTATION OF ACTIVITY)

Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

- a. Serial number of prescription (equivalent if an institution)
- b. Date of processing
- c. Quantity dispensed
- d. The identification of the pharmacist responsible for dispensing
- e. Medication dispensed

5. AUXILIARY RECORDKEEPING SYSTEM

An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

6. COMMON DATA BASE

Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent

dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation V for non-controlled substances.

7. TRANSFER OF PRESCRIPTIONS VIA ADP

A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306.26. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

a. Any pharmacy using ADP must comply with all applicable State and Federal regulations.

b. A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

c. The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

d. The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

- 1. Write the word "TRANSFER" on the face of the transferred prescription.
- 2. Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

e) To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

J. Electronic Transmission Of Prescriptions

1. All Prescription Drug Orders communicated by way of Electronic Transmission shall:

a. be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order;

b. identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by

Federal or State law;

c. be transmitted by an authorized Practitioner or his designated agent; and

d. be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

2. The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

3. The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

4. All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5. Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

6. Controlled substance prescriptions may only be electronically transmitted via a facsimile.

7. Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

a. The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

b. Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

c. A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

d. The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

e. Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

K. Return of Medications and Supply

1. Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or

pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

2. Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section D revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

DIVISION OF PROFESSIONAL REGULATION BOARD OF PODIATRY

Statutory Authority: 24 Delaware Code,
Section 506(a)(1) (24 Del.C. 506(a)(1))

In RE: |
Adoption of Rules and |
Regulations |

Order Adopting Rules and Regulations

AND NOW, this 14th day of September, 2000, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Podiatry of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

Nature of the Proceedings

Pursuant to its authority under 24 *Del.C.* §506(1) the Board proposed to adopt new Rules and Regulations to replace its existing Rules and Regulations. These changes to the Rules and Regulations are to implement and clarify the Board's law, 24 *Delaware Code*, Chapter 5, which was completely amended effective July 20, 1999. Substantive changes to the rules and regulations included changes in and clarification of the requirements of the Preceptorship program; clarification of examination requirements and criteria for licensure by reciprocity; clarification of inactive status requirements; allowance for certain computer, television or video based continuing education and certain self-directed continuing education activities, and establishing procedural rules pertaining to hearings before the Board. In addition, material which unnecessarily duplicated the statutes or other rules and regulations was

stricken. All of the rules and regulations were entirely re-ordered and re-numbered.

Notice of the public hearing on the Board's proposed rule adoption was published in the *Delaware Register of Regulations* on June 1, 2000 and in two Delaware newspapers of general circulation, all in accordance with 29 Del. C. §10115. The public hearing was held as noticed on July 10, 2000. The Board deliberated and voted on the proposed rule amendments following the public hearing at the July 10, 2000 meeting, voting unanimously to adopt the revised rules and regulations. This is the Board's Decision and Order ADOPTING the rule revisions as proposed.

Evidence and Information Submitted at Public Hearing

The Board received no written comments in response to the notice of intention to adopt the proposed rule revisions. No public comment was received at the July 10, 2000 public hearing.

Findings of Fact and Conclusions

As outlined in the preceding section, the public was given the required notice of the Board's intention to comprehensively revise its regulations and was offered an adequate opportunity to provide the Board with comments on the proposed changes. The Board concludes that its consideration of the proposed revisions to its Rules and Regulations is within its general authority to promulgate regulations under 24 Del.C. §506. The Board finds that adoption of the proposed rules and regulations is necessary to comply with and enforce 24 Del.C. Chapter 5, as amended in July 1999, and for the full and effective performance of the Board's duties under that chapter. The Board finds that the revised rules clarify the law and will better assist applicants and licensees to understand their responsibilities under the Board's law. The Board also notes that continuing education requirements have been made more liberal in terms of what kinds of courses and activities can qualify for credit. The Board therefore unanimously voted to adopt these rules and regulations as published

Order

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

1. The proposed Rules and Regulations are *approved and adopted* in their entirety, in the exact text attached hereto as Exhibit "A". These Rules and Regulations will constitute the complete Rules and Regulations of the Board and will supersede all previous versions.

2. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of*

Regulations, pursuant to 29 Del.C. §10118(e).

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

**By Order of the Board of Podiatry
(as authenticated by a quorum of the Board):**

- Gary D. Evans, President, Public Member
- Dr. Luis Garcia, Professional Member
- Dr. Kathryn Lightcap, Professional Member
- Eugene J. Marcus, Public Member
- Dr. Elizabeth A. Reilly, Professional Member

- 1.0 Authority and Effective Date
- 2.0 Board Structure and Function
- 3.0 Licensing
- 4.0 Complaint Review and Disciplinary Proceedings
- 5.0 Education
- 6.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 1.0 Authority and Effective Date
 - 1.1 These regulations are issued by the Board of Podiatry pursuant to 24 Del.C. §505(a)(1).
 - 1.2 These regulations are adopted in accordance with the 24 Del.C. §505(a)(1) and 29 Del.C., Ch. 101.

- 2.0 Board Structure and Function
 - 2.1 Special Meeting Requests. The Board shall hold a regularly scheduled business Meeting at least once in each quarter of a calendar year and at such other times as the President deems necessary, or at the request of a majority of Board members. Public notice shall appear in the major newspapers no less than one week prior to the meeting date and notice of all meetings shall comply with the Freedom of Information Act. (24 Del.C. §504(b) and 29 Del.C., Ch. 100)

- 3.0 Licensing
 - 3.1 Application and Requirements for Licensure. Pursuant to 24 Del.C. §506, an applicant for licensure must meet the requirements of 24 Del.C. §506(a)(1)(2)(3). Once having met those requirements, an applicant for licensure must have satisfactorily passed the national examination with an average overall grade of not less than 75; satisfactorily complete a residency or preceptorship program; and must pass the PM Lexis Examination, Part III (24 Del.C. §505(a)). Upon completion of all those requirements, the Board shall issue a license.

- 3.2 Examination. Pursuant to 24 Del.C. §§505 and 507, applicants for licensure must have passed an approved national examination by an average overall score of 75. At the present, the approved national examination is administered by the National Board of Podiatry Examiners

(NBPE).

3.2.1 Pursuant to 24 ~~Del.C.~~ §507, in the event there shall be in existence no such national examination approved by the Board at any time, the Board may appoint a subcommittee of three persons, to consist of one Board member and two podiatrists who are not currently Board members and who have been licensed in Delaware for ten or more years. That subcommittee shall then devise a licensure examination and formulate a set of administration, grading, and record-keeping procedures, and shall submit same for approval at the next regular meeting of the Board following completion of the draft examination and procedures. The Division of Professional Regulation shall review and approve, subject to the Sunset Committee review, the content and validity of any examination written, developed or used by the Board.

3.3 Licensure by Reciprocity.

3.3.1 In addition to other requirements for licensure by reciprocity set forth in 24 ~~Del.C.~~ §508, the Board may only approve licensure by reciprocity where said applicants have been registered or certified in other states whose requirements for registration or certification are substantially equal to those of the State of Delaware. Prior to issuing a license by reciprocity, the Board will determine whether said applicants have ever been disciplined or whether there are any disciplinary actions pending.

3.3.2 The Board may, of course, consider applicants for licensure by reciprocity when said applicants have been registered or certified in states whose requirements for certification are more stringent than those of the State of Delaware.

3.3.3 Requirements for registration and certification, as they relate to states other than Delaware, are deemed by the Board to be substantially equal to those of the State of Delaware when said requirements include:

3.3.3.1 Satisfactory completion of licensure examination administered on a national basis, or a state examination equivalent, with an overall average grade of not less than 75; and

3.3.3.2 Satisfactory completion of a hospital residency program approved by the American Podiatric Medical Association (APMA), or completion of an approved preceptorship program in the office of a podiatrist, licensed in the state from which the application is directed, for a period of one year; and

3.3.3.3 Satisfactory completion of a degree of Doctor of Podiatric Medicine or its equivalent from a school currently accredited by the APMA.

3.3.4 Requirements for registration and certification, as they relate to states other than Delaware, shall be deemed by the Board to be more stringent than those of Delaware when said requirements include criteria substantially equivalent to those set forth in 3.3.3.1, 3.3.3.2 and 3.3.3.3 above, and, in addition impose additional

threshold requirements for certification or registration, and applications for licensure by reciprocity from such states shall be considered by the Board along with applications from states with requirements substantially equal to those of Delaware, as set forth in regulations 3.3.1 and 3.3.2 above. In addition, the State of licensure must grant reciprocity to Delaware licensees.

3.4 Relicensure After Inactive Status And Renewal of Lapsed Licenses.

3.4.1 A licensee who has been placed in an inactive status by the Board for a period of no more than five years, may obtain a new license and re-enter active practice upon completion of the same continuing education requirements as if they had been actively practicing, as described more fully in regulation 5.2 below. This continuing education must be completed prior to the licensee reentering active practice.

3.4.2 Any licensee whose license lapses for non-renewal may re-apply within one(1) year by paying the fee required by 24 ~~Del.C.~~ §510 and having completed all continuing education which a person would have been required to complete for renewal.

4.0 Complaint Review and Disciplinary Proceedings

4.1 Receipt of Complaint. A practitioner or member of the public desiring to file a complaint against a practitioner and/or licensee regulated by the Board shall file a written complaint with the Director of the Division of Professional Regulation who shall mail a certified copy, return receipt requested, of the complaint to the respective commission, board or agency, which regulates the practitioner or licensee named in the complaint.

4.2 The Division's staff shall, within 15 days of the receipt of the complaint, fill out a complaint card, assign a complaint number, and log the complaint in the Division's records. A record of each complaint shall be kept for a period of 5 years.

4.3 The Division shall thereafter mail a copy of the complaint to the named practitioner or licensee. Said mailed copy of the complaint shall constitute notice of the pending complaint against the practitioner. The practitioner may respond, in writing, to the Division to the complaint's allegations within 20 days of the receipt of the complaint by the practitioner or licensee.

4.4 The Division shall then assign a Division investigator to investigate the complaint. At the Board's next regularly scheduled meeting it may assign a member to assist the Division with the investigation of the complaint. Said investigator shall recuse himself or herself from the Board, commission or agency's deliberations on the complaint at any hearing held regarding the complaint. The assisting Board member shall not communicate any issue of law or fact regarding the investigation to any fellow Board members. The Division's investigator shall direct the investigation of the complaint and shall be responsible for

issuing a final written report at the conclusion of the investigation.

4.5 The complainant shall also be notified, in writing, within 30 days of receipt of the complaint that the Division of Professional Regulation has received the complaint and it has been referred to be investigated by a Division Investigator.

4.6 Following the investigator's written report, the Division may forward the complaint and report to the Attorney General's office for a review by a Deputy Attorney General who, if warranted, may file a formal complaint against the practitioner and/or licensee. Otherwise, the initial written complaint shall be used in any further hearings in the proceedings. All hearings shall be conducted in accordance with the Administrative Procedures Act, 29 ~~Del.C.~~ Ch.101.

4.7 The ~~Division Director, or his designee,~~ is empowered to issue subpoenas for witnesses, documents, physical evidence or any other source of evidence needed during the investigation of a complaint filed under this chapter. If the respondent fails to comply with the subpoena issued pursuant to this subsection, the Division of Professional Regulation may compel compliance with said subpoena by filing a motion to comply in Superior Court which shall have jurisdiction over this matter. The Board may temporarily suspend a practitioner's license in advance of a final adjudication, or during the appeals process; but only in cases where there is a clear and immediate danger to the health and safety of a patient or to the public if the licensee is allowed to continue to practice. Such suspension may be appealed to the Superior Court.

5.0 Education

5.1 Preceptorship Program.

5.1.1 Pursuant to 24 ~~Del.C.~~ §505(a)(3)(ii), each and every applicant for licensure by examination who has not satisfactorily completed an APMA approved hospital residency program shall complete a one year preceptorship, during which time the applicant's clinical abilities and skills shall be under the observation and supervision of a clinical supervisor, who shall be a Delaware licensed podiatrist who has received the written approval of the Board to supervise the preceptorship of one or more candidates for licensure.

5.1.2 It shall be the responsibility of the Board, in connection with the above described preceptorship requirements to:

5.1.2.1 Approve and certify all clinical observers; and

5.1.2.2 Approve and certify all preceptorship programs and evaluations.

5.1.3 Preceptorships shall commence in February or August of each year and shall run for twelve months.

5.1.4 A candidate for the preceptorship program

shall have submitted his application for licensure to the Board, together with a certified copy of satisfactory completion of national examinations pursuant to 24 ~~Del.C.~~ §505(a)(3)(ii), before the Board may approve his admission to the preceptorship program.

5.15 The Board shall, by letter, notify each applicant who has submitted a complete application and evidence of satisfactory test results of that applicant's admission to the preceptorship program.

5.16 Following receipt by an applicant of notice of his admission to the preceptorship program, it shall be the responsibility of the applicant to apply to a licensed practitioner for a twelve month preceptorship with that practitioner, who shall have been approved as a clinical observer by the Board. The Board shall supply each applicant for admission to the preceptorship program with a list of practitioners who are clinical observers approved by the Board.

5.17 Professional liability (malpractice) insurance for preceptorship participants shall be carried by the candidates for licensure. The preceptor shall provide professional liability (malpractice) coverage for candidates for whom they are the preceptor.

5.18 During the course of each twelve month preceptorship, each candidate shall be evaluated by the clinical observer for whom he is working in the following areas: podiatric medicine, podiatric surgery, orthopedics, preventive medicine, diagnostic radiology, dermatology, trauma and emergency care, sports medicine, podopediatrics, geriatric podiatry, biomechanics, physical medicine and basic practice management. Each candidate shall be evaluated during the twelve month preceptorship by one other licensed practitioner approved by the Board in the following areas: podiatric medicine, physical examination and the basic application of podiatric principles. The primary observer shall submit his observations in the form of a letter addressed to the Board. Accompanying the letter to the Board shall be an evaluation covering the prescribed subjects on the evaluation sheets attached hereto as Exhibit "D". The primary observer shall report to the Board every three months. The secondary observer shall submit a similar and appropriate report by letter to the Board, accompanied by evaluation sheets covering the prescribed subjects. These sheets are attached hereto as Exhibit "D".

5.18.1 In the event that the primary observer has been unable to expose the candidate to any required category of evaluation, he shall advise the secondary observer of this fact and shall include the fact in his quarterly report to the Board.

5.18.2 In the event that a preceptorship candidate receives a negative or deficient evaluation from his clinical observer or from his secondary observer, in two or less of the above described categories of evaluation, the

Board shall allow the applicant to correct the deficiency or deficiencies by attendance at and completion of a course or program in each said deficient area. Said program or course shall have prior written approval by the Board. Upon successful completion of all such approved programs, the Board shall forthwith issue to the candidate a letter indicating that he may proceed with his preceptorship program.

5.2 Continuing Education.

5.2.1 Pursuant to 24 ~~Del.C.~~ §505(a)(13), the Board is empowered to provide by rule for continuing medical education. "Continuing medical education," as that term is herein applied by the Board, includes any and all continuing education requirements, as herein below provided, which must be satisfied biennially by all licensed practitioners as a condition for licensure renewal. Each licensed practitioner shall complete, biennially, at least 32 hours of continuing education as a condition of license renewal.

5.2.2 Each practitioner shall be exempt from the continuing education requirement in the first biennial licensing period, or any portion thereof, in which he is licensed to practice in Delaware. On or before the last day in April every two years, each practitioner shall submit to the Board validated documents which evidences satisfactory completion of the continuing education requirements for the previous two years.

5.2.3 Only approved courses, will be counted toward the 32 hour biennial continuing education requirement. A practitioner may gain approval of any course or program by written application to the Board, stating the title, sponsor and summary of course content. The Board may act upon all such requests at the next regularly scheduled meeting, may act upon such requests at any intervening special meeting convened to consider other issues, or may delegate to any member of the Board the authority to approve continuing education courses on behalf of the Board. Any practitioner who attends and/or completes a course which has not yet been approved by the Board does so at his own risk that the Board may not approve the said course nor allow it to be counted toward completion of the annual requirement of 32 hours of continuing education.

5.2.4 The Board has the authority to make exceptions to the continuing professional education requirements for reasons beyond the licensee's control including, but not limited to, health, military service, foreign residency, and retirement. Upon application, the Board shall set the time in which the licensee must complete the continuing education requirement.

5.2.5 The overriding consideration in determining if a specific program qualifies for continuing professional education program is that it be a formal program of learning which contributes directly to the professional competence of the permit holder. No credit

shall be given for business or practice seminars.

5.2.6 Formal programs requiring class attendance will qualify only if:

5.2.6.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years, or the outline is provided to the participant or both.

5.2.6.2 The program is at least one hour (a fifty-minute period) in length.

5.2.6.3 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

5.2.7 The following are deemed to qualify for continuing education without prior Board approval:

5.2.7.1 Any program approved by the APMA, and approved affiliates.

5.2.7.2 Any seminar sponsored by the Delaware Podiatric Medical Association.

5.2.7.3 Any podiatric program sponsored by a hospital or clinic that has been approved by the Board for the Preceptorship programs toward licensure.

5.2.7.4 Any program sponsored by a medical institution that has been formally approved in writing by the Board in advance of the program date(s).

6.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

6.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates. 6.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

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

6.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in

consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

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

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

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

6.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated

professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

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

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

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

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

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

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

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

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

specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

BOARD OF PODIATRY RULES AND REGULATIONS

- 1.0 General Provisions
- 2.0 Application and Licensing Requirements
- 3.0 Examinations
- 4.0 Reciprocity
- 5.0 Licenses (Temporary, Inactive, renewal)
- 6.0 Continuing Education
- 7.0 Disciplinary Proceedings and Hearings
- 8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 GENERAL PROVISIONS

1.1 Pursuant to 24 *Del.C.* Chapter 5, the Delaware Board of Podiatry ("the Board") is authorized to, and has adopted, these Rules and Regulations.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board's Administrative Assistant at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) 739-4522. Requests to the Board may be directed to the same office.

1.3 The Board's President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President's absence, the Board's Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board shall elect officers, pursuant to 24 *Del. C.* §504 in January of each year.

1.5 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.6 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.7 Board members are subject to the provisions applying to honorary state officials in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 *Del.C.* Chapter 58.

Statutory authority: 24 Del.C. §503; 504; 506.

2.0 APPLICATION AND LICENSING REQUIREMENTS

2.1 Application and Requirements for Licensure. Pursuant to 24 *Del.C.* §508, an applicant for licensure must meet the requirements of 24 *Del.C.* §508(a). An applicant for licensure must arrange to provide the Board with a copy

of his or her record with the National Practitioners' Data Bank. Upon completion of these requirements, the Board shall issue a license.

2.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete or in proper form until the Board has received all required and requested documents, materials, information and fees.

2.3 Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. degree programs.

Statutory authority: 24 Del.C. §508.

2.4 Residency Program. The hospital residency program shall be approved by and comply with the Special Standards and Requirements established for residency programs by the American Podiatric Medical Association (APMA) and Council on Podiatric Medical Education (CPME).

2.5 Preceptorship Program.

2.5.1 Pursuant to 24 *Del. C.* §508(a)(2), each and every applicant for licensure by examination who has not satisfactorily completed an APMA approved hospital residency program shall complete a one year preceptorship, during which time the applicant's clinical abilities and skills shall be under the observation and supervision of a preceptor, who shall be a Delaware licensed podiatrist, who has received the prior written approval of the Board to supervise the preceptorship of one or more candidates for licensure.

2.5.2 Preceptorships shall run for twelve (12) months.

2.5.3 A candidate for the preceptorship program shall submit his or her curriculum vitae, certified transcripts from podiatric medical school(s) showing confirmation of "Doctor of Podiatric Medicine" degree, and evidence of passing scores on National Board Examinations Part I and Part II, before the Board may approve his or her admission to the preceptorship program.

2.5.4 The Board shall, by letter, notify each applicant who has submitted all required documentation of his or her admission to the preceptorship program.

2.5.5 Following receipt by an applicant of notice of his or her admission to the preceptorship program, it shall be the responsibility of the applicant to apply to a licensed practitioner for a twelve (12) month preceptorship with that practitioner. It shall be the responsibility of the Board, in connection with the above-described preceptorship requirements to approve and certify all preceptors; and approve and certify all preceptorship programs and evaluations.

2.5.6 The preceptor shall provide professional liability (malpractice) coverage for candidates for whom

they are the preceptor at all times during the preceptorship.

2.5.7 During the course of each twelve (12) month preceptorship, each candidate shall be evaluated by the preceptor (primary clinical observer) for whom he or she is working. The preceptorship shall pattern itself after and ensure exposure to all areas covered by the CPME standards for Rotating Podiatric Residency (RPR) Sections 21.0 through 21.6, and the candidate shall be evaluated in those areas.

Each candidate shall be evaluated during the twelve (12) month preceptorship by one other licensed practitioner (secondary clinical observer) approved by the Board in the following areas: podiatric medicine, physical examination and the basic application of podiatric principles. The primary observer shall submit his observations in the form of a letter addressed to the Board. The primary observer shall report to the Board every three (3) months. The letter shall include an evaluation covering the prescribed subjects above. The secondary observer shall submit a similar appropriate report by letter to the Board, accompanied by evaluations covering the prescribed subjects.

2.5.7.1 In the event that the primary observer has been unable to expose the candidate to any required category of evaluation, he or she shall advise the secondary observer of this fact, and shall include the fact in his quarterly report to the Board.

2.5.7.2 In the event that a preceptorship candidate receives a negative or deficient evaluation from his or her preceptor, in two or less of the above-described categories of evaluation, the Board shall allow the applicant to correct the deficiency or deficiencies by attendance at and completion of a course or program in each said deficient area. Said program or course shall have prior written approval by the Board. Upon successful completion of all such approved programs, the Board shall forthwith issue to the candidate a letter indicating that he or she may proceed with his preceptorship program.

2.5.7.3 In the event that a preceptorship candidate receives a negative or deficient evaluation from his or her preceptor, in more than two of the above-described categories of evaluation, the candidate may request another Delaware licensed podiatrist to independently evaluate the candidate's competency in those areas and report to the Board. The Board will review all evaluations and make a determination as to the status of the preceptorship.

Statutory authority: 24 Del.C. §§508(a)(2)

3.0 EXAMINATIONS

3.1 Examination. Pursuant to 24 Del. C. §508 and 509, applicants for licensure must have taken an approved national examination and achieved the minimum passing score recommended by the testing service providing the examination. The approved national examination is the

PMLexis administered by the National Board of Podiatry Medical Examiners (NBPME).

3.2 An applicant for licensure is required to have successfully completed the NBPME Part I and Part II exams as a prerequisite to sitting for the PMLexis.

3.3 An applicant for licensure shall, prior to sitting for the examination, notify the testing service administering the PMLexis to forward his or her examination results directly to the Board. Failure to do so may constitute grounds for denial of licensure.

Statutory authority: 24 Del.C. §506(a)(3); 509.

4.0 RECIPROCITY

4.1 In addition to other requirements for licensure by reciprocity set forth in 24 Del. C. §510, the Board may only approve licensure by reciprocity where said applicants are currently licensed in other state(s) whose requirements for registration or certification are substantially similar to those of the State of Delaware, or as set forth in Rules 4.3 and 4.4, below. Equivalency shall be determined by comparing the laws in effect at the time of application. Prior to issuing a license by reciprocity, the Board will determine whether said applicants have ever been disciplined or whether there are any disciplinary actions pending in any jurisdiction.

4.2 Requirements for registration and certification, as they relate to states other than Delaware, are deemed by the Board to be substantially similar to those of the State of Delaware when said requirements include:

4.2.1 Satisfactory completion of a degree of Doctor of Podiatric Medicine or its equivalent from a school currently accredited by the APMA or its successor;

4.2.2 Satisfactory completion of the NBPME Part I, Part II and PMLexis examinations, with at least the minimum passing score recommended by the testing service providing the examination; and;

4.2.3 Satisfactory completion of a hospital residency program approved by the American Podiatric Medical Association (APMA), or completion of an approved preceptorship program in the office of a podiatrist, licensed in the state in which the applicant is licensed or certified, for a period of one year.

4.3 An applicant licensed in a state whose standards for licensure are not substantially similar to those of Delaware may obtain licensure by reciprocity if he or she holds a license in good standing in that state and has practiced podiatry for a minimum of five years after licensure.

4.4 An applicant for licensure by reciprocity, who is licensed in a state whose standards are not substantially similar to those of this state, must provide the Board with an affidavit from his or her employer(s) in the state of licensure, or other evidence acceptable to the Board, documenting at least five (5) years of practice following licensure in that state.

Statutory authority: 24 Del.C. §510.

5.0 LICENSES (RENEWAL, INACTIVE, TEMPORARY)

5.1 Renewal/Lapse

5.1.1 Any licensee whose license lapses for non-renewal may re-apply within one (1) year by paying the fee required by 24 *Del. C.* §511 and having completed all continuing education which a licensee would have been required to complete for renewal.

5.1.2 If a licensee allows his or her license to lapse for over one year and has not been granted inactive status, that licensee must reapply for licensure in the same manner as a new applicant.

5.1.3 It shall be the responsibility of all licensees, active or inactive, to keep the Board informed of any change in name, home or business address.

5.2 Inactive Status

5.2.1 A licensee may be placed in an inactive status by the Board for a period of no more than five years. Requests for inactive status shall be made, in writing, to the Board and requests which exceed one year shall be renewed biennially at the time of regular license renewals, set by the Division. Upon application to the Board and payment of a renewal fee, an inactive licensee may obtain a new license and re-enter active practice upon completion of the continuing education requirements below. The following continuing education must be completed prior to the licensee reentering active practice:

5.2.1.1 Inactive status for one year or less: 16 CE hours.

5.2.1.2 Inactive status for more than one year up to 5 years: 32 CE hours, completed within 24 months prior to reapplication.

Statutory authority: 24 Del.C. §512.

5.3 Temporary License. In the case of a temporary license issued to a qualified applicant for licensure in this state pending the results of the PMLexis examination, it is the duty of the applicant to inform the Board of his or her examination results immediately upon their receipt.

Statutory authority: 24 Del.C. §513.

6.0 CONTINUING EDUCATION

6.1 Pursuant to 24 *Del. C.* §506(a)(7), the Board is empowered to provide by rule for continuing medical education. "Continuing medical education (CME)," as that term is herein applied by the Board, includes any and all continuing education requirements, as herein below provided, which must be satisfied biennially by all licensed practitioners as a condition for licensure renewal. Each licensed practitioner shall complete, biennially, at least 32 hours of continuing education as a condition of license renewal.

6.2 Each practitioner shall be exempt from the continuing education requirement in the first biennial licensing period, or any portion thereof, in which he is

licensed to practice in Delaware. On or before the last day in April every two (2) years, each practitioner shall submit to the Board validated documents which evidence satisfactory completion of the continuing education requirements for the previous two (2) years. Each licensee must complete a Podiatry CME log, on a form to be supplied by the Board, indicating the date, title, sponsor, and number of hours the licensee attended, for each continuing education program submitted for credit. The Board reserves the right to request additional documentation, such as copies of program materials, to verify CME compliance.

6.3 Only approved courses will be counted toward the 32 hour biennial continuing education requirement. A practitioner may gain approval of any course or program by written application to the Board, stating the title, sponsor and summary of course content. The Board may act upon all such requests at the next regularly scheduled meeting, may act upon such requests at any intervening special meeting convened to consider other issues, or may delegate to any member of the Board the authority to approve continuing education courses on behalf of the Board. Any practitioner who attends and/or completes a course which has not yet been approved by the Board does so at his own risk that the Board may not approve the said course nor allow it to be counted toward completion of the annual requirement of 32 hours of continuing education.

6.4 Content. The overriding consideration in determining if a specific program qualifies for continuing professional education is that it be a formal program of learning which contributes directly to the professional competence of the licensee. No credit shall be given for business or practice seminars.

6.4.1 Computer, television or video based courses and other independent study courses may be submitted to the Board for approval, however no such course will be approved for credit unless it includes successful completion of a final examination or paper.

6.4.2 The following programs will be deemed to qualify for continuing education without prior Board approval:

6.4.2.1 Any program approved by the American Podiatric Medical Association (APMA), and approved affiliates.

6.4.2.2 Any seminar sponsored by the Delaware Podiatric Medical Association (DMPA).

6.4.2.3 Any podiatric program sponsored by a hospital or clinic as part of a CPME approved residency program.

6.5 Hardship. The Board has the authority to make exceptions to the continuing professional education requirements upon written request of the licensee and a showing of good cause. "Good cause" may include, but is not limited to, disability, illness, military service, foreign residency, and retirement. Upon application, the Board shall

set the time in which the licensee must complete the continuing education requirement. No extension shall be granted for more than 120 days after the end of the licensing period.

6.6 Self-directed activity

6.6.1 The Board may, upon request, review and approve credit for self-directed activities, including research, preparation and/or presentation of professional papers and articles, to a maximum of eight (8) hours per biennial licensing period. **A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity.** Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.6.2 The Board may award up to a maximum of eight (8) continuing education hours for the first-time preparation and presentation of an approved podiatric clinical course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

Statutory authority: 24 Del.C. §§506(a)(7).

7.0 DISCIPLINARY PROCEEDINGS AND HEARINGS

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

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

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

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

7.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and

Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 Del. C. Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

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

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

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

Statutory authority: 24 Del.C. §§514 and 517; 29 Del.C. §§10111, 10122 and 10131

7.2. Hearing procedures

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

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

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

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

7.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 Del.C. §515.

Statutory authority: 24 Del.C. §§514, 515, 517; 29 Del.C. §§10111

8.0 VOLUNTARY TREATMENT OPTION FOR CHEMICALLY DEPENDENT OR IMPAIRED PROFESSIONALS

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

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

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

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

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

subsection (h) of this section.

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

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

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

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

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

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

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

8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect

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

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

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

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

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

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

**DIVISION OF PROFESSIONAL REGULATION
RULES & REGULATIONS GOVERNING THE
PRACTICE OF RESPIRATORY CARE**

Statutory Authority: 24 Delaware Code,
Section 1770B(c)(5) (24 Del.C. 1770B(c)(5))

In the Matter of the		
Modification of the Rules		
And Regulations of the		Report
Respiratory Care Practice		
Advisory Council		

The Respiratory Care Advisory Council ("Council") established by 24 Del. C. § 1770B to assist the Board of Medical Practice ("Board") in the performance of its duty relating to the regulation of Respiratory Care Practitioners is

authorized to promulgate rules and regulations governing the practice of respiratory care. The Council has determined that its existing Rules and Regulations (Section 8.5:b.6) which limit the use of correspondence courses in meeting the requirement for continuing education to 4 (four) hours per year is overly restrictive and unnecessary, and should be stricken.

The increasing availability of quality correspondence courses on the Internet and otherwise, have convinced the Council that the present four (4) hour limitation is unnecessary and inappropriate. Additionally, the Council has determined to correct Rule 8.5:b to reflect that the number of contact hours is to be computed per renewal period rather than "per year".

Public Notice of these proposed modifications to the Rules and Regulations was published in (2) two newspapers of general circulation. In addition, publication was made in the Delaware Register of Regulations in the July 1, 2000 edition. Pursuant to such notice a public hearing was conducted by the Council on August 7, 2000. No public comment adverse to the proposed modifications was received by the Council at the hearing nor were any adverse written comments received. Written comments were received from the State Council for Persons with Disabilities which did not pertain to the presently proposed modifications.

The Council, by the affirmative vote of the undersigned members, hereby finds and concludes that the following modifications to the Rules and Regulations of the Respiratory Care Practice Advisory Council are necessary and appropriate:

1. Paragraph 8.5:b is modified by striking the words "a year" and substituting therefore the words "per renewal period". This change clarifies that the limitations on the use of various methods of meeting the requirements for continuing education are for each renewal period rather than for each year.

2. Paragraph 8.5:6 is stricken. This removes the 4 (four) hour limitation on the use of approved correspondence courses in meeting the continuing education requirements.

Recommendation

Based on these findings, conclusions and the above discussion, it is the recommendation of the undersigned members of the Respiratory Care Practice Advisory Council to the Board of Medical Practice that the Board approve these changes to the Rules and Regulations of the Respiratory Care Practice Advisory Council to be effective ten (10) days after their final publication in the Delaware Register of Regulations.

Respectfully submitted this 7th day of August, 2000:
James Little, M.ED., RRT, Chairperson

Robert Lang, RRT, Council member
 Phillip Santoto, RTT, Council Member
 Kathleen Schuts, Council Member
 Latrina Clark-Reese, MS, RTT, Council Member
 John D'Angelo, MA, Council Member

BOARD OF MEDICAL PRACTICE

In the Matter of the Modification of the Rules and Rules and Regulations of The Respiratory Care Practice Advisory Council Concerning Continuing Education		Order
---	--	-------

AND NOW, to-wit, this 12th day of September, 2000;

WHEREAS, the Board has considered the attached Report of the Respiratory Care Practice Advisory Council concerning the hearing on the proposed modifications of the Rules and Regulations of the Respiratory Care Practice Advisory Council; and

WHEREAS, the Board has determined to accept such Report and approve the proposed Rule and Regulation modifications set forth in the attached report.

NOW THEREFORE:

1. The proposed modifications to the Rules and Regulations of the Respiratory Care Practice Advisory Council as set forth on the attached report are hereby approved.

IT IS SO ORDERED.

V. Raman Sukumar, M.D., Board Member
 Bruce L. Bolasny, M.D., Board Member
 Jorge Pereira-Ogan, M.D., Board Member
 Carolyn E. McKown, Board Member
 Lois W. Dow, M.D., Board Member
 Vance Daniels, Board Member
 Catherine T. Hickey, Esquire, Board President
 Janet Kramer, M.D., Board Member
 Venerando J. Maximo, M.D., Board Member
 Edward J. McConnell, M.D., Board Vice-President
 Stephen Fanto, M.D., Board Secretary/Treasurer
 Bentley A. Hollander, M.D., Board Member
 Cleo H. Fountain, Board Member
 Constantine W. Michell, D.O., Board Member
 Garrett Colmorgan M.D., Yogesh C. Kansal
 Yogesh C. Kansal, Board Member

- 1.0 Definitions
- 2.0 Purpose
- 3.0 Standards of Practice for the Respiratory Practitioner
- 4.0 Standards Related to the Respiratory Care Practitioner's Competence and Responsibilities

- 5.0 Administration of Medications
- 6.0 Disciplinary Proceedings
- 7.0 Working Student Respiratory Care Practitioner
- 8.0 Continuing Education
- 9.0 Renewal of License
- 10.0 Application for a License
- 11.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Definitions

"Board" - means Delaware Board of Medical Practice.

"Certified Respiratory Therapy Technician (CRTT)" - means the credential awarded by the NBRC to individuals who pass the certification examination for entry level respiratory therapy practitioners.

"Council" - means the Respiratory Care Practice Advisory Council of the Board of Medical Practice.

"NBRC" means the National Board for Respiratory Care, Inc.

"Programs Approved by the Board" - means initial course of study programs accredited by the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or its successor organizations which have been approved by the Board.

"Registered Respiratory Therapist (RRT)" - means the credential awarded by the NBRC to individuals who pass the registry examination for advanced respiratory therapy practitioners.

"Respiratory Care" - means treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under the direction of a physician. Respiratory care includes inhalation therapy and respiratory therapy under 24 **Del.C.** §1770B(a)(2), Medical Practices Act.

"Respiratory Care Practitioner (RCP)" - means an individual who practices respiratory care under 24 **Del.C.** §1770B(a)(1) and (7), Medical Practices Act.

"Student Respiratory Care Practitioner (Student-RCP)" - means an individual enrolled in an accredited Respiratory Care Program recognized and approved by the Board.

"Working Student Respiratory Care Practitioner" - means a student respiratory care practitioner who is employed to perform respiratory care under a limited scope of practice established by the Board.

"General Supervision" - means whether by direct observation and monitoring, protocols approved by physicians, or orders written or verbally given by physicians.

"Direct Supervision" - means supervising licensee or supervising physician will be present and immediately available within the treatment area.

2.0 Purpose

2.1 The purpose of the standards is to establish minimal

acceptable levels of safe practice to protect the general public and to serve as a guide for the Board to evaluate safe and effective practice of respiratory care.

3.0 Standards of Practice for the Respiratory Care Practitioner

3.1 The respiratory care practitioner shall conduct and document respiratory care assessments of individuals and groups by various appropriate means including but not limited to the following:

3.1.1 Collecting objective and subjective data from observations, examinations, physiologic tests, interviews and written records in an accurate and timely manner.

3.1.2 Sorting, selecting, reporting, and recording the data.

3.1.3 Analyzing data.

3.1.4 Validating, refining and modifying the data by using available resources including interactions with the patient, family, and health team members.

3.1.5 Evaluating data.

3.1.6 Respiratory care practitioners shall establish and document data that serves as the basis for the strategy of care.

3.2 Respiratory care practitioners may develop strategies of care such as a treatment plan.

3.3 Respiratory care practitioners may participate under the direction and supervision of a physician in the implementation of patient care.

4.0 Standards Related to the Respiratory Care Practitioner's Competence and Responsibilities

4.1 Respiratory care practitioners shall:

4.1.1 Have knowledge of the statutes and regulations governing the practice of respiratory care.

4.1.2 Accept responsibility for competent practice of respiratory care.

4.1.3 Obtain instructions and supervision from physicians.

4.1.4 Function as a member of a health care team by collaborating with other members of the team to provide appropriate care.

4.1.5 Consult with respiratory care practitioners and others and seek guidance as necessary.

4.1.6 Obtain instruction and supervision as necessary when implementing respiratory care techniques.

4.1.7 Contribute to the formulation, interpretation, implementation and evaluation of objectives and policies related to the practice of respiratory care within the employment setting.

4.1.8 Report unsafe respiratory care practice and conditions to the Respiratory Care Practice Advisory Council, (Council), or other authorities as appropriate.

4.1.9 Practice without unlawful discrimination as to age, race, religion, sex, national origin or disability.

4.1.10 Respect the dignity and rights of patients regardless of social or economic status, personal attributes or nature of health problems.

4.1.11 Respect patients' right-to-privacy by protecting confidentiality unless obligated by law to disclose the information.

4.1.12 Respect the property of patients and their families.

4.1.13 Teach safe respiratory care practice to other health care workers as appropriate.

5.0 Administration of Medications

5.1 Respiratory care practitioners may administer pharmacological agents, aerosols, or medical gases via the respiratory route. Administration of medication by routes other than the respiratory route require the direct supervision of a physician.

5.2 A respiratory care practitioner shall not deliver any medication unless the order, written or oral by a physician or other person authorized by the Board of Medical Practice, to prescribe that class of medication includes:

5.2.1 Patient identification

5.2.2 Date of the order

5.2.3 Time of the order

5.2.4 Name of medication

5.2.5 Dosage

5.2.6 Frequency of administration

5.2.7 Route of administration

5.2.8 Method of administration

No respiratory care practitioner holding a permit or a license in the state of Delaware may administer medications for the testing or treatment of cardiopulmonary impairment for which the respiratory care provider is untrained or incompetent.

5.3 Respiratory care practitioners must be able to document appropriate training and proficiency on the route of medication delivery, drug pharmacology, and dosage calculations for any cardiopulmonary medications for which they are responsible to administer. Appropriate training includes but is not limited to the following components:

5.3.1 Pharmacology. Subject matter shall include terminology, drug standards, applicable laws and legal aspects, identification of drugs by name and classification, and the principles of pharmacodynamics of medications used in the treatment and testing of cardiopulmonary impairment.

5.3.2 Techniques of drug administration. Subject matter shall include principles of asepsis, safety and accuracy in drug administration, applicable anatomy and physiology, and techniques of administration and any route of administration for cardiopulmonary medications that fall within the legal scope of practice of a respiratory care practitioner.

5.3.3 Dosage calculations. Subject matter shall include a review of arithmetic and methods of calculation

required in the administration of drug dosages.

5.3.4 Clinical experience. Subject matter shall include clinical experience in administration of the cardiopulmonary medication(s), planned under the direction of a qualified respiratory care practitioner or other qualified health care provider responsible for teaching cardiopulmonary medication administration.

5.3.5 Role of the respiratory care practitioner in administration of cardio-pulmonary medications. Subject matter shall include constraints of medication administration under the legal scope of practice for respiratory care practitioners, the rationale for specific respiratory care in relation to drug administration; observations and actions associated with desired drug effects, side effects and toxic effects; communication between respiratory care practitioners and other health care teams; respiratory care practitioner - client interactions; and the documentation of cardiopulmonary medication administration.

5.4 Each respiratory care practitioner shall maintain a record that documents training and proficiency and medications that each practitioner is authorized to administer. At the request of the Council such records may be audited, reviewed, or copied.

5.5 Documentation of medication administration by the respiratory care practitioner shall include at a minimum:

- 5.5.1 Patient identification
- 5.5.2 Date of the order
- 5.5.3 Time of the order
- 5.5.4 Name of medication
- 5.5.5 Dosage
- 5.5.6 Frequency of administration
- 5.5.7 Route of administration
- 5.5.8 Method of administration
- 5.5.9 Respiratory care practitioner's name
- 5.5.10 Date and time of administration
- 5.5.11 Documentation of effectiveness
- 5.5.12 Documentation of adverse reactions and notifications if any

6.0 Disciplinary Proceedings

6.1 The license or permit of a respiratory care practitioner or student found to have committed unprofessional conduct may be subject to revocation, suspension, or non-renewal. The practitioner or student may be placed on probation subject to reasonable terms and conditions, or reprimanded.

6.2 Any licensed respiratory care practitioner found, after notice and hearing, to have engaged in behavior in his or her professional activity which is likely to endanger the public health, safety or welfare or who is unable to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol may have his or her license revoked, suspended, not renewed

or may be placed on probation.

6.3 Unprofessional Conduct

Unprofessional conduct includes any act of fraud, deceit, incompetence, negligence, or dishonesty and shall include, without limitation, the following:

6.3.1 Performing acts beyond the scope of authorized practice by a respiratory care practitioner to include violations of 24 Del.C. §1770B or of these regulations.

6.3.2 Assuming duties and responsibilities within the practice of respiratory care without adequate preparation or supervision or when competency has not been maintained.

6.3.3 Performing new respiratory care techniques and/or procedures without adequate education and practice or without proper supervision.

6.3.4 Failing to take appropriate action or follow policies and procedures in the practice situation designed to safeguard the patient from incompetent, unethical or illegal health care practices.

6.3.5 Inaccurately recording on, falsifying or altering a patient or agency record.

6.3.6 Committing verbal, physical or sexual abuse or harassment of patients or co- employees.

6.3.7 Assigning unqualified persons to perform the practice of licensed respiratory care practitioners.

6.3.8 Delegating respiratory care responsibilities to unqualified persons.

6.3.9 Failing to supervise persons to whom respiratory care responsibilities have been properly delegated.

6.3.10 Leaving a patient assignment in circumstances which endangers the patient except in documented emergency situations.

6.3.11 Failing to safeguard a patient's dignity and right to privacy in providing respiratory care services which shall be provided without regard to race, color, creed or status.

6.3.12 Violating the confidentiality of information concerning a patient except where disclosure is required by law.

6.3.13 Practicing respiratory care when unfit to perform procedures and make decisions when physically, psychologically, or mentally impaired.

6.3.14 Diverting drugs, supplies, or property of a patient or agency or attempting to do so.

6.3.15 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 or attempting to do so.

6.3.16 Providing respiratory care in this state without a currently valid license or permit and without other lawful authority to do so.

6.3.17 Allowing another person to use his/her

license or temporary permit to provide respiratory care for any purpose.

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

6.3.19 Resorting to, or aiding in any fraud, misrepresentation or deceit directly or indirectly in connection with acquiring or maintaining a license to practice respiratory care.

6.3.20 Failing to report unprofessional conduct by another respiratory care practitioner licensee or permit holder or as specified in 4.1.8 .

6.3.21 Failing to provide respiratory care to a patient in accordance with the orders of the responsible physician without just cause.

6.4 Disciplinary Investigations And Hearings

6.4.1 Upon receipt of a written complaint against a respiratory care practitioner or upon its own motion, the Council may request the Division of Professional Regulation to investigate the complaint or a charge against a respiratory care practitioner and the process established by 29 **Del.C.** §8807 shall be followed with respect to any such matter.

6.4.2 Where feasible, within sixty (60) days of receiving a complaint from the Attorney General's Office after an investigation pursuant to 29 **Del.C.** §8807(h), the Council shall conduct an evidentiary hearing upon notice to the licensee. Written findings of fact and conclusions of law shall be sent to the Board of Medical Practice along with any recommendation to revoke, to suspend, to refuse to renew a license, to place a licensee on probation, or to otherwise reprimand a licensee found guilty of unprofessional conduct in the licensee's professional activity which is likely to endanger the public health, safety or welfare, or the inability to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol.

7.0 Working Student Respiratory Care Practitioner

7.1 A working student respiratory care practitioner may only practice under the direct supervision of a licensed respiratory care practitioner. The scope of practice is limited to those activities for which there is documented evidence of competency.

7.2 Direct supervision means that a licensed respiratory care practitioner will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed respiratory care practitioner.

7.3 A student may apply for a student temporary permit. If approved by the Board, such permit may be issued

by the Division of Professional Regulation and may not be renewed. An application will be considered by the Council provided that the applicant meets the following criteria:

7.3.1 Applicant is matriculated in an approved Respiratory Care Program.

7.3.2 Application is submitted no more than 20 weeks prior to the program's announced graduation date.

7.3.3 Applicant shall submit to the Council a certified list of respiratory care services which have been successfully completed as a part of the respiratory care curriculum.

7.4 A student temporary permit shall automatically cease upon graduation or on the date that the holder is no longer matriculated in and not a graduate of a Respiratory Care Program. Any holder of a temporary student permit which ceases for any of the reasons stated above shall within five (5) working days surrender the permit to the Division of Professional Regulation.

7.5 Subject to Rule 7.4, a student temporary permit shall be valid for 16 weeks.

7.6 Respiratory care services which may be performed by the holder of a student temporary permit are limited to only those services which have been successfully completed by the student as part of a respiratory care program. Successful completion of these services must be certified by the program director on the Verification of Respiratory Care Education Form and submitted to the Council along with an attached competency check list. The holder of the student temporary permit must also meet the employer's standards for those procedures in specified patient care situations.

8.0 Continuing Education

8.1 Contact Hours Required for Renewal

8.1.1 The respiratory care practitioner shall be required to complete (20) twenty contact hours biennially and to retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes. All contact hours must be completed at least sixty (60) days prior to the end of the renewal year.

8.1.2 Contact hours shall be prorated for new licensees in accordance with the following schedule:

Two years remaining in the licensing cycle requires -	20 hours
One year remaining in the licensing cycle requires -	10 hours
Less than one year remaining in the licensing cycle -	exempt

8.2 Exemptions

8.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the

Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

8.3 Criteria for Qualification of Continuing Education Program Offerings

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

8.3.1 Definition of Contact Hours

8.3.1.1 Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1.2 Recredentialing examination for certified respiratory therapy technician, (CRTT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

8.3.1.3 Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.

8.3.1.4 One (1) semester hour shall be equal to fifteen (15) contact hours.

8.3.1.5 One (1) quarter hour shall be equal to ten (10) contact hours.

8.3.1.6 Two (2) hours (120 minutes) of clinical educational experience shall be equal to one (1) contact hour.

8.3.1.7 Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.

8.3.1.8 Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.

8.3.1.9 Performing clinical or laboratory research in health care shall be reviewed and may be granted an appropriate number of contact hour(s) at the Council's discretion.

8.3.2 Learner Objectives

8.3.2.1 Objectives shall be written and be the basis for determining

content, learning experience, teaching methodologies, and evaluation.

8.3.2.2 Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.

8.3.3 Subject Matter

Appropriate subject matter for continuing education shall include the following:

8.3.3.1 Respiratory care science and practice and other scientific topics related thereto

8.3.3.2 Respiratory care education

8.3.3.3 Research in respiratory care and health care

8.3.3.4 Management, administration and supervision in health care delivery

8.3.3.5 Social, economic, political, legal aspects of health care

8.3.3.6 Teaching health care and consumer health education

8.3.3.7 Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license

8.3.4 Description

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.

8.3.5 Types of Activities/Programs

8.3.5.1 An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.

8.3.5.2 A correspondence course contains the following elements:

8.3.5.2.1 developed by a professional group, such as an education corporation or professional association.

8.3.5.2.2 follows a logical sequence.

8.3.5.2.3 involves the learner by requiring active response to module materials and provides feedback.

8.3.5.2.4 contains a test to indicate progress and to verify completion of module.

8.3.5.2.5 supplies a bibliography for continued study.

8.3.5.3 A workshop contains the following elements:

8.3.5.3.1 developed by a knowledgeable individual or group in the subject matter.

8.3.5.3.2 follows a logical sequence.

8.3.5.3.3 involves the learner by requiring

active response, demonstration and feedback.

8.3.5.3.4 requires hands-on experience.

8.3.5.3.5 supplies a bibliography for continued study.

8.3.5.4 Advanced and specialty examinations offered by the NBRC or other examinations as approved by the Council including:

Recredentialing exam.

Pediatric/perinatal specialty exam.

Pulmonary function credentialing exams

Advanced practitioner exam

8.3.5.5 Course preparation

8.3.5.6 Clinical education experience must be:

8.3.5.6.1 Planned and supervised.

8.3.5.6.2 Extended beyond the basic level of preparation of the individual who is licensed.

8.3.5.6.3 Based on a planned program of study.

8.3.5.6.4 Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.

8.3.5.6.5 Conducted in a clinical setting.

8.4 Educational Providers

8.4.1 Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

American Association for Respiratory Care.

American Medical Association under Physician Category I.

American Thoracic Society

American Association of Cardiovascular and Pulmonary Rehabilitation

American Heart Association

American Nurses Association

American College of Chest Physicians

American Society of Anesthesiologists

American Sleep Disorders Association

Other professional or educational organizations as approved periodically by the Council.

8.5 Accumulation of Continuing Education

8.5.1 When a licensee applies for license renewal, a minimum of twenty (20) contact hours in activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours ~~biennially~~ per renewal period shall include the following categories:

8.5.1.1 A minimum of 12 contact hours of continuing education required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, 8.3.3.1, 8.3.3.2, or 8.3.3.3.

8.5.1.2 The remaining 8 contact hours of the continuing education required for renewal may be selected

from Subsection 8.3.3, Subject Matter.

8.5.2 Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours a ~~year~~ per renewal period as follows:

8.5.2.1 Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.

8.5.2.2 Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.

8.5.2.3 Preparation and publication of respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.4 Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.5 Infection control programs from facility or agency to a maximum of one contact hour.

~~8.5.2.6 Correspondence courses that are not within the curriculum that leads to an academic degree beyond that required for the original license to a maximum of four contact hours.~~

8.5.2.7~~6~~ Presentation or participation in review or recertification in American Heart Association or Red Cross provider or instructor programs, such as Advanced Cardiac Life Support, Basic Life Support, Pediatric Advanced Life Support, or CPR, to a maximum of two contact hours per program.

8.5.2.8~~7~~ Academic course work, related to health care or health care administration, to a maximum of four contact hours.

8.6 Review/Approval of Continuing Education Contact Hours

8.6.1 The Council may review the documentation of any respiratory care practitioner's continuing education.

8.6.2 The Council may determine whether the activity/program documentation submitted meets all criteria for continuing education as specified in these regulations.

8.6.3 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.

8.6.4 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.

8.6.5 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

8.6.6 Each license not renewed in accordance with this section shall expire, but may within a period of three years thereafter be reinstated upon payment of all fees as set

by the Division of Professional Regulation of the State of Delaware.

8.6.7 An applicant wishing to reinstate an expired license shall provide documentation establishing completion of the required 20 hours of continuing education during the two-year period preceding the application for renewal.

9.0 Renewal of License

9.1 To renew a license to practice respiratory care, a licensee must complete a renewal form provided by the Division of Professional Regulation certifying completion of continuing education.

9.2 Renewal notices will be mailed by the Division of Professional Regulation sixty (60) days prior to the expiration of the license.

10.0 Application for a License

10.1 Application

10.1.1 An application for a license to practice respiratory care must be completed on a form provided by the Board of Medical Practice and returned to the Board Office with the required, non-refundable fee.

10.2 Completed Application

10.2.1 An application for a license to practice respiratory care shall be considered completed when the Board has received the following documentation:

- 10.2.1.1 Non-refundable application fee
- 10.2.1.2 Completed application for licensure
- 10.2.1.3 Verification of education form
- 10.2.1.4 Verification of national examination

score

10.2.1.5 Letter(s) of good standing from other states where the applicant may hold a license, if applicable.

10.2.1.6 Any other information requested in the application.

10.3 Appeals Process

10.3.1 When the Council determines that an applicant does not meet the qualifications for licensure as prescribed under 24 Del.C. §1770B and the Rules and Regulations governing the practice of respiratory care, the Council shall make such recommendation to the Board proposing to deny the application. The Council shall notify the applicant of its intended action and reasons thereof. The Council shall inform the applicant of an appeals process prescribed under 29 Del.C. §10131.

11.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

designate or designates.

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

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

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

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

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

11.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies

to assure an unbiased assessment of the regulated professional's progress.

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

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

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

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

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

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

11.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in

consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

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

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

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

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

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del.C. Ch. 60)

Secretary's Order No.: 2000-A-0044

**RE: Proposed Amendment to Subparts "M" and "N" of
the State of Delaware Regulation No. 38:
Emission Standards for Hazardous Air Pollutants For
Source Categories**

Date of Issuance: September 11, 2000

Effective Date of the Amendment: October 11, 2000

I. Background

On Wednesday, August 23, 2000, at approximately 6:00 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 amendments to Title V permitting requirements of Regulation No. 38 for area sources. After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated September 6, 2000, 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 September 6, 2000, 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 Subparts "M" and "N" of the State of Delaware's Regulation No. 38 be amended in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

IV. Reasons

Adopting the proposed amendments to Delaware's Regulation No. 38 will further the policies and purposes of 7 Del.C. Chapter 60, because there is a need to concentrate the Department's limited permitting personnel on the completion of the Title V permitting program for the larger and more complex, major sources of air pollutants, rather than add ninety small area sources to the project, which would be counter-productive to the Department at this time. In addition, the proposed five-year delay of the Title V permitting requirement would not result in increased emissions of hazardous air pollutants from these sources, because these sources remain subject to all of the control requirements of Regulation No. 38 and Regulation No. 2, the general air permit regulation. Also, almost all of the aforementioned ninety area sources are small family businesses, and without this amendment, the DNREC air permit fee would increase from \$150.00 per year to \$4,000.00 per year, thus causing a significant negative economic impact upon these small area sources.

Nicholas A. DiPasquale, Secretary

Regulation No. 38

Emission Standards for Hazardous Air Pollutants for Source Categories

~~6/30/99~~ 10/11/00

Subpart M Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

The provisions of Sections 63.320 through 63.325 in Subpart M, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 1997 are hereby adopted by reference with the following changes:

(a) Except in section 63.325 of this subpart, "Department" shall replace "Administrator".

(b) Paragraph 63.320(b) shall be replaced with the following language: "Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991, shall be in compliance with the provisions of this subpart beginning on June 30, 1999 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act."

(c) Paragraph 63.320(c) shall be replaced with the following language: "Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall be in compliance with the provisions of this subpart beginning on June 30, 1999."

(d) Dry cleaning machine systems subject to paragraphs 63.320(d) or 63.320(e) shall also be subject the requirements of 63.324(c).

(e) Paragraph 63.320(f) shall be replaced with the following language: "(f)(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) and new transfer machine system(s) and its (their) ancillary equipment installed between December 9, 1991 and September 22, 1993 in the dry cleaning facility must comply with Sec. 63.322, Sec. 63.323, and Sec. 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.

(2) Following review of notification submitted in accordance with 63.324(c)(1), the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed under paragraph (f)(1), if there has been no exceedance during the prior 36 months and ---

(i) The total yearly perchloroethylene consumption falls below and remains below the amounts

specified in paragraph (d) or (e) before and after the next purchase of perchloroethylene, or

(ii) The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in paragraph (d) or (e)."

(f) Paragraph 63.320(i) shall be replaced with the following language: "(i)(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (g) of this section, but then exceeds those amounts, the dry cleaning facility becomes a major source and all dry cleaning systems located at that dry cleaning facility must comply with the appropriate requirements for major sources under Secs. 63.322, 63.323, and 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.

(2) Following review of notification submitted in accordance with 63.324(c)(1), the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed under paragraph (i)(1), if there has been no exceedance during the prior 36 months and ---

(i) The total yearly perchloroethylene consumption falls below and remains below the amounts specified in paragraph (g) before and after the next purchase of perchloroethylene, or

(ii) The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in paragraph (g)."

(g) Paragraph 63.320(j) shall be replaced with the following language: "(j)(1) All coin-operated dry cleaning machines are exempt from Sec. 63.320(f), Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (c), (d)(1), (d)(2), (d)(3), (d)(4), and (e).

(2) Facilities consisting of only coin-operated dry cleaning machines, unless otherwise subject to Regulation 30 permitting requirements, are exempt from paragraph 63.320(k)."

(h) Paragraph 63.320(k) shall be replaced with the following language: "The owner or operator of any source subject to the provisions of this subpart M is subject to Regulation 30 permitting requirements. These affected sources, if not major or located at major sources as defined under Regulation 30, are deferred by the Department from Regulation 30 permitting requirements until December 9, 1999 2004. All sources receiving deferrals shall submit

Regulation 30 permit applications by December 9, 2000 2005. All sources receiving deferrals still must meet the compliance schedule as stated in Sec. 63.320."

(i) The definition of Administrator found in Section 63.321 shall be replaced with the following language: "*Administrator* means the Administrator of the United States Environmental Protection Agency."

(j) The definition of Department is added to the list of definitions found in Section 63.321 with the following language: "*Department* means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended."

(k) The definition of Diverter valve found in Section 63.321 shall be replaced with the following language: "*Diverter valve* means a flow control device or flow control devices that prevents room air from passing through a refrigerated condenser when the door of the dry cleaning machine is open."

(l) The opening to paragraph 63.322(b) shall be replaced with the following language: "The owner or operator of each new dry-to-dry machine and its ancillary equipment and of each new transfer machine system and its ancillary equipment installed on or after September 22, 1993:"

(m) Paragraph 63.322(m) shall be replaced with the following language: "The owner or operator of a dry cleaning system shall repair all perceptible leaks detected under paragraph (k) or (l) of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt."

(n) The opening to paragraph 63.323(b) shall be replaced with the following language: "When a carbon adsorber is used to comply with Sec. 63.322(a)(2), Sec. 63.322(h) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with Sec. 63.322(b)(3), the owner or operator shall measure the concentration of perchloroethylene in the exhaust of the carbon adsorber weekly with a colorimetric detector tube, while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber to determine that the perchloroethylene concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:"

(o) The opening to paragraph 63.324(a) shall be replaced with the following language: "Each owner or operator of a dry cleaning facility shall notify the Department in writing by June 30, 1999 or upon startup, whichever is later, and provide the following information:"

(p) The opening to paragraph 63.324(b) shall be replaced with the following language: "Each owner or operator of a dry cleaning facility shall submit to the

Department on or before the 30th day following start-up or June 30, 1999, whichever is later, a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:”.

(q) Paragraph 63.324(c) shall be replaced with the following language: “(c)(1) Each owner or operator of an area source dry cleaning facility that exceeds the solvent consumption amounts specified in paragraphs 63.320 (d), (e) or (g) shall notify the Department not later than 30 days after the exceedance occurred. The notification shall provide the following information and shall be signed by a responsible official who shall certify its accuracy:

- (i) The name and address of the dry cleaning facility;
- (ii) A copy of the yearly perchloroethylene consumption records that indicate that there was an exceedance of the applicable amount specified in paragraphs 63.320 (d), (e) or (g);
- (iii) The circumstances that led to the exceedance; and
- (iv) A statement that all information contained in the notification is true and accurate.

(2) Each owner or operator of an area source dry cleaning facility that becomes subject to additional requirements under Sec. 63.320 (f)(1) or (i)(1) shall submit to the Department on or before the dates specified in Sec. 63.320 (f)(1) or (i)(1), a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:

- (i) The new yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to Sec. 63.323(d);
- (ii) Whether or not they are in compliance with each applicable requirement of Sec. 63.322; and
- (iii) All information contained in the statement is accurate and true.”

(r) The opening to paragraph 63.325(a) shall be replaced with the following language: “Any person requesting that the use of certain equipment or procedures be considered equivalent to the requirements under Sec. 63.322 shall collect, verify, and submit to the Administrator (with copy to the Department) the following information to show that the alternative achieves equivalent emission reductions:”.

~~9/11/99~~ 10/11/00

Subpart N Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

The provisions of Sections 63.340 through 63.347 in Subpart N, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 1998 are hereby adopted by

reference with the following changes:

(a) Except as shown in Table N-1 of this subpart, “Department” shall replace “Administrator”.

(b) Paragraph 63.340(b) shall be replaced with the following language: “Owners or operators of affected sources subject to the provisions of this subpart must also comply with the requirements of subpart A of this regulation, according to the applicability of subpart A of this regulation to such sources, as identified in Table 1 of this subpart.”

(c) The opening sentence of paragraph 63.340(e)(1) shall be replaced with the following language: “The Department has determined, pursuant to the criteria under Sec. 3 of Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution”, that an owner or operator of the following types of operations that are not by themselves major sources and that are not located at major sources, as defined in Regulation 30, is permanently exempt from title V permitting requirements for that operation:”.

(d) Paragraph 63.340(e)(2) shall be replaced with the following language: “An owner or operator of any other affected source subject to the provisions of this subpart is subject to title V permitting requirements of Regulation 30. These affected sources, if not major or located at major sources as defined in Regulation 30, are deferred by the Department from title V permitting requirements until December 9, ~~1999~~ 2004. All sources receiving deferrals shall submit title V permit applications by December 9, ~~2000~~ 2005. All sources receiving deferrals still must meet the compliance schedule as stated in Sec. 63.343.”

(e) The opening sentence of Section 63.341(a) shall be replaced with the following language: “Terms used in this subpart are defined in the Act, in subpart A of this regulation, or in this section. For the purposes of subpart N of this regulation, if the same term is defined in subpart A of this regulation and in this section, it shall have the meaning given in this section.”

(f) Paragraph 63.341(b)(10) shall be replaced with the following language: “ VR_{tot} = the average total ventilation rate for the three test runs as determined at the outlet by means of the Method 306 in appendix A of 40 CFR part 63 in dscm/min.”

(g) The first sentence of paragraph 63.342(f)(3)(i) shall be replaced with the following language: “The owner or operator of an affected source subject to the work practices of paragraph (f) of this section shall prepare an operation and maintenance plan to be implemented no later than September 11, 1999.”

(h) Replace all “Table 1 of this section” and “Table 1 of Sec. 63.342” with “Table 342-1 of this section” and “Table 342-1 of Sec. 63.342”, respectively.

(i) paragraph 63.342(f)(3)(i)(C) shall be replaced with the following language: “If the specific equipment used is

not identified in Table 342-1 of this section, the plan shall incorporate proposed work practice standards. These proposed work practice standards shall be submitted to the Administrator (with copy to the Department) for approval as part of the submittal required under Sec. 63.343(d);”.

(j) The first sentence of paragraph 63.342(f)(3)(iii) shall be replaced with the following language: “Recordkeeping associated with the operation and maintenance plan is identified in Sec. 63.346(b) and paragraph (f)(3)(v) of this section.”

(k) Replace the title of table in Section 63.342 with the following title: “Table 342-1 to Sec. 63.342.--Summary of Work Practice Standards”.

(l) The following errata found in Table 342-1 as published in the Federal Register and the Code of Federal Regulations shall be corrected as follows:

(i) Replace “chronic” with “chromic”;

(ii) Replace “PSB” with “PBS”; and

(iii) Replace “manufacturers” with “manufacturer’s”.

(m) Replace each “this part” found in Sections 63.343 and 63.344 with “40 CFR part 63”.

(n) Paragraph 63.343(a)(1) shall be replaced with the following language: “The owner or operator of an existing affected source shall comply by September 11, 1999 with the emission limitations in Sec. 63.342.”

(o) Paragraphs 63.343(a)(1)(i) and (ii) shall be deleted.

(p) Paragraph 63.343(a)(2) shall be replaced with the following language: “The owner or operator of a new or reconstructed affected source that has an initial startup after January 25, 1995, shall comply by September 11, 1999 or immediately upon startup of the source, whichever is later. The owner or operator of a new or reconstructed affected source that has an initial startup after December 16, 1993 but before January 25, 1995, shall comply by September 11, 1999.”

(q) Paragraph 63.343(a)(5) shall be replaced with the following language: “An owner or operator of an existing hard chromium electroplating tank or tanks located at a small, hard chromium electroplating facility that increases its maximum cumulative potential rectifier capacity, or its actual cumulative rectifier capacity, such that the facility becomes a large, hard chromium electroplating facility must comply with the requirements of Sec. 63.342(c)(1)(i) for all hard chromium electroplating tanks at the facility no later than 1 year after the month in which monthly records required by Secs. 63.342(c)(2) and 63.346(b)(12) show that the large designation is met.”

(r) Paragraph 63.343(a)(6) shall be replaced with the following language: “An owner or operator of an affected source or sources that requests an extension of compliance shall do so in accordance with the applicable paragraphs of Sec. 63.6(i) of subpart A. When the owner or operator is requesting the extension for more than one affected source

located at the facility, then only one request may be submitted for all affected sources at the facility.”

(s) Paragraph 63.343(a)(6)(i) shall be deleted.

(t) Paragraph 63.343(a)(6)(ii) shall be deleted.

(u) Paragraph 63.343(b)(1) shall be replaced with the following language: “Except as provided in paragraphs (b)(2) and (b)(3) of this section, an owner or operator of an affected source subject to the requirements of this subpart is required to conduct an initial performance test as required under Sec. 63.7 of subpart A using the procedures and test methods listed in Secs. 63.7 of subpart A and 63.344 of this subpart.”

(v) The first sentence of paragraph 63.343(c)(1)(ii) shall be replaced with the following language: “On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the composite mesh-pad system once each day that any affected source is operating.”

(w) The first sentence of paragraph 63.343(c)(2)(ii) shall be replaced with the following language: “On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the velocity pressure at the inlet to the packed-bed system and the pressure drop across the scrubber system once each day that any affected source is operating.”

(x) The first sentence of paragraph 63.343(c)(4)(ii) shall be replaced with the following language: “On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the fiber-bed mist eliminator, and the control device installed upstream of the fiber bed to prevent plugging, once each day that any affected source is operating.”

(y) The first sentence of paragraph 63.343(c)(5)(ii) shall be replaced with the following language: “On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source shall monitor the surface tension of the electroplating or anodizing bath.”

(z) The first sentence of paragraph 63.343(c)(6)(ii) shall be replaced with the following language: “On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source shall monitor the foam blanket thickness of the electroplating or anodizing bath.”

(aa) Paragraph 63.343(c)(8)(i) shall be replaced with the following language: “Requests and approvals of alternative monitoring methods shall be considered in

accordance with Sec. 63.8(f)(1), (f)(3), (f)(4), and (f)(5) of subpart A.”

(bb) Paragraph 63.343(d) shall be replaced with the following language: “An owner or operator who uses an air pollution control device not listed in this section shall submit to the Administrator (with copy to the Department) a description of the device, test results collected in accordance with Sec. 63.344(c) verifying the performance of the device for reducing chromium emissions to the atmosphere to the level required by this subpart, a copy of the operation and maintenance plan referenced in Sec. 63.342(f) including proposed work practice standards, and appropriate operating parameters that will be monitored to establish continuous compliance with the standards. The monitoring plan submitted identifying the continuous compliance monitoring is subject to the Administrator’s approval.”

(cc) The first sentence of paragraph 63.344(a) shall be replaced with the following language: “Performance tests shall be conducted using the test methods and procedures in this section and Sec. 63.7 of subpart A.”

(dd) The last sentence of paragraph 63.344(c)(2)(iii) shall be replaced with the following language: “The other requirements of Sec. 63.7 of subpart A that apply to affected sources, as indicated in Table 1 of this subpart, must also be met.”

(ee) The last sentence of paragraph 63.344(c)(4) shall be replaced with the following language: “Procedures for requesting and obtaining approval are contained in Sec. 63.7(f) of subpart A.”

(ff) The second sentence of paragraph 63.344(d)(4)(i) shall be replaced with the following language: “The port shall be located as close to the control system as possible, and shall be placed a minimum of 2 duct diameters downstream and 0.5 duct diameter upstream of any flow disturbance such as a bend, expansion, or contraction (see Method 1, 40 CFR part 60, appendix A).”

(gg) Paragraph 63.344(e)(2) shall be replaced with the following language: “When multiple affected sources performing the same type of operation (e.g., all are performing hard chromium electroplating) and subject to the same emission limitation are controlled with an add-on air pollution control device that is not controlling emissions from any other type of affected operation or from any nonaffected sources, the applicable emission limitation identified in Sec. 63.342 must be met at the outlet of the add-on air pollution control device.”

(hh) The opening of paragraph 63.344(e)(3)(iv) shall be replaced with the following language: “Determine the total ventilation rate from the affected sources (VR_{inlet}) by using equation 1:

$$VR_{tot} \times IDA_i / IA_{total} = VR_{inlet} \quad (1)$$

where”.

(ii) Replace “Sigma VR_{inlet} ” in paragraph

63.344(e)(3)(v) with “ VR_{inlet} ”.

(jj) The opening of paragraph 63.344(e)(4)(ii) shall be replaced with the following language: “Determine the total ventilation rate for each type of affected source ($VR_{inlet,a}$) using equation 3:

$$VR_{tot} \times IDA_{i,a} / IA_{total} = VR_{inlet,a} \quad (3)$$

where”.

(kk) The opening of paragraph 63.344(e)(4)(iii) shall be replaced with the following language: “Establish the allowable mass emission rate in mg/hr for each type of affected source (AMR_i) that is controlled by the add-on air pollution control device using equation 4, 5, 6, or 7 as appropriate:”.

(ll) The opening of paragraph 63.344(e)(4)(iv) shall be replaced with the following language: “Establish the allowable mass emission rate (AMR_{sys}) in mg/hr for the system using equation 8, including each type of affected source as appropriate:”.

(mm) Paragraph 63.345(b) shall be replaced with the following language: “New or reconstructed affected sources. The owner or operator of a new or reconstructed affected source is subject to applicable paragraphs of Sec. 63.5, as noted in Table 1 of subpart N, as well as the provisions of this section.”

(nn) The first sentence of paragraph 63.345(b)(1) shall be replaced with the following language: “After September 11, 1999, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new affected source or reconstruct an affected source subject to this subpart, or reconstruct a source such that it becomes an affected source subject to this subpart, without submitting a notification of construction or reconstruction to the Department.”

(oo) Paragraph 63.345(b)(2)(iii) shall be replaced with the following language: “A notification of intention to construct a new affected source or make any physical or operational changes to an affected source that may meet or has been determined to meet the criteria for a reconstruction as defined in Sec. 63.2 of subpart A;”.

(pp) Paragraph 63.345(b)(2)(iv) shall be replaced with the following language: “An identification of subpart N of this regulation as the basis for the notification;”.

(qq) Paragraph 63.345(b)(4), in its entirety, shall be replaced with the following language: “(4)(i) The owner or operator of a new or reconstructed affected area source that submits a notification in accordance with paragraphs (b)(1) through (3) of this section is not subject to approval by the Department. Construction or reconstruction is subject only to notification and can begin upon submission of a complete notification.

(ii) The owner or operator of a new or reconstructed affected major source that submits a notification in accordance with paragraphs (b)(1) through (3)

of this section and an application for approval of construction or reconstruction in accordance with requirements of Sec. 63.5 of subpart A is subject to approval by the Department. Construction or reconstruction can not commence prior to receipt of the Department's approval of the application for approval of construction or reconstruction and/or approval of the Regulation 2 permit to construct application.

(iii) Additionally, the owner or operator of a new or reconstructed affected source may be required to obtain an approved construction permit under Regulation 2 of the State of Delaware "Regulations Governing the Control of Air Pollution", before commencing construction or reconstruction."

(rr) Paragraph 63.345(b)(5), in its entirety, shall be replaced with the following language: "(5) Submittal timeframes. After September 11, 1999, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, an owner or operator of a new or reconstructed affected source shall submit the notification of construction or reconstruction required by paragraph (b)(1) of this section and/or the application for approval of construction or reconstruction required by Sec. 63.5 of subpart A according to the following schedule:

(i) If construction or reconstruction commences after September 11, 1999, the notification and/or application shall be submitted as soon as practicable before the construction or reconstruction is planned to commence.

(ii) If the construction or reconstruction had commenced and initial startup had not occurred before September 11, 1999, the notification and/or application shall be submitted as soon as practicable after September 11, 1999."

(ss) Paragraph 63.346(a) shall be replaced with the following language: "The owner or operator of each affected source subject to these standards shall fulfill all recordkeeping requirements outlined in this section and in subpart A of this regulation as identified in Table 1 of this subpart."

(tt) Paragraph 63.346(b)(15) shall be replaced with the following language: "Any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements, if the source has been granted a waiver under Sec. 63.10(f) of subpart A; and".

(uu) Paragraph 63.346(b)(16) shall be replaced with the following language: "All documentation supporting the notifications and reports required by Sec. 63.9 and Sec. 63.10 of subpart A and Sec. 63.347 of this subpart."

(vv) Paragraph 63.346(c) shall be replaced with the following language: "All records shall be maintained for a period of 5 years in accordance with Sec. 63.10(b)(1) of subpart A."

(ww) Paragraph 63.347(a) shall be replaced with the following language: "The owner or operator of each affected source subject to these standards shall fulfill all reporting requirements outlined in this section and in subpart A of this regulation as identified in Table 1 of this subpart. These reports shall be mailed to the Administrator at the appropriate address as identified in Sec. 63.13 and to the Department, in accordance with 63.10(a)(4) of subpart A."

(xx) Paragraph 63.347(a)(1) shall be replaced with the following language: "Reports required by subpart A of this regulation and this section may be sent by U.S. mail, fax, or by another courier."

(yy) the opening of paragraph 63.347(c)(1) shall be replaced with the following language: "The owner or operator of an affected source that has an initial startup before September 11, 1999, shall notify the Department in writing that the source is subject to this subpart. The notification shall be submitted no later than September 11, 1999, and shall contain the following information:"

(zz) Paragraph 63.347(c)(1)(iii) shall be replaced with the following language: "A statement that subpart N of this regulation is the basis for this notification;"

(aaa) Paragraph 63.347(c)(1)(vi) shall be replaced with the following language: "For sources performing hard chromium electroplating, the maximum cumulative potential rectifier capacity;"

(bbb) Paragraph 63.347(c)(1)(vii) shall be replaced with the following language: "For sources performing hard chromium electroplating, a statement of whether the affected source(s) is located at a small or a large, hard chromium electroplating facility and whether this will be demonstrated through actual or maximum cumulative potential rectifier capacity;"

(ccc) Paragraph 63.347(c)(1)(viii) shall be replaced with the following language: "For sources performing hard chromium electroplating, a statement of whether the owner or operator of an affected source(s) will limit the maximum cumulative potential rectifier capacity in accordance with Sec. 63.342(c)(2) such that the hard chromium electroplating facility is considered small; and"

(ddd) Paragraph 63.347(c)(1)(ix) shall be replaced with the following language: "A statement of whether the affected source is located at a major source or an area source as defined in Sec. 63.2 of subpart A."

(eee) Paragraph 63.347(c)(2), in its entirety, shall be replaced with the following language: "(2) The owner or operator of a new or reconstructed affected source that has an initial startup after January 25, 1995 shall submit an initial notification, in addition to the notification of construction or reconstruction required by Sec. 63.345(b), as follows:

(i) A notification of the date when construction or reconstruction was commenced, shall be submitted simultaneously with the notification of construction or

reconstruction, if construction or reconstruction was commenced before September 11, 1999;

(ii) A notification of the date when construction or reconstruction was commenced, shall be submitted no later than 30 calendar days after such date, if construction or reconstruction was commenced after September 11, 1999; and

(iii) A notification of the actual date of startup of the source shall be submitted by September 11, 1999 or within 30 calendar days after startup, whichever is later."

(fff) Paragraph 63.347(d)(2) shall be replaced with the following language: "In the event the owner or operator is unable to conduct the performance test as scheduled, the provisions of Sec. 63.7(b)(2) of subpart A apply."

(ggg) The opening of paragraph 63.347(e)(2) shall be replaced with the following language: "If the State in which the source is located has not been delegated the authority to implement the rule, each time a notification of compliance status is required under this part, the owner or operator of an affected source shall submit to the Administrator (with copy to the Department) a notification of compliance status, signed by the responsible official (as defined in Sec. 63.2 of subpart A) who shall certify its accuracy, attesting to whether the affected source has complied with this subpart. If the State has been delegated the authority, the notification of compliance status shall be submitted to the Department. The notification shall list for each affected source:"

(hhh) Paragraph 63.347(e)(3) shall be replaced with the following language: "For sources required to conduct a performance test by Sec. 63.343(b), the notification of compliance status shall be submitted to the Department no later than 90 calendar days following completion of the compliance demonstration required by Sec. 63.7 of subpart A and Sec. 63.343(b) of this subpart."

(iii) Paragraph 63.347(e)(4) shall be replaced with the following language: "For sources that are not required to complete a performance test in accordance with Sec. 63.343(b), the notification of compliance status shall be submitted to the Department no later than 30 days after the compliance date specified in Sec. 63.343(a)."

(jjj) Paragraph 63.347(f)(1) shall be replaced with the following language: "If the State in which the source is located has not been delegated the authority to implement the rule, the owner or operator of an affected source shall report to the Administrator (with copy to the Department) the results of any performance test conducted as required by Sec. 63.7 of subpart A or Sec. 63.343(b) of this subpart. If the State has been delegated the authority, the owner or operator of an affected source should report performance test results to the Department."

(kkk) Paragraph 63.347(g)(2)(i)(B) shall be replaced with the following language: "The owner or operator continues to comply with all applicable recordkeeping and monitoring requirements of subpart A of this regulation and

this subpart; and".

(lll) The opening sentence of paragraph 63.347(h) shall be replaced with the following language: "The requirements of this paragraph do not alleviate affected area sources from complying with the requirements of Regulation 2 and 30 of the State of Delaware "Regulations Governing the Control of Air Pollution"."

(mmm) Paragraph 63.347(h)(3)(i)(B) shall be replaced with the following language: "The owner or operator continues to comply with all applicable recordkeeping and monitoring requirements of subpart A of this regulation and this subpart; and".

(nnn) The first sentence of paragraph 63.347(i) shall be replaced with the following language: "The requirements of this paragraph do not alleviate affected sources from complying with the requirements of Regulation 2 and 30 of the State of Delaware "Regulations Governing the Control of Air Pollution"."

(ooo) Paragraph 63.347(i)(1), in its entirety, shall be replaced with the following language: "(1) Not later than September 11, 1999, submit an initial notification that includes:

(i) The same information as is required by paragraphs (c)(1)(i) through (v) of this section;

(ii) A statement that a trivalent chromium process that incorporates a wetting agent will be used to comply with Sec. 63.342(e); and

(iii) The list of bath components that comprise the trivalent chromium bath, with the wetting agent clearly identified."

(ppp) Paragraph 63.347(i)(2) shall be replaced with the following language: "Within 30 days of the compliance date specified in Sec. 63.343(a) or by September 11, 1999, whichever is later, a notification of compliance status that contains an update of the information submitted in accordance with paragraph (i)(1) of this section or a statement that the information is still accurate."

(qqq) Replace the title of table following Section 63.347 with the following title: "Table 1 of Subpart N of Regulation 38 -- Subpart A (General Provisions) Applicability to Subpart N".

(rrr) The following errata found in Table 1 of Subpart N as published in the Federal Register and the Code of Federal Regulations shall be corrected as follows:

(i) "Sec. 63.345(c)(5)" noted in comments for 63.5(d)(1)(i) shall be replaced with "Sec. 63.5(b)(5)";

(ii) "Sec. 63.345(c)(5)" noted in comments for 63.5(f)(2) shall be replaced with "Sec. 63.5(b)(5)";

(iii) "part A" noted in comments for 63.6(b)(1)-(2) shall be replaced with "subpart A";

(iv) Reference to "63.6(i)(12)(ii)-(iii)" shall be replaced with "63.6(i)(12)(ii)-(iv)"; and

(v) Reference to "63.8(c)(4)-(7)" shall be replaced with "63.8(c)(4)-(8)".

(sss) In Table 1 of Subpart N, delete any “Comment” and change the applicability from “Yes” to “No” for the following “General provision references”:

- (i) “63.6(i)(2)”;
- (ii) “63.6(i)(5)”;
- (iii) “63.6(i)(6)(ii)”;
- (iv) “63.6(i)(10)(v)(B)”;
- (v) “63.6(i)(12)(i)”;
- (vi) “63.6(i)(12)(ii-iv)”.

(ttt) In Table 1 of Subpart N, delete the “Comment” for the “General provision reference”, “63.6(i)(4)(i)”.

(uuu) In Table 1 of Subpart N, replace the “Comment” with the following language: “This paragraph only references “paragraph (i)(4)(ii) of this section” for compliance extension provisions.” for the following “General provision references”:

- (i) “63.6(i)(6)(i)”;
- (ii) “63.6(i)(8)”;
- (iii) “63.6(i)(9)”;
- (iv) “63.6(i)(10)(v)(A)”.

Table N-1 of Subpart N - Exceptions to “Department” as replacement of “Administrator” under Subpart N (a)

Reference	“Administrator” means “Administrator”	Comment
63.342(f)(3)(i)(C)	Yes	As replaced
Table 342-1 To Sec. 63.342	Yes	
63.343(c)(8)(ii)	Yes	
63.343(d)	Yes	As replaced
63.344(c)(4)	Yes	
63.347(a)	Yes	As replaced
63.347(e)(2)	Yes	As replaced
63.347(f)(1)	Yes	As replaced
In Table 1 of Subpart N in comments for 63.8(f)(2)	Yes	

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Panel on Intergovernmental Planning & Coordination	Mr. W. Steven Cooper, Chairman Ms. Peggy Tracy	09/04/02 09/04/03
Basic Life Support Financial Task Force	Mr. Robert L. Scoglietti	Pleasure of the Governor
Council on the Blind	Ms. Alice Capodanno Mr. Douglas Salter Ms. Beatrice Simonds Ms. Gail Staren Ms. Eleanor West	08/30/03 08/30/03 08/30/03 08/30/03 08/30/03
Council on Forestry	Mr. John E. Clark Mr. Allen Jones Mr. Raymond Taraila	09/08/03 09/08/03 09/08/03
Council on Libraries	Mr. James C. Conrad Mr. Richard J. Geisenberger Mr. Lewis Purnell	08/25/03 08/25/03 08/25/03
Criminal Justice Council	Mr. Andre G. Bouchard	Pleasure of the Governor
Delaware Heritage Commission	Dr. James Soles, Chairman	03/30/03
Delaware State University Board of Trustees	Mr. F. Michael Parkowski Dr. Jesse R. Williamson	08/25/06 08/25/06
Delaware Technical and Community College Board of Trustees	Ms. Mary M. Dudek Mr. Craig T. Eliassen Honorable Norman D. Griffiths	08/29/03 08/29/03 08/29/03
Department of Finance	Mr. William M. Remington, Acting Secretary	
Division of Revenue	Mr. Patrick T. Carter, Director	
Interstate Compact for Uniform Licensure of Participants in Thoroughbred Racing Committee	Mr. Bernard J. Daney	Pleasure of the Governor
New Castle County Board of Elections	Mr. Noel H. Kuhrt, Jr.	08/29/04
State Board of Accountancy	Mr. Joseph C. Schoell	08/17/03
State Board of Pharmacy	Ms. Karen Dey Mr. Martin Golden Mr. Jack Murphy	07/01/03 07/01/03 07/01/03
State Board of Plumbing Examiners	Ms. Nettye Evans	08/25/03

GOVERNOR'S APPOINTMENTS

717

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
State Public Assessment and Accountability System Advisory Committee	Ms. Susan T. Gleich	Pleasure of the Governor
	Ms. Adrienne H. Kalbacher	Pleasure of the Governor
Task Force for the Future of Delaware Agriculture	Dr. John C. Nye, Dean	Pleasure of the Governor
Wastewater Facilities Advisory Council	Mr. Josef A. Burger	07/08/01

**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
San 2000-09

1. Title of the Regulations:

Amendments To Addendum To The Delaware Phase II Attainment Demonstration For The Philadelphia-Wilmington-Trenton Severe Ozone Nonattainment Area (Non-regulatory Document)

2. Brief Synopsis of the Subject, Substance and Issues:

In January 2000 the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted to the U.S. Environmental Protection Agency (EPA) a document entitled "Addendum to The Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area" ("The Addendum"). The Addendum addressed a deficiency in the Phase II Plan, i.e., it established the on-road mobile source volatile organic compounds (VOC) and oxides of nitrogen (NOx) emissions budgets required for the purposes of transportation conformity in Kent and New Castle counties, the two Delaware severe ozone nonattainment counties. EPA has informed us by letter that the Department must revise the State Implementation Plan (SIP) to include two elements – a formal commitment to revise the on-road mobile VOC and NOx emissions budgets within a year of the release of the MOBILE6 (an emission factor model), and a formal commitment to adopt and submit additional control measures necessary to support attainment by October 31, 2001. Both items were included in the submittal letter but were not subjected to the public hearing process and this document formalizes that requirement.

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:

November 14, 2000, 06:00 pm; DNREC Auditorium; 89 Kings Highway; Dover, DE 19901

7. Prepared by:

Raymond H. Malenfant, Program Manager, (302) 739-4791, Mohammed A. Majeed, Environmental Engineer, (302) 739-4791, September 13, 2000

**Amendments to Addendum To The Delaware Phase II
Attainment Demonstration for the Philadelphia-
Wilmington-Trenton Ozone Nonattainment Area
(Januray 2000)**

Draft

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**

September 2000

List of Acronyms

AQMS DNREC's Air Quality Management Section
 CAAA Clean Air Act Amendments of 1990
 CMSA Consolidated Metropolitan Statistical Area
 CO Carbon Monoxide
 DNREC Delaware Department of Natural Resources and
 Environmental Control
 EPA The U.S. Environmental Protection Agency
 MOBILE EPA's Software tool for estimating on-road
 mobile source VOC, NOx and CO emissions factors
 NAA Nonattainment area
 NAAQS National Ambient Air Quality Standards
 NOx Oxides of Nitrogen
 OTAG Ozone Transport Assessment Group
 OTR Ozone Transport Region
 SIP State Implementation Plan
 UAM Urban Airshed Model
 VOC Volatile Organic Compounds

1. Introduction

The Clean Air Act Amendments of 1990 (CAAA) require all "serious" and above ozone nonattainment areas (NAAs) to submit their attainment demonstrations based on the photochemical grid model such as the Urban Airshed Model (UAM). Kent and New Castle Counties are the two

"severe" counties for which Delaware is in nonattainment with the 1-hour ozone National Ambient Air Quality Standard (NAAQS). These two counties are part of a larger NAA - the Philadelphia Consolidated Metropolitan Statistical Area (CMSA), which has been named as the Philadelphia-Wilmington-Trenton NAA. The CAAA requires a modeled attainment demonstration for the entire Philadelphia-Wilmington-Trenton NAA, and the attainment year for the severe ozone Philadelphia-Wilmington-Trenton NAA is year 2005.

In May 1998 the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision entitled "The Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area" ("The Delaware Phase II document"). The Delaware Phase II document successfully demonstrated attainment of the 1-hour ozone NAAQS for the Delaware portion of the Philadelphia-Wilmington-Trenton ozone NAA for the July 18-20, 1991 episode with the Ozone Transport Assessment Group (OTAG) Run2 boundary conditions. In its December 16 1999 notice (64 FR 70444), EPA determined that there is a shortfall in the attainment demonstration for the Philadelphia-Wilmington-Trenton ozone NAA and identified the requirements that the states must meet in order to get their Phase II attainment demonstrations approved. In January 2000, DNREC submitted a document entitled "Addendum to the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Severe Ozone Nonattainment Area" ("The Addendum") that lists all the EPA identified requirements and addresses how Delaware will fulfil those requirements to get the Delaware Phase II Attainment Demonstration Plan approved.

EPA has informed DNREC by letter (*Appendix 1*) that the Department must revise the Addendum to include two elements - a formal commitment to revise the on-road mobile source VOC and NOx emissions budgets within a year of the release of the MOBILE6 (an emission factor model), and a formal commitment to adopt and submit additional control measures necessary to support attainment by October 31, 2001. Both items were included in the submittal letter to the Addendum, but were not subjected to the public hearing process and this document formalizes that requirement.

The agency with direct responsibilities for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management Section, Air Quality Management Section (AQMS), under the direction of Darryl D. Tyler, Program Administrator. The working responsibility for Delaware's air quality planning falls within the Planning and Community Protection (PCP) Branch of the Air Quality Management Section of DNREC under the

management of Raymond H. Malenfant, Program Manager. Raymond H. Malenfant is the project manager and chief editor of this document. Mohammed A. Majeed, Ph.D., P.E. is the principal author and Alfred R. Deramo is the quality assurance reviewer of this document.

2. Amendments to the Addendum

This document addresses the commitments that are not listed in the Addendum.

2.1 Additional Measures

In its December 16 1999 notice (64 FR 70444), EPA has declared that the Philadelphia CMSA has shortfalls in the attainment demonstrations, and identified the amount of attainment shortfalls for the CMSA for which the states need to develop additional control measures. EPA requires the states to adopt additional measures, and these measures can be adopted regionally such as in the Ozone Transport Region (OTR), or locally in individual states. Delaware hereby commits to adopt additional control measures and submit the revised SIP to EPA by October 31, 2001.

2.2 Revision of On-Road Mobile Source Emissions Budgets

EPA requires Delaware to revise the on-road mobile source VOC and NOx emissions budgets within a year of the release of the MOBILE6 (an emission factor) model. DNREC hereby commits to revise the SIP and the on-road mobile source VOC and NOx emissions budgets within a year of the release of the MOBILE6.

Appendix 1

Letter
From
David L. Arnold
Chief, Ozone & Mobile Sources Branch
EPA Region III Office

GENERAL NOTICES

**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**SAN # 99-28****1. Title of the Regulations:**

Summary Of Delaware 2005 Rate-of-Progress Plan For Kent And New Castle Counties: For Demonstrating 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) for every three years after 1996 to demonstrate how to achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x), which are major precursors to form ozone. The plan proposed herein is for the period between 2003 to 2005, and thus termed as Delaware's 2005 Rate-of-Progress Plan.

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:

A public hearing will be held on November 14, 2000 at 6:00 PM in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

7. Prepared By:

Frank F. Gao, Project Leader(302) 739-4791 September 14, 2000

(Proposal)

**Summary of Delaware 2005 Rate-of-progress Plan for Kent and New Castle Counties
For Demonstrating 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 and in Conjunction with Delaware
Department of Transportation
October 2000**

Acronym List

AIRS-EPA's Aerometric Information Retrieval System.	mmBTU-Million British Thermal Unit
AFS-AIRS Facility Subsystem.	mmcf-Million Cubic Feet
AMS-AIRS Area and Mobile Subsystem.	NAAQS-National Ambient Air Quality Standard
AQM-Air Quality Management Section	NLEV-National Low Emission Vehicle
BEA-Bureau of Economic Analysis	NOx -Oxides of Nitrogen
CAAA-Clean Air Act Amendments of 1990	OTAG-Ozone Transport Assessment Group
CMSA-Consolidated Metropolitan Statistical Area	OTC-Ozone Transport Commission
CO-Carbon Monoxide	OTR-Ozone Transport Region
DelDOT-Delaware Department of Transportation	PAPS-Point and Area Projection System
DNREC-Delaware Department of Natural Resources and Environmental Control	PERC-Perchloroethylene
EPA-United States Environmental Protection Agency	POTW-Publicly Owned Treatment Works
EPS2.0-EPA's Emissions Preprocessor System software	RACT-Reasonably Available Control Technology
FMVCP-Federal Motor Vehicle Control Program	RPP-Rate-of-Progress Plan
HPMS-Highway Performance Monitoring System	RVP-Reid Vapor Pressure
I/M-Inspection and Maintenance	SCC-Source Classification Code
LEV-Low Emission Vehicle	SIC-Standard Industrial Classification
MPO-Metropolitan Planning Organization	SIP-State Implementation Plan
	VHB-Vanasse Hangen Brustlin, Inc.
	VOC-Volatile Organic Compound

References

1. *1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NOx*, Department of Natural Resources and Environmental Control, Air Quality Management Section, Dover, Delaware, revised as of May 3, 1994.
2. *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, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, October 1992.
3. *The Delaware 15% Rate-of-Progress Plan*, Department of Natural Resources and Environmental Control, Air Quality Management Section, Dover, Delaware, February 1995.
4. *NOx Substitution Guidance*, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, December 1993.
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. *The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties*, Department of Natural Resources and Environmental Control, Dover, DE, December 1997.
7. *Amendments to The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties*, Department of Natural Resources and Environmental Control, Dover, DE, April 1999.
8. *OTAG Draft Modeling Report*, Regional and Urban Scale Modeling Workgroup, Ozone Transport Assessment Group, February 1997.
9. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration*, Ozone/Carbon Monoxide Programs Branch, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, February 18, 1994.
10. *Population Projections, Version 1992.0*, Delaware Population Consortium, Dover, Delaware, January 1992.
11. *BEA Regional Projections to 2040, Volumes I, II, and III*, U.S. Department of Commerce, Bureau of Economic Analysis (BEA), Washington, D.C., U.S. Government Printing Office, October 1990.
12. *Procedures for Preparing Emissions Projections*, EPA-450/4-91-019, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July 1991.
13. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, EPA-452/R-93-002, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1993.
14. *Guidance for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventory*, EPA-452/R-92-010, Office of Air Quality and Standards, EPA, Research Triangle Park, NC, November 1992.

15. *Compilation of Air Pollutant Emission Factors. Vol. 1: Stationary Point and Area Sources.* AP-42, 5th ed., Office of Air Quality and Standards, EPA, Research Triangle Park, NC, January 1995.
16. *Memorandum of Understanding among the States of the Ozone Transport Commission on Development of a Regional Strategy Concerning the Control of Stationary Source Nitrogen Oxide Emissions,* Stationary and Area Source Committee of Ozone Transport Commission (OTC), Washington, D.C., September 1994.
17. *The 1990 OTC NO_x Baseline Emission Inventory.* EPA-454/R-95-013, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, NC, July 1995.
18. *Delaware Regulation No. 39: NO_x Budget Trading Program.* Department of Natural Resources and Environmental Control, Dover, DE, as proposed in September 2000.
19. *Alternative Control Techniques Document: Automobile Refinishing,* EPA-453/R-94-031, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, NC, April 1994.
20. *Alternative Control Techniques Document: Offset Lithographic Printing,* EPA 453/R-94-054, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, NC, June 1994.
21. *Regional Oxidant Modeling of the 1990 Clean Air Act Amendments: Default Projection and Control Data,* Report No. 94.08.003/1731, prepared by E. H. Pechan & Associates, Inc. for Richard A. Wayland, Environmental Scientist, Source Receptor Analysis Branch, US EPA, Research Triangle Park, NC, August 1994.
22. *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,* EPA-450/4-81-026d (Revised), Office of Mobile Sources, US EPA, Ann Arbor, Michigan, 1992.
23. *Regulatory Support Document: Phase 2 Emission Standards for New Nonroad Spark-ignition Engines at of below 19 Kilowatts.* Office of Air and Radiation, US EPA, Washington, D.C., December 1997.
24. *Regulatory Impact Analysis: Control of Air Pollution Emission Standards for New Nonroad Spark-Ignition Marine engines,* Office of Air and Radiation, US EPA, Washington, D.C., June 1996.
25. *Final Regulatory Impact Analysis: Control of Emissions from Nonroad Diesel Engines,* Engine Program and Compliance Division, Office and Air and Radiation, and Office of Mobile Sources, US EPA, August 1998.
26. *Technical Highlights Report: Emission Factors for Locomotives,* EPA420-F-97-051, Office of Mobile sources, US EPA, Ann Arbor, MI, December 1997.

INTRODUCTION

1. Background

This document contains Delaware's State Implementation Plan (SIP) revision for the milestone year of 2005 to address adequate rate of progress toward attainment of the 1-hour ground level ozone National Ambient Air Quality Standard (NAAQS) as set forth in the Clean Air Act Amendments of 1990 (hereafter referred to as CAAA).¹ The plan is hereafter referred to as "Delaware 2005 Rate-of-Progress Plan", or simply as "the 2005 RPP".

The CAAA sets forth the National Ambient Air Quality Standards 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. High levels of ozone also cause serious damage to forests and agricultural crops, resulting in economic losses to logging and farming operations. Ozone is generally not directly emitted to the atmosphere, but formed in the atmosphere by chemical reactions between volatile organic compounds (VOC), nitrogen oxides (NO_x), and carbon monoxide (CO) in the presence of sunlight. Consequently, in order to reduce ozone concentrations, the CAAA requires specific amounts of reductions in anthropogenic VOC emissions and/or NO_x emissions over a specified period of years until the ozone standard is attained. These periodic emission reductions are termed as "rate of progress" toward the attainment of the ozone NAAQS.

The CAAA defines five nonattainment classifications for areas 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 classification designation for individual areas.² The CAAA also establishes the Ozone Transport Region (hereafter referred to as OTR) where the interstate transport of air pollutants from one or more states

1. Federal Clean Air Act, 42 U.S.C.A. 7401 *et seq.*, as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

2. Clean Air Act Amendments of 1990, Title 1, Part D, Section 181.

contributes significantly to violations of the ozone NAAQS in one or more other states. This single transport region for ozone includes the states of Delaware, Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area (CMSA) that includes the District of Columbia.³ The OTR includes the Philadelphia Consolidated Metropolitan Statistical Area (CMSA) which is classified as a severe nonattainment area (Figure 1). 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.

Section 182 (d) of the CAAA requires states to submit a State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA), for each ozone nonattainment area classified as severe or above, that achieves a 15% net reduction of actual anthropogenic



Figure 1. Philadelphia Consolidated Metropolitan Statistical Area (CMSA) Nonattainment Area.⁴

(human-caused) volatile organic compound (VOC) emissions by November 15, 1996. In addition to the 15% reduction, Section 182(d) also requires states to submit SIP revisions that achieve actual VOC emission reductions of at least 3% per year averaged over each consecutive 3-year period beginning November 15, 1996, until the area's applicable attainment date. These rate-of-progress emission reductions are based on the states' 1990 emission levels. The SIP revision for the 1990-1996 reductions is termed as "the 15% Rate-of-Progress Plan (RPP)", and the plans for an average 3% per year reduction over each 3-year period after 1996 are termed as "the Post-1996 Rate-of-Progress Plans". The CAAA also provides for crediting of VOC emissions reductions achieved in the 1990-1996 period to the post-1996 rate-of-progress plans if they are in excess of the 15% VOC reductions requirement, and substitution of any anthropogenic nitrogen oxides (NO_x) emissions reductions, net of growth, occurring in the post-1990 period for the post-1996 VOC emission reduction requirements. In addition to the average annual 3% VOC/NO_x emission reduction, Section 182(d) of CAAA also requires the States to provide for photochemical grid modeling demonstrations for the attainment of ozone NAAQS by the applicable attainment dates.

Through a memorandum dated on March 2, 1995, from Mary D. Nichols, Assistant Administrator for Air and Radiation,

3. Clean Air Act Amendments of 1990, Title 1, Part D, Section 184 (a).

4. 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.

EPA provides for the States with serious and above ozone nonattainment areas a two-phased approach to the post-1996 RPPs.⁵ Briefly, in Phase I, the States are required to develop a plan for the milestone year of 1999 which includes necessary control measures to achieve a 9% reduction of VOC and/or NO_x emissions between 1996 and 1999. In Phase II, the States are required to assess the regional and local control measures necessary to meet the rate-of-progress requirements and achieve attainment. On December 23, 1997, EPA provided further guidance, along with a memorandum from Richard D. Wilson, Acting Assistant Administrator of Air and Radiation, on how to prepare the Phase II submittal.⁶

2. Delaware State Implementation Plan Submittals

All the rate-of-progress emission reductions aforementioned are based on the States' 1990 emission levels. Delaware's 1990 Base Year Ozone Emission Inventory, which is an inventory of the 1990 actual VOC, NO_x, and CO emissions from all sources in Delaware, was submitted to EPA as a SIP revision on May 27, 1994, and was approved by EPA on March 25, 1996. Since the ozone NAAQS attainment date for Kent and New Castle Counties is 2005, Delaware is required to submit the 15% RPP, and RPPs for three post-1996 milestone years, i.e., 1999, 2002, and 2005. Delaware's 15% RPP was submitted to EPA as a SIP revision in February, 1995. In this document, Delaware showed that, by implementing necessary control measures, the required 15% VOC emission reduction could be successfully met by 1996. The 15% RPP was conditionally approved by EPA in May, 1997. Delaware's 1999 RPP, the first post-1996 SIP revision developed according to the Phase I requirements set forth in the Nichols' Memorandum (please see Footnote 4), was submitted to EPA in December, 1997. In June 1999, Delaware submitted to EPA the Amendments of the 1999 RPP. In the 1999 RPP (as amended in April 1999), Delaware shows that the 9% VOC and/or NO_x emission reductions required for the 1996-1999 period can be successfully met by implementing additional control measures in this time period. Delaware also demonstrates that an additional 3% VOC/NO_x emission reduction can be achieved, without further rulemaking activities, to meet the contingency requirements specified by EPA.⁷ In May 1998, Delaware submitted to EPA the Phase II attainment demonstration document based on EPA's guidance. In this Phase II document, Delaware makes a commitment to submit a SIP revision to EPA before the end of 2000 to address the emission reductions for the post-1999 rate-of-progress milestone years up to the attainment date for the 1-hour ozone NAAQS (Delaware's attainment date for the 1-hour ozone NAAQS is 2005). Both Phase I and Phase II submittals are currently under EPA's review.

On July 18, 1997, EPA revised the 1-hour ozone NAAQS with an 8-hour standard at a level of 0.08 ppm.⁸ However, the 1-hour standard will continue to apply to a nonattainment area for an interim period until EPA makes a determination that the area has air quality meeting the 1-hour standard. As a consequence, the provisions of Section 182 of the CAAA will continue to apply to the subject nonattainment areas until EPA makes determinations that these areas have met the 1-hour ozone standard (please see Footnote 5). The continuation of the 1-hour standard requires that Delaware submit to EPA, before the end of 2000, fully adopted Rate-of-Progress Plans for the milestone years of 2002 and 2005 to demonstrate adequate progress toward attainment of the 1-hour standard in 2005. Delaware fulfilled its Rate-of-Progress Plan for the milestone year of 2002 (i.e., the 2002 RPP) and submitted it to EPA for review and approval in February 2000. The document presented herein is Delaware's Rate-of-Progress Plan for the milestone year of 2005.

3. Organization of the 2005 Rate-of-Progress Plan

This document is a revision of Delaware's State Implementation Plan to fulfill (1) the CAAA rate-of-progress requirements toward attainment of the 1-hour ozone NAAQS, and (2) the commitment made in Delaware's Phase II submittal. The document is a fully-adopted Rate-of-Progress Plan with (1) emission target calculations for the milestone year of 2005, and (2) all control measures resulting from regulations adopted or to be adopted as necessary to achieve the rate-of-progress requirements set forth for 2005.

Based on the suggestion of EPA Region III Office, Delaware decides to use EPA's MOBILE5b model, instead of the

5. *Memorandum: Ozone Attainment Demonstrations*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, Washington, D.C. 20460, March 2, 1995.

6. *Memorandum and Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM₁₀ NAAQS*, Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, U.S. EPA, Washington, D.C. 20460, December 23, 1997.

7. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration*, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, NC, February 1994.

8. Environmental Protection Agency: *National Ambient Air Quality Standard for Ozone*; Final Rule. *Federal Register*, Vol. 62, No. 138, Friday, July 18, 1997.

MOBILE5a model used in Delaware's previous RPPs, to estimate more accurately VOC and NOx emissions in 2005 from on-road mobile vehicles. According to EPA's guidance on the use of MOBILE5b, Delaware must use MOBILE5b to reevaluate the mobile source emissions for the 1990 baseline inventory and the emission projections inventories of all the milestone years, i.e., 1996, 1999, 2002 and 2005.⁹ The reevaluations of these emission inventories using MOBILE5b are included and discussed in the appropriate locations in this document. In general, this rate-of-progress plan contains five parts as explained below.

Part I. The 1990 Base Year Inventory Summary and 2005 Target Levels of VOC and NOx Emissions

The 2005 Target Levels of VOC and NOx Emissions are the maximum amounts of anthropogenic VOC and NOx emissions allowed in the years of 2005 in Kent and New Castle Counties in order to meet the 3% per year VOC/NOx reduction requirements. As previously mentioned, the basis for calculating these target levels is the 1990 Base Year Emission Inventory, which is an inventory of actual VOC, NOx, and CO emissions that occurred in Delaware in 1990. Section 182(c)(2)(C) of CAAA allows NOx reductions that occur after 1990 to be used to meet the post-1996 rate of progress requirements. The condition for meeting the rate-of-progress requirements is that the sum of all creditable VOC and NOx emissions must equal 3% per year averaged over the applicable milestone period. In the event of NOx substitution, separate target levels of emissions will have to be calculated for VOC and NOx. Part I presents a summary of the 1990 Base Year Inventory, as well as the 6-step process for determining the 2005 target levels of VOC and NOx emissions. To meet EPA's requirements for using MOBILE5b, Part I in the 2005 RPP also presents (1) reevaluations of controlled emission projections (i.e., the control strategy projections) of VOC and NOx in 1996, 1999, and 2002, and (2) calculations of VOC and NOx emission target levels in 1996, 1999 and 2002.

Part II. The 2005 Current Control Projection Inventory & Required VOC and NOx Emission Reductions

The Current Control Projections are estimates of the amount of VOC and NOx emissions that will occur in 2005, taking into account the effects of economic growth, and assuming no new emission control measures would be implemented between 1990 and the corresponding milestone year, i.e., 2005. The purpose of calculating the 2005 Current Control Projection Inventory is to determine the amount of growth in VOC and NOx emissions by 2005 that must be offset. Part II discusses the methodology for developing the emission growth factors and demonstrates how the growth factors are used to determine the Current Control Projection Inventory for VOC and NOx emissions in the year 2005. Since Delaware decides to use MOBILE5b to estimate on-road mobile source emissions, the current control projection inventories for 1996, 1999 and 2002 are also reevaluated for MOBILE5b in this part. The reevaluated 2002 current control inventory is then used to calculate emission increase from 2003 to 2005.

Part III. The 2005 Control Strategy Projection Inventory and Emission Control Measures

The 2005 Control Strategy Projections are estimates of the amount of VOC and NOx emissions that will occur in 2005, taking into account the effects of economic growth and continued benefits of control strategies in the 15% RPP, the 1999 RPP, the 2002 RPP, and including the benefits from new control measures that will be implemented during the 2003-2005 period. The purpose of calculating the 2005 Control Strategy Projection Inventory is to determine if the new national, regional and state level control measures, which will be implemented between 2003 and 2005 will reduce VOC and/or NOx emissions sufficiently to offset growth and to meet the 2005 Target Levels of VOC and NOx emissions calculated in Part I. Part III discusses the methodology used to develop the 2005 Control Strategy Projection Inventory and presents the individual control measures to be implemented by 2005 with their VOC and NOx emission reductions. The control strategy projections for on-road mobile sources are estimated using EPA's MOBILE5b model.

Part IV. Contingency Plan for the 2005 RPP

Contingency measures are required by the CAAA to be included in the rate-of-progress plans to remedy the state's failure to meet the emission reduction target in a milestone year. The CAAA requires that, in the event of such a failure, the contingency measures can be implemented (1) without any further rulemaking actions by the state, and (2) to achieve an additional 3% emission reduction over the 1990 baseline level.¹⁰ Part IV discusses the contingency measures and the potential

9. Memorandum: *Summary of Comments and Guidance for Use of MOBILE5b*, Philip A. Lorang, Director, Assessment and Modeling Division, Office of Mobile Sources, US EPA, August 17, 1997.

10. Memorandum: *Guidance on Issues Related to 15 Percent Rate-of-Progress Plans*, Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, US EPA, August 23, 1993.

emission reductions associated with each measure.

Part V. Documentation

Numerous appendices are included in this part to backup the discussion and conclusions in Part I through Part IV. These appendices include background information, emission data, projection methodologies and calculations, relevant guidance memorandums from EPA, and other references cited in Part I through Part IV.

It should be pointed out that there exist minute discrepancies among numbers in various parts in this document. Those discrepancies are due to calculation rounding errors that are of a magnitude of ± 0.001 TPD. Those discrepancies do not affect the final calculation results and the conclusions of the plan.

4. 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, Air Quality Management Section (AQM), under the direction of Darryl D. Tyler, Section Administrator. The Delaware Department of Transportation (DelDOT), in conjunction with the consulting firm Vanasse Hangen Brustlin, Inc. (VHB), Watertown, MA, is responsible for providing input data files regarding emissions of the on-road mobile source portions of the 2005 RPP. The Ozone and Mobile Sources Branch of EPA Region III Office provides significant help and guidance in estimating mobile source emissions for 2005. Other Delaware agencies, including the Department of Labor, the Department of Public Safety, and the Department of Agriculture, provide information used in some portions of the 2005 RPP. These agencies will be referred to and acknowledged in appropriate locations in the document.

The working responsibility for Delaware's air quality planning falls within the Planning and Community Protection Branch of the Air Quality Management Section of DNREC, under the management of Raymond H. Malenfant, Program Manager. Joseph Cantalupo, Manager of DelDOT's Intergovernmental Coordination Section, Office of Planning, is responsible for managing the work associated with the on-road mobile source portions of this document. Thomas F. Wholley, Director of Air Quality Services, Vanasse Hangen Brustlin, Inc., is responsible for contract work associated with the on-road mobile source portions of this document.

The following personnel of AQM's Planning and Community Protection Branch are instrumental in completing this document:

Project Leader and Principal Author: Frank F. Gao, Ph.D., P.E., Environmental Engineer

Technical Editing Reviewer: Alfred R. Deramo, Environmental Resource Planner

Quality Assurance Reviewer: Mohammed A. Majeed, Ph.D., P.E., Environmental Engineer

Technical Supporting Staff:

Point sources: Bhavesh V. Amin, P.E., Manager, PCP's Emission Inventory Development Program
Marian A. Hitch, Senior Environmental Compliance Specialist.

Area Sources: Jack L. Sipple, Environmental Scientist
Mark D. Eastburn, Environmental Scientist

Off-Road Mobile Sources: Margaret A. Jenkins, Environmental Scientist

On-Road Mobile Sources: Phillip A. Wheeler, Resource Planner

PART I

THE 1990 BASE YEAR INVENTORY SUMMARY AND THE 2005 TARGET LEVELS OF VOC AND NO_x EMISSIONS

Under the rate-of-progress provisions in Section 182(d) of the Clean Air Act Amendments of 1990 (CAAA), Delaware is required to achieve an average 3% per year VOC emission reduction from the 1990 baseline emission levels in Kent and New Castle Counties in the milestone period of 2003-2005. In order to determine necessary and adequate control strategies for achieving the required emission reductions in this 2005 RPP, the target level of VOC emissions in the milestone year of 2005 must first be calculated. In addition, Section 182(c)(2)(C) of the CAAA permits the substitution of NO_x emission reductions for the post-1996 VOC emission reductions required for the adequate rate-of-progress. Such NO_x substitutions for VOC emission reductions require the calculation of the 2005 target level of NO_x emissions.

The 3% per year rate-of-progress reductions in VOC and NO_x emissions for the 2003-2005 period are determined from the 1990 Base Year Inventory after the inventory is adjusted for non-creditable emission reductions due to (1) Federal Motor Vehicle Control Program (FMVCP) tailpipe or evaporative standards promulgated prior to 1990, (2) Federal regulations

specifying Reid Vapor Pressure (RVP) limits on gasoline for nonattainment areas, (3) State regulations required to correct deficiencies in Reasonably Available Control Technology (RACT) rules, and (4) State regulations required to establish or correct Inspection and Maintenance (I/M) programs. In this part, a summary of the 1990 Base Year Inventory for Kent and New Castle Counties is first presented, followed by the procedures and calculations for estimating the 2005 target levels of VOC and NOx emissions.

1.1. The 1990 Base Year Inventory Summary

The rate-of-progress provisions in the CAAA require states in nonattainment areas to submit to the EPA a current inventory of actual emissions from all sources of relevant pollutants.¹¹ This inventory is to be used as the basis for determining required emissions reductions. The calendar year 1990 is the time frame for this current emissions inventory which is called the 1990 Base Year Ozone State Implementation Plan (SIP) Emissions Inventory (hereafter referred to as the 1990 Base Year Inventory). Delaware's 1990 Base Year Inventory was submitted to the EPA as a SIP revision on May 27, 1994, and approved by EPA on March 25, 1996 (Reference 1, hereafter referred to as Delaware's 1990 Base Year Inventory).

The 1990 Base Year Inventory is categorized into point, stationary area, off-road mobile, on-road mobile, and biogenic sources of emissions. Volatile organic compounds (VOC), nitrogen oxides (NOx), and carbon monoxide (CO) are the ozone precursor emissions reported for each category in the 1990 Base Year Inventory. Because CO is only marginally reactive in producing ozone, the CO component of the 1990 Base Year Inventory does not figure into the rate of progress requirements. Therefore, only the VOC and NOx components of the 1990 Base Year Inventory are summarized here. The results of Delaware's 1990 Base Year Inventory are summarized in Table 1-1 for VOC and NOx emissions from Kent and New Castle Counties. The values in Table 1-1 are reported in tons per day (TPD) in the peak ozone season. The peak ozone season for Delaware is defined as from June 1 through August 31.

**Table 1-1
1990 Base Year Inventory Summary of VOC and NOx Emissions (in TPD)
by County in Peak Ozone Season**

	Kent		New Castle		Total	NAA
Source Category	VOC	NOx	VOC	NOx	VOC	NOx
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	13.07	10.62	35.28	27.06	48.35	37.68
Biogenic Sources*	32.46	0.00	17.51	0.00	49.97	0.00
Total Emissions	65.233	25.843	131.296	137.002	196.529	162.845

* NOx emissions from biogenic sources are considered negligible.

The percent VOC contribution of each source component listed in Table 1-1 to the total VOC emissions from Kent and New Castle Counties is shown in Figure 1-1. These relative proportions are shown both for the total inventory of all sources, and for the anthropogenic inventory which excludes biogenic emissions. The anthropogenic inventory is the inventory from which the Base Year Inventory is adjusted and the 2005 Target Levels of VOC (and NOx) emissions are calculated.

The percent NOx contribution of each source component listed in Table 1-1 to the total NOx emissions from Kent and New Castle Counties is shown in Figure 1-2. All NOx emissions in the 1990 Base Year Inventory are from anthropogenic sources. The NOx emissions from biogenic sources are considered negligible and are not included in the 1990 Base Year Inventory.

A more detailed explanation of the 1990 Base Year Inventory data and the methods used to develop the data is contained in Delaware's *1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NOx*, Department of Natural Resources and Environmental Control, Air Quality Management Section, Dover, DE, revised as of May 3, 1994 (Reference 1).

11. CAAA, Title I, Part D, Sec. 172(c)(3) and Sec. 182

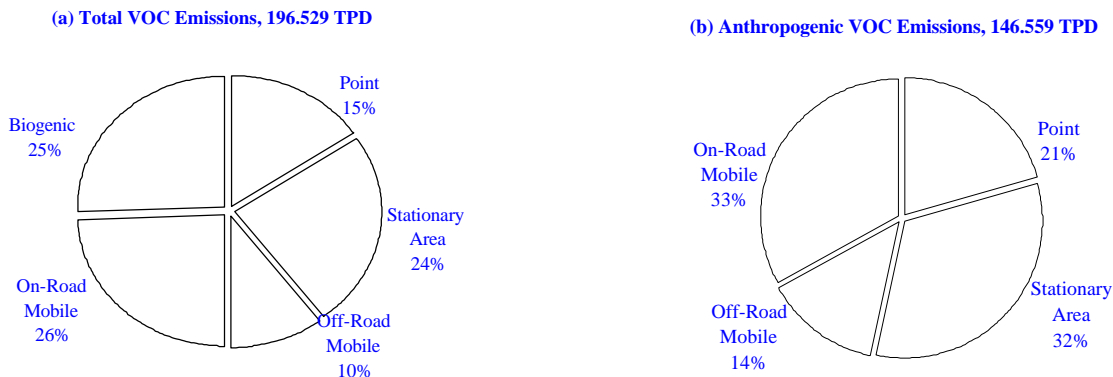


Figure 1-1. Contribution of Source Components to Total 1990 Base Year VOC Emissions in Delaware's Non-Attainment Area (NAA).

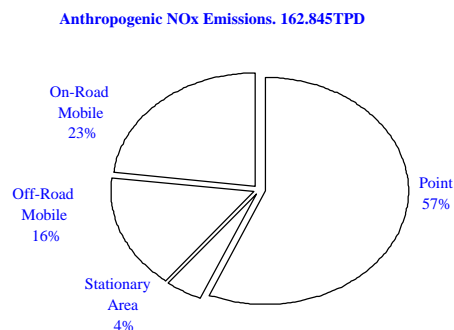


Figure 1-2. Contribution of Source Components to Total 1990 Base Year VOC Emissions in Delaware's Non-Attainment Area (NAA).

1.2. Guidance for Calculating Emission Target Levels for Post-1996 Milestone Years

The Clean Air Act Amendments of 1990 (CAAA) is the principal guidance for determining the target levels of VOC and NO_x emissions in a state's Rate-of-Progress Plans (RPP). Based on the CAAA, EPA has issued various guidance documents for States to follow in their RPP development. This section briefly outlines the requirements and procedures specified in the CAAA and relevant EPA guidance documents for determining emission target levels in the rate-of-progress milestone years. In a later section, details of how Delaware determines the target levels of VOC and NO_x emissions in 2005 will be presented.

The target level of VOC emissions (and NO_x emissions when appropriate) for a milestone year is the maximum amount of total anthropogenic VOC (and NO_x) emission to be allowed for the entire subject nonattainment area (NAA) in that specific milestone year. The CAAA sets forth restrictions on the acceptability of certain control measures toward the VOC emission reductions to meet the rate-of-progress requirements. Briefly, all real, permanent, and enforceable post-1990 VOC emission reductions are creditable toward the rate-of-progress reductions except (1) the Federal Motor Vehicle Control Program (FMVCP) tailpipe or evaporative standards promulgated prior to 1990, (2) the Federal Regulations specifying Reid Vapor Pressure (RVP) limits for gasoline for nonattainment areas, (3) the State regulations required to correct deficiencies in Reasonably Available Control Technology (RACT) rules, and (4) the State regulations required to establish or correct vehicle Inspection and Maintenance (I/M) programs.¹² After adjustments for these non-creditable emission reductions and for emissions of any photochemically non-reactive VOCs such as perchloroethylene (PERC), the 1990 Base Year Inventory for

12. Clean Air Act amendment of 1990, Title I, Part D, Section 182(b)(1)(D).

Anthropogenic Emissions is termed as the 1990 Adjusted Base Year (or Baseline) Inventory. This adjusted baseline inventory forms the basis for determining the rate-of-progress (i.e., percentage) emission reductions, and the corresponding emission target levels for individual milestone years. The basic procedures for developing the adjusted base year inventory are outlined in an EPA document entitled “*Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate-of-Progress Plans*” (Reference 2, hereafter referred to as *The Guidance on the Adjusted Base Year Inventory*).

For the milestone year of 1996, the target level is required for VOC emissions only. This can be done by multiplying the VOC emission level in the 1990 Adjusted Base Year Inventory by 15% to obtain the required emission reduction, and subtracting it from the 1990 adjusted level. Details of Delaware’s 1996 emission target calculations can be found in *The Delaware 15% Rate-of-Progress Plan*, Delaware Department of Natural Resources and Environmental Control, Dover, DE, February, 1995 (Reference 3). For the post-1996 milestone years, the target levels are to be calculated for VOC emissions, as well as for NOx emissions if NOx substitution is selected by states to meet the required rate-of-progress reductions. Section 182(c)(2)(C) of the CAAA allows states to use actual NOx emission reductions obtained after 1990 to meet the post-1996 VOC emission reduction requirements. If a state chooses to substitute its NOx emission reductions for VOC emission reductions, such substitution must meet the criteria outlined in the EPA’s *NOx Substitution Guidance* (Reference 4). These criteria are (1) the sum of all creditable VOC and NOx emission reductions must equal 3% per year averaged over each applicable milestone period, and (2) the overall VOC and NOx emission reductions must be consistent with the area’s modeled attainment demonstration. The second criterion, i.e., the consistency requirement, is modified by a policy memorandum issued by EPA on July 12, 1994.¹³ The modification requires that (1) the State must have adopted RACT regulations for NOx emission control, and (2) the State must demonstrate, through modeling of at least one episode with photochemical Urban Airshed Modeling (UAM) or Regional Oxidant Modeling (ROM), the usefulness of NOx controls in reducing the ground-level ozone concentrations. The State of Delaware satisfies these two requirements. Delaware adopted NOx RACT regulations on November 24, 1993 and these regulations became effective on May 31, 1995 (Reference 5). The Sensitivity Analysis conducted by Rutgers University for the Philadelphia-New Jersey UAM Airshed has demonstrated that as much as 75% of VOC and 75% of NOx reductions could be necessary for the entire domain to achieve the ground-level ozone standard. Details of this analysis are presented in *The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties*, Department of Natural Resources and Environmental Control, Dover, DE, as amended in June 1999 (Reference 6). Delaware’s two nonattainment counties (i.e., Kent and New Castle) are included in the modeled airshed domain. In addition, the Regional and Urban Scale Modeling (RUSM) performed by Ozone Transport Assessment Group (OTAG) has shown that NOx emission and transport controls are crucial for Delaware to reach attainment of the ozone standard (Reference 8). Therefore, Delaware meets the consistency requirement and can choose to control NOx emissions and substitute NOx emission reductions for VOC emission reductions to meet the rate-of-progress requirements.

To determine the control strategies for achieving a 9% VOC/NOx emission reduction for each 3-year period after 1996 (hereafter termed as milestone period), the target levels of VOC and NOx emissions for the three post-1996 milestone years (i.e., 1999, 2002, and 2005 for Delaware) need to be calculated. For these post-1996 milestone years, the target levels of VOC and NOx emissions for a subject milestone year depend on the target levels in the previous milestone year. According to EPA’s *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration* (Reference 9, hereafter referred

to as *The Guidance on the Post-1996 RPP*), the following equation should be used for calculating emission target levels for a subject milestone year

$$TL_x = TL_y - BG_r - FT_x$$

(1-1)

- where: x = subject milestone year (e.g., 2005),
- y = previous milestone year (e.g., 2002),
- TL_x = target level of emissions for year x ,
- TL_y = target level of emissions for year y ,
- BGr = Emission reduction required for year y ,
- FT_x = Fleet turnover correction for year y to year x .

In the following sections, procedures of how Delaware determines its target levels of VOC and NOx emissions for the milestone year 2005 are presented. It should be pointed out that based on the suggestion of EPA Region III Office, Delaware

13. Memorandum: *Clarification of Policy for Nitrogen Oxides (NOx) Substitution*, John S. Seitz, Director, Office of Air Quality Planning and Standards, US EPA, July 12, 1994.

decides to use EPA's MOBILE5b model, instead of MOBILE5a model, to better estimate VOC and NOx emissions in 2005 from on-road mobile vehicles. Since the target levels of VOC and NOx emissions in the previous milestone years are needed for calculating the target levels for a later milestone year, the EPA's guidance requires that Delaware uses MOBILE5b to estimate mobile source emissions in 1990, 1996, 1999 and 2002.¹⁴ Details of MOBILE5b modeling and the emission results are included and discussed in the main plan of the 2005RPP.

1.3. The 2005 Target Levels of VOC and NOx Emissions

From Equation 1-1, it can be seen that the target level of VOC emissions for a subject milestone year (i.e., 2005) is calculated by subtracting, from the target levels in the previous milestone year (i.e., 2002), the required rate-of-progress emission reductions (i.e., 9% for the period of 2003-2005) and the fleet turnover correction for the corresponding milestone period. There are six major steps in calculating the target emission levels for the milestone year 2005.

Step 1. Development of the 1990 Base Year Inventory

The 1990 Base Year Inventory is an inventory of actual annual and daily (typical weekday in the peak ozone season) emissions of VOCs (as well as NOx and CO emissions) from four source categories, i.e., point, stationary area, mobile and biogenic. This work has been fulfilled in Delaware's 1990 Base Year Ozone SIP Emission Inventory (Reference 1). A summary by source sector of the 1990 Base Year Inventory of VOC and NOx emissions in Delaware's two severe nonattainment counties (Kent and New Castle) has been presented in Table 1-1.

Step 2. Development of the 1990 Rate-of-Progress or Baseline Inventory

The 1990 Baseline Inventory is the "baseline" from which Delaware calculates the 9% rate-of-progress emission reductions for each 3-year milestone period. Delaware's 1990 baseline inventory accounts for only anthropogenic emissions from sources within Kent and New Castle Counties. Therefore, this baseline inventory is obtained by removing, from the 1990 Base Year Inventory, (1) biogenic emissions, (2) any emissions from sources outside Kent and New Castle Counties, and (3) the non-reactive perchloroethylene (PERC) emissions (for VOC inventory only). In addition, the 1990 baseline inventory needs to be amended for switching from MOBILE5a model to MOBILE5b model (Table 1-1 contains mobile emissions estimated by MOBILE5a).

Delaware's 1990 Base Year Inventory for Kent and New Castle Counties (Table 1-1) does not include emissions from any outside sources. It does include, however, the biogenic and PERC emissions. Perchloroethylene was originally classified by EPA as a photochemically reactive VOC for emission inventory purposes. The EPA reclassified PERC as photochemically *non-reactive* after Delaware's 1990 Base Year Inventory was compiled. Because only the photochemically *reactive* VOCs participate in the formation of ozone, the PERC emissions, which are now considered not participating in the formation of ozone, need to be subtracted from the 1990 Base Year Inventory. Calculations for the 1990 Baseline Inventory for VOC emissions are shown below.

1990 Base Year Total VOC Emissions (Kent and New Castle Counties Only):

$$65.233 \text{ TPD (Kent)} + 131.296 \text{ TPD (New Castle)} = 196.529 \text{ TPD}$$

Emissions from Outside Nonattainment Area: None

1990 Base Year Total Biogenic VOC Emissions:

$$32.460 \text{ TPD (Kent)} + 17.510 \text{ TPD (New Castle)} = 49.970 \text{ TPD}$$

1990 Base Year Total PERC Emissions: 0.716 TPD

1990 Base Year Mobile Source VOC Emission (MOBILE5b):

$$12.890 \text{ TPD (Kent)} + 34.070 \text{ TPD (New Castle)} = 46.960 \text{ TPD}$$

1990 Baseline VOC Emissions = 1990 Base Year Inventory - (Outside Emissions)

14. Memorandum: *Summary of Comments and Guidance for Use of MOBILE5b*, Philip A. Lorang, Director, Assessment and Modeling Division, Office of Mobile Sources, US EPA, August 17, 1997.

$$\begin{aligned}
 &+ \text{Biogenic Emissions} + \text{PERC Emissions}) \\
 &- \text{MOBILE5a Emission} + \text{MOBILE5b Emission} \\
 &= 196.529 - (0 + 49.970 + 0.716) - 48.350 + 46.960 \\
 &= \mathbf{144.453 \text{ TPD}}
 \end{aligned}$$

The MOBILE5a emission in the above calculation is obtained from Table 1-1.

The 1990 Baseline Inventory for NOx emissions will not have the three minus corrections since (1) biogenic NOx emissions are negligible, (2) there are no NOx emissions from outside sources in the 1990 Base Year Inventory, and (3) correction for PERC emissions does not apply to NOx emissions. The only correction is for MOBILE5b:

1990 Base Year Mobile Source NOx Emission (MOBILE5b):

$$10.620 \text{ TPD (Kent)} + 27.040 \text{ TPD (New Castle)} = 37.660 \text{ TPD}$$

$$\begin{aligned}
 \mathbf{1990 \text{ Baseline NOx Emissions}} &= 1990 \text{ Base Year Inventory} - \text{MOBILE5a Emission} \\
 &\quad + \text{MOBILE5b Emission} \\
 &= 162.845 - 37.680 + 37.660 = \mathbf{162.825 \text{ TPD}}
 \end{aligned}$$

The MOBILE5a emission in the above calculation is obtained from Table 1-1. The 1990 Baseline Inventory for both VOC and NOx emissions is summarized in Table 1-2.

Table 1-2
1990 Baseline Inventory Summary for VOC and NOx Emissions (in TPD)

	Kent		New		Castle		Total		NAA	
Source Sector	VOC	NOx	VOC	NOx	VOC	NOx	VOC	NOx	VOC	NOx
Point Sources	3.242	6.130	26.938	85.767	30.180	91.897				
Stationary Area Sources	12.779	1.202	34.366	5.398	47.145	6.600				
Off-Road Mobile Sources	3.494	7.891	16.674	18.777	20.168	26.668				
On-Road Mobile Sources	12.89	10.62	34.07	27.04	46.96	37.66				
TOTAL EMISSIONS	32.405	25.843	112.048	136.982	144.453	162.825				

Step 3. Development of the 1990 Adjusted Baseline Inventory

According to Section 182(b)(1)(D) of the CAAA, emission reductions that 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 adequate rate-of-progress emission reductions. Therefore, the 1990 Baseline Inventory needs to be adjusted by subtracting the VOC (and NOx) emission reductions that are expected to occur between 1990 and individual milestone years due to the FMVCP and RVP regulations. The result of this adjustment is called "the 1990 Adjusted Baseline Inventory relative to the subject milestone year."

The FMVCP/RVP VOC and NOx emission reductions that are expected to occur between 1990 and a subject milestone year are determined using EPA's on-road mobile source emission modeling software, MOBILE5b. The MOBILE5b input files for the 1990 Adjusted Baseline Inventory for on-road mobile sources are provided by Delaware Department of Transportation (DelDOT), through its contractor, Vanasse Hangen Brustlin, Inc., Watertown, MA (hereafter referred to as VHB). With these input files, the MOBILE5b modeling work has been performed by DNREC staff with immediate help and close direction of EPA Region III. The input files and the modeling output files are included in Appendix B of the 2005 RPP. The emission reduction that will occur between 1990 and a subject milestone year (i.e., 1996, 1999, 2002, or 2005) as a result of the FMVCP and RVP regulations is determined by subtracting the 1990 Adjusted Base Year Inventory of On-Road Mobile Source Emissions (described in Appendix B of the 2005 RPP) from the 1990 Baseline Inventory of On-Road Mobile Source Emissions. The calculations and results for the non-creditable FMVCP/RVP emission reductions for individual milestone years are presented in Table 1-3.

GENERAL NOTICES

**Table 1-3
Non-Creditable FMVCP/RVP Emission Reductions (in TPD)**

Description	VOC	NOx	
1990 Baseline On-Road Mobile Source Emissions	46.96	37.66	(a)
1990 Adjusted Base Year On-Road			
Mobile Source Emissions			
Adjusted for 1996	38.73	34.75	(b)1996
Adjusted for 1999	36.83	33.80	(b)1999
Adjusted for 2002	35.63	33.37	(b)2002
Adjusted for 2005	35.00	33.21	(b)2005
FMVCP/RVP			
Emission Reductions			
For 1990-1996	8.23	2.91	(a)-(b)1996
For 1990-1999	10.13	3.86	(a)-(b)1999
For 1990-2002	11.33	4.29	(a)-(b)2002
For 1990-2005	11.96	4.45	(a)-(b)2005

The 1990 Adjusted Baseline Inventory relative to a subject milestone year is obtained by subtracting the corresponding FMVCP/RVP emission reductions from the 1990 Baseline Inventory presented in Step 2. The calculations and results are shown in Table 1-4. This all-source adjusted inventory is the baseline for calculating the required rate-of-progress emission reductions, as shown in the following steps.

Step 4. Calculation of Corrections for Fleet Turnover

It is anticipated that there will be some decrease in motor vehicle emissions for many years as a result of fleet turnover, i.e., the gradual replacement of older pre-control vehicles

**Table 1-4
1990 Adjusted Baseline VOC and NOx Emissions (in TPD)**

Description	VOC	NOx	
1990 Baseline Inventory (All Sources)	144.453	162.825	(a)
FMVCP/RVP Emission Reductions			
For 1990-1996	8.230	2.910	(b)1996
For 1990-1999	10.130	3.860	(b)1999
For 1990-2002	11.330	4.290	(b)2002
For 1990-2005	11.960	4.450	(b)2005
1990 Adjusted Baseline Emissions			
Relative to 1996	136.223	159.915	(a)-(b)1996
Relative to 1999	134.323	158.965	(a)-(b)1999
Relative to 2002	133.123	158.535	(a)-(b)2002
Relative to 2005	132.493	158.375	(a)-(b)2005

by newer vehicles with the control required by the CAAA, even in the absence of any additional and new controls. The CAAA does not allow States to take credit from these fleet-turnover reductions for achieving rate-of-progress. Therefore, the emission reductions due to any fleet turnover during the post-1996 milestone periods are not creditable for the corresponding milestone year. The fleet turnover correction for each post-1996 target level is obtained by subtracting the 1990 Baseline On-Road Mobile Source Emissions adjusted to the subject milestone year (i.e., 2005) from the 1990 Baseline On-Road Mobile Source Emissions adjusted to the previous milestone year (i.e., 2002). The calculations and results for each post-1996

milestone period are shown in Table 1-5.

**Table 1-5
Fleet Turnover Corrections for On-Road Mobile Source
VOC and NOx Emissions (TPD)**

Fleet Turnover Correction	VOC	NOx	*
For 1996-1999	1.90	0**	(b)1996-(b)1999
For 1999-2002	1.20	0.43	(b)1999-(b)2002
For 2003-2005	0.63	0.16	(b)2002-(b)2005

* Data are from Table 1-3. ** Fleet turnover is not needed for NOx in 1999 target calculation.

Step 5. Calculation of Required VOC and NOx Emission Reductions

The rate-of-progress reductions in VOC and NOx emissions for each three-year milestone period are calculated separately. However, the sum of all creditable VOC and NOx emission reductions must be equal to 9% with respect to the corresponding 1990 adjusted baselines.

The VOC emission reduction that can be applied for a milestone year is obtained by subtracting (1) the non-creditable fleet turnover correction, and (2) the expected VOC emission level in the subject milestone year (e.g., 2005), from the target level of the previous millstone year (e.g., 2002). The fleet-turnover corrections will be calculated in the next step. Calculations of the creditable VOC emission reductions for the three milestone years are presented in Table 1-6. Also presented in Table 1-6 are percentages of these creditable VOC reductions with respect to their 1990 adjusted VOC baselines.

The percentages of creditable VOC reductions in Table 1-6 determine the percentages of NOx emission reductions to meet the 9% rate-of-progress requirements. For example, the percentage of creditable VOC reduction for the milestone year 1999 is **Error! Not a valid link.**, as shown in Table 1-6. Thus, the percentage of NOx reduction for substitution must be at least 7.45% (i.e., 9% - **Error! Not a valid link.** = 7.45%). This percentage is then multiplied with the 1990 adjusted NOx baseline (relative to 1999) to determine the required tonnage of NOx reduction for the milestone year 1999. Calculations for the required NOx emission reductions for all three milestone years are presented in Table 1-7.

**Table 1-6
Creditable VOC Emission Reductions (in TPD) for Three Milestone Years**

Description	Emissions	
1999 Milestone Year		
1990 Baseline VOC Emission Adjusted for 1999	134.323	(a)
1996 VOC Target Level	115.790	(b)
VOC Fleet Turnover Correction for 1996-1999	1.900	(c)
1999 VOC Control Strategy Projection	111.806	(d)
Creditable VOC Emission Reductions for 1999	2.084	(e)=(b)-(c)-(d)
% of VOC Reductions for 1999 Rate-of-Progress	1.55%	(f)=(e)/(a)x100
2002 Milestone Year		
1990 Baseline VOC Emission Adjusted for 2002	133.123	(a)
1999 VOC Target Level	111.806	(b)
VOC Fleet Turnover Correction for 1999-2002	1.200	(c)
2002 VOC Control Strategy Projection	99.082	(d)
Creditable VOC Emission Reductions for 2002	11.524	(e)=(b)-(c)-(d)
% of VOC Reductions for 2002 Rate-of-Progress	8.66%	(f)=(e)/(a)x100
2005 Milestone Year		
1990 Baseline VOC Emission Adjusted for 2005	132.493	(a)
2002 VOC Target Level	99.082	(b)
VOC Fleet Turnover Correction for 2003-2005	0.630	(c)

GENERAL NOTICES

2005 VOC Control Strategy Projections	95.414	(d)
Creditable VOC Emission Reductions for 2005	3.038	(e)=(b)-(c)-(d)
% of VOC Reductions for 2005 Rate-of-Progress	2.29%	(f)=(e)/(a)x100

**Table 1-7
Required NOx Emission Reductions (in TPD) for Three Milestone Years**

Description	NOx Emissions	
1999 Milestone Year		
1990 Baseline NOx Emission Adjusted for 1999	158.965	(a)
% VOC Reductions for 1999 Rate-of-Progress	1.55%	(b)
% NOx Reductions for 1999 Rate-of-Progress	7.45%	(c)
Total % of VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 1996-1999	11.841	(e)=(a)x(c)
2002 Milestone Year		
1990 Baseline NOx Emission Adjusted for 2002	158.535	(a)
% VOC Reductions for 2002 Rate-of-Progress	8.66%	(b)
% NOx Reductions for 2002 Rate-of-Progress	0.34%	(c)
Total % of VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 1999-2002	0.544	(e)=(a)x(c)
2005 Milestone Year		
1990 Baseline NOx Emission Adjusted for 2005	158.375	(a)
% VOC Reductions for 2005 Rate-of-Progress	2.29%	(b)
% NOx Reductions for 2005 Rate-of-Progress	6.71%	(c)
Total % VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 2003-2005	10.622	(e)=(a)x(c)

Step 6 - Calculation of 2005 Target Levels of VOC and NOx Emissions

The target levels of VOC and NOx emissions in each milestone year are calculated using Equation 1-1, i.e., by subtracting the required emission reductions (in Step 4 above) and the fleet turnover corrections (in Step 5 above) from the target levels of the previous milestone year. One exception is the calculation of NOx emission target for the 1999 milestone year. Since 1999 is the first milestone year with respect to NOx emission reduction, according to EPA's guidance document (*The Guidance on the Post-1996 RPP*, Reference 9), the target calculation does not need to subtract the fleet turnover. Since Delaware uses MOBILE5b in estimating the on-road mobile source emissions, the VOC and/or NOx target levels for 1996, 1999 and 2002 are also reevaluated for MOBIOE5b. The calculations and results are summarized in Table 1-8. In Table 1-8, the VOC target level in a milestone year is also the reevaluated total VOC control strategy projection in the previous milestone year.

The target levels shown in Table 1-8 are the maximum VOC and NOx emissions to be allowed in 2005 under the requirements of adequate rate-of-progress toward the attainment of the 1-hour ozone standard for Delaware's two severe nonattainment counties, i.e., Kent and New Castle Counties. Delaware must limit its VOC and NOx emissions in Kent and New Castle Counties to or below these target levels in 2005.

**Table 1-8
Target Levels of VOC and NOx Emissions (in TPD) in Each Milestone**

Description	Emissions (TPD)		
	VOC	NOx	
1996 Target Level-VOC	115.790		(a)
1990 Baseline Adjusted for 1999-NOx		158.965	
1999 Milestone Year			

Emission Reduction for Rate-of-Progress	2.084	11.841	(b)
Fleet Turnover Correction for 1996-1999	1.900	0	(c)
Target Level for 1999	111.806	147.124	(d)=(a)-(b)-(c)
2002 Milestone Year			
Emission Reduction for Rate-of-Progress	11.524	0.544	(e)
Fleet Turnover Correction for 1999-2002	1.2	0.43	(f)
Target Level for 2002	99.082	146.150	(g)=(d)-(e)-(f)
2005 Milestone Year			
Emission Reduction for Rate-of-Progress	3.038	10.622	(h)
Fleet Turnover Correction for 2003-2005	0.63	0.16	(i)
Target Level for 2005	95.414	135.368	(j)=(g)-(h)-(i)

PART II

**THE 2005 CURRENT CONTROL PROJECTION INVENTORY AND
THE REQUIRED VOC AND NO_x EMISSION REDUCTIONS**

Section 182(c)(2) of the Clean Air Act Amendments of 1990 (CAAA) requires Delaware's two severe ozone nonattainment counties (Kent and New Castle Counties) to achieve a 3% per year emission reduction averaged over each consecutive 3-year period after 1996, plus offsetting emission growth, until 2005, the year of attainment. For each post-1996 three-year, the required VOC and/or NO_x emission reductions from the 1990 adjusted baselines have been calculated in Section 1.3 in Part I of this document. The results have been presented in Table 1-6 and Table 1-7 for VOC and NO_x reductions, respectively. Part II of this document presented herein describes the methodology used in determining the total amount of VOC and NO_x emission reductions required for the 2005 Rate-of-Progress Plan, including the emission reductions that are required to offset emission growth.

To determine the total amount of VOC and NO_x emission reductions required for the 2005 Rate-of-Progress Plan, the emission levels in the milestone year 2005 must be estimated. For this purpose, the 2005 growth factors are developed for the various source categories of emissions based on economic indicators. The 1990 baseline emissions are multiplied by these growth factors, and the resulting inventory is called the 2005 Current Control Projection Inventory. The 2005 current control projections are estimates of VOC and NO_x emissions that will occur in 2005 if no new emission control measures are implemented between 1990 and 2005. The differences between the 2005 current control projections and the 2005 target levels of emissions (discussed in Part I of this document) are the total VOC and/or NO_x emissions that Delaware must plan to reduce in order to meet the VOC and/or NO_x reduction requirements for the milestone year of 2005.

2.1 Summary of Current Control Projection Inventories

The 2005 Current Control Projection Inventory of VOC and NO_x emissions for Kent and New Castle Counties is summarized in Tables 2-1 for VOC and Table 2-2 for NO_x. Also included in these tables, for comparison purposes, are the 1990 Baseline Inventory emissions from individual source sectors. The 1990 Baseline Inventory emissions have been determined in Part I of this document, with on-road mobile source emissions estimated using MOBILE5b emission factors. The 1990 data presented in Tables 2-1 and 2-2 are obtained from Table 1-2 in Part I. The Current Control Projection and Baseline VOC and NO_x emission data are shown graphically in Figures 2-1 and 2-2, respectively. Figure 2-3 shows the relative proportions of VOC and NO_x emissions for each source sector in the 2005 Current Control Projection Inventory for the entire severe nonattainment area (NAA) in Delaware. Figures 2-4 and 2-5 respectively show the 2005 Current Control Projection Inventory VOC and NO_x emissions by county.

The point, stationary area, and off-road mobile source portions of the 2005 Current Control Projection Inventory are essentially created by multiplying 1990 Baseline Inventory emission levels by the appropriate growth factors. The on-road mobile source emissions are projected by multiplying the MOBILE5b emission factors generated by the projected 2005 vehicle miles traveled (VMT), as discussed in Section 2.3 of the 2005 RPP.

GENERAL NOTICES

Table 2-1
Summary of VOC Emissions in 2005 Current Control Projection Inventory (in TPD)

Source Sector	Kent	County	New	Castle	Total	NAA
	1990	2005	1990	2005	1990	2005
	Baseline	Projection	Baseline	Projection	Baseline	Projection
Point	3.242	3.440	26.938	28.561	30.180	32.001
Stationary Area	12.779	14.026	34.366	37.979	47.145	52.005
Off-Road Mobile	3.494	4.210	16.674	18.559	20.168	22.769
On-Road Mobile	12.890	16.860	34.070	40.450	46.960	57.310
Total Emissions	32.405	38.536	112.048	125.549	144.453	164.085

* 1990 Baseline Inventory data are obtained from Table 1-2 in Part I.

Table 2-2
Summary of NO_x Emissions in 2005 Current Control Projection Inventory (in TPD)

Source Sector	Kent	County	New	Castle	Total	NAA
	1990*	2005	1990*	2005	1990*	2005
	Baseline	Projection	Baseline	Projection	Baseline	Projection
Point	6.130	7.343	85.767	99.424	91.897	106.767
Stationary Area	1.202	1.377	5.398	6.178	6.600	7.555
Off-Road Mobile	7.891	9.305	18.777	21.799	26.668	31.104
On-Road Mobile	10.620	13.890	27.040	36.150	37.660	50.040
Total Emissions	25.843	31.915	136.982	163.551	162.825	195.466

* 1990 Baseline Inventory data are obtained from Table 1-2 in Part I.

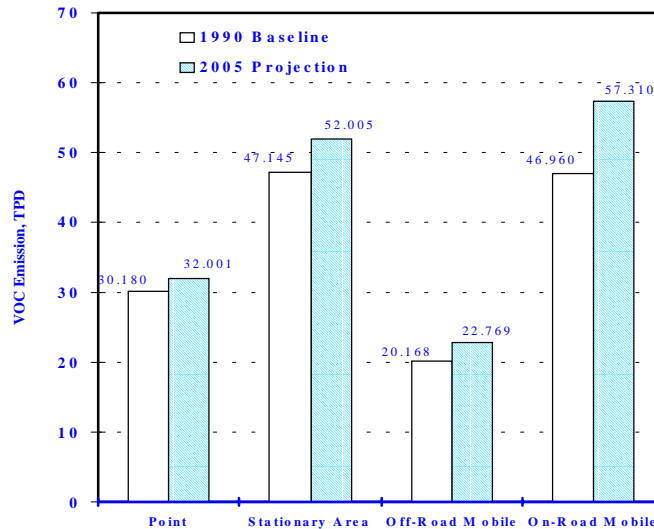


Figure 2-1. Comparison of VOC Emissions in 2005 Current Control Projection Inventory and 1990 Baseline Inventory.

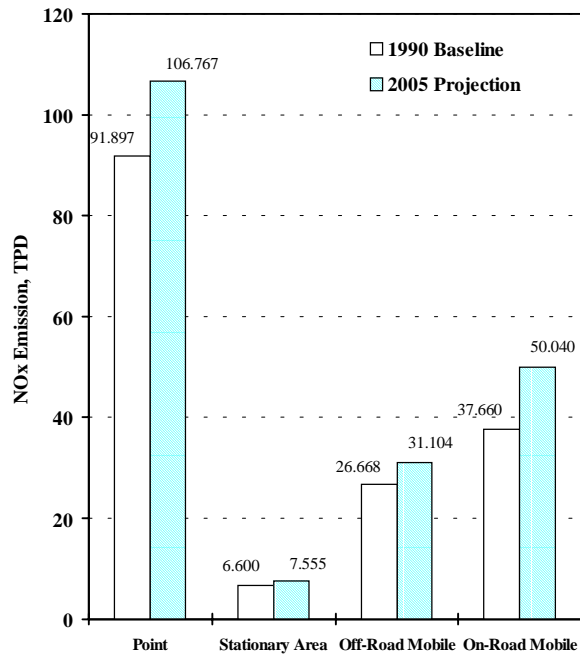


Figure 2-2. Comparison of NOx Emissions in 2005 Current Control Projection Inventory and 1990 Baseline Inventory.

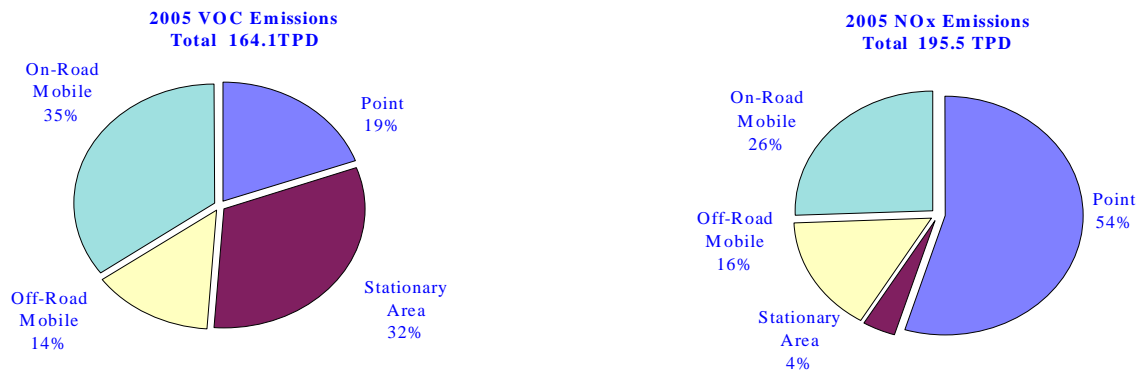


Figure 2-3. Total 2005 Current Control Projection Inventory VOC and NOx Emissions by Source Sector

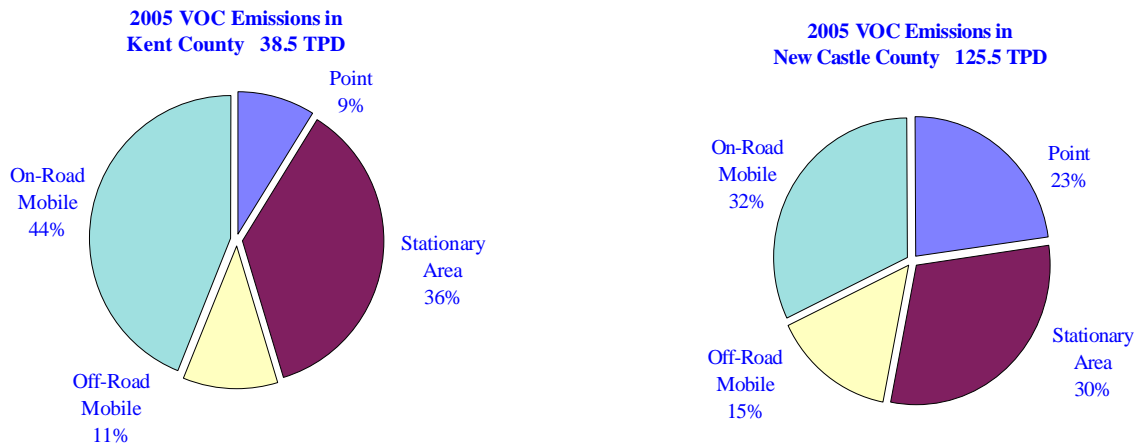


Figure 2-4. Total 2005 Current Control Projection Inventory VOC Emissions by County and Source Sector

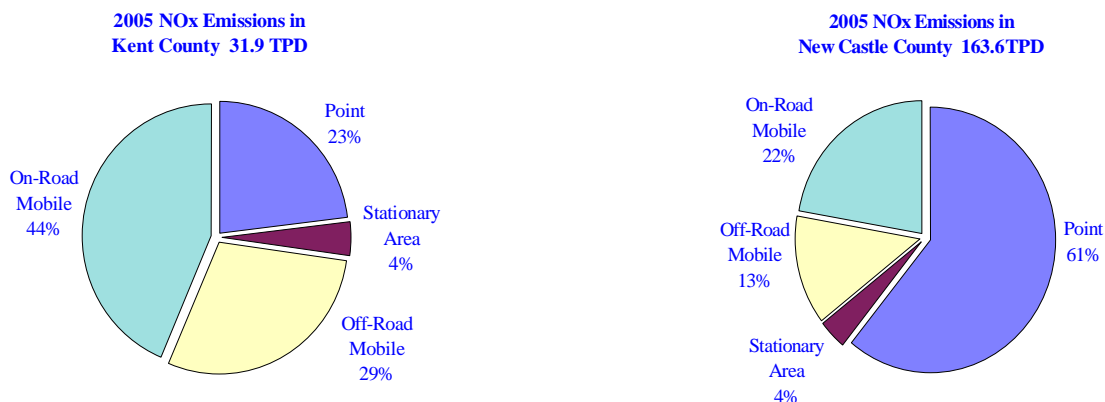


Figure 2-5. Total 2005 Current Control Projection Inventory NOx Emissions by County and Source Sector

2.2 Determination of Emission Growth Factors and Emissions in 2005

Growth factors are ratios that compare the amount of emission-producing activity expected in the projection year (i.e., 2005) to that occurred in the base year (i.e., 1990). Thus, growth factors reflect the proportional increase or decrease that economic growth or decline is expected to have on emission levels from 1990 to the projection year 2005. Because growth in emissions for all source categories cannot be directly determined, growth factors are derived using surrogate measures of growth which are indirect but quantifiable measures of activities that are expected to grow in a manner similar to emissions from the various source categories. For example, the population growth can serve as a good indicator of expected increases in emissions from residential fuel use.

Sources of data used to derive Delaware's emission growth factors include the following: (1) population statistics from *Population Projections, Version 1992.0*, Delaware Population Consortium, Dover, DE, January 1992 (Reference 10, hereafter referred to as Delaware Population Projections), (2) earnings and employment data by industry type from *BEA Regional Projections to 2040, Volumes I, II, and III*, Bureau of Economic Analysis (BEA), U.S. Department of Commerce, Washington, D.C., U.S. Government Printing Office, October 1990 (Reference 11, hereafter referred to as BEA Regional Projections), and (3) local surveys conducted by the Air Quality Management Section of the Delaware Department of Natural Resources and Environmental Control (DNREC). The growth factors have been derived according to *Procedures for Preparing Emissions Projections*, EPA-450/4-91-019, July 1991, (Reference 12, hereafter referred to as *Procedures for Projections*), and the *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, NC March 1993 (Reference 13, hereafter referred to as the *Guidance for Growth/Projections/Strategies*). A detailed explanation of the methodology used to determine Delaware’s emission growth factors is included in Appendix C of the 2005 RPP.

After the emission growth factors for the 1990-2005 period are determined, they are applied to the 1990 base year emissions for point, stationary area and non-road mobile sources to project the current control emission projections for the milestone year of 2005. The projections are performed following EPA’s *Guidance for Growth/Projections/Strategies* (Reference 13). The current control projections for the on-road mobile source sector are conducted using EPA’s MOBILE5b computer model. Details in calculating the current control projections are presented in Part II of the 2005 RPP. The summary of the 2005 current control projections have been already presented in Table 2-1 and Table 2-2 for VOC and NOx emissions, respectively.

2.3 Calculation of Required VOC and NOx Emission Reductions in 2005

According to the rate-of-progress provisions in the CAAA, Delaware’s 2005 RPP for the severe nonattainment area (i.e., Kent and New Castle Counties) is required not only to achieve a 9% of the 1990 baseline from the 2002 targets, but also to offset any growth in emissions between 2002 and 2005. The total emission reductions for meeting the adequate rate of progress consist of two components: (1) reductions to offset any growth in emissions occurring between 2002 and 2005 that must be offset, plus (2) the average 3% per year emission reductions for the 2003-2005 period. The methods of estimating these two components are presented in the following subsections.

2.3.1. Determination of Growth in Emissions for the 2003-2005 Period

The growth in emissions for the 2003-2005 period can be determined by subtracting the 2002 current control projections from the 2005 current control projections. Details of the calculations are presented in Part II of the 2005 RPP. A summary of the growths in VOC and NOx emissions for the 2003-2005 period is presented in Table 2-3. As indicated in Table 2-3, a growth of 5.078 TPD in VOC emissions and a growth of 8.605 TPD in NOx emissions for the 2003-2005 period must be offset in Delaware’s nonattainment area.

**Table 2-3
Summary of Emission Growths between 2002 and 2005 (in TPD)**

	Growth		in VOC	Emissions	Growth		in NOx	Emissions
Source Sector	Kent	New Castle	Total NAA	Kent	New Castle	Total NAA	Total NAA	Total NAA
Point	0.079	0.647	0.726	0.354	4.584	4.938		
Stationary Area	0.264	0.752	1.016	0.030	0.142	0.172		
Off-Road Mobile	0.117	0.389	0.506	0.281	0.624	0.905		
On-Road Mobile	0.600	2.230	2.830	0.710	1.880	2.590		
Total Emissions	1.060	4.018	5.078	1.375	7.230	8.605		

2.3.2. Determination of VOC and NOx Emission Reductions for the 2005 RPP

In Part I of this document, Delaware has determined its 2002 and 2005 target levels of VOC and NOx emissions to meet the rate-of-progress requirements (Table 1-8). The VOC and NOx emission reductions required to meet the 2005 target levels can be determined as follows:

$$\begin{aligned} \text{VOC Reduction Without Growth} &= \text{2002 Target Level} - \text{2005 Target Level} \\ &= 99.082 - 95.414 = 3.668 \text{ TPD} \end{aligned}$$

$$\begin{aligned} \text{Total VOC Reduction Required beyond the 2002 RPP Target Level} \\ &= \text{Emission Growth} + \text{Reduction Without Growth} \\ &= 5.078 + 3.668 = \mathbf{8.746 \text{ TPD}} \end{aligned}$$

The total VOC emission reduction of 8.746 TPD, besides the 159.007 - 99.082 = 59.925 TPD of VOC emission reductions required the 2002 RPP, is the additional VOC emission reduction needed to meet the 2005 target level of VOC emissions. In other words, Delaware’s 2005 RPP for Kent and New Castle Counties must show a total reduction of 8.746 + 59.925 = 68.671 TPD in VOC emissions from the 2005 Current Control Projections. The same total reduction can be calculated by taking the difference of the 2005 current control projection and the 2005 target level of VOC emissions, as

shown below:

Required VOC Reduction for 1990-2005 Period

$$= 2005 \text{ Current Control Projection} - 2005 \text{ Target Level}$$

$$= 164.085 - 95.414 = \mathbf{68.671 \text{ TPD}}$$

The required NOx emission reductions can be determined using the similar procedures:

$$\text{NOx Reduction Without Growth} = 2002 \text{ Target Level} - 2005 \text{ Target Level}$$

$$= 146.150 - 135.368 = 10.782 \text{ TPD}$$

Total Required NOx Reduction beyond 2002 RPP Target Level

$$= \text{Emission Growth} + \text{Reduction Without Growth}$$

$$= 8.605 + 10.782 = \mathbf{19.387 \text{ TPD}}$$

The total NOx emission reduction of 19.387 TPD, besides the $186.861 - 146.150 = 40.711$ TPD reduction to satisfy the 2002 RPP requirements, is the additional NOx reductions needed to meet the 2005 target level of NOx emissions. In other words, the total nonattainment area of Kent and New Castle Counties must show a total NOx emission reduction of $19.387 + 40.711 = 60.098$ TPD from the 2005 Current Control Projection of NOx emissions. The same reduction can be obtained by taking the difference of the 2005 current control projection and the 2005 target level of NOx emissions, as shown below:

Required NOx Reduction for 1990-2005 Period

$$= 2005 \text{ Current Control Projection} - 2005 \text{ Target Level}$$

$$= 195.466 - 135.368 = \mathbf{60.098 \text{ TPD}}$$

A summary of the required VOC and NOx emission reductions is presented in Table 2-4. These required reductions form the basis on which Delaware develops its emission control strategies in the 2005 Rate-of-Progress Plan.

Table 2-4
VOC and NOx Emission Reductions Required in the 2005 RPP (in TPD)

VOC Emissions			NOx Emissions		
Target Level	Current Control Projection	Required Reduction	Target Level	Current Control Projection	Required Reduction
95.414	164.085	68.671	135.368	195.466	60.098

PART III

**THE 2005 CONTROL STRATEGY PROJECTION INVENTORY
AND EMISSION CONTROL MEASURES**

In Part I of this document, Delaware has determined its VOC and NOx emission targets in the milestone year of 2005 to meet the average 3% per year rate-of-progress requirement, plus offsetting the emission growth. In Part II of this document, Delaware has determined that, in order to meet those emission targets, a 68.671 TPD VOC emission reduction and a 60.098 TPD NOx emission reduction must be achieved in this 2005 Rate-of-Progress Plan for Kent and New Castle Counties. These emission reductions will be accomplished by implementation of VOC emission control measures proposed in Delaware's 15% RPP, VOC and NOx emission controls in Delaware's 1999 and 2002 RPPs, and additional national, regional and state control measures necessary for further VOC and NOx emission reductions. In order to show that the reductions associated with these control measures are adequate to meet the 2005 VOC and NOx emission targets, the 1990 Baseline emissions are projected to 2005 including the effects of both growth and the new control measures. The resulting inventory is called the 2005 Control Strategy Projection Inventory. The total VOC and NOx emissions in the 2005 Control Strategy Projection Inventory must be equal to or less than the 2005 target levels of VOC and NOx emissions in order to show that the control measures are adequate for fulfilling the rate-of-progress requirements of VOC and NOx emission reductions.

The 2005 target levels of VOC and NOx emissions have been calculated (in Part I of this document) to be 95.414 TPD

and 135.368 TPD, respectively. Part III of this document discusses the 2005 Control Strategy Projection Inventory, the control measures that Delaware will implement to meet the average 3% per year rate-of-progress requirement for the 2003-2005 period, the sources affected by these control measures, and the expected reductions from each control measure.

3.1 The 2005 Control Strategy Projection Inventory Summary

The 2005 Control Strategy Projection Inventory is summarized in Tables 3-1 and 3-2 for VOC and NOx emissions, respectively. As shown in Tables 3-1 and 3-2, the total 2005 Control Strategy Projections for VOC and NOx emissions are 95.414 TPD and 134.243 TPD, respectively, in the peak ozone season. The 2005 Control Strategy Projection of VOC emissions is the same as the target level, and the total 2005 Control Strategy Projection of NOx emissions is less than the required target level of 135.368 TPD. Therefore, the control measures that are included in the 2005 Control Strategy Projection are adequate for meeting the average 3% per year rate-of-progress requirement, plus offsetting the emission growth for the 2003-2005 period.

Figure 3-1 shows a graphic comparison by source sector for VOC emissions of the 1990 Baseline Inventory (from Part I, Table 1-2), the 2005 Current Control Projections (from Part II, Table 2-1), and the 2005 Control Strategy Projections (from Table 3-1). Figure 3-2 shows the relative proportions of the 2005 Control Strategy Projections of VOC emissions from each source sector for the entire nonattainment area. Figure 3-3 shows the relative proportions of the 2005 Control Strategy Projections of VOC emissions by county.

**Table 3-1
Summary of 2005 Control Strategy Projection Inventory VOC Emissions (in TPD)**

Source Sector	Kent County	New Castle County	Total NAA
Point	1.403	22.824	24.227
Stationary Area	10.039	26.909	36.948
Off-Road Mobile	2.647	11.990	14.637
On-Road Mobile	4.839	14.763	19.602
Total Emissions	18.928	76.486	95.414

**Table 3-2
Summary of 2005 Control Strategy Projection Inventory NOx Emissions (in TPD)**

Source Sector	Kent	New Castle	Total NAA
Point	3.953	67.497	71.450
Stationary Area	1.009	4.960	5.969
Off-Road Mobile	7.998	18.001	25.999
On-Road Mobile	7.905	22.920	30.825
Total Emissions	20.865	113.378	134.243

Figure 3-4 shows a graphic comparison by source sector for NOx emissions of the 1990 Baseline Inventory (from Part I, Table 1-2), the 2005 Current Control Projections (from Part II, Table 2-2), and the 2005 Control Strategy Projections (from Table 3-2). Figure 3-5 shows the relative proportions of the 2005 Control Strategy Projections of NOx emissions from each source sector for the entire nonattainment area. Figure 3-6 shows the relative proportions of the 2005 Control Strategy Projections of NOx emissions by county.

The 2005 Control Strategy Projections for point sources, stationary area sources, and off-road mobile sources are calculated primarily using the projection equations provided in the *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, US EPA, March 1993 (Reference 13, hereafter referred to as *Guidance for Growth/Projections/Strategies*). Other equations are also used for some specific cases. Those equations are either obtained from other EPA guidance documents or derived from emission-related data provided by EPA. The control strategy projections of the on-road mobile sources are developed using EPA's MOBILE5b software in accordance with *Procedures for Preparing Emissions Projections* (EPA-450/4-91-019, Office of Air Quality Planning and Standards, US EPA, July 1991, Reference 12) and EPA's guidance memorandum for use of MOBILE5b (Philip A. Lorang, Office of Mobile Sources, US EPA, August 11, 1997, included in Appendix H of the 2005 RPP).

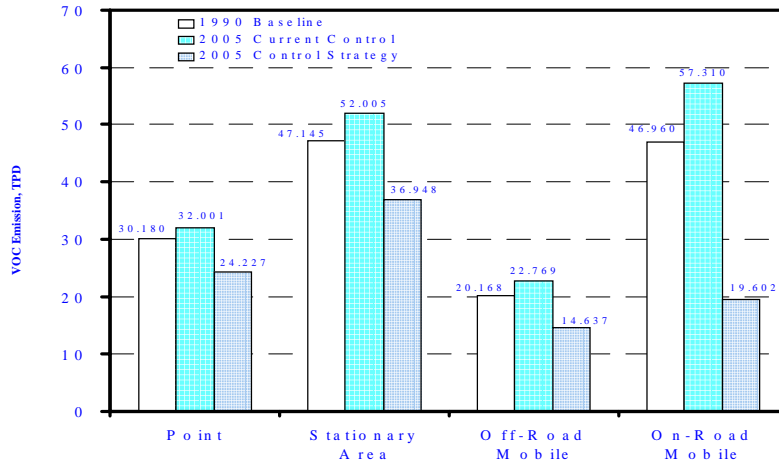


Figure 3-1. Comparison of VOC Emissions in 1990 Baseline, 2005 Current Control Projection, and 2005 Control Strategy Projection Inventories.

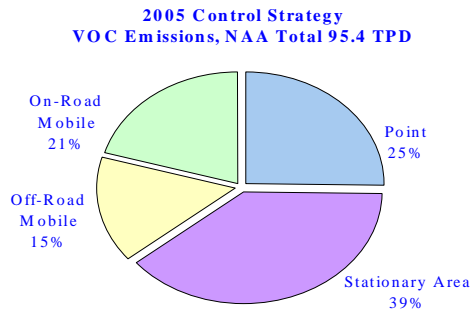


Figure 3-2. Contribution of Each Source Sector to Total 2005 VOC Control Strategy Projection in Delaware's Nonattainment Area (NAA).



Figure 3-3. Contribution of Each Source Sector to 2005 VOC Control Strategy Projection in Each Nonattainment County.

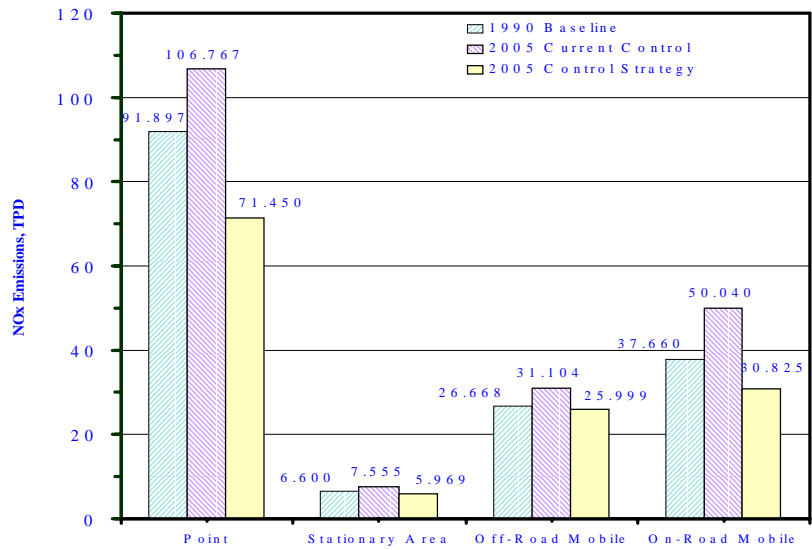


Figure 3-4. Comparison of NOx Emissions in 1990 Baseline, 2005 Current Control Projection, and 2005 Control Strategy Projection Inventories.

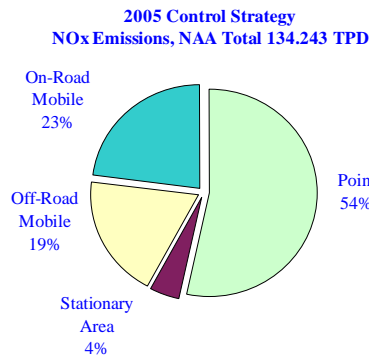


Figure 3-5. Contribution of Each Source Sector to Total 2005 Control Strategy Projection NOx Emissions in Delaware's Nonattainment Area (NAA).

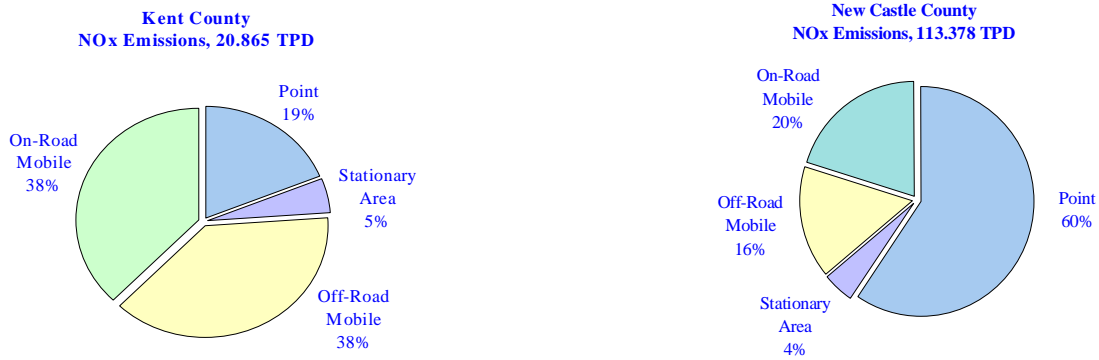


Figure 3-6. Contribution of Each Source Sector to 2005 Control Strategy Projection NOx Emissions in Each Nonattainment County.

3.2 The 2005 Control Strategy Projections for Point Sources

Emissions from point sources are projected on a source-specific (process-by-process) basis in accordance with the *Guidance for Growth/Projections/Strategies* (Reference 13). In this guidance document and its following memoranda for amendments and corrections, EPA provides methods and projection equations for estimating future year emissions from individual point sources. Selection of method or equation to be used to project emissions from a point source is dependent on whether or not the source will have new controls by the milestone year of 2005.

A. Method 1

The VOC and NO_x emissions for point sources that will have new controls by 2005 are projected at allowable emissions rates using the point source projection equations from Section 6.4 of the *Guidance for Growth/Projections/Strategies* (Reference 13). These same equations have been used to determine the 2005 Current Control Projections in Part II of this document. However, the projection data used for the 2005 Control Strategy Projections differ from those used for the 2005 Current Control Projections. For the control strategy projections, the controlled emissions factors, process control efficiencies (*CE*), controlled emissions rates, and rule effectiveness (*RE*) values for the processes with new controls by 2005 are used to reflect the controls that will be in place in 2005. For the current control projections in Part II, all parameters are related to controls, if any, that were in place in 1990.

For sources that will have new controls by 2005, the Control Strategy Projections are determined using one of the following five projection equations (Reference 13):

$$EMIS_{py} = ORATE \times EMF_{py,pc} \times \left[1 - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100} \right] \times GF_{py} \quad (P-1)$$

$$EMIS_{py} = ORATE \times EMF_{py} \times \frac{200 - RE_{py}}{100} \times GF_{py} \quad (P-2)$$

$$EMIS_{py} = CRTPOL \times \frac{1 - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100}}{1 - \frac{CEQEFF}{100} \times \frac{RULEFF}{100}} \times GF_{py} \quad (P-3)$$

$$EMIS_{py} = CRTPOL \times \frac{\frac{200 - RE_{py}}{100}}{\frac{200 - RULEFF}{100}} \times \frac{EMF_{py}}{EMF_{by}} \times GF_{py} \quad (P-4)$$

$$EMIS_{py} = ER_{py} \times \frac{CRTPOL}{EMIS_{bya}} \times \frac{200 - RE_{py}}{100} \quad (P-5)$$

where:	<i>EMIS_{py}</i>	= Projection Year Emissions (Tons per Peak Ozone Season Day);
	<i>ORATE</i>	= 1990 Base Year Ozone Season Operating Rate (Production Units/Day);
	<i>EMF_{py,pc}</i>	= Projection Year Pre-control Emissions Factor (Mass of Pollutant/Production Unit);
	<i>CE_{py}</i>	= Projection Year Control Efficiency (Percent);
	<i>RE_{py}</i>	= Projection Year Rule Effectiveness (Percent);
	<i>GF_{py}</i>	= Projection Year Growth Factor (Dimensionless);
	<i>EMF_{py}</i>	= Projection Year Post-control Emissions Factor (Mass of Pollutant/Production Unit);
	<i>CRTPOL</i>	= 1990 Baseline Ozone Season Actual Emissions (Tons Per Peak Ozone Season Day);
	<i>CEQEFF</i>	= 1990 Base Year Control Efficiency (Percent);
	<i>RULEFF</i>	= 1990 Base Year Rule Effectiveness (Percent);
	<i>EMF_{by}</i>	= 1990 Base Year Emissions Factor ;
	<i>ER_{py}</i>	= Projection Year Annual Emissions Cap (Mass of Pollutant/Year);
	<i>EMIS_{bya}</i>	= 1990 Base Year Annual Emissions (Tons Per Year).

Depending on the method that is used to estimate the 1990 Baseline emissions and the type of projection year control data available, one of these five equations is used to project emissions from each process that will have new controls by 2005. Equation P-1 is used when the 1990 baseline emissions are calculated using a pre-control emission factor, and a control efficiency is used to factor the control measure into the emissions estimation. Equation P-2 is used when emissions are calculated using a post-control emissions factor; that is, the emissions factor accounts for the affect of the control measure on emissions. Equation P-3 is used when 1990 baseline emissions are calculated by material balance or test data, and a control efficiency is used to factor the control measure into the emissions estimation. Equation P-4 is used when 1990 baseline emissions are calculated by material balance or test data, and the control level is represented by an emissions factor rather than by a control efficiency. Equation P-5 is used when permit limits or emission caps are used to represent the effect of the control measures on emissions. This equation is originally presented in the aforementioned EPA's document and recently amended by EPA in a guidance memorandum¹⁵. According to this memorandum, the term *ERpy* can be an emission cap on other than an annual basis, and then the term *EMIS_{bya}* should be modified to reflect the same time period.

Delaware has compiled the 2005 control data for point sources from Federal and State regulations and air emissions permits that have been issued in the post-1990 time frame. The required emission and control data are inserted into the appropriate projection equation for each process. Wherever applicable, a default RE value of 80% for the projection year is used, as suggested by EPA (Reference 14). The calculation results from these equations, which include the effects of both emission growth and new controls, are the 2005 Control Strategy Projections of emissions from individual processes.

The following is an example of control strategy projection calculation for a point source that will have new controls by 2005.

Example of Point Source Emission Projection Calculation

The Delaware Regulations Governing Solid Waste have been revised in 1990 to include requirements for installation of gas control systems at all sanitary landfills. Control efficiencies for each affected landfill are determined based on design data for the proposed gas control systems. For the Cherry Island facility located in New Castle County, with a control device efficiency (flare efficiency) of 98%, the overall control efficiency for the landfill is estimated to be 98%. Other projection data for the Cherry Island landfill are:

- CRTPOL* = 0.268 TPD in the peak ozone season;
- RE2005* = 80%;
- CEQEFF* = 0%;
- RULEFF* = 0%;
- GF2005* = 1.09.

Using Equation P-3, the 2005 VOC control strategy emission projection for the Cherry Island landfill can be calculated as:

$$EMIS_{2005} = 0.268 \times \frac{1 - \frac{98}{100} \times \frac{80}{100}}{1 - \frac{0}{100} \times \frac{0}{100}} \times 1.11 = 0.064 \text{ TPD}$$

B. Method 2

All sources that will not have new controls by 2005 are projected by multiplying their 1990 baseline emissions with the appropriate growth factors, that is,

$$EMIS_{py} = CRTPOL \times GF_{py} \tag{P-6}$$

Therefore, for sources that will not have new controls by 2005, the 2005 Control Strategy Projection emissions are equal to the 2005 Current Control Projection emissions which are determined in Part II of this document. A summary of the 2005 control strategy emission projections for point sources is presented in Table 3-3 by source SIC category.

15. Memorandum: Correction Errata to 15 Percent Rate of Progress Guidance Document. G.T. Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, NC, March 17, 1999. The memorandum is included in Appendix H.

Table 3-3
2005 Control Strategy Projections for Point Source Emissions (in TPD)

Source		Kent		New	Castle
SIC	Category Name	VOC	NOx	VOC	NOx
16	Construction	0.061	0.079	0.022	0.028
20	Food Manufacturing	0.031	0.061	0.000	0.000
22	Textiles	0.000	0.000	1.027	0.101
25	Furniture and Fixtures	0.502	0.011	0.000	0.000
26	Paper Manufacturing	0.030	0.087	0.264	0.135
28	Chemicals & Allied Products	0.202	0.056	6.452	3.748
2911	Petroleum Refining	0.000	0.000	4.766	47.481
2951	Asphalt Paving Mixtures	0.000	0.000	0.022	0.028
30	Rubber/Plastic Manufacturing	0.000	0.000	0.982	0.003
33	Primary Metal Industry	0.046	0.000	0.000	0.000
34	Fabricated Metal Products	0.000	0.000	0.078	0.000
37	Transportation Equipment	0.000	0.000	7.206	0.672
38	Meas/Analyz/Control Instrumentation	0.056	0.000	0.000	0.000
42	Motor Freight Transportation	0.000	0.000	0.033	0.015
46	Pipelines	0.002	0.000	0.000	0.000
4911	Electric Utilities & Generators	0.049	3.567	0.260	14.357
4952	POTWs	0.220	0.000	1.346	0.000
4953	Landfills	0.022	0.000	0.101	0.000
80	Health Services	0.000	0.000	0.011	0.139
82	Educational Services	0.000	0.000	0.000	0.026
87	Engineering, Research	0.000	0.000	0.202	0.765
97	Federal, Civilian Government	0.181	0.093	0.052	0.000
Total Emissions by County		1.403	3.953	22.824	67.497
Total NAA Emissions		VOC:	24.227	NOx:	71.450

3.3 The 2005 Control Strategy Projections for Stationary Area Sources and Off-Road Mobile Sources

Stationary area and off-road mobile source emissions are projected according to the *Guidance for Growth/Projections/Strategies* (Reference 13). The projection method for stationary area and off-road mobile sources is dependent on whether or not sources will be subject to new controls by 2005. Stationary area and off-road mobile sources that will not be subject to new controls by 2005 are projected using the following equation:

$$EMIS_p = CRTPOL \times GF_p \quad (A-1)$$

where $EMIS_p$ = emission in projection year (TPD in Peak Ozone Season);
 $CRTPOL$ = 1990 baseline actual emission (TPD in Peak Ozone Season);
 GF_p = growth factor for projection year (dimensionless).

For stationary area and non-road mobile sources that are subject to new controls by 2005, the 2005 Control Strategy Projections are determined in a manner similar to the point source 2005 Control Strategy Projections, using projection equations from the *Guidance for Growth/Projections/Strategies*. The main difference between the point source projections and the stationary area and off-road mobile source projections is that point source emissions are projected on a process-by-process basis as described previously, while stationary area and off-road mobile source emissions are projected on a category-wide basis. Therefore, the 2005 Control Strategy Projection Inventory for stationary area and off-road mobile sources is determined using category-wide activity level data versus the process operating data that is used for point source projections.

The stationary area and off-road mobile source projection data reflects 2005 controls and rule effectiveness values. A rule penetration value is also factored into the emissions projection. Rule penetration factors are used in conjunction with rule effectiveness (as defined in Part II of this document) to adjust regulated stationary area source emissions estimates. Rule

penetration is the portion of an area 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 control efficiency and rule effectiveness adjustment affect only the emissions values for those regulated sources, and not the emissions values for the unregulated sources in the category.

The equations used to project stationary area and off-road mobile sources that will be subject to new controls by 2005 are discussed in the following paragraphs.

1. Stationary Area Sources

In general, stationary area sources that will be subject to new controls by 2005 are projected using the following equation:

$$EMIS_{py} = ACTLEV \times EMF_{py} \times GF_{py} \times \left[N - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100} \times \frac{RP_{py}}{100} \right] \quad (A-2)$$

- where *EMIS_{py}* = emissions in projection year (TPD in Peak Ozone Season);
- ACTLEV* = 1990 baseline activity level (activity units per day in Peak Ozone Season);
- EMF_{py}* = projection year emissions factor (mass of pollutant per activity unit);
- GF_{py}* = projection year growth factor (dimensionless);
- CE_{py}* = projection year control efficiency (percent);
- RE_{py}* = projection year rule effectiveness (percent);
- RP_{py}* = projection year rule penetration (Percent);
- N* = 1 if the future control is accounted for the CE factor, or
 = 2 if the future control is accounted for the EMF factor, and in which case, CE should be set equal to 100% (see EPA's memorandum on March 17, 1999, included in Appendix H).

This equation is originally presented in the aforementioned EPA's document and amended by EPA in a guidance memorandum (See footnote 15 on page 40). In cases where the emission factor in a projection year (*EMF_{py}*) is equal to the 1990 baseline emission factor (*EMF_{by}*), the corresponding 1990 baseline emission (*CRTPOL*) can be used in Eq.(A-2) to replace the 1990 baseline activity level (*ACTLEV*) and the projection year emissions factor (*EMF_{py}*). This is because when *EMF_{py}* = *EMF_{by}*, *CRTPOL* is equal to *ACTLEV* times *EMF_{py}* in Eq.(A-2). Then, Eq.(A-2) becomes

$$EMIS_{py} = CRTPOL \times GF_{py} \times \left[1 - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100} \times \frac{RP_{py}}{100} \right] \quad (A-2b)$$

For gasoline dispensing facilities that will be subject to the Stage II vapor recovery controls, the projection equation differs slightly due to the nature of the projection year emission factor for Stage II vapor recovery. The projection year emission factor for Stage II Vapor Recovery is produced by modeling using EPA's MOBILE5a software on the basis of the state-specific motor vehicle input parameters. This emissions factor has already included the effects of the control efficiency, rule effectiveness, and rule penetration in the projection year. Therefore, the term

$$\frac{CE_{py}}{100} \times \frac{RE_{py}}{100} \times \frac{RP_{py}}{100}$$

in Eq.(A-2) is not required for emission projections for those sources with the Stage II Vapor Recovery controls. Thus, for projecting emissions from sources affected by Stage II Vapor Recovery, Eq.(A-2) becomes:

$$EMIS_{py} = ACTLEV \times EMF_{py} \times CF \times GF_{py} \quad (A-3)$$

- where *EMIS_{py}* = emission in projection year (TPD in Peak Ozone Season);
- ACTLEV* = 1990 baseline activity level (gallons gasoline per day in Peak Ozone Season);
- EMF_{py}* = emissions factor in projection year from MOBILE5a (grams VOC per gallon gasoline);
- CF* = Conversion Factor (grams/gallon to tons/gallon);

GF_{py} = Growth Factor for projection year.

The details of the Stage II Vapor Recovery Program are discussed in the subsection "3.5.2. Control Measures for Stationary Area Sources" of the 2005 RPP.

The following is a calculation example of 2005 Control Strategy Projection for a stationary area source category that will have new controls by 2005.

Example of Projection Calculation for Stationary Area Source

Section 34 of Delaware Air Regulation 24 prohibits the manufacture, mixing, storage, use, and application of cutback asphalt during the ozone season. The 2005 projected VOC emissions from cutback asphalt for Kent County can be determined using stationary area source projection Equation A-2 (or A-2b). The projection data for cutback asphalt emissions in Kent County are:

$ACTLEV$ = 45 tons asphalt/yr or 0.173 tons asphalt/day in Peak Ozone Season;
 EMF_{2005} = EMF_{1990} = 420 lbs VOC/ton asphalt;
 CE_{2005} = 100%;
 RE_{2005} = 80%;
 RP_{2005} = 100%;
 GF_{2005} = 0.91.

The control efficiency and rule penetration are determined to be 100% from Section 34 of Regulation 24. The EPA's default 80% value is used for the projection year rule effectiveness. Using Equation A-2, the projected VOC emission is:

$$EMIS_{2005} = 0.173 \times 420 \times 0.91 \times \left[1 - \frac{100}{100} \times \frac{80}{100} \times \frac{100}{100} \right] \times \frac{1 \text{ ton}}{2000 \text{ lbs}} = 0.007 \text{ TPD}$$

2. Off-Road Mobile Sources - Using Reformulated Gasoline

Using reformulated fuel is one of the control measures that will affect off-road mobile source emissions by 2005. Emissions from off-road mobile sources that will be affected by reformulated fuel are projected using information provided in a memorandum entitled *VOC Emission Benefits for Nonroad Equipment with the Use of Federal Phase 1 Reformulated Gasoline* (Phil Lorang, Director, Emission Planning and Strategies Division, Office of Mobile Sources, U.S. Environmental Protection Agency, Ann Arbor, Michigan, August 18, 1993, included in Appendix K of the 2005 RPP). According to the memorandum, reformulated fuel will affect the exhaust and evaporative VOC emission components of the 2-stroke and 4-stroke engine categories. For Delaware, 86.51% of the VOC emissions from 2-stroke and 4-stroke engines is exhaust and 5.58% is evaporative. The remaining 7.91% of the VOC emissions from 2-stroke and 4-stroke engines is not significantly affected by reformulated fuel. The VOC emissions reduction is estimated to be 3.3% of the exhaust emissions and 3.5% of the evaporative emissions. Therefore, VOC emissions from 2-stroke and 4-stroke engines were projected using the following equation:

$$\begin{aligned} EMIS_{py} &= CRTPOL \times GF_{py} \times [86.51\% \times (1 - 3.3\%) + 5.58\% \times (1 - 3.5\%) + 7.91\%] \\ &= CRTPOL \times GF_{py} \times 0.9695 \end{aligned} \quad (A-4)$$

where $EMIS_{py}$ = emission in projection year (TPD in Peak Ozone Season);
 GF_{py} = growth factor for projection year;
 $CRTPOL$ = 1990 baseline emissions (TPD in Peak Ozone Season).

3. Off-Road Mobile Sources - New Emissions Standards

The EPA is under court order to promulgate new emissions standards for Heavy-Duty Compression Ignition (CI) engines, small nonroad Spark Ignition (SI) Engines, and Outboard/Inboard Marine Engines. These new standards will result in VOC and/or NOx emission reductions from a wide variety of nonroad engines. Details of how Delaware estimates VOC and NOx emission reductions from these new standards are discussed in a subsection under the heading of "3.5.3 Control Measures for Nonroad Mobile Sources" in the 2005 RPP. The control strategy projections are summarized in Tables 3-4 and

3-5 for stationary area and non-road mobile sources, respectively, by the 4-digit source classification codes (SCC).

**Table 3-4
2005 Control Strategy Projections for Stationary Area Source Emissions (in TPD)**

Source		Kent		New	Castle
SCC	Category Name	VOC	NOx	VOC	NOx
2102	Industrial Fuel Consumption	0.007	0.502	0.037	2.957
2103	Commercial/Instit. Fuel Consumption	0.007	0.181	0.034	0.833
2104	Residential Fuel Consumption	0.153	0.175	0.104	0.634
2301	Chemical Manufacturing	0.008	0.000	0.160	0.000
2302	Food and Kindred Products	0.076	0.000	0.304	0.000
2308	Rubber/Plastics Production	0.076	0.000	0.442	0.000
2399	Industrial Processes: NEC	0.095	0.000	0.190	0.000
2401	Surface Coating	2.658	0.000	11.653	0.000
2415	Degreasing	0.740	0.000	2.964	0.000
2420	Dry Cleaning	0.105	0.000	0.217	0.000
2425	Graphic Arts	0.307	0.000	0.006	0.000
2461	Misc. Commercial Solvent Use				
	Pesticide Use	1.146	0.000	1.242	0.000
	Cutback & Emulsified Asphalt	0.013	0.000	0.007	0.000
2465	Misc. Consumer Solvent Use	0.893	0.000	3.481	0.000
2501	Petroleum Product Storage	0.436	0.000	1.333	0.000
2505	Petroleum Product Transport	0.869	0.000	1.822	0.000
2601	On-Site Incineration	0.161	0.037	0.707	0.213
2610	Open Burning	0.484	0.097	1.760	0.320
2660	Leaking Underground Storage Tanks	0.003	0.000	0.002	0.000
2810	Misc. Sources: Other Combustion				
	Structural & Forest Fires	0.104	0.017	0.014	0.003
	Prescribed Burning	0.009	0.000	0.001	0.000
2830	Accidental Releases	1.689	0.000	0.430	0.000
Total Emissions by County		10.039	1.009	26.909	4.960
Total State NAA Emissions		VOC:	36.948	NOx:	5.969

**Table 3-5
2005 Control Strategy Projections for Off-Road Mobile Source Emissions (in TPD)**

Source		Kent		New	Castle
SCC	Category Name	VOC	NOx	VOC	NOx
2260	2-Stroke Gasoline Vehicles	0.571	0.047	1.388	0.431
2265	4-Stroke Gasoline Vehicles	0.448	0.032	1.977	0.191
2270	Diesel Vehicles	0.438	3.354	0.930	9.266
2275	Aircraft	0.497	0.630	0.230	0.093
2280	Commercial Marine Vehicles	0.593	3.745	1.097	6.467
2282	Recreational Marine Vessels	0.076	0.008	6.262	0.786
2283	Military Marine Vessels	0.004	0.021	0.007	0.038
2285	Railroads	0.021	0.162	0.100	0.729
Total Emissions by County in 2005		2.647	7.998	11.990	18.001
Total State NAA Emissions in 2005		VOC:	14.637	NOx:	25.999

3.4 The 2005 Control Strategy Projections for On-Road Mobile Sources

The on-road mobile source portion of 2005 Control Strategy Projection Inventory has been determined using the 2005 emission factors generated by EPA's computer model MOBILE5b and the 2005 projected vehicle-miles-traveled (VMT) on the 2005 Delaware roadway network. The 2005 VMT projections are determined using the network-based travel-demand models for Kent and New Castle Counties. The 2005 VMT projections and the 1990 VMT projections, both calculated by the travel-demand models, are used to derive a growth factor for each functional vehicle class. The growth factor is then applied to the 1990 VMT from the Highway Performance Monitoring System (HPMS) data. This methodology provides consistency with the 1990 Base Year Inventory methodology, since they are both based on VMT from HPMT. The input data for MOBILE5b and 2005 VMT data are provided by Delaware Department of Transportation through its consulting contractor Vanasse Hangen Brustlin, Inc. (VHB), Watertown, MA. Modeling work of MOBILE5b and calculations for mobile source emissions are conducted by DNREC-AQM's technical staff under direct guidance of EPA Region III Office.

Control measures included in MOBILE5b modeling are Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP), Tier I vehicle emissions standards, inspection and maintenance (I/M) program, anti-tampering program (ATP) and pressure test, reformulated fuel, heavy duty diesel standards, the national low emission vehicle (NLEV) program, Tier II vehicle emission standards and low-sulfur fuel requirements. More discussions of mobile source emission projections are presented in a section entitled "3.5.4 On-Road Mobile Source Control Measures" in the 2005 RPP. A summary of the 2005 control strategy on-road mobile source emissions is presented in Table 3-6. It should be pointed out that the emission levels in Table 3-6 also serve as the on-road mobile source emission budgets for Kent and New Castle Counties for the purposes of meeting the transportation conformity requirements set forth in Section 182 of the CAAA.

Table 3-6
2005 Control Strategy Projections for On-Road Mobile Source Emissions (in TPD)

County	VOC	NOx
Kent	4.839	7.905
New Castle	14.763	22.920
Total NAA	19.602	30.825

3.5 Emission Control Measures and Emission Reductions

The control measures that Delaware includes in the 2005 RPP are listed in Table 3-7 for VOC sources and in Table 3-8 for NOx sources, along with implementation dates for individual control measures. The estimated VOC and NOx emission reductions from individual control measures are also listed in the tables (in TPD in the peak ozone season). As indicated in Table 3-7 and Table 3-8, the total VOC and NOx emission reductions for Delaware's nonattainment area (i.e., Kent and New Castle Counties) for the 2005 RPP are 68.671 TPD and 61.225 TPD, respectively. As calculated in Part II of this document, the emission reductions that Delaware needs to meet the 3% per year rate-of-progress requirement plus offsetting the growth for the 2005 milestone year are 68.671 TPD and 60.098 TPD for VOC and NOx, respectively. Therefore, the control measures listed in Table 3-7 and Table 3-8 are not only adequate to meet the emission reduction requirements for the 2005 milestone year, but also generate 1.127 TPD of surplus for NOx emission reductions (61.225 - 60.098 = 1.127 TPD). Delaware decides to use this NOx emission surplus in the contingency plan of the 2005 RPP to meet the contingency requirements set forth in the CAAA (See Part IV of this document for the contingency plan).

The control measures in Table 3-7 and Table 3-8 are grouped by point, area, off-road mobile, and on-road mobile source sectors. Several control measures affect both point and area sources, and therefore are listed under both source sectors. For sources that will be subject to new controls by 2005, the emission reductions are determined by subtracting the 2005 Control Strategy Projection emissions (described in this part) from the 2005 Current Control Projection emissions using the following equation:

$$ER_{2005} = \text{Current Control Projection} - \text{Control Strategy Projection} \quad (R-1)$$

where ER_{2005} stands for "Emission Reduction (ER) in 2005". For sources that will not have new controls or will not be affected by new rules by 2005, their control strategy projections will be equal to their current control projections. Thus, emission reductions from those sources will be zero. Details of individual control measures, affected sources, control strategy emission projections and emission reductions for individual source sectors are presented in Section 3.5 of the 2005 RPP.

**Table 3-7
VOC Emission Control Measures and Expected Emission Reductions for 2005 (in TPD)**

Control Measures And Regulations	Expected Kent	VOC Emission New Castle	Reduction Total NAA
Point Source Controls			
RACT "Catch-Ups" in Kent County:			
Solvent Metal Cleaning	0.540	N/A	0.540
Surface Coating of Metal Furniture	0.074	N/A	0.074
Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufact. Equip.	0.005	N/A	0.005
New RACT Regulations:			
Bulk Gasoline Marine Tank Vessel Loading Facilities	N/A	1.896	1.896
SOCMI Reactor Processes and Distillation Operations	N/A	0.026	0.026
Batch Processing Operations	0.404	0.040	0.444
Offset Lithography	N/A	0.085	0.085
Aerospace Coatings	0.007	0.007	0.014
Industrial Cleaning Solvents	N/A	0.532	0.532
Non-CTG RACT	0.161	0.223	0.384
Federal Benzene Waste Rule and Delaware Air Regulation 24.28			
Delaware Air Regulation 24.28	N/A	1.319	1.319
Other Delaware Regulations:			
Sanitary Landfills	0.078	0.365	0.443
Irreversible Process Changes	0.768	1.245	2.013
Total VOC Reductions Point Sources	2.037	5.739	7.776
Stationary Area Source Controls			
RACT "Catch-Ups" in Kent County:			
Solvent Metal Cleaning	0.138	N/A	0.138
Cutback Asphalt	0.026	N/A	0.026
New and Revised RACT Regulations:			
Stage IV Vapor Recovery-Gas. Disps. Facil.	0.499	0.160	0.659
Emulsified Asphalt	0.026	0.027	0.053
Motor Vehicle Refinishing	0.273	1.087	1.360
Offset Lithography	0.084	0.001	0.085
Aerospace Coatings	N/A	0.034	0.034
Stage II Vapor Recovery	0.593	1.962	2.555
Other Delaware Regulations:			
Open Burning	1.876	5.937	7.813
Federal Rules			
Consumer Products	0.192	0.765	0.957
Architectural Coatings	0.276	1.099	1.375
Total VOC Reductions Area Sources	3.982	11.072	15.054
Off-Road Mobile Source Controls			
Reformulated Fuel	0.007	0.027	0.034

GENERAL NOTICES

New Emis. Standards:			
For Small Spark Ignition Engines	1.190	3.795	4.985
For Compression Ignition Engines	0.339	0.730	1.069
For Marine Engines	0.025	2.019	2.044
For Locomotives	0.001	0.001	0.002
Total VOC Reductions Off-Road Sources	1.562	6.571	8.133
On-Road Mobile Source Controls			
Controls present after 1990, including	11.860	25.150	37.010
FMVCP and RVP			
Tier I Vehicle Emissions Standards			
Basic I/M for Kent County			
ATP and Pressure Test for Kent			
ATP and Pressure Test for New Castle			
Reformulated Fuel			
Heavy Duty Diesel Standards			
NLEV Program			
Tier II Emission Standards/Low Sulfur Fuel	0.161	0.537	0.698
Total VOC Reductions On-Road Sources	12.021	25.687	37.708
Total VOC Reductions from All Controls	19.602	49.070	68.671

**Table 3-8
NOx Emission Control Measures and Expected Emission Reductions for 2005 (in TPD)**

Control Measures And Regulations	Expected Kent	NOx Emission New Castle	Reduction Total NAA
Point Source Controls			
Delaware NOx RACT	0.019	2.371	2.390
NOx SIP Call Regional Control	3.371	29.557	32.928
Total for Point Source	3.390	31.928	35.318
Stationary Area Source Controls			
Open Burning	0.368	1.219	1.587
Total for Area Source Reductions	0.368	1.219	1.587
Off-Road Mobile Source Controls			
New Emission Standards:			
For Spark Ignit. (Gasoline) Engines	0.011	0.052	0.063
For Compression Ignit. (Diesel) Engines	1.154	3.228	4.382
For Marine Engines	-0.001	-0.107	-0.108
For Locomotives	0.142	0.626	0.768
Total for Off-Road Mobile Source	1.306	3.799	5.105
On-Road Mobile Source Controls			
Controls present after 1990, including	5.080	10.520	15.600
FMVCP and RVP			
Tier I Vehicle Emissions Standards			
Basic I/M for Kent County			
ATP and Pressure Test for Kent			
ATP and Pressure Test for New Castle			

Reformulated Fuel Heavy Duty Diesel Standards			
NLEV Program			
Tier II Emission Standards/Low Sulfur Fuel	0.905	2.710	3.615
Total for On-Road Mobile Source	5.985	13.230	19.215
Total Reductions from All Controls	11.049	50.176	61.225

PART IV

CONTINGENCY MEASURES

4.1 Contingency Requirements for Emission Reductions

The CAAA requires States with nonattainment areas to implement specific control measures if the area fails to make reasonable further progress, fails to meet any applicable milestone, or fails to attain the national ambient air quality standards by the applicable attainment date.¹⁶ The EPA has interpreted this CAAA provision as a requirement for States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their Rate-of-Progress Plans so that, upon implementation of such measures, additional emission reductions of at least 3% of the adjusted 1990 base year emissions would be achieved (Reference 13). Under the same provision of the CAAA, EPA also requires that the contingency measures must be fully-adopted control measures or rules, so that, upon failure to meet milestone requirements or attain the standards, the contingency measures can be implemented without any further rulemaking activities by the States and/or EPA.

To meet the requirements for contingency emission reductions, EPA allows States to use NOx emission reductions to substitute for VOC emission reductions in their contingency plans. The condition set forth by EPA for NOx substitution is that States must achieve a minimum of 0.3% VOC reductions of the total 3% contingency reduction, and the remaining 2.7% reduction can be achieved through NOx emission controls (Reference 9). Delaware decides to include both VOC and NOx emission controls in its contingency plan for the 2005 Rate-of-Progress Plan.

4.2 Control Measures to Meet Contingency Requirements

Delaware proposes to achieve the required contingency emission reductions through controls over both VOC and NOx emissions. The VOC emission reductions will be obtained from (1) implementing an annual inspection schedule for the Stage II Vapor Recovery Systems, and (2) from the open burning control in New Castle County. The NOx emission reductions will be achieved through a combination of controls on various sources in the peak ozone season, as well as through improvement of rule effectiveness (*RE*) for the regional NOx emission control rule in Delaware. The contingency measures and the associated VOC and NOx emission reductions are discussed in detail in the following subsections.

4.2.1 Stage II Vapor Recovery System with Annual Inspections

The CAAA requires States with moderate and above ozone nonattainment areas to submit a SIP revision requiring owners or operators of gasoline dispensing facilities to install and operate a system for gasoline vapor recovery during refueling process for motor vehicles.¹⁷ Under this requirement, Delaware has developed its Stage II Vapor Recovery Program, which is defined in Section 36 of Delaware Air Regulation 24 (Reference 5). The Delaware's stage II vapor recovery regulation gives the regulatory agency the right to perform compliance inspections as needed. Currently, a triennial inspection schedule is performed by the responsible agency (Underground Storage Tank Branch of DNREC). Delaware has taken credit for VOC emission reductions from this triennial inspection schedule in Part III of the 2005 RPP, where the emission reductions are estimated using a control efficiency (CE) of 95%, a rule penetration (RP) of 97%, and a rule effectiveness (RE) of 65.3% according to an EPA's guidance document. The total creditable VOC emission reduction from the triennial inspection is 2.56 TPD, as indicated in Part III of the 2005 RPP.

Additional VOC emission reductions can be obtained from the Stage II Vapor Recovery Program when the inspection frequency is increased. If the program is conducted with an annual inspection schedule, the rule effectiveness (*RE*) value of this control will increase from 65.3% to 90.5%, resulting in additional VOC emission reductions. In other words, the program is more effective for reducing VOC emissions with a higher inspection frequency. Delaware proposes to perform an annual inspection schedule for its Stage II Vapor Recovery Program as a contingency measure. Implementing the annual inspection

16. CAAA, Title I, Part D, Section 172(c)(9) and Section 182(c)(9).

17. CAAA, Title I, Part D, Section 182(b)(3).

does not need any further rulemaking activities at both state and federal levels. Based on a 95% control efficiency, a 97% rule penetration, and a 90.5% rule effectiveness, the emission factors estimated by MOBILE5b are 0.53 g/gal and 0.48 g/gal for Kent and New Castle, respectively. The MOBILE5b input and output files for estimating the 2005 Stage II VOC emission factors with annual inspection are provided in Appendix N of this document.

According to EPA's guidance document *Procedures for Emissions Inventory Preparation, Volume IV: Mobile Sources* (Reference 22), the in-use efficiency of stage II vapor recovery system applies to both spillage and displacement. As determined in the 2005 RPP, the annual inspection in Stage II Vapor Recovery Program will lead to additional VOC emission reductions of 0.05 TPD and 0.19 TPD from spillage and displacement, respectively. The total additional reduction is therefore 0.24 TPD ($0.05 + 0.19 = 0.24$).

4.2.2 VOC Emission Reduction from Open Burning Control

As indicated in Part III of the 2005 RPP, Delaware decides to use 0.16 TPD VOC emission reduction from the open burning control in New Castle County for the contingency requirements. Since the open burning regulation is an adopted state rule, inclusion of the 0.16 TPD for contingency reduction will not need any further rulemaking activities by the States and/or EPA.

The total VOC emission reduction from Stage II Vapor Recovery and the open burning control is $0.24 + 0.16 = 0.40$ TPD. In Part I of this document, Delaware has determined its 1990 adjusted baseline inventory level of VOC emissions to be 132.493 TPD (Table 1-4). The additional 0.40 TPD VOC emission reduction is $(0.40/132.493) = 0.0030 = 0.30\%$ of the 1990 adjusted base year VOC emissions, thus, satisfying the 0.30% minimum requirement on VOC emission reductions for the contingency plan. The rest of the contingency reductions will be obtained through NOx controls, which will be discussed in the following subsection.

4.2.3 NOx Emission Controls in Peak Ozone Season

As determined above, 0.30% of the 3.00% contingency requirement will be obtained by VOC emission reductions from annual inspection of the Stage II vapor recovery program and the open burning regulation. The remaining 2.70% (i.e., $3.00\% - 0.30\% = 2.70\%$) is the percentage required for NOx reduction substitution. The adjusted 1990 base year NOx emission level has been determined to be 158.375 TPD in Part I (Table 1-4). Thus, the NOx emission reductions for contingency purpose will be at least $158.375 \times 2.70\% = 4.28$ TPD.

In Subsection 3.5, Part III of this document, Delaware has demonstrated that, through adequate NOx emission controls, a 1.13 TPD NOx emission reduction will be achieved, in addition to those needed to meet the minimum rate-of-progress requirements for the 2005 RPP. Delaware decides to use this additional 1.13 TPD NOx emission reduction in this contingency plan based on the following judgements. First, this additional reduction shall be achieved from a combination of control measures in the 2005 RPP. Second, all these control measures are fully adopted measures or rules. Thus, no further rulemaking actions by the State and/or EPA are needed when this 1.13 TPD NOx reduction surplus becomes necessary to serve the contingency purpose. The remaining NOx emission reduction for contingency purpose becomes 3.15 TPD ($4.28 - 1.13 = 3.15$).

Delaware has promulgated the federal NOx SIP Call Rule through its Regulation 39 (*Delaware NOx Emission Trading Program*, Reference 18). In Part III of the 2005 RPP, Delaware has shown that the regional NOx control rule (the trading program) has enabled Delaware to achieve a significant NOx emission reduction, with a default *RE* value of 80%, in the milestone year 2005. Through a thorough analysis of Regulation 39, Delaware has demonstrated that the stringent provisions in Regulation 39 and the nature of trading program can improve the rule effectiveness from the default value of 80% to 97%. As shown in the 2005 RPP, applying the improved *RE* of 97% will produce a total NOx emission reduction of 36.41 TPD from the affected NOx sources. If compared with the total reduction of 32.93 TPD obtained with the default *RE* of 80% (Table 3-17 in Part III of the 2005 RPP), the additional reduction will be 3.48 TPD (i.e., $36.41 - 32.93 = 3.48$). Since Regulation 39 is a state adopted rule, the additional 3.48 TPD NOx emission reduction can be obtained through *RE* improvement without any further rule-making activities at both State and federal levels.

4.3 Summary of Contingency Measures and Emission Reductions

A summary of the contingency measures and the associated additional VOC and NOx emission reductions are presented in Table 4-2. As shown in Table 4-2 and in the discussions above, the contingency measures will produce a total of 4.61 TPD of NOx emission reductions, which is greater than the required reduction of 4.28 TPD. Thus, the contingency measures proposed herein are adequate for meeting the contingency requirements set forth by EPA.

Table 4-2. Summary of Contingency Measures and Emission Reductions

<u>Contingency Measures</u>	Emission Reduction (TPD)	
	<u>VOC</u>	<u>NOx</u>
Stage II Vapor Recovery with Annual Insp.	0.24	-
Open Burning	0.16	
Total VOC Emission Reductions	0.40	
<u>Required VOC Emission Reductions</u>	<u>0.40</u>	<u>-</u>
NOx Controls in Peak Ozone Season	-	1.13
RE Improvement on Regional NOx Control Rule	-	3.48
Total NOx Emission Reduction	-	4.61
Required NOx Emission Reductions	-	4.28

**PART V
DOCUMENTATION**

This part of the 2005 Rate-of-Progress Plan contains a collection of supporting documents referred to in Part I through Part IV of the plan. The documents are in appendix form and include the following:

- APPENDIX A: Perchloroethylene Emissions from Delaware 1990 Base Year Emission Inventory (Electronic file available).
- APPENDIX B: MOBILE5b Input and Output Data for the 1990 Adjusted Base Year Inventories Relative to Individual Milestone Years (Only hard copy available).
- APPENDIX C: Development of Emission Growth Factors for Delaware's 2002 and 2005 Rate-of-Progress Plans (Electronic file).
- APPENDIX D: Point Source Emission Projections for the 2005 Current Control Projection Inventory (Electronic file).
- APPENDIX E: Stationary Area and Off-Road Mobile Source Emission Projections for the 2005 Current Control and Control Strategy Inventories (Electronic file).
- APPENDIX F: MOBILE5b Input-Output Data and Calculation of On-Road Mobile Source Emission Projections for Individual Milestone Years (Hard copy only).
- APPENDIX G: Point Source Emission Projections for the 2005 Control Strategy Inventory (Electronic file).
- APPENDIX H: Collection of EPA Guidance Documents and Memorandums Cited in the 2005 RPP (Hard copy only).
- APPENDIX I: VOC Emissions Reductions from the Federal Benzene Waste Rule and Delaware Regulation 24 Section 28 (Electronic file).
- APPENDIX J: MOBILE5b Input and Output Data for the 2005 Stage II Vapor Recovery with Triennial Inspection (Electronic file).
- APPENDIX K: Estimating VOC and NOx Emission Reductions from New Federal Emission Standards on Nonroad Diesel Engines (Electronic file).
- APPENDIX L: Mobile Source VOC and NOx Emission Reductions from Federal Tier 2 Standards and Low-Sulfur Content Fuel (Hard copy only).
- APPENDIX M: MOBILE5b Input and Output Files for the 2005 Stage II Vapor Recovery with Annual Inspection (Electronic file).
- APPENDIX N: Improvement of Rule Effectiveness for NOx Emission Sources Covered by the Federal NOx SIP Call Rule and Delaware Regulation 39 (Electronic file).

Some of these appendixes are not available in electronic form. However, hard copies are available upon written request. Written request should be addressed to Dr. Frank F. Gao, Air Quality Management Section, DNREC, 156 South State Street, Dover, DE 19901, or through fax at (302)739-3106, or via e-mail at fgao@state.de.us.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHARMACY**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to adopt new Regulation XV to provide comprehensive requirements which will govern automated systems in community, institutional, and long term care pharmacy settings.

A public hearing will be held on the Proposed changes on November 15, 2000 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed Regulation. Written comment can be submitted at any time prior to the hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

**DIVISION OF PROFESSIONAL REGULATION
STATE EXAMINING BOARD OF PHYSICAL
THERAPISTS**

Statutory Authority: 24 Delaware Code,
Section 2604(1) (24 Del.C. 2604(1))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 2604(1), the Delaware State Examining Board of Physical Therapists proposes to revise its rules and regulations. Two of the proposed changes modify two treatment options that support personnel are permitted to perform. Another proposed change clarifies the extent to which a licensee may modify a treatment prescription. The proposed regulations serve to implement or clarify specific sections of 24 Del.C. Chapter 26.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, November 21, 2000 at 6:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 739-4522.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**DEPARTMENT OF AGRICULTURE
NUTRIENT MANAGEMENT PROGRAM**

PLEASE TAKE NOTICE that, pursuant to 3 Del.C. §2221, the Department of Agriculture has developed, in conjunction with the Delaware Nutrient Management Commission, and proposes to adopt regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to land or water, or who are involved in providing advice or consultation regarding the same, and regulations governing the investigation and resolution of complaints concerning alleged violations of Delaware's nutrient management laws (3 Del.C. Chapter 22) or regulations developed thereunder. These regulations are proposed to meet the mandate set forth in 3 Del.C. Chapter 22 and put into effect the purpose of that chapter to help improve and maintain the quality of Delaware's ground and surface waters in the interest of the overall public welfare. These proposals represent new substantive and procedural regulations in areas not previously regulated, and their term shall be permanent unless subsequently amended or repealed in accordance with the Administrative Procedures Act (29 Del.C. Chapter 101).

Public hearings on these proposed regulations shall be held on the following dates and locations:

- October 24, 2000 (Tuesday) at 6:00 pm, Messick's Community Building, 8314 Vernon Road, Harrington, DE 19952;
- October 26, 2000 (Thursday) at 6:00 pm, Gumboro Volunteer Fire Company, RD3, Route 26, Gumboro, DE 19966; and
- November 2, 2000 (Thursday) at 6:00 pm, Townsend Volunteer Fire Company, 107 Main Street, Townsend, DE 19734.

The Department of Agriculture, in conjunction with the Delaware Nutrient Management Commission, will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Department and the Commission in care of William R. Rohrer, Nutrient Management Program Administrator, at the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901. The final date to submit written comments shall be at the public hearing on November 2, 2000. It is requested that anyone wishing to present verbal comments at a public hearing contact Mr. Rohrer at the above address or by calling (302) 739-4811 or

(800) 282-8685 (within Delaware only). To accommodate all who wish to speak at these meetings, limits on the length of verbal comments may be necessary. For this reason, it is requested that anyone wishing to present verbal comments bring a written copy as well. Copies of the proposed regulations may be obtained by contacting Mr. Rohrer, or on the Department of Agriculture's website at <http://www.state.de.us/deptagri>.

Notice of the public hearing will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Tuesday, October 19, 2000 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES

Regulations on Establishment Of Delegation of Power of Relative Caregivers to Consent to Medical Treatment of Minors 13 **Del.C.** §707,708

Delaware Health and Social Services has implemented on an emergency basis the below proposed regulations and is now accepting comments in preparation for adoption of these changes on a permanent basis.

The promulgation of these regulations will put 13 **Del.C.** §707 and 708 into effect so that grandparents and relative caregivers without custody or guardianship can approve medical treatment for children in their care. Promulgation of these regulations will allow the law to establish a system known to providers and consumers throughout the state, encourage well child Doctor's visits, visits to the Doctor before a condition worsens, and fewer visits to hospital emergency rooms.

Copies of the proposed regulations are available for review by appointment at the following locations:

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical Disabilities
Herman M. Holloway Sr. Campus
Administration Building, Annex
1901 N DuPont Highway

New Castle, DE
Delaware Health and Social Services
Division of Services for Aging and Adults with Physical Disabilities
Milford State Service Center
18 North Walnut Street
First Floor
Milford, DE 19963
Contact Carol Boyer at 577-4791 or 1-800-223-9074 to make arrangements.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

Carol Boyer
Delaware Health & Social Services
Division of Services for Aging and Adults with Physical Disabilities
Administration Bldg., Annex
1901 N DuPont Highway
New Castle, DE 19720

Such comments must be received by close of business on Thursday, October 31, 2000.

DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES

Regulations on Establishment Of Delegation of Power of Relative Caregivers to Consent for Registering Minors for School 14 **Del.C.** § 202

Delaware Health and Social Services has implemented on an emergency basis the below proposed regulations and is now accepting comments in preparation for adoption of these changes on a permanent basis.

The promulgation of these regulations will put 14 **Del.C.** §202 in effect so that grandparents and relative caregivers without custody or guardianship can register children in their care for the school year beginning September 2000. Doing so will put these caregivers in compliance with 27 **Del.C.** §2702, which states that children "between five years of age and sixteen years of age" shall be enrolled in a free public school.

Copies of the proposed regulations are available for review by appointment at the following locations:

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical Disabilities
Herman M. Holloway Sr. Campus
Administration Building, Annex
1901 N DuPont Highway
New Castle, DE

Delaware Health and Social Services
 Division of Services for Aging and Adults with Physical
 Disabilities
 Milford State Service Center
 18 North Walnut Street
 First Floor
 Milford, DE 19963

Contact Carol Boyer at 577-4791 or 1-800-223-9074 to
 make arrangements.

Written comments are also invited on these proposed
 new regulations and should be sent to the following address:

Carol Boyer
 Delaware Health & Social Services Division of Services
 for Aging and Adults with Physical Disabilities
 Administration Bldg., Annex
 1901 N DuPont Highway
 New Castle, DE 19720

Such comments must be received by close of business
 on Thursday, October 31, 2000.

DEPARTMENT OF INSURANCE

The Delaware Insurance Department proposes a new
 regulation that requires the prompt payment of claims settled
 by insurance companies either pursuant to a legal action or
 otherwise.

The public may obtain a copy of the proposed regulation
 from the Delaware Insurance Department, Rodney Building,
 841 Silver Lake Boulevard, Dover, DE 19904. The contact
 person is Kathy Gravel who can be reached at the
 aforementioned address or by telephone at (302) 739-4251
 ext. 121. The Department of Insurance will accept written
 comments from October 1, 2000 through November 30,
 2000. A public hearing will be held at the Delaware
 Insurance Department, Rodney Building, 841 Silver Lake
 Boulevard, Dover on Wednesday, November 15, 2000 at
 10:00 p.m.

No other regulations are impacted by this regulation.
 The Delaware Insurance Department derives its authority to
 adopt this regulation through 18 **Del.C.** §§311 and 2312.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

REGISTER NOTICE SAN # 99-22

TITLE OF THE REGULATIONS:

FREEDOM OF INFORMATION ACT REGULATION

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

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

NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed regulation
 will extend through November 2, 2000. Interested parties
 may submit comments in writing during this time frame to:
 Susan Baker, DNREC/DAWM, 89 Kings Highway, Dover,
 DE 19901, and/or statements and testimony may be
 presented either orally or in writing at the public hearing to
 be held on Thursday, October 26, 2000 beginning at 6:30
 PM in the DNREC auditorium at the Richardson and
 Robbins Building, 89 Kings Highway, Dover DE.

PREPARED BY:

Susan S. Baker, (302) 739-4791, September 12, 2000

DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

REGISTER NOTICE SAN # 2000-10

TITLE OF THE REGULATIONS:

AMENDMENTS TO DELAWARE 2002 RATE-OF-
 PROGRESS PLAN FOR KENT AND NEW CASTLE
 COUNTIES: For Demonstrating Progress toward
 Attainment of the 1-Hour National Ambient Air Quality
 Standard for Ground Level Ozone.

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) for the period from 2000 to 2002 to demonstrate how to achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NOx), which are major precursors to form ozone. This plan, termed as Delaware's 2002 Rate-of-Progress Plan, was submitted to EPA in February 2000. The document proposed herein amends the 2002 RPP with respect to the VOC emission reductions from the wastewater treatment plant at Motiva Enterprises in New Castle County.

NOTICE OF PUBLIC COMMENT:

A public hearing will be held on November 14, 2000 at 6:00 PM in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

PREPARED BY:

Frank F. Gao, Project Leader, (302) 739-4791, September 12, 2000

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

**Register Notice
San 2000-09**

Title of the Regulations:

Amendments To Addendum To The Delaware Phase II Attainment Demonstration For The Philadelphia-Wilmington-Trenton Severe Ozone Nonattainment Area (Non-regulatory Document)

Brief Synopsis of the Subject, Substance and Issues:

In January 2000 the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted to the U.S. Environmental Protection Agency (EPA) a document entitled "Addendum to The Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area" ("The Addendum"). The Addendum addressed a deficiency in the Phase II Plan, i.e., it established the on-road mobile source volatile organic compounds (VOC) and oxides of nitrogen (NOx) emissions budgets required for the purposes of transportation conformity in Kent and New Castle counties, the two Delaware severe ozone nonattainment counties. EPA has informed us by letter that the Department must revise the State Implementation Plan (SIP) to include two elements – a formal commitment to revise the on-road mobile VOC and

NOx emissions budgets within a year of the release of the MOBILE6 (an emission factor model), and a formal commitment to adopt and submit additional control measures necessary to support attainment by October 31, 2001. Both items were included in the submittal letter but were not subjected to the public hearing process and this document formalizes that requirement.

Notice of Public Comment:

November 14, 2000, 06:00 pm; DNREC Auditorium; 89 Kings Highway; Dover, DE 19901

Prepared by:

Raymond H. Malenfant, Program Manager, (302) 739-4791, Mohammed A. Majeed, Environmental Engineer, (302) 739-4791, September 13, 2000

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

**Register Notice
SAN # 99-28**

Title of the Regulations:

Summary Of Delaware 2005 Rate-of-Progress Plan For Kent And New Castle Counties: For Demonstrating Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground Level Ozone.

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) for every three years after 1996 to demonstrate how to achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NOx), which are major precursors to form ozone. The plan proposed herein is for the period between 2003 to 2005, and thus termed as Delaware's 2005 Rate-of-Progress Plan.

Notice of Public Comment:

A public hearing will be held on November 14, 2000 at 6:00 PM in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Prepared By:

Frank F. Gao, Project Leader, (302) 739-4791, September 14, 2000

SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public

hearings and open meetings of state agencies.

PUBLISHED MONTHLY - \$120.00 PER YEAR

YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$120/YEAR

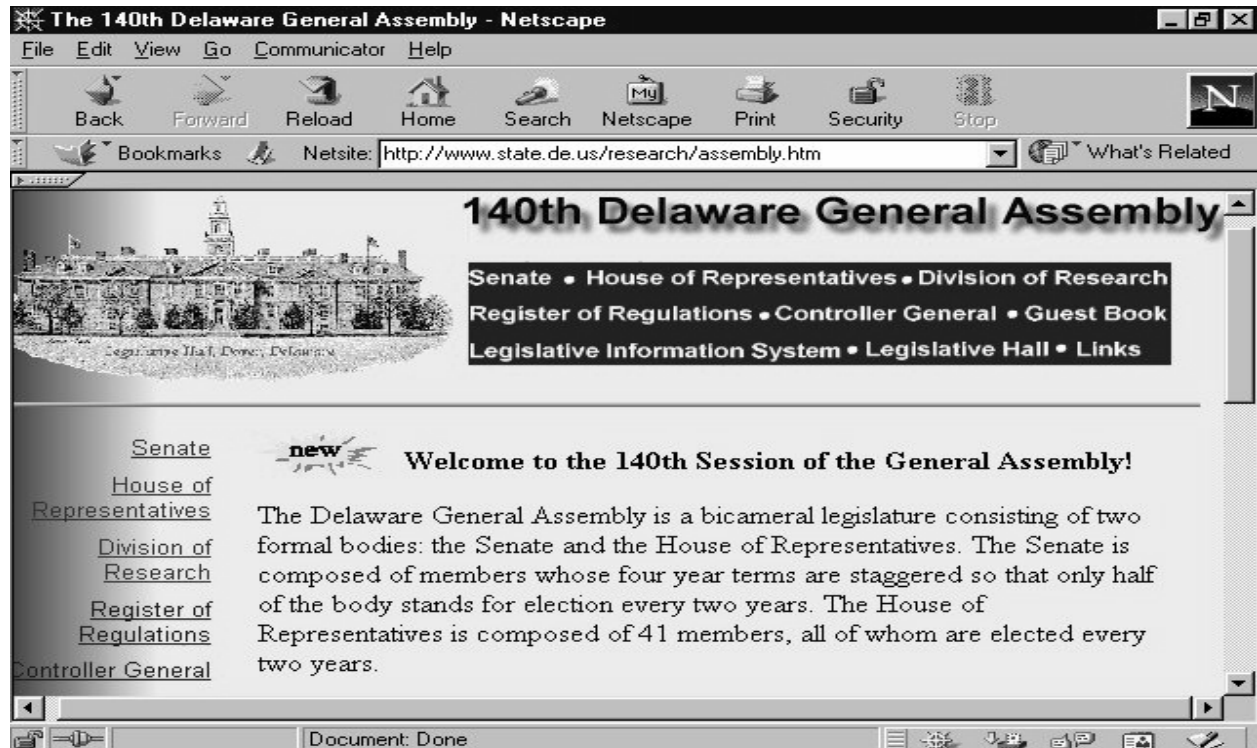
You will be billed upon receipt of your order. Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$10 per issue. Back issues are available at \$12 per issue. Subscription fees are non-refundable.

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Visit The Delaware General Assembly On The Web!



The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

<http://www.state.de.us/research/assembly.htm>



LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____ FAX _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
One copy of all legislation introduced:	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$100
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$775
One copy of all legislation signed by the Governor:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$195
One copy of House and Senate calendars:	
<input type="checkbox"/> 1st Session set - - - - -	\$75
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$100
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$775
One copy of all Governor's Advisories:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$25
Daily Legislative Agendas and weekly Standing Committee Notices:	
<input type="checkbox"/> Via Fax - - - - -	\$150

* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact Ms. Ginny Potts in the Division of Research by dialing, toll-free, (800) 282-8545 (in state). Ms. Potts may also be reached via E-Mail at vpotts@state.de.us. Please dial (302) 739-4114 if you are calling from outside Delaware.

Please return this order form to Ms. Potts at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.