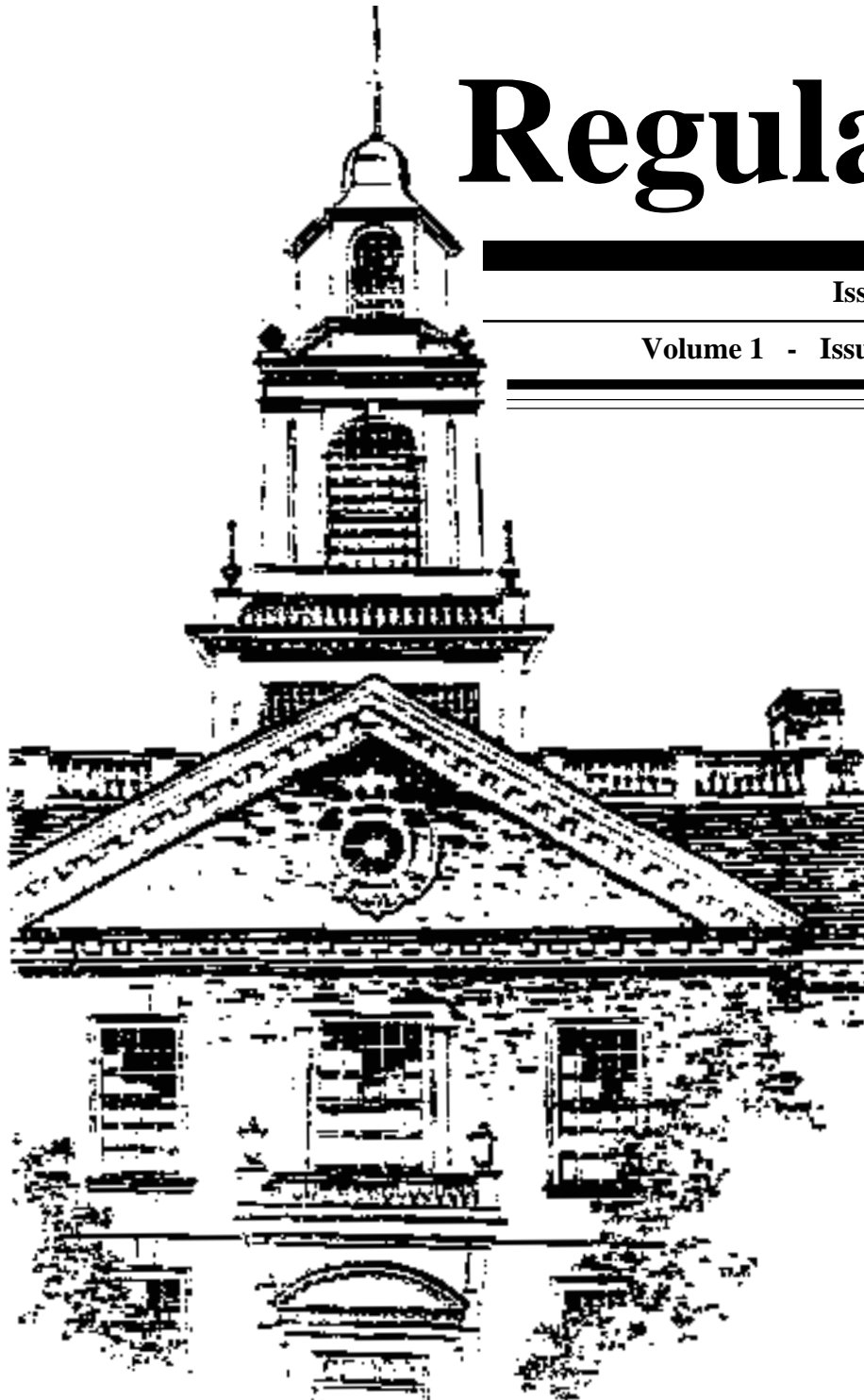

Delaware Register of Regulations



Issue Date: September 1, 1997

Volume 1 - Issue 3

Pages 206 - 288

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Executive Orders

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before August 15, 1997.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

1:1 **Del. R.** 35 - 37 (July 1, 1997) refers to Volume 1, Issue 1, pages 35 - 37 of the Delaware Register issued on July 1, 1997.

SUBSCRIPTION INFORMATION

A yearly subscription for the Delaware Register of Regulations costs \$80.00 per year from July - June, for 12 issues. Single copies are available at a cost of \$7.00 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
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.

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Div. of Public Health, Public Pools	1:2 Del.R. 174 (Final)
Div. of Public Health, Trauma System Rules	1:2 Del.R. 110 (Prop.)

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Department of Natural Resources & Environmental Control

Div. of Air & Waste Management, Air Quality Management, Regulation No. 2	1:1 Del.R. 48 (Final)
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Public Service Commission

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Regulation Docket No. 47, Notice of Proposed Rule making Concerning Intrastate Discounts for Schools & Libraries	1:1 Del.R. 9 (Prop.)
Regulation Docket No. 47, Notice of Proposed Rule making Concerning Intrastate Discounts for Schools & Libraries	1:2 Del.R. 139 (Final)

DEPARTMENT OF HEALTH & SOCIAL SERVICES, Division of Public Health

Statutory Authority: Title 16, Section 122(3)(c) of the Delaware Code.

The following chart should be inserted at 1:2 Del.R. 129 at the end of the section "AIR TRANSPORT GUIDELINES"

PREHOSPITAL TRAUMA TRIAGE SCHEME, ALS & BLS
M.O.V.E. - Mechanism, Obvious Injury, Vital Signs, Extenuating Circumstances

STEP 1 MECHANISM

- Patient ejection from vehicle
• Death in same vehicle compartment
• Estimated extrication time >20 min. (heavy equipment)
• Falls from ≥ 2 1/2 times the patient's height
Appropriate for Air Medical Transport
If NO for all elements in Step 1, proceed to Step 2

STEPS 1, 2, 3:
If any of these conditions are present, transport to Trauma Center

NOTE:
Patients with unmanageable airways: transport to the nearest hospital.

STEP 2 OBVIOUS INJURY

- Pelvic fractures
• Flail chest or other major chest injury
• Limb paralysis
• Amputation above wrist or ankle
• Penetrating injury to head, neck, torso, axilla, groin, or proximal extremities
• Major external hemorrhage
• Major burns*, trauma with burns, or inhalation injury
• More than 1 proximal long bone fracture (humerus or femur)
• AVPU Scale: does not respond to voice
Appropriate for Air Medical Transport
If NO for all elements in Step 1 & 2 proceed to STEP 3

NOTE:
If transport time between Trauma Centers is relatively equal transport patient to the higher level Center

STEP 3 VITAL SIGNS

- Adult Glasgow Coma Score.....<13
• Adult Respiratory Rate.....<10 or >30
• Adult Systolic B/P.....<90
• Adult Heart Rate.....<50 or >120
Appropriate for Air Medical Transport
If NO for all elements in Step 1, 2, & 3 proceed to STEP 4

NOTE:
Patients with Glasgow Coma Score < 8 or exhibiting new onset paralysis or paresis: direct transport to a Trauma Center with neurosurgical capabilities.

STEP 4 EXTENUATING CIRCUMSTANCES

- Moderate risk mechanism of injury
- High speed auto crash: speed >25 mph, auto deformity >20", or inner intrusion >12"
- Rollover with vehicle impact
- Auto-pedestrian/auto-bicycle injury with significant impact
- Motorcycle crash >20 mph or with separation of rider from bike
• Pre-existing conditions
- Age <15 or >65
- Pregnancy
- Cardiac disease, respiratory disease
- Other significant medical conditions- discuss with MC
• Required by patient condition in the judgement of the prehospital provider
If YES to STEP 4: Contact Medical Control & consider transport to closest Trauma Center
If NO for all elements in STEPS 1, 2, 3 & 4: Routine Transport

IF IN DOUBT CONSULT MEDICAL CONTROL & CONSIDER TRANSPORT TO TRAUMA CENTER

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.

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES

IN THE MATTER OF:

REVISION OF REGULATION
OF THE MEDICAID/MEDICAL
ASSISTANCE PROGRAM
CONTAINED IN DMAP
SECTION 420

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services has determined that a detriment to the public welfare exists if revision of the regulation contained in DMAP SECTION 420 is not implemented without prior notice or hearing. Failure to implement will result in a delay in an increase in the amount of funds that can be protected monthly in a personal needs account for individuals residing in nursing facilities. An increase of six dollars (from \$36 to \$42) was approved and funded by the Delaware Legislature effective July 1, 1997.

NATURE OF PROPOSED REVISION:

The revised rule increases the amount to be protected for the personal needs of a Medicaid client in a long-term

care facility from \$36 to \$42. The wording of the policy is as follows:

DMAP 420

1. Personal needs

a) ~~\$36.00~~ \$42.00 per month of available income is to be protected for the recipients direct personal needs, as defined by Form MAP-64*

FINDING OF FACT:

The Department finds that this change should be made 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.

* Denotes modified regulation

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted on an emergency basis, without prior notice or hearing, and became effective July 1, 1997.

8/1/97 *Carmen R. Nazario*
Date **CARMEN R. NAZARIO**
 SECRETARY

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES

IN THE MATTER OF: |

REVISION OF
REGULATION
CONTAINED IN
DSSM 8301.3 |

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services has determined that a threat to the public welfare exists if revision of regulations contained in DSSM Section 8000 is not implemented without prior notice or hearing. Failure to do so would tend to promote noncompliance with the requirements of the *A Better Chance* program.

NATURE OF PROPOSED REVISIONS:

8205.2 EXCEPTIONS

The family cap restrictions will not apply in the following cases:

- to an additional child conceived or fathered as a result of incest or sexual assault; or
- to a child who does not reside with his or her parent; or
- to a child that was conceived or fathered in a month the assistance unit (i.e., the entire family) was not receiving ABC. *This does not apply in a case that is closed due to sanctioning.*

8301.1.4 FAILURE TO COMPLY WITH THE CONTRACT AND THE IMPOSITION OF SANCTIONS

Failures to comply with *self-sufficiency requirements are not treated as separate activity violations, but as one component. Accordingly, a person who quits employment without good cause and is sanctioned 1/3, receives a 2/3 sanction for the second violation whether it is for a job quit or noncompliance with employment and training activities or cooperation to ensure compliance with school attendance for dependent children under age 16.*

8301.3 BENEFIT REDUCTION FOR MULTIPLE SANCTION TYPES

The sanctions for failure to meet Contract requirements allow for the possibility of multiple penalties to be imposed at the same time. The hierarchy is as follows:

1. *If in place, the one-third penalty for failing to meet work and training requirements and the one-third penalty for not cooperating with school or agency officials to meet attendance requirements for dependent children under the age of 16 is first imposed by DCIS.

2. If in place, the \$68 sanction for 16 and over teens who fail to meet school attendance requirements and an additional \$68 for their parents who do not cooperate to remedy the situation is imposed next.

3. If in place, the \$50 sanction for failure to meet enhanced family functioning requirements is the last to be imposed by DCIS.*

8304 *SELF-SUFFICIENCY REQUIREMENTS - EMPLOYMENT AND TRAINING, WORK, AND COOPERATION TO ENSURE SCHOOL ATTENDANCE BY DEPENDENTS UNDER AGE 16

DSS expects employable adults to participate in either employment or activities related to finding work (e.g. employment and training activities) for AFDC benefits to continue uninterrupted. Either an employable adult is working or is participating in activities to secure employment. DSS also expects caretakers to cooperate as necessary with school and other officials to ensure satisfactory school attendance by dependent children under age 16. The failure of clients to maintain any of these activities represent sanctionable offenses, which are components of the self-sufficiency requirements.*

8304.1 REQUIREMENTS FOR *SELF-SUFFICIENCY*

*Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. Since parents with children under age 16 are expected to exert more influence over their children, and since early school attendance is so important in moving children down the path to self-sufficiency, this requirement is grouped with employment and training and work requirements as part of the overall self-sufficiency requirements, which invoke harsher

penalties for noncompliance. (See section 8305 for requirements and sanctions related to cooperation to ensure school attendance by children over the age of 16).*

8304.2 SANCTIONS FOR FAILING TO COMPLY WITH*SELF-SUFFICIENCY REQUIREMENTS

Self-sufficiency requirements include those related to employment and training, work, and cooperation with officials to ensure satisfactory school attendance by dependents under age 16.

The penalty for noncompliance with any of the self-sufficiency* requirements be:

- a) for the first offense, a 1/3 reduction in AFDC
- b) for the second offense, a 2/3 reduction in AFDC
- c) for the third offense, a loss of all cash benefits.

The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:

- a) for a first offense, a 1/3 reduction in AFDC, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
- b) for a second offense, a 2/3 reduction in AFDC, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
- c) for a third offense, a permanent loss of all cash benefits.

The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits for two months *or until the individual obtains a job of equal or higher pay.

Contract Requirement	Amount/Duration of Sanction	Increase/2 months if not Compliant
Employment & Training	1/3 reduction for 2 months or until compliance whichever is shorter for first offense; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense	Yes
Caretaker Cooperation to ensure School Attendance for children under 16 years	1/3 reduction for 2 months or until compliance whichever is shorter; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense	Yes

Contract Requirement	Amount/Duration of Sanction	Increase/2 months if not Compliant
Keeping a job unless good cause exists to quit the job	If meeting job search requirements, 1/3 reduction for 2 months or until person enters a job of equal or higher pay, whichever is shorter; 2/3 reduction for 2 months or until enters a job of equal or higher pay whichever is shorter for second offense	No
Keeping a job, unless good cause exists to quit the job	If not meeting job search requirements, full loss of benefits until compliance of either meeting job search requirements or person enters a job of equal or higher pay	N/A

Noncompliance with more than one of the self-sufficiency requirements at a point in time will result in a one-third benefit reduction for each sanction.

Example: A person fails to attend the DOL orientation and, prior to a cure, then fails to cooperate with officials to ensure school attendance by his/her 14-year-old child. The resulting sanctions would result in a 2/3 (1/3 + 1/3) loss of cash benefits.*

8304.3 CURING THE SANCTION FOR SELF-SUFFICIENCY REQUIREMENTS

Clients must keep appointments with Employment and Training staff, complete the Employability Development Plan and follow through with the recommendations of the Employment and Training staff for a minimum period of two weeks.// Clients, unless indicated otherwise, must participate in the work attachment model for a minimum period of two weeks.

EXAMPLE: A client fails to keep her initial appointment with Employment and Training staff and is sanctioned . In order to cure this sanction, the client must not only keep her appointment with Employment and Training staff, but must also keep her appointment with DOL staff and follow through with her DOL activity for a minimum period of two weeks before the sanction is considered cured.

8305.1 SANCTIONS FOR UNSATISFACTORY SCHOOL ATTENDANCE

A. CHILDREN UNDER AGE 16, INCLUDING TEEN PARENTS WHO ARE DEPENDENT CHILDREN

The fiscal sanction for failure, without good cause, to meet the school attendance requirements *for a child under 16 are the same as for other self-sufficiency requirements. See Section 8304.2.*

* Denotes modification of or addition to regulation

// Denotes deletion from existing regulation

FINDING OF FACT

The Department finds that these changes should be made 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.

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted on an emergency basis, without prior notice or hearing, and shall become effective immediately.

8/1/97 *Carmen R. Nazario*

Date *CARMEN R. NAZARIO*
SECRETARY

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 STATE
OFFICE OF THE STATE BANK COMMISSIONER
Statutory Authority: 5 Delaware Code,
Section 121(b) (5 **Del.C.** 121(b))**

**NOTICE OF PROPOSED AMENDMENT OF
REGULATIONS OF THE STATE BANK
COMMISSIONER**

Summary:

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.1101(f).0001, 5.1101etal.0002, 5.1101etal.0003, 5.1101etal.0004, 5.1101etal.0005, 5.1101etal.0006, 5.1101etal.0007, 5.1105.0008, 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011. Proposed revised Regulation 5.1101(f).0001 (“Election to be Treated for Tax Purposes as a ‘Subsidiary Corporation’ of a Delaware Chartered Banking Organization or Trust Company, National Bank Having Its Principal Office in Delaware, or Out-of-State Bank that Operates a Resulting Branch in Delaware”) provides for certain corporations to elect to be treated as “subsidiary corporations” of Delaware banks for purposes of the bank franchise tax, and is being amended to permit

elections to be made under certain circumstances after April 1 of the tax year, and to require taxpayers to provide information about elections on estimated franchise tax reports. Proposed revised Regulations 5.1101etal.0002 (“Instructions for Preparation of Franchise Tax”), 5.1101etal.0003 (“Estimated Franchise Tax Report”), and 5.1101etal.0004 (“Final Franchise Tax Report”), which are applicable to most banks and trust companies (but not to out-of-state federal savings banks or resulting branches of out-of-state banks), are being amended to conform to statutory changes in Senate Bill 483 (“SB483”), signed by the Governor on July 11, 1996, Senate Bill 44 (“SB44”), signed by the Governor on April 23, 1997, and House Bill 257, as amended (“HB257”), signed by the Governor on July 23, 1997. Proposed revised Regulations 5.1101etal.0005 (“Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in This State”), 5.1101etal.0006 (“Estimated Franchise Tax Report -- Federal Savings Banks Not Headquartered in Delaware”), and 5.1101etal.0007 (“Final Franchise Tax Report -- Federal Savings Banks Not Headquartered in Delaware”), which are applicable to out-of-state federal savings banks with Delaware branches, also are being amended to conform to statutory changes in SB483, SB44 and HB257. Proposed revised Regulation 5.1105.0008 (Instructions for

Calculation of Employment Tax Credits”) is being amended to conform to SB483. Proposed revised Regulations 5.1101etal.0009 (“Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks”), 5.1101etal.0010 (“Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks”), and 5.1101etal.0011 (“Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks”), which are applicable to resulting branches in Delaware of out-of-state banks, are being amended to conform to SB483, SB44 and HB257. Proposed revised Regulations 5.1101(f).0001, 5.1101etal.0002, 5.1101etal.0003, 5.1101etal.0004, 5.1101etal.0005, 5.1101etal.0006, 5.1101etal.0007, 5.1105.0008, 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011 would be adopted by the State Bank Commissioner on or after October 2, 1997. Other regulations issued by the State Bank Commissioner are not affected by these proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

Copies of the proposed revised regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received by October 2, 1997.

Public Hearing:

A public hearing will be held on the proposed revised regulations in the Second Floor Cabinet Room in the Townsend Building, 401 Federal Street, Dover, Delaware 19901, on Thursday, October 2, 1997 at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

Regulation No.: 5.1101(f).0001
Proposed

**ELECTION TO BE TREATED FOR TAX PURPOSES
AS A “SUBSIDIARY CORPORATION” OF A
DELAWARE CHARTERED BANKING
ORGANIZATION OR TRUST COMPANY,
NATIONAL BANK HAVING ITS PRINCIPAL
OFFICE IN DELAWARE, OR OUT-OF-STATE BANK
THAT OPERATES A RESULTING BRANCH IN
DELAWARE (5 Del. C. §1101(f))**

A. PURPOSE: Pursuant to 5 Del. C. §1101(f), certain corporations may elect to be treated as a “subsidiary corporation” of a Delaware chartered banking organization or trust company, a national bank having its principal office in Delaware, or an out-of-state bank that operates a resulting branch in Delaware. If a valid election is made, the electing corporation will be taxable on a consolidated basis with its deemed parent Delaware chartered banking organization or trust company, national bank having its principal office in Delaware, or out-of-state bank that operates a resulting branch in Delaware, and the electing corporation will be exempt from Delaware state corporation income taxes and occupational license taxes (as provided in 5 Del. C. §1109).

B. WHO MAY ELECT: A corporation may make the election only if it meets the following two tests:

1. Ownership test: Eighty percent (80%) of the total combined voting power of all classes of voting stock of the electing corporation (“Electing Corporation”) is owned by an out-of-state bank that operates a resulting branch in Delaware or, directly or indirectly, by a bank holding company (“Qualifying Entity”) that also, directly or indirectly, owns all of the stock of a Delaware chartered banking organization or trust company, a national bank located in Delaware or an out-of-state bank that operates a resulting branch in Delaware (“Deemed Parent”). For purposes of determining ownership of the voting power of an Electing Corporation, non-voting stock convertible into voting stock shall be treated as having been so converted.

In order to determine if this test is met, Question 5 on the election form must be completed. In Column A of Question 5, list each class of stock or property right which has voting rights or can be converted into stock with voting rights. In Column B, state the percentage of the Electing Corporation’s total voting power of that particular class of stock (assuming full conversion). In Column C, state the percentage of each respective class that the Qualifying

Entity owns. If each figure in Column C is at least 80%, then this first test is met and Column D need not be completed. If not, Column D should be calculated by multiplying Column B times Column C. The sum of the figures in Column D must be at least equal to 80%. The ownership test must be met at all times during the taxable year for which the election is made.

2. **Employment Test:** The Electing Corporation, together with its affiliates (defined by 5 Del. C. §773(1)), employs by or before the end of the taxable year following the taxable year in which the election was made at least 200 persons in Delaware.

C. WHERE TO FILE: The original of the election form must be filed with the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and a copy must be filed with the Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801.

D. WHEN TO MAKE THE ELECTION: The election must be made and filed before the first day of the fourth month of the Electing Corporation's taxable year, except that, (1) in the case of a corporation that is newly formed or acquired by the Qualifying Entity, the election may be made and filed within 90 days of such formation or acquisition, and such later election shall not be subject to the payment of any additional tax under 5 Del. C. §1104(c) for underpayment of estimated tax or installment for periods before the date of such election, and (2) with the approval of the Commissioner, a later election may be made, subject to the payment of any additional tax for underpayment of estimated tax or installment as provided in 5 Del. C. §1104(c) and applicable regulations of the Commissioner.

E. SUPPLEMENTAL REPORTING REQUIREMENTS: Once an election has been made under 5 Del. C. §1101(f) for any Electing Corporation, and so long as the same remains in effect, each Estimated Franchise Tax Report under Regulation 5.1101etal.0003 or 5.1101etal.0010 and each Final Franchise Tax Report under Regulation 5.1101etal.0004 or 5.1101etal.0011 filed by the Deemed Parent shall indicate on the first page thereof the name of each Electing Corporation whose income and expenses are consolidated with that of the Deemed Parent. In addition, each such consolidated Report filed by the Deemed Parent shall have attached to it separate Reports completed on an individual non-consolidated basis for each Electing

Corporation (complete such attachments only to the extent necessary to calculate estimated or final taxable income).

F. TERMINATION OF ELECTION: Once an election is made, it remains in effect until terminated (a) by notice of voluntary termination delivered to the State Bank Commissioner, with a copy to the Delaware Division of Revenue, at any time during the Electing Corporation's taxable year (which termination shall be effective as of the first day of such taxable year), or (b) by failure to meet the ownership test and the employment test referenced in Section B.1 and B.2 hereof. If either test is first failed at any time during the first six months of any taxable year, the termination shall relate back to the first day of such taxable year. If either test is failed at any time during the second six months of any taxable year, the termination shall relate forward to the first day of the succeeding taxable year. However, an Electing Corporation shall have the allowable time period referenced in Section B.2 initially to meet the employment test.

If an election is terminated, the Deemed Parent shall file an amended Estimated and/or Final Franchise Tax Report for the year for which the election was originally made, which Estimated and/or Final Franchise Tax Report shall eliminate the income and expenses of the Electing Corporation. Any resulting reduction in bank franchise taxes can be utilized by the Deemed Parent as credit (without interest) against its future bank franchise tax liability.

G. TAXABLE YEAR: The "taxable year" of an Electing Corporation shall end on the same date as the taxable year of the Deemed Parent (as determined for federal income tax reporting purposes), unless a different taxable year is approved by the State Bank Commissioner.

ELECTION TO BE TREATED AS A SUBSIDIARY CORPORATION UNDER 5 DEL. C. §1101(f)

1. Name and Principal Place of Business of Electing Corporation:

2. First day of Electing Corporation's taxable year for which election is made: _____

PROPOSED REGULATIONS

3. Name and Principal Place of Business of Qualifying Entity (as defined in Section B.1 of this regulation).

Regulation No.: 5.1101etal.0002
Proposed

**INSTRUCTIONS FOR PREPARATION OF
FRANCHISE TAX
(5 Del. C., Chapter 11)**

4. Name and Principal Place of Business of Deemed Parent (as defined in Section B.1 of this regulation):

I. This regulation applies to banking organizations and trust companies, other than resulting branches in this State of out-of-state banks or federal savings banks not headquartered in this state but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0003 and 5.1101etal.0004, respectively. Regulations 5.1101etal.0005, 5.1101etal.0006 and 5.1101etal.0007 are applicable to federal savings banks not headquartered in this State but maintaining branches in this State. Regulations 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011 are applicable to resulting branches in this State of out-of-state banks.

5. Ownership of Voting Power of Electing Corporation (See Section B.1 of this regulation):

(A)	(B)	(C)	(D)
Class of Voting Stock (including property convertible into voting stock)	Class's Percentage of Corporation's Total Voting Power	Percentage of Class Held by Qualifying Entity	Weighted Voting Power of Class Held by Qualifying Entity
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total	<u>100%</u>	Total	_____

II. Definitions

A. "Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

B. "Banking organization" means:

1. A bank or bank and trust company organized and existing under the laws of this State;
2. A national bank, including a federal savings bank, with its principal office in this State;
3. An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq., or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System, and maintaining an office in this State;
4. A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;
5. A foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5; or
6. A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

6. Does the Electing Corporation and its "affiliates" (as defined by 5 Del. C. §773(1)) currently have 200 or more Delaware employees? _____

7. If the answer to Question 6 is "No," do you expect the number of Delaware employees of the Electing Corporation and its affiliates to be at least equal to 200 by the end of the taxable year following the year of election?

The undersigned does hereby certify that the undersigned is duly authorized on behalf of the Electing Corporation to make an election to be treated as a "subsidiary corporation" of the above-named Deemed Parent for purposes of 5 Del. C. §1101 and that all statements herein are true and correct to the best of the undersigned's knowledge and belief.

_____	_____	_____
Date	Signature	Title

C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del. C. §771 or federal law) or

any subsidiary corporation directly or indirectly owned by any banking organization:

1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

2. The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;

3. The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;

4. The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;

5. The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to a banking organization described in subsection B.3 above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or

6. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

D. "International Banking Facility" means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

E. "National Bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.

F. "Net Operating Income Before Taxes" means the total net interest income plus total non-interest income, minus provision for loan and lease losses, provision for allocated transfer risk, and total non-interest expense, and adjustments made for securities gains or losses and other appropriate adjustments.

G. "Out-of-state bank" has the same meaning as in §795 of Title 5 of the Delaware Code, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit

operations are to be carried out.

H. "Resulting branch in this State of an out-of-state bank" has the same meaning as in §1101(a) of Title 5 of the Delaware Code, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the Delaware Code, and, in addition, a branch office in this State of an out-of-state bank.

I. "Securities Business" means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

J. "Trust Company" means a trust company or corporation doing a trust company business which has a principal place of business in this State.

III. Estimated Franchise Tax

A banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax:

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0003;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Adjusted for any estimated income from an insurance division or subsidiary;

3. Less any deductions set forth in 5 Del. C. §1101;

4. Multiplied by .56 to arrive at estimated taxable income;

5. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

6. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with

Regulation No. 5.1105.0008.

7. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

40% due on or before June 1 of the current taxable year;

20% due on or before September 1 of the current taxable year;

20% due on or before December 1 of the current taxable year.

IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization and the final franchise tax report, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a banking organization entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year, except as otherwise required by 5 Del. C. §904.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection IV. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0004.

C. Calculation of final tax. The total final franchise tax shall be calculated as follows:

1. The net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Adjusted for any income from an insurance division or subsidiary;

3. Less any deduction set forth in 5 Del. C. §1101;

4. Multiplied by .56 to arrive at "taxable income";

5. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied to the taxable income to

arrive at subtotal annual franchise tax;

6. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

7. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

V. Payment of Final Franchise Tax

A. Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

B. The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

A. In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;

2. The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on

PROPOSED REGULATIONS

or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year; provided, however, that this paragraph C shall not apply if the banking organization or trust company, or any predecessor thereof, had taxable income of \$200,000 or more for any of the three taxable years immediately preceding the taxable year involved.

VII. Penalty - Late Payment of Final Franchise Tax

In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for a banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the final franchise tax report due January 30 or February 15, as applicable.

Regulation No.: 5.1101etal.0003
Proposed

**ESTIMATED FRANCHISE TAX REPORT
(5 Del. C., Chapter 11)**

This report shall be completed by any banking organization (other than a resulting branch in this State of an out-of-state bank, as defined in § 1101(a) of Title 5 of the Delaware Code) or trust company with an estimated tax liability in excess of \$10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0002.

Name of Banking Organization or Trust Company

Location

List corporation(s) electing under Section 1101(f) and attach hereto separate reports of estimated income for each Electing Corporation (include Federal Employer Identification number).

Rounded to the
nearest thousand \$

- | | |
|--|-------|
| 1. Estimated net operating income before taxes (including income of Electing Corporations) | _____ |
| 2. Less: Adjustment for income from an insurance division or subsidiary | _____ |
| 3. Subtotal | _____ |
| 4. Less: | |
| (a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other | _____ |

PROPOSED REGULATIONS

applicable Delaware law, which is otherwise subject to income taxation under Delaware law.

(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5, Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign branch or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes

“income from sources without the United States” as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto.

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto.

(f) Gross income from international banking facilities less any attributable expenses or other deductions.

(g) Interest income from obligations of volunteer fire companies.

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code.

5. Total deductions (add lines 4(a)-(h))

6. Estimated total income before taxes (subtract item 5 from item 3)

7. Estimated taxable income (calculated to nearest dollar) x .56

8. Estimated subtotal annual franchise tax liability (before tax credits)

Calculation Table:

First	\$20,000,000 of item 7 at 8.7%	_____
Next	\$ 5,000,000 of item 7 at 6.7%	_____
Next	\$ 5,000,000 of item 7 at 4.7%	_____
Next	\$620,000,000 of item 7 at 2.7%	_____
	Amount of item 7 over \$650,000,000 at 1.7%	_____

Subtotal

9. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto)

PROPOSED REGULATIONS

Regulation No.: 5.1101etal.0004
Proposed

FINAL FRANCHISE TAX REPORT
(5 Del. C., Chapter 11)

10. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) _____

11. Estimated total annual franchise tax liability (subtract items 9 & 10 from item 8) \$ _____

12. Payment structure and dates \$ Amount

June 1	40% of estimate due	_____
September 1	20% of estimate due	_____
December 1	20% of estimate due	_____
March 1 (of succeeding year)		_____
Final payment		_____

This report shall be completed by all banking organizations (other than resulting branches in this State of out-of-state banks, as defined in § 1101(a) of Title 5 of the Delaware Code) and trust companies and submitted to the Office of the State Bank Commissioner on or before January 30; provided, however, that a banking organization entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall submit this report to the Office of the State Bank Commissioner on or before February 15. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0002.

I, the undersigned officer, hereby certify that this report, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

Name of Banking Organization or Trust Company

Location

List corporation(s) electing under Section 1101(f) and attach hereto separate reports of estimated income for each Electing Corporation (include Federal Employer Identification number).

Date	Signature of President, Treasurer or Other Proper Officer	Title
------	---	-------

Print Name	Phone No.
------------	-----------

Print Address

Rounded to the
nearest thousand \$

1. Net operating income before taxes (including income of Electing Corporations) _____

2. Less: Adjustment for income from an insurance division or subsidiary (report of income attached hereto). _____

3. Subtotal _____

4. Less:
(a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United

States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law.

(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5, Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign branch or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before

taxes in the case of a subsidiary engaged in a securities business.

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto.

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto.

(f) Gross income from international banking facilities less any attributable expenses or other deductions.

(g) Interest income from obligations of volunteer fire companies.

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code.

5. Total deductions (add lines 4(a)-(h))

6. Total income before taxes (subtract item 5 from item 3)

7. Taxable income (calculated to nearest dollar) x .56

8. Subtotal franchise tax liability (before tax credits)

Calculation Table:

First \$20,000,000 of item 7 at 8.7%	
Next \$ 5,000,000 of item 7 at 6.7%	
Next \$ 5,000,000 of item 7 at 4.7%	
Next \$620,000,000 of item 7 at 2.7%	
Amount of item 7 over \$650,000,000 at 1.7%	
Subtotal	

9. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto)

PROPOSED REGULATIONS

10. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) _____

11. Total annual franchise tax liability (subtract items 9 & 10 from item 8) \$ _____

12. Less: Estimated tax payments
 a. June 1 payment _____
 b. September 1 payment _____
 c. December 1 payment _____
 d. Total estimated tax payments (add items 12a, 12b, and 12c) _____

13. March 1 final tax payment (subtract item 12d from item 11) _____

14. Additional tax due to underpayment of estimated franchise tax or installment (if applicable) _____

15. Penalty for late payment of final franchise tax (if applicable) _____

16. Total final tax payment (add items 13, 14 and 15) _____

I, the undersigned officer, hereby certify that this report, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

 Date Signature of President,
 Treasurer or Other
 Proper Officer

 Print Name Phone No.

Print Address

Regulation No.: 5.1101etal.0005
 Proposed

**INSTRUCTIONS FOR PREPARATION OF
 FRANCHISE TAX FOR FEDERAL SAVINGS BANKS
 NOT HEADQUARTERED IN THIS STATE BUT
 MAINTAINING BRANCHES IN THIS STATE
 (5 Del. C., Chapter 11)**

I. This regulation applies only to federal savings banks not headquartered in this State but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0006 and 5.1101etal.0007, respectively.

II. Definitions
 A. "Net operating income before taxes" means the total net income calculated in accordance with Section VIII of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

III. Estimated Franchise Tax
 A federal savings bank not headquartered in this State whose franchise tax liability for the current year is anticipated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0006;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes of the branch or branches located in Delaware;

2. Less the interest income from obligations of volunteer fire companies;

3. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

4. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with

Regulation No. 5.1105.0008.

5. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

- 40% due on or before June 1 of the current year;
- 20% due on or before September 1 of the current year;
- 20% due on or before December 1 of the current year.

IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income of the Delaware branch or branches of the federal savings bank not headquartered in this State and the final franchise tax report shall be filed with the Office of the State Bank Commissioner on or before January 30 each year;

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in section IV. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0007.

C. Calculation of final tax. The total final franchise tax shall be calculated as follows:

- 1. The net operating income before taxes of the branch or branches located in Delaware;
- 2. Less the interest income from obligations of volunteer fire companies;
- 3. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;
- 4. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

5. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

V. Payment of Final Franchise Tax

A. Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

B. The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise

tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

A. In the case of any underpayment of estimated franchise tax or installment of estimated franchise tax required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;

2. The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the federal savings bank not headquartered in this State for the preceding taxable year; provided, however, that this paragraph C shall not apply if the federal savings bank not headquartered in this state, or any predecessor thereof, had taxable income of \$200,000 or more for any of the three taxable years immediately preceding the taxable year involved.

VII. Penalty - Late Payment of Estimated Franchise Tax or Installment or Final Franchise Tax

In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax a penalty in an amount

determined at the rate of 0.05 percent per day until required payment is made.

VIII. Separate Accounting by Delaware Branches

A. Books and Records. Each branch in this State of a federal savings bank not headquartered in this State must keep a separate set of books and records as if it were an entity separate from the rest of the federal savings bank that operates such Delaware branch. These books and records must reflect the following items attributable to the Delaware branch:

1. Assets and the credit equivalent amounts of off-balance sheet items used in computing the risk-based capital ratio under 12 C.F.R. part 567;
2. Liabilities;
3. Income and gain;
4. Expense and loss.

B. Consolidation of Delaware Branches. If a federal savings bank not headquartered in this State operates more than one Delaware branch, it may treat all Delaware branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

C. Determining Assets Attributable to a Delaware Branch

1. General Principle of Asset Attribution. The general principle will be to attribute assets to a Delaware branch if personnel at the Delaware branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

2. Loans and Finance Leases. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

3. Stocks and Debt Securities. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

4. Foreign Exchange Contracts and Futures Options, Swaps, and Similar Assets. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a

Delaware branch if personnel at the Delaware branch actively and materially participated in the licensing of such asset.

6. Currency. U.S. and foreign currency will be attributed to a Delaware branch if physically stored at the Delaware branch.

7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a Delaware branch if they are located at or are part of the physical facility of a Delaware branch.

8. Other Business Assets. Other business assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

9. Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in 12 C.F.R. part 567 not otherwise addressed above (e.g., guarantees, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending federal savings bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities). These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

D. Liabilities Attributable to a Delaware Branch.

The liabilities attributable to a Delaware branch shall be the deposits recorded on the books of the Delaware branch plus any other legally enforceable obligations of the Delaware branch recorded on the books of the Delaware branch or the federal savings bank not headquartered in this State.

E. Income of a Delaware Branch.

1. Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a Delaware branch in accordance with the rules in subsection C above will be attributed to the Delaware branch.

2. Income from Fees. Fee income not attributed to a Delaware branch in accordance with subsection 1 above will be attributed to the Delaware branch depending on the type of fee income.

a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the Delaware branch if the letters of credit, travelers

checks, or money orders are issued by the Delaware branch, except to the extent that subsection 1 above requires otherwise.

b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the Delaware branch if the services generating the fees are performed by personnel at the Delaware branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

F. Determining the Expenses of a Delaware Branch.

1. Interest. The amount of interest expense of a Delaware branch shall be the actual interest booked by the Delaware branch, which should reflect market rates.

2. Direct Expenses of a Delaware Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the Delaware branch are direct expenses of such Delaware branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the Delaware branch, some taxes, insurance, the cost of supplies and fees for services rendered to the Delaware branch.

3. Indirect Expenses of a Delaware Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a Delaware branch must be allocated between the Delaware branch and the rest of the federal savings bank operating the Delaware branch. If the federal savings bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the federal savings bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the Delaware branch to the assets of the entire federal savings bank or based on the ratio of gross income of the Delaware branch to gross income of the entire federal savings bank.

Regulation No.: 5.1101etal.0006
Proposed

**ESTIMATED FRANCHISE TAX REPORT
FEDERAL SAVINGS BANKS NOT
HEADQUARTERED IN DELAWARE
(5 Del. C., Chapter 11)**

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State with an estimated tax liability in excess of \$10,000 in any given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0005.

Name of Federal Savings Bank

Location

Rounded to the
nearest thousand \$

1. Estimated net operating income before taxes	_____
2. Less: Interest income from obligations of volunteer fire companies	_____
3. Estimated taxable income before taxes (subtract item 2 from item 1)	_____
4. Estimated subtotal annual franchise tax liability (before tax credits)	_____
Calculation Table:	
First \$20,000,000 of item 3 at 8.7%	_____
Next \$ 5,000,000 of item 3 at 6.7%	_____
Next \$ 5,000,000 of item 3 at 4.7%	_____
Next \$620,000,000 of item 3 at 2.7%	_____
Amount of item 3 over \$650,000,000 at 1.7%	_____
Subtotal	_____
5. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto)	_____

PROPOSED REGULATIONS

6. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) _____

Regulation No.: 5.1101etal.0007
Proposed

**FINAL FRANCHISE TAX REPORT
FEDERAL SAVINGS BANKS NOT
HEADQUARTERED IN DELAWARE
(5 Del. C., Chapter 11)**

7. Estimated total annual franchise tax liability (subtract items 5 and 6 from item 4) _____

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State and submitted to the Office of the State Bank Commissioner on or before January 30. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0005.

8. Payment Structure and Dates \$ Amount

 June 1 40% of estimate due _____

 September 1 20% of estimate due _____

 December 1 20% of estimate due _____

 March 1 (of succeeding year) _____

 Final payment _____

Name of Federal Savings Bank

Location

I, the undersigned officer, hereby certify that this report, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

Rounded to the
nearest thousand \$

Date	Signature of President, Treasurer or Other Proper Officer	Title
	Print Name	Phone No.
	Print Address	

1. Net Operating Income Before Taxes verifiable by documentary evidence _____

2. Less: Interest income from obligations of volunteer fire companies _____

3. Taxable income before taxes (subtract item 2 from item 1) _____

4. Subtotal annual franchise tax liability (before tax credits) _____

Calculation Table:

First \$20,000,000 of item 3 at 8.7%	_____
Next \$ 5,000,000 of item 3 at 6.7%	_____
Next \$ 5,000,000 of item 3 at 4.7%	_____
Next \$620,000,000 of item 3 at 2.7%	_____
Amount of item 3 over \$650,000,000 at 1.7%	_____

Subtotal _____

5. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto) _____

6. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit

PROPOSED REGULATIONS

reporting requirements, completed worksheet attached hereto) _____

Regulation No.: 5.1105.0008
Proposed

7. Total annual franchise tax liability (subtract items 5 and 6 from item 4) _____

**INSTRUCTIONS FOR CALCULATION OF
EMPLOYMENT TAX CREDITS
(5 Del. C. §1105)**

8. Less: Estimated tax payments
a. June 1 payment \$ _____
b. September 1 payment _____
c. December 1 payment _____
d. Total estimated tax payments (add items 8a, 8b and 8c) _____

This regulation provides for the calculation of employment tax credits for the years 1997 through 2001 for entities subject to the bank franchise tax. These employment tax credits are provided in Section 1105(d), and subject to requirements in Sections 1105(e) and 1105(f), of Title 5 of the Delaware Code.

9. March 1 final tax payment (subtract item 8d from item 7) _____

I. Definitions

10. Additional tax due to underpayment of estimated franchise tax or installment (if applicable) _____

A. "Base year" means calendar year 1996.

11. Penalty for late payment of final franchise tax (if applicable) _____

B. "Full-time employment" means employment of any individual for at least 35 hours per week, not including absences excused by reason of vacations, illness, holidays or similar causes.

12. Total final tax payment (add items 9, 10 and 11) \$ _____

C. "Health care benefits" means financial protection against the medical care cost arising from disease and accidental bodily injury (for which the employer pays at least 50%) for workers employed by the employer for a continuous period of 6 months or more.

I, the undersigned officer, hereby certify that this report, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

D. "New investment" includes (1) machinery, (2) equipment and (3) the cost of land and improvements to land, provided that the new investment is placed into service within Delaware after December 1996 and was not used by any person at any time within the one year period ending on the date the taxpayer placed such property in service in the conduct of the taxpayer's business. If the new investment is leased or subleased by the taxpayer, the amount of the new investment shall be deemed to be eight times the net annual rent paid or incurred by the taxpayer. The net annual rent represents the gross rent paid or incurred by the taxpayer during the taxable year, less any gross rental income received by the taxpayer from sublessees of any portion of the facility during the taxable year.

Date Signature of President,
 Treasurer or Other
 Proper Officer

Title

Print Name Phone No.

Print Address

E. "Qualified employee" means an employee engaged in regular full-time employment, for whom the taxpayer provides health care benefits, who has been employed in Delaware by the taxpayer for a continuous period of at least 6 months and who was not employed at the same facility in substantially the same capacity by a different employer during all or part of the base year.

PROPOSED REGULATIONS

II. Employment Tax Credit

A tax credit for the current tax year shall be allowed against the tax imposed under subsection 1105(a) of Title 5 of the Delaware Code. The amount of the credit shall be \$400 for each new qualified employee in excess of 50 qualified employees above the number of employees employed by the taxpayer in full-time employment during the base year.

III. New Investment Required

The employment tax credit provided above may not be claimed until the taxpayer has made new investments of at least \$15,000 per qualified employee in excess of the numbers of employees employed by the taxpayer in full-time employment during the base year.

IV. Annual Limit On Credit

The amount of the employment tax credit allowable for the current tax year (including any credit carried forward as provided below) shall not exceed 50 percent of the amount of tax imposed on the taxpayer under Section 1105(a) of Title 5 of the Delaware Code for the current tax year.

V. Applicable Years

The employment tax credit provided above may be earned and applied only in tax years beginning after December 31, 1996 and ending before January 1, 2002, subject to the credit carryover described below.

VI. Credit Carryover

The amount of the employment tax credit for any taxable year that is not allowable for such taxable year solely as a result of the limitation described above in Section IV shall be a credit carryover to each of the succeeding 9 years in the manner described in Section 2011(f) of Title 30 of the Delaware Code.

VII. Calculation Worksheet

The employment tax credit provided above shall be calculated on the accompanying Employment Tax Credit Calculation Worksheet, which shall be submitted with the taxpayer's tax report.

EMPLOYMENT TAX CREDIT CALCULATION WORKSHEET FOR YEARS 1997 - 2001

THE FOLLOWING ELIGIBILITY REQUIREMENTS APPLY TO THE EMPLOYMENT TAX CREDIT:

- THE NUMBER OF QUALIFIED EMPLOYEES MUST HAVE INCREASED BY AT LEAST 50 SINCE BASE YEAR 1996.

- YOUR ORGANIZATION MUST HAVE MADE AT LEAST \$750,000 IN NEW INVESTMENTS WITHIN DELAWARE AFTER 12/96.

A. EMPLOYMENT REQUIREMENT

1. TOTAL QUALIFIED EMPLOYEES AT YEAR END	_____
2. LESS NUMBER OF FULL-TIME EMPLOYEES WORKING DURING BASE YEAR	_____
3. SUBTOTAL	_____
4. LESS MINIMUM NEW QUALIFIED EMPLOYEE THRESHOLD	(50) _____
5. MAXIMUM QUALIFIED EMPLOYEES	_____

B. REQUIRED INVESTMENT

6. NEW INVESTMENT FROM 1/1/97 TO CURRENT TAX YEAR	_____
7. LESS MINIMUM NEW INVESTMENT FOR FIRST 50 EMPLOYEES (\$750,000)	_____
8. SUBTOTAL	_____
9. DIVIDED BY \$15,000 (ROUNDED DOWN TO THE NEXT LOWEST WHOLE NUMBER)	_____
10. ELIGIBLE QUALIFIED EMPLOYEES (USE THE LESSER OF LINE 5 OR 9)	_____

C. CREDIT CALCULATION

11. EMPLOYMENT TAX CREDIT FOR CURRENT TAX YEAR (\$400 X LINE 10)	_____
12. PRIOR YEARS' TAX CREDIT CARRYOVER (IF APPLICABLE)	_____
13. TOTAL TAX CREDIT AVAILABLE	_____

D. CREDIT ALLOWED

14. CURRENT YEAR FRANCHISE TAX LIABILITY PURSUANT TO CHAPTER 11 OF TITLE 5 _____

15. MAXIMUM TAX CREDIT ALLOWED (50% OF LINE 14) _____

E. TOTAL TAX CREDIT TAKEN (LESSER OF LINE 13 OR LINE 15) _____

Regulation No.: 5.1101etal.0009
Proposed

**INSTRUCTIONS FOR PREPARATION OF
FRANCHISE TAX FOR RESULTING BRANCHES IN
THIS STATE OF OUT-OF-STATE BANKS
(5 Del. C., Chapter 11)**

I. This regulation applies only to resulting branches in this State of out-of-state banks. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0010 and 5.1101etal.0011, respectively.

II. Definitions

A. "Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

B. "Banking organization" means:

1. A bank or bank and trust company organized and existing under the laws of this State;
2. A national bank, including a federal savings bank, with its principal office in this State;
3. An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq., or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System, and maintaining an office in this State;
4. A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;
5. A foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5; or
6. A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-

state bank.

C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del. C. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
2. The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
3. The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
4. The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
5. The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to a banking organization described in subsection B.3 above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
6. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

D. "International Banking Facility" means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

E. "National Bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.

F. "Net Operating Income Before Taxes" means the total net income calculated in accordance with Section IX of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

G. "Out-of-state bank" has the same meaning as in §795 of Title 5 of the Delaware Code, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under

Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

H. "Resulting branch in this State of an out-of-state bank" has the same meaning as in §1101(a) of Title 5 of the Delaware Code, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the Delaware Code, and, in addition, a branch office in this State of an out-of-state bank.

I. "Securities Business" means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

J. "Trust Company" means a trust company or corporation doing a trust company business which has a principal place of business in this State.

III. Estimated Franchise Tax

A resulting branch or branches in this State of an out-of-state bank whose franchise tax liability for the current year, on a consolidated basis, is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated tax.

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0010;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Increased by the resulting branch imputed capital addback for the preceding income year (calculated in accordance with Section IV.C.2. of this Regulation).

3. Adjusted for any estimated income from an

insurance division or subsidiary;

4. Less any deductions set forth in 5 Del. C. §1101;

5. Multiplied by .56 to arrive at estimated taxable income;

6. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

7. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

8. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

40% due on or before June 1 of the current taxable year;

20% due on or before September 1 of the current taxable year;

20% due on or before December 1 of the current taxable year.

IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income, on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank and the final franchise tax report, setting forth the "taxable income", on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a resulting branch of an out-of-state bank that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection IV.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0011.

C. Calculation of final tax. The total final franchise tax shall be calculated as follows:

1. The net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Increased by the resulting branch imputed capital addback, which is the product of the greater of the products determined under subparagraphs (a) and (b) of this subsection (2) and the average of the monthly short-term applicable federal rates, as determined under §1274(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1274(d)), or any successor provisions thereto, and as published each month in the Internal Revenue Bulletin, for the twelve-month period preceding the date on which the resulting branch imputed capital addback is being determined.

a. The product of (i) the deposits recorded on the books of the resulting branch in this State, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed "adequately capitalized" pursuant to 12 C.F.R. Part 325.

b. The product of (i) the value of that portion of the total risk-weighted assets (as defined in 12 C.F.R. Part 325) of the out-of-state bank operating the resulting branch in this State that are attributable to such resulting branch in accordance with section IX.C of this regulation, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed 'adequately capitalized' pursuant to 12 C.F.R. Part 325.

3. Adjusted for any income from an insurance division or subsidiary;

4. Less any deduction set forth in 5 Del. C. §1101;

5. Multiplied by .56 to arrive at "taxable income";

6. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;

7. The subtotal annual franchise tax shall be adjusted for tax credits pursuant to 5 Del.C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

8. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

V. Payment of Final Franchise Tax

A. Taxes owed for the previous calendar year are

due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

B. The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

A. In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;

2. The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.

B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the resulting branch(es) of the out-of-state bank for the preceding taxable year; provided, however, that this paragraph C shall not apply if the out-of-state bank, or any predecessor thereof, had taxable income of \$200,000 or more for any of the three taxable years immediately preceding the taxable year involved.

D. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated

franchise tax or any installment shall not be imposed if the addition is attributable to the difference between the imputed capital addback for the current and preceding income years.

VII. Penalty - Late Payment of Final Franchise Tax

In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a "subsidiary corporation" of the resulting branch(es) of the out-of-state bank pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for the resulting branch(es) of the out-of-state bank whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the Final Franchise Tax Report due January 30 or February 15, as applicable.

IX. Separate Accounting by Resulting Branches

A. Books and Records. Each resulting branch must keep a separate set of books and records as if it were an entity separate from the rest of the bank that operates such resulting branch. These books and records must reflect the following items attributable to the resulting branch:

1. Assets and the credit equivalent amounts of off-balance sheet items used in computing the risk-based capital ratio under 12 C.F.R. part 325;
2. Liabilities;
3. Income and gain;
4. Expense and loss.

B. Consolidation of Delaware Branches. If a bank operates more than one resulting branch, it may treat all resulting branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

C. Determining Assets Attributable to a Resulting Branch

1. General Principle of Asset Attribution. The general principle will be to attribute assets to a resulting branch if personnel at the resulting branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

2. Loans and Finance Leases. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

3. Stocks and Debt Securities. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

4. Foreign Exchange Contracts and Futures, Options, Swaps, and Similar Assets. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the licensing of such asset.

6. Currency. U.S. and foreign currency will be attributed to a resulting branch if physically stored at the resulting branch.

7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a resulting branch if they are located at or are part of the physical facility of a resulting branch.

8. Other Business Assets. Other business assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

9. Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in Appendix A to 12 C.F.R. part 325 (the "Appendix") not otherwise addressed above (e.g., guarantees, surety contracts, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities, note issuance facilities described in the Appendix). These

assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

D. Liabilities Attributable to a Resulting Branch. The liabilities attributable to a resulting branch shall be the deposits recorded on the books of the resulting branch plus any other legally enforceable obligations of the resulting branch recorded on the books of the resulting branch or its parent.

E. Income of a Resulting Branch.

1. Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a resulting branch in accordance with the rules in section IX.C above will be attributed to the resulting branch.

2. Income from Fees. Fee income not attributed to a resulting branch in accordance with 1. above will be attributed to the resulting branch depending on the type of fee income.

a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the resulting branch if the letters of credit, travelers checks, or money orders are issued by the resulting branch, except to the extent that 1. requires otherwise.

b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the resulting branch if the services generating the fees are performed by personnel at the resulting branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

F. Determining the Expenses of a Resulting Branch.

1. Interest. The amount of interest expense of a resulting branch shall be the actual interest booked by the resulting branch, which should reflect market rates.

2. Direct Expenses of a Resulting Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the resulting branch are direct expenses of such resulting branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the resulting branch, some taxes, insurance, the cost of supplies and fees for services rendered to the resulting branch.

3. Indirect Expenses of a Resulting Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions,

assets, liabilities, or other activities of a resulting branch must be allocated between the resulting branch and the rest of the bank operating the resulting branch. If the bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the resulting branch to the assets of the entire bank or based on the ratio of gross income of the resulting branch to gross income of the entire bank.

Regulation No.: 5.1101etal.0010
Proposed

**ESTIMATED FRANCHISE TAX REPORT FOR
RESULTING BRANCHES IN THIS STATE OF OUT-
OF-STATE BANKS
(5 Del. C., Chapter 11)**

This report shall be completed by the resulting branch(es) in this State of an out of state bank with an estimated tax liability in excess of \$10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0009.

Name of Out-of-State Bank

Location

List corporation(s) electing under Section 1101(f) and attach hereto separate reports of estimated income for each Electing Corporation (include Federal Employer Identification number).

Rounded to the
nearest thousand \$

1. Estimated net operating income before taxes (including income of Electing Corporations) _____

PROPOSED REGULATIONS

<p>2. Plus: Resulting branch imputed capital addback for the preceding income year _____</p>	<p>United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign bank or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business. _____</p>
<p>3. Less: Adjustment for income from an insurance division or subsidiary _____</p>	<p>(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto. _____</p>
<p>4. Subtotal _____</p>	<p>(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto. _____</p>
<p>5. Less:</p> <p style="padding-left: 20px;">(a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law. _____</p> <p style="padding-left: 20px;">(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5 of the Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business. _____</p> <p style="padding-left: 20px;">(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the</p>	<p>(f) Gross income from international banking facilities less any attributable expenses or other deductions. _____</p> <p>(g) Interest income from obligations of volunteer fire companies. _____</p> <p>(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code. _____</p>
<p>6. Total deductions (add lines 5(a)-(h)) _____</p>	<p>6. Total deductions (add lines 5(a)-(h)) _____</p>
<p>7. Estimated total income before taxes (subtract item 6 from item 4) _____</p>	<p>7. Estimated total income before taxes (subtract item 6 from item 4) _____</p>
<p>8. Estimated taxable income (calculated to nearest dollar) _____</p>	<p>8. Estimated taxable income (calculated to nearest dollar) _____</p> <p style="text-align: right;">x .56</p>

PROPOSED REGULATIONS

9. Estimated subtotal annual franchise tax liability (before tax credits)
 Calculation Table:

First \$20,000,000 of item 8 at 8.7% _____
 Next \$ 5,000,000 of item 8 at 6.7% _____
 Next \$ 5,000,000 of item 8 at 4.7% _____
 Next \$620,000,000 of item 8 at 2.7% _____
 Amount of item 8 over \$650,000,000 at 1.7% _____
 Subtotal _____

Regulation No.: 5.1101etal.0011
 Proposed

**FINAL FRANCHISE TAX REPORT
 FOR RESULTING BRANCHES IN THIS STATE
 OF OUT-OF-STATE BANKS
 (5 Del. C., Chapter 11)**

This report shall be completed by all resulting branch(es) in this state of out-of-state banks and submitted to the Office of the State Bank Commissioner on or before January 30; provided, however, that a resulting branch of an out-of-state bank that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall submit this report to the Office of the State Bank Commissioner on or before February 15. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0009.

10. Less: Total employment tax credits (calculated in accordance with Regulation No. 51105.0008, completed worksheet attached hereto) _____

11. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements) _____

 Name of Out-of-State Bank

 Location

12. Estimated total annual franchise tax liability (subtract items 10 and 11 from item 9) \$ _____

List corporation(s) electing under Section 1101(f) and attach hereto separate reports of income for each Electing Corporation (include Federal Employer Identification number).

13. Payment structure and dates \$ Amount

June 1 40% of estimate due _____
 September 1 20% of estimate due _____
 December 1 20% of estimate due _____
 March 1 (of succeeding year) _____
 Final payment _____

Rounded to the nearest thousand \$

I, the undersigned officer, hereby certify that this report, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

1. Net operating income before taxes (including income of Electing Corporations) _____

2. Plus: Resulting branch imputed capital addback _____

3. Less: Adjustment for income from an insurance division or subsidiary (report of income attached hereto). _____

4. Subtotal _____

5. Less:
 (a) Net operating income before

Date	Signature of President, Treasurer, or Other Proper Officer	Title
	Print Name	Phone No.
	Print Address	

PROPOSED REGULATIONS

taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law.

(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5 of the Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign branch or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the

income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto.

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto.

(f) Gross income from international banking facilities less any attributable expenses or other deductions.

(g) Interest income from obligations of volunteer fire companies.

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code.

6. Total deductions (add lines 5(a)-(h))

7. Total income before taxes (subtract item 6 from item 4)

x .56

8. Taxable income (calculated to nearest dollar)

9. Subtotal annual franchise tax liability (before tax credits)

Calculation Table:

First \$20,000,000 of item 8 at 8.7%

Next \$ 5,000,000 of item 8 at 6.7%

Next \$ 5,000,000 of item 8 at 4.7%

Next \$620,000,000 of item 8 at 2.7%

Amount of item 8 over \$650,000,000 at 1.7%

Subtotal

PROPOSED REGULATIONS

10. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto) _____

11. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) _____

12. Total annual franchise tax liability (subtract items 10 and 11 from item 9) \$ _____

13. Less: Estimated tax payments
a. June 1 payment \$ _____
b. September 1 payment _____
c. December 1 payment _____
d. Total estimated tax payments (add items 13a, 13b and 13c) _____

14. March 1 final tax payment (subtract item 13d from item 12) _____

15. Additional tax due to underpayment of estimated franchise tax or installment (if applicable) _____

16. Penalty for late payment of final franchise tax (if applicable) _____

17. Total final tax payment (add items 14, 15 and 16) \$ _____

I, the undersigned officer, hereby certify that this report, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

_____	_____	_____
Date	Signature of President, Treasurer or Other Proper Officer	Title
	_____	_____
	Print Name	Phone No.

	Print Address	

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

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

DELAWARE STATE LOTTERY OFFICE

The Commission proposes these amendments pursuant to 29 Del.C. sections 4805(a), 4805 (a)(24)(f), 4805(25) and 29 Del.C. section 10115. The proposed rules would require employee organization seeking to represent video lottery employees to register with the Lottery Office. The employee organization and its key employees would be subject to a registration and background investigation process. The new rules would also promulgate procedures for background investigations of new Lottery employees in positions involving access to sales agents or video lottery agents. The proposed Rules will be considered by the Lottery at a public hearing on September 23, 1997 at 3:00 p.m. at the DNREC Auditorium, 89 Kings Highway, Dover, Delaware. Copies of the proposed rules may be obtained from the Lottery Office. Comments may be submitted in writing to the Lottery Office on or before 4:00 p.m. on September 30, 1997 and/or in person at the hearing. The Lottery Office is located at 1575 McKee Road, Suite 102, Dover, Delaware 19901 and the phone number is (302)739-5291.

DELAWARE STATE LOTTERY OFFICE VIDEO LOTTERY EMPLOYEE ORGANIZATION AND LOTTERY EMPLOYEE REGULATIONS

1.0 Introduction

These regulations are authorized pursuant to section 4805 of Title 29 of the Delaware Code. Video lottery operations in the State of Delaware are strictly regulated by the Delaware State Lottery Office through the powers delegated to the Director of the Lottery pursuant to Title 29 of the Delaware Code.

2.0 Definitions

The following words shall be accorded these meanings for purposes of these Regulations:

“Agency” - the Delaware State Lottery Office created pursuant to 29 Del. C. chapter 48.

“agent” or “licensed agent” or “licensed video lottery agent” - any person licensed by the Director of the Agency to conduct licensed video lottery operations.

“applicant” - any person applying for a license authorized under these regulations.

“background investigations” - the security, fitness, and background checks conducted of an applicant.

“Director” - the Director of the Delaware State Lottery Office as established by Title 29 of the Delaware Code.

“employee organization” - any organization that admits or seeks to admit to membership employees of a Delaware video lottery agent and which has a purpose the representation of such employees in collective bargaining, grievance representation, labor disputes, salaries, wages, rates of pay, hours of employment, or conditions of work.

“key employee” - any officer and any employee of an employee organization who has direct involvement with or who exercises authority, discretion or influence in the representation of employees of a Delaware video lottery agent in collective bargaining, grievance representation, labor disputes, salaries, wages, rates of pay, hours of employment or conditions of work.

“licensee” - any person authorized by the Director to participate in video lottery operations.

“Lottery” - the public gaming system or games established and operated by the Delaware State Lottery Office.

“pension or welfare system maintained by an employee organization” - means any pension or welfare system created or established by an employee organization or one or more of the trustees or one or more members of the governing body of which is selected or appointed by the employee organization.

“pension system” - any plan, fund or program which is maintained by an employee organization, or by an employee organization and an employer, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

“person” - an individual, general partnership, limited partnership, corporation or other legal entity.

“registrant” - any employee organization or key employee applying for registration under these regulations.

“welfare system” - any plan, fund or program which is maintained by an employee organization or by an employee organization and an employer, to the extent that such plan, fund or program was established or is maintained for the purposes of providing for its participants, or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment, or vacation benefits, apprenticeship, or other training programs, or day care centers, scholarship funds, or prepaid legal services, or any other such benefit other than pension on retirement or death, and insurance to provide such pensions.

“video lottery” - any lottery conducted with a video lottery machine or linked video lottery machines with an aggregate progression prize or prizes.

3.0 Registration of Employee Organizations

3.1 Any employee organization representing or seeking to represent employees employed by a Delaware video lottery agent shall register with the Director of the Agency. An employee organization shall be required to file a registration application with the Agency within ten (10) business days after it secures a signed authorization card from any employee who is employed by a Delaware video lottery agent. Any registration statement filed by an employee organization after the signature of an authorization card but prior to the employee organization’s petition for election shall not be subject to disclosure by the Agency to any video lottery agent.

3.2 The employee organization shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the employee organization to provide the following, without limitation:

- (1) The name of the registrant as shown on its charter or in its constitution;
- (2) The current and former business addresses of the registrant, including the address of any office where matters pertaining to employees of a video lottery agent will be conducted;
- (3) The names of all persons principally involved in the original creation of the employee organization;
- (4) The name and address of: (i) all affiliates which are either a parent body or any superior organization with any right or ability to control, supervise, discipline or set policy for this organization; (ii) all affiliates which are chartered by the same parent body as this organization; (iii) all affiliates which are governed by the same constitution or bylaws.
- (5) The nature of the actual or probable

involvement of any affiliate which represents or is seeking to represent employees who are employed by a video lottery agent, or which is involved or seeking to be involved in the control or direction of such representation.

(6) Information on any pension or welfare system maintained by the employee organization that hold any direct financial interest in any video lottery agent or technology provider.

(7) Disclosure of pension and welfare systems maintained by the employee organization and the names and titles of each officer or agent responsible for management of the pension or welfare system.

(8) With respect to all employee organization personnel:

(a) Full name, including any known alias or nickname;

(b) Designation of all key labor employees in the employee organization;

(c) Title or other designation in the employee organization;

(d) A brief description of the duties and activities of each individual;

(e) The business address and telephone number of each individual; and,

(f) Annual compensation including salary, allowances, and other direct or indirect disbursements (including reimbursed expenses).

(9) Any other information the Director determines is needed to determine the competence, honesty, and integrity of the applicant as required by Title 29 of the Delaware Code.

(10) A written certification under oath in a form signed by the local employee organization president and secretary-treasurer, and chief official of the local employee organization if his title is other than president or secretary-treasurer, that the information contained on the application is complete and accurate.

(11) A statement whether the employee organization has ever been found by any court or governmental agency to be unsuitable to represent employees under a federal or state labor statute.

(12) A list of any litigation involving the employee organization over the last five years.

(13) A Release Authorization directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the registrant as requested by the Agency or the Delaware State Police.

(14) A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the registrant from any disclosure or publication of information acquired during the investigation process.

3.3 To the extent, if any, that the information supplied in the registration or otherwise supplied by the employee organization or on the employee organization's behalf, becomes inaccurate or incomplete, the employee organization shall so notify the Agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to correct the inaccuracy or incompleteness of the information.

3.4 Upon request of the Agency, the employee organization shall supplement the information provided in the registration form as deemed necessary by the Agency.

3.5 All registration statements filed under these Regulations shall be valid for a one-year period and a renewed registration form or an updated supplemental registration form must be filed annually. The employee organization filing the registration form is under a continuing duty to promptly notify the Director of the Agency of any changes in disclosed information.

4.0 Registration of Key Employees of Employee Organizations

4.1 Any key employee of an employee organization shall be required to register with the Agency at the same time as the application for registration is filed under section 3.0 of these Regulations, or within thirty (30) days after the date on which such individual is elected, appointed, or hired, whichever is later.

4.2 The key employee shall register with the Agency on registration forms supplied by the Agency. Registration forms shall require the key employee to provide the following, without limitation:

(1) Name, including any aliases or nicknames;

(2) Title or position with the employee organization;

(3) Date and place of birth;

(4) Physical description;

(5) Current address and residence history;

(6) Social security number;

(7) Citizenship and, if applicable, information concerning alien status;

(8) Telephone number at current place of employment;

(9) Employment history, including all positions held with a labor organization, union or affiliate, whether or not compensated;

(10) Excluding minor traffic offenses, a detailed description of the following areas of criminal conduct, if any, including whether the crime involved is

denominated a felony or a misdemeanor:

- (i) Any convictions;
- (ii) Any criminal offenses for which he was charged, indicted or summoned to answer, but for which he was not convicted;
- (iii) Any criminal offenses for which he received a pardon;

(11) Whether he has ever been denied a business, liquor, gaming, or professional license, or has had such license revoked;

(12) Whether he has ever been found by any court or governmental agency to be unsuitable to be affiliated with a labor organization and if so, all details relating thereto;

(13) Whether he has ever been subpoenaed as a witness before any grand jury, legislative body, administrative body, or crime commission and if so, all details relating thereto.

(14) All key employee applicants will be required to submit a complete set of fingerprints to the Delaware State Bureau of Identification along with the standard release information.

(15) Any other information the Director determines is needed to determine the competence, honesty, and integrity of the applicant as required by Title 29 of the Delaware Code.

(16) A written certification under oath by the applicant that the information contained on the application is complete and accurate.

(17) A Release Authorization directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Agency or the Delaware State Police.

(18) A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the applicant from any disclosure or publication of information acquired during the investigation process.

4.3 To the extent, if any, that the information supplied in the application form, or otherwise supplied by the applicant, becomes inaccurate or incomplete, the applicant shall so notify the Agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to correct the inaccuracy or incompleteness of the information.

4.4 Upon request of the Agency, the applicant shall supplement the information provided in the application form as deemed necessary by the Agency.

4.5 All registration forms filed under these

Regulations shall be valid for a one-year period and a renewed registration form or an updated supplemental registration form must be filed annually. The entity or individual filing such form is under a continuing duty to promptly notify the Director of any changes in disclosed information.

5.0 Procedure for Review of Registration Applications

5.1 All registration statements filed under these Regulations shall be valid for a one year period and a renewed registration must be filed annually. The entity or individual filing such form is under a continuing duty to promptly notify the Director of any changes in disclosed information. The Delaware State Police shall conduct all background investigations required for by these Regulations and 29 Del. C. section 4805(a)(24)(a).

5.2 All applications for registration shall be deemed approved unless the Director notifies the applicant within sixty (60) days of his decision not to approve the registration or unless extenuating circumstances require a longer period, in which case the Director shall act with all deliberate speed to complete the process.

5.3 The application for registration by an employee organization or key employee of such employee organization may be denied or registration revoked under the following circumstances:

(i) If the employee organization or key employee of such employee organization is in violation of standards established under the Labor Management Reporting and Disclosure Procedure Prohibition Against Persons Holding Office, 29 U.S.C. section 504(a).

(ii) The applicant's competence, honesty or integrity pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the video lottery based on the applicant's associations or by virtue of the fact that the applicant has been convicted of a felony crime of moral turpitude or arrested for an act constituting racketeering under 11 Del. C. section 1502(9)(a)(b)(2)(4-10) within ten (10) years prior to applying for registration hereunder or at anytime thereafter. Any employee or employee organization denied registration based on an arrest for an act constituting racketeering under 11 Del. C. section 1502(9)(a)(b)(2)(4-10) may apply for reconsideration of registration if subsequently acquitted or a nolle prosequi is entered or the charge is otherwise dismissed. In such instances, the Lottery shall reconsider the applicant's registration based on the criteria set forth in these Regulations and 29 Del. C. section 4805(a)(24).

(iii) The organization or individual has

knowingly made or caused to be made any written statement to any representative of the Agency or the Delaware State Police or who has orally responded to an official inquiry by the Agency, its employees or agents, which was at the time and in light of circumstances under which it was made false or misleading.

(iv) The organization or key employee thereof holds or obtains a direct financial interest in any video lottery agent, provided the employee organization is provided a thirty (30) day period to divest of any such direct financial interest.

5.4 Any employee organization may continue to provide services to employees of a Delaware video lottery agent during the review of the application process and the appeal process, except where the employee organization is found in violation of section 5.3(iv) of these Regulations or there has been a previous violation of sections 5.3(i-iii) of these Regulations by the employee organization within the previous ten (10) years.

5.5 The failure of any key employee to satisfy the requirements of sections 5.3(i-iv) of these Regulations may constitute grounds for suspension of the registration of the employee organization if the organization does not remove the key employee from his or her duties as defined in 29 Del. C. section 4803(j) and the definition of "key employee" contained in section 2.0 of these Regulations. The employee organization will be given a reasonable opportunity to remove or replace any key employee found to be in violation of sections 5.3(i-iv) of these Regulations.

5.6 In any case where the Director determines that a registration of an employee organization or key employee shall be denied or revoked, the Agency shall first give written notice to the applicant or registrant of the intended action, the reasons therefor, and the right to a hearing as provided for in 29 Del. C. chapter 101. The notice of the intended denial, suspension, or revocation shall comply with any applicable requirements of the Delaware Administrative Procedures Act in 29 Del. C. sections 10133-10134 and, at a minimum, afford the applicant or registrant an opportunity for a hearing.

5.7 If the applicant or registrant desires a hearing, it shall provide the Agency with a written statement within ten days of receipt of the notice which contains the following:

(1) A clear and concise assignment of each error which the applicant or registrant alleges to have been committed in the tentative determination to deny, suspend, or revoke the registration. Each assignment of error should be listed in a separately numbered paragraph.

(2) A clear and concise statement of the facts on

which the applicant or registrant relies in support of each assignment of error.

(3) A prayer setting forth the relief sought.

(4) The signature of the individual or an officer of the employee organization authorized to request the hearing.

(5) A verification by the person requesting the hearing or counsel that the statements contained in the statement are true.

5.8 The Secretary of Finance shall, within a reasonable time, if requested by the Director, appoint a hearing officer to determine whether the application for registration should be denied, suspended, or revoked. The appointed hearing officer shall be bound to conduct all hearings in conformance with the requirements of 29 Del. C. section 10131. Notice of the hearing shall be given at least twenty (20) days before the date it is to be held.

5.9 The applicant or registrant may appear individually, by legal counsel, or by any other duly authorized representative. In the absence of the registrant, written evidence of a representative's authority shall be presented to the hearing officer in a form satisfactory to the hearing officer.

5.10 The applicant or registrant or his duly authorized representative, may with the approval of a hearing officer waive the hearing and agree to submit the case for decision on the record, with or without a written brief. Such a waiver or agreement shall be in writing and placed on the record.

5.11 The applicant or registrant shall be given an opportunity for argument within the time limits fixed by the hearing officer following submission of the evidence. The hearing officer, upon request of the licensee, may accept briefs in lieu of argument. The briefs shall be filed within ten days after the hearing date or within such other time as fixed by the hearing officer.

5.12 The Delaware Uniform Rules of Evidence shall be in effect in all proceedings before the hearing officer. The hearing officer may exclude any evidence which is irrelevant, unduly repetitious, or lacking a substantial probative effect.

5.13 A record shall be made of all hearings and all witnesses shall be sworn and subject to cross examination.

5.14 Following the conclusion of the hearing and within ten days of the receipt of the transcript thereof, or within such other time as fixed by the hearing officer but

in no event later than 45 days following the hearing, the hearing officer shall prepare a final decision, including his or her findings of fact and conclusions of law, and the order signed by the hearing officer shall be final. A copy of said order shall be served upon the party requesting the hearing or their attorney of record in person or by registered or certified mail.

5.15 The hearing officer's decision to deny an application of registration or to suspend or revoke a registration shall be appealable to the Superior Court under the provisions of the Delaware Administrative Procedures Act.

6.0 Lottery Employee Investigations

6.1 The Director shall conduct employment investigations for any person seeking employment with the Agency for compensation for a position which has direct access to lottery ticket sales agents, video lottery agents, or vendors.

6.2 Applicants for Lottery positions in section 6.1 of these Regulations will be required to submit a set of their fingerprints to the State Bureau of Identification along with a signed standard release. The submitted fingerprints shall be processed by the S.B.I. in order to provide the Director with the individual's entire federal and state criminal history record.

6.3 Any applicant for a Lottery position in section 6.1 of these Regulations shall be required to submit an application form to the Agency to allow the Director to determine that the applicant does not pose a threat to the public interest of the State of Delaware or the integrity of the Lottery Office. The application materials shall request, without limitation:

- (1) Name, including any aliases or nicknames;
- (2) Title or position to be applied for;
- (3) Date and place of birth;
- (4) Current address and residence history;
- (5) Social security number;
- (6) Citizenship and, if applicable, information concerning alien status;
- (7) Telephone number;
- (8) Employment and educational history.
- (9) Qualifications for the position applied for;
- (10) Excluding minor traffic offenses, a detailed description of the following areas of criminal conduct, if any, including whether the crime is denominated a felony or a misdemeanor:

- (i) Any convictions;

- (ii) Any criminal offenses for which the applicant was charged, indicted, or summoned to answer, but for which he was not convicted;

- (iii) Any criminal offense for which he received a pardon;

Any other information the Director determines is needed to determine the qualifications and fitness of the applicant.

7.0 Severability

The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of Delaware, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and regulations and all other sections shall remain in full force and effect.

DEPARTMENT OF AGRICULTURE DELAWARE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section
10103, 10128(m)(1), (3 Del.C. 10103,
10128(m)(1))

Proposed Rule Amendments

The Commission proposes these amendments pursuant to 3 Del. C. sections 10103 and 10128(m)(1), and 29 Del. C. section 10115. The proposed revision to Rule 13.16 would extend the time period for an owner to claim horses in a new race meet when the owner's stable has been previously eliminated due to claims. The proposed amendment to Rule 15.02(e) would allow for the use of lasix in two year old horses after September 1st of the race meet. The amendment is intended to follow the practice of the majority of surrounding states that permit the use of lasix in two year old horses to control bleeding. The proposed Rules will be considered by the Commission at its next regularly scheduled meeting on September 23, 1997 at 11:00 a.m. at Delaware Park, Stanton, DE. Copies of the proposed rules may be obtained from the Commission. Comments may be submitted in writing to the Commission office on or before 4:00 p.m. on September 30, 1997 and/or in person at the hearing. The Commission Office is located at 2320 South DuPont Highway, Dover, DE 19901 and the phone number is

(302)739-4811.

13.14 Invalidation of Claim:

Claims which are not made in keeping with the Rules shall be void. The Stewards may, at any time in their discretion, require any person filing a claim to furnish an affidavit in writing that he is claiming in accordance with these Rules. The Stewards shall be the judges of the validity of the claim and, if they feel that a "starter" was nominated for the purpose of making its owner eligible to claim, they may invalidate the claim.

13.15 Necessity to Record Lien:

Any person holding a lien of any kind against a horse entered in a claiming race must record the same with the Racing Secretary and/or Horsemen's Bookkeeper at least thirty (30) minutes before post time for that race. . If none is so recorded, it shall be conclusively assumed, for claiming purposes, that none exists.

13.16 Claiming Privileges -- Eliminated Stable:

~~An Owner whose stable has been completely eliminated by claiming shall have the right to claim during the remainder of the meeting at which his stable was eliminated. After claiming a horse under the conditions of this Rule, the Owner shall be required to reinstate his eligibility to claim before being eligible to make another claim.~~

If a person's stable shall be eliminated with thirty (30) racing days or less remaining in the current racing season, and such person is unable to replace the horse(s) lost via a claim by the end of the racing season, such person may apply to the Stewards for an additional thirty (30) racing days of eligibility to claim in the new race meeting as long as the person owns no other horses at the start of the next race meeting.

13.17 Claim Embraces Horse's Prior Engagements:

The engagements of a claimed horse pass automatically with the horse to the claimant.

15.02 Bleeder Medication:

Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (Lasix) to control epistaxis (bleeding) to horses under the following conditions:

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour

immediately following such a race or workout, is observed by the Licensee's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Licensee's Veterinarian at the detention barn within one (1) hour of workout or race.)

(b) A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Licensee's Veterinarian and the Stewards. it shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Licensee's veterinarian or Stewards on official forms from that State prior to entry.

(c) The Licensee's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

(d) A horse in the Bleeder Program shall be required to be brought to a detention barn designated by the Licensee and approved by the Commission not later than three and one-half (3 1/2) hours before post time for the race in which it is entered and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time. During the 3 1/2 hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

(e) No 2-year-old horse will be acceptable for the Bleeder Program until after September 1st of the race meet.

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for sixty (60) calendar days. A horse which bleeds a third time will be barred from further racing in the State of Delaware. A positive endoscopic examination shall be classed as a first time bleeder.

Revised: 6/19/92.

**DEPARTMENT OF NATURAL
RESOURCES & ENVIRONMENTAL
CONTROL**

SHELLFISHERIES ADVISORY COUNCIL

Statutory Authority: 7 Delaware Code,
Section 2804 (7 **Del.C.** 2804)

Brief Synopsis of the Subject Substance and Issue

The Department of Natural Resources and Environmental Control, in consultation with the Shellfisheries Advisory Council, proposes to amend Shellfish Regulation No. S-48 CONCH MINIMUM SIZE LIMITS, to increase the minimum size limit on channeled conchs from 5 inches in length or 2 ¾ inches in diameter to 6 inches in length or 3 1/8 inches in diameter with an allowance of 5 conchs per 60 pound bushel to be less than the minimum size or dimension. The minimum size limits on knobbed conchs would remain at 5 inches in length or 2 ¾ inches in diameter with no allowance for any under sized knobbed conchs per any measure. This change in minimum size for channeled conchs will better conserve their spawning stock and will provide a higher yield per recruit and price per pound.

Possible Terms of the Agency Action:

The Department of Natural Resources and Environmental Control may reject or approve this amendment.

Statutory Basis or Legal Authority to Act: 7 Del. C. § 2804.

List of other Regulations that may be impacted or affected by this proposal. None.

Notes of Public Comment

Individuals may present their opinions and/or request additional information by writing or visiting the Fisheries Section, 89 Kings Highway, Dover, DE 19901 prior to 4:30 p.m. on October 10, 1997. A public hearing on this proposal will be held in the DNREC auditorium, 89 Kings Highway, Dover, DE at 7:30 p.m. on Monday, October 6, 1997.

Proposed Amendment to Shellfish Regulation No. S-48

S-48 CONCH MINIMUM SIZE LIMITS

(a) It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatum*, that measures less than six (6) inches in length or 3 inches in diameter at the whorl.

(b) Notwithstanding the provisions of paragraph (a), a person may possess no more than five (5) channeled conchs per 60 pounds that are less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.

(c) It shall be unlawful for any person to possess any knobbed conch, *Busycotypus carica*, that measures less than five (5) inches in length or 2 ¾ inches in diameter at the whorl.

Existing Shellfish Regulation No. S-48

S-48 CONCH MINIMUM SIZE LIMITS

(a) It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatum*, or knobbed conch, *Busycotypus carica*, that measure less than 5 inches in length or 2.75 inches in diameter at the whorl.

SHELLFISH REGULATIONS

The following regulations are pursuant to Title 7, Delaware Code, Chapters 19, 21, 23, 24, 25, 27, and 28. They are supplementary to new and revised shellfish laws.

S-1 DEFINITIONS:

1. "Commercial Shellfishing" - shall mean for any person to possess those species of shellfish in excess of the following quantities unless said person has a valid receipt for all shellfish above these quantities; or as otherwise provided by law or regulation:

- (1) Oysters - one (1) bushel per vessel
- (2) Blue Crabs - one (1) bushel per person
- (3) Hard Clams - five hundred (500) clams per person
- (4) Lobsters - two (2) lobsters per person

2. "Commercial Measure" - shall mean that unit of measurement of a species of shellfish as described herein:

- (1) Oysters - bushels
- (2) Blue Crabs - bushels
- (3) Clams - actual numbers or bushels
- (4) Lobsters - actual numbers or pounds
- (5) Blue Mussels - bushels or pounds

3. "A Person's Intent to Sell Shellfisheries to Another" - shall mean a person has in his possession a quantity of that species of shellfish in excess of the quantity specified under the definition of "Commercial Shellfishing" or this same person advertises for sale, offers for sale or completes the sale of any portion of that measure of shellfish to another person.

4. "Delaware Bay": - shall mean all those waters and

submerged lands under the jurisdiction of the State located within an area bordered on the North by a straight line drawn between Liston Point, Delaware and Hope Creek, New Jersey and bordered on the South by a line drawn from Cape May Inlet East Jetty Light to Cape May Harbor Inlet Lighted Bell Buoy 2CM; thence to the northernmost extremity of Cape Henlopen, but not including any tributaries thereto.

5. "Delaware River" - shall mean all those waters and submerged lands under the jurisdictions of the State located within an area to the North of a straight line connecting Liston Point, Delaware and Hope Creek, New Jersey, but not including any tributaries thereto.

6. "Recreational Purposes" - shall mean the noncommercial use of shellfish that does not include the sale, trade or barter of shellfish in quantities less than the prescribed quantities for commercial shellfishing.

7a. "New Licensee" shall mean for purposes of interpreting § 1918(a), Chapter 19, Title 7, Delaware Code, any person who has never been issued a commercial crab pot license or any person who has not been issued a valid commercial crab pot license by the Department before May 1, 1995 and annually thereafter when applying for the renewal of such license.

7b. "New Licensee" shall mean for purposes of interpreting § 1918(b), Chapter 19, Title 7, Delaware Code, any person who has never been issued a commercial crab dredger's license or any person who has not been issued a valid crab dredger's license by the Department before May 1, 1994 and then annually thereafter when applying for the renewal of such license."

8. "2 consecutive years, as it appears in §1918(c), 7 Del.C. shall mean any consecutive 24 month period."

S-3 COMMERCIAL SHELLFISHING PROHIBITED ON SUNDAY

(a) It shall be unlawful for any person to engage in commercial shellfishing on Sunday. (Exception. §1904, 7 Del. C. has been amended so that crabs and conchs may be taken on any Sunday and clams may be taken on any Sunday between and including Memorial Day and Labor Day.

S-5 TAKING SHELLFISH OTHER THAN OYSTERS, CLAMS, LOBSTERS AND CRABS

(a) It shall be lawful for persons to take any species of shellfish other than oysters, *Crassostrea*

virginica; clams, *Mercenaria mercenaria*; lobsters, *Hamarus americanus*; and crabs, *Callinectes sapidus* from the shellfish grounds under the jurisdiction of the State. Oysters, clams, lobsters and crabs only maybe taken according to the provisions of Chapters 19, 21, 23, 24, and 25 of Title 7, Delaware Code.

(Note- Conchs only may be taken according to the provisions of Chapter 28, 7. Del. C.)

(b) It shall be unlawful for any person, unless authorized to do so, to take shellfish, other than crabs and lobsters, from natural oyster beds, the leased shellfish grounds of other persons or those shellfish grounds closed to shellfishing by order of the Department of Health and Social Services.

S-7 NATURAL OYSTER BEDS - LOCATION

(a) Natural oyster beds shall mean those shellfish grounds located to the North of the "East Line" in Delaware Bay and River and shellfish grounds located upstream of the entrances of all tributaries entering the Delaware River and Delaware Bay under the jurisdiction of the State.

(b) The Department shall designate specific natural oyster beds that will be open for taking seed oysters on specific dates prior to April 1 in any given year.

S-9 OYSTERS - PUBLIC TONGING AREAS - LOCATION

(a) Public tonging areas for oysters shall mean those shellfish grounds located in the Delaware Bay approximately two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay and more specifically described as plotted on the Delaware Bay Chart No. 12304, 22nd edition, published by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C., November 1975 with Loran C overprinted as follows:

CORNER LOCATION	LORAN READING
1. Northwest Corner	9930-Y-52260.91 9930-Z-70042.54
2. Northeast Corner	9930-Y-52259.36 9930-Z-70043.20
3. Southwest Corner	9930-Y-52262.10 9930-Z-70043.80
4. Southeast Corner	9930-Y-52260.65 9930-Z-70043.95

S-11 OYSTERS - PUBLIC TONGING AREAS - SEASON

(a) It shall be unlawful for any person to harvest oysters from the public tonging area located in the Delaware Bay two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay at any time other than September 1 through April 30 next ensuing for each year.

NOTE: It is unlawful for any person to harvest oysters from any public tonging areas unless said person has a valid public oyster tonger's license.

S-13 OYSTERS - DAILY TAKE LIMITS - PUBLIC TONGING AREA

(a) It shall be unlawful for any person to take more than fifteen (15) bushels of oysters in any one (1) day from the oyster public tonging grounds.

S-15 HARD CLAMS - SEASON AND LIMITS FOR COMMERCIAL CLAM TONG/RAKE LICENSE

(a) It shall be lawful for any person who has a valid Commercial Clam Tong/Rake License to harvest hard clams during permitted times on any date except Sunday.

(Exception- § 1904, 7 Del. C. has been amended so that clams may be taken on Sundays between and including Memorial Day and Labor Day.)

(b) It shall be unlawful for any person who has a valid Commercial Clam Tong/Rake License to harvest on any one (1) day or possess at any time more than two thousand five hundred (2,500) hard clams unless said person has a valid receipt for clams in excess of two thousand five hundred (2,500).

S-17 HARD CLAMS - SEASON AND LIMITS FOR COMMERCIAL DREDGE CLAM LICENSE

(a) It shall be lawful for any person who has a valid Commercial Dredge Clam License to take clams from shellfish grounds, as permitted by law, at permitted times on any date except Sunday.

(Exception - §1904, 7. Del.C. has been amended so that clams may be taken on Sundays between and including Memorial Day and Labor Day.)

(b) It shall be lawful for any person who has a valid Commercial Dredge Clam License to harvest any number of hard clams.

S-19 HARD CLAMS - METHOD OF TAKE, SEASON AND LIMITS FOR NON-COMMERCIAL CLAMMING

PERMIT

(a) It shall be unlawful for any person who has a valid Non-Commercial Clamming Permit to attempt to take, catch kill or reduce to possession any hard clams with any device other than a hand-held rake with a head no wider than fourteen (14) inches measured perpendicular to the tines and a straight handle not in excess of seven (7) feet in length.

(b) it shall be unlawful for any person who has a valid Non-Commercial Clamming Permit to harvest hard clams during the period between one-half hour after sunset and one-half hour before sunrise next ensuing.

(c) it shall be unlawful for any person who has a valid Non-Commercial Clamming Permit to harvest in any one (1) day or possess at any time more than five hundred (500) hard clams unless said person has a valid receipt for clams in excess of five hundred (500).

(d) It shall be lawful for any person who has a valid Non-Commercial Clamming Permit to harvest hard clams on any date during the time period permitted.

S-21 HARD CLAMS - METHODS OF TAKE, SEASON AND LIMITS FOR RECREATIONAL CLAMMING

(a) It shall be unlawful for any person to attempt to take, catch, kill or reduce to possession any hard clams with a device other than a hand-held rake with a head no wider than fourteen (14) inches measured perpendicular to the tines and a straight handle not in excess of seven (7) feet in length.

(b) It shall be unlawful for any person to harvest hard clams during the period between one-half hour after sunset and one-half hour before sunrise next ensuing.

(c) It shall be unlawful for any person who is a resident of this State to harvest in any one (1) day or possess at any time more than one hundred (100) clams unless otherwise permitted to do so by license or permit or said person has a valid receipt for all clams in excess of one hundred (100).

(d) It shall be unlawful for any person who is a non-resident of this State to harvest in any one (1) day or possess at any time more than fifty (50) hard clams unless otherwise permitted to do so by license or permit or said person has a valid receipt for all clams in excess of fifty (50).

(e) It shall be lawful for any person to harvest

hard clams on any date during the time period permitted.

S-23 LOBSTERS - POT DESIGN

(a) It shall be unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot, or port of not less than 1 3/4" x 6" located in the parlor section of each pot or trap.

S-25 LOBSTERS - POT, SEASON AND LIMITS FOR COMMERCIAL LOBSTER POT LICENSE

(a) It shall be lawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State at any time as permitted by law on any date except Sunday.

(b) It shall be unlawful for any person who has a valid Commercial Lobster Pot License to set, tend or use in any manner in excess of fifty (50) lobster pots for the taking of lobsters in the waters under the jurisdiction of the State.

S-27 DREDGE RESTRICTIONS FOR TAKING SHELLFISH

(a) It shall be unlawful for any person to take or attempt to take any shellfish with any device attached to a vessel powered by sail or mechanical means in any waters under the jurisdiction of the State of Delaware except in the Delaware Bay and the territorial waters in the Atlantic Ocean within three miles of the Delaware shoreline unless otherwise permitted by law or by Departmental regulation.

S-29 CRAB POT NUMBER BUOYS AND VESSEL PANEL COLOR CODE AND NUMBER REQUIREMENTS

(a) The color code assigned by the Department to a commercial crab pot licensee shall be displayed on each buoy or buoys attached to the line of each crab pot deployed in the water in the following order:

(1) The first color in the color code sequence shall be on a buoy or buoys located the farthest from the crab pot (top).

(2) The last color in the color code sequence shall be on the buoy or buoys located the closest to the crab pot (bottom).

(3) Any second or third color in the color code sequence between the first and last colors shall be on a buoy or buoys in the same top to bottom order as in the

color code sequence.

(b) Each color coded buoy attached to a line of a commercial crab pot shall measure at least three (3) inches by three (3) inches by three (3) inches except that a separate buoy, located between the crab pot and color coded buoy nearest the crab pot but no closer than five (5) feet to the color coded buoy nearest the crab pot may be of lesser dimensions.

(c) Each color in a color code shall cover a contiguous area of at least 28 square inches on a buoy.

(d) Each color coded buoy shall be visible on the water's surface when the tide is slack and the wind is less than ten (10) miles per hour.

(e) Each color coded buoy shall have its color or colors recognizable at all times.

(f) The color code assigned by the Department to a commercial crab pot licensee shall be displayed on the 2' x 2' panel on the licensee's vessel in a manner that when viewed from either side of the vessel, the sequence of colors shall be as follows relative to the vessel:

(1) The first color in the color code sequence shall be on the panel in a vertical band closest to the stern of the vessel.

(2) The last color in the color code shall be on the panel in a vertical band closest to the bow of the vessel.

(3) Any second or third color in the color code sequence between the first and last colors shall be on the panel in vertical band(s) in the same stern to bow order as assigned in the color code sequence.

(g) Each color coded panel shall be visible and the color(s) shall be recognizable at all times while tending crab pots.

(h) Each color coded panel shall be displayed as vertical bands on the panel such that each color covers a contiguous area of equal size. The panel shall not display any color other than the colors in the assigned color code except for a color used to indicate the crab pot number.

(i) A number shall be assigned by the Department to each commercial crab pot license.

(j) The commercial crab pot licensee's number shall be displayed on the color coded panel on the licensee's vessel with at least three (3) inch high contrasting colored Arabic numerals so that said number shall be visible from either side of the vessel.

(k) The commercial crab pot licensee's number shall be displayed on at least one color coded buoy attached to each crab pot displayed in the water in at least one (1) inch high Arabic numerals. The number shall be painted in a contrasting color, branded on or carved into the buoy.

S-33 NON-COMMERCIAL CRAB POTS: ILLEGAL TAMPERING THEREOF

(a) It shall be unlawful for any person, other than the rightful owner of a non-commercial crab pot whose initials appear on the white float attached to said crab pot, to lift, move, take or damage any non-commercial crab pot or to take or attempt to take crabs from any non-commercial crab pot.

S-35 COMMERCIAL CLAMMING: MORATORIUM ON FORMERLY LEASED SHELLFISH GROUNDS

(a) It shall be unlawful for any person, including former leaseholders, to take or attempt to take shellfish by any means on formerly leased shellfish grounds in the Indian River and bay as indicated on a Department map, Document 40-05/78/02/2, and described as follows:

- a. Elisha Cropper Plot 1 (310 acres)
Plot 2 (140 acres)
Plot 3 (100 acres)
- b. John Satterfield Plot 6 (20 acres)
- c. Linden Short Plot 8 (20 acres)
- d. John Rogers Plot 28 (70 acres)

S-37 OYSTER VESSEL LICENSING FOR TRANSPLANTING OYSTERS FORM NATURAL OYSTER BEDS

(a) The owner of a vessel which was previously licensed in Delaware to harvest and/or transplant oysters from natural oyster beds or from leased shellfish ground in Delaware Bay may directly apply to the Department for a license for said vessel to harvest and/or transplant oysters from the natural oyster beds or from leased shellfish grounds within the jurisdiction of the State.

(b) The owner of a vessel which was not previously licensed to harvest oysters in Delaware and is to be used for transplanting oysters from natural oyster beds in Delaware Bay to leased shellfish grounds in Delaware Bay, must submit an application for said vessel license to the Department that will first be reviewed by the Council on Shellfisheries for their determination as to whether or not:

(1) the legal and equitable owner is a Delaware resident or a corporation whose principal place of business

is located within Delaware prior to January 1, 1990 or a Delaware corporation incorporated after January 1, 1990 with its principal place of business in Delaware and whose legal and equitable owners are Delaware residents; and,

(2) the profits for the operation of said vessel will help to preserve and improve the Delaware shellfish industry; and,

(3) the vessel to be licensed will remain exclusively in Delaware's shellfish industries for a period of at least sixty (60) months.

Based upon these three criteria, the council on Shellfisheries shall then recommend approval or disapproval for issuing an oyster harvesting license for said vessel within ten (10) calendar days of receipt of the application provided that there is no regularly scheduled council meeting between the date of the application and the beginning of the oyster transfer season. The Department, upon receiving a recommendation from the Council on Shellfisheries, shall decide whether or not to issue an oyster harvesting license for the vessel for the forthcoming oyster transfer season.

(c) The owner of a vessel which was not previously licensed to harvest and/or transplant oysters in Delaware and said vessel is only to be used to harvest oysters from leased shellfish grounds may directly apply to the Department and receive a vessel license to harvest oysters from leased shellfish grounds within the jurisdiction of the state.

S-41 SHELLFISHING GROWING AREAS CLOSED TO HARVESTING CLAMS, MUSSELS AND OYSTERS

(a) It shall be unlawful for any person to harvest or attempt to harvest any clams, mussels or oysters from any shellfish growing area that is classified as prohibited, conditionally approved but closed to harvesting shellfish or otherwise not classified as a shellfish growing area as established in regulations adopted by the Division of Public Health of the Delaware Department of Health and Social Services under authority of Title 16, Section 122(3) (A), (B), (F), and (J) and currently in effect.

S-43 FAILURE TO TEND CRAB POTS

(a) It shall be unlawful for any person who sets a crab pot in the tidal waters of the State to fail to tend and remove crabs from said pot at least once during every 72-hour period.

S-45 DESCRIPTION OF BOUNDARIES DELINEATING LEASABLE SHELLFISH GROUNDS

(a) Shellfish grounds to be leased for protecting, planting and harvesting shellfish in the State shall be limited to the following area in Delaware Bay described as follows:

Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then continuing south to a point at Loran-C coordinates 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27279.67/42837.42 and then continuing west southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line".

S-46 MAXIMUM NUMBER OF CRAB POTS AUTHORIZED TO BE FISHED

(a) It shall be unlawful for any person with a valid commercial crab pot license to fish, place or cause to have placed in the waters of this State at any time more than the number of crab pots for which said person's commercial crab pot license stipulates in accordance with §2303, Chapter 23, Title 7, Delaware Code.

S-48 CONCH MINIMUM SIZE LIMITS

(a) It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatum*, or ~~knobbed conch, *Busycon carica*~~ that measures less than ~~six (6)~~ six (6) inches in length or ~~2.75~~ 3 1/8 inches in diameter at the whorl.

(b) Notwithstanding the provisions of paragraph (a), a person may possess no more than five (5) channeled conchs per 60 pounds that are less than six (6) inches in length or 3 inches in diameter at the whorl.

(c) It shall be unlawful for any person to possess any knobbed conch, *Busycon carica*, that measures less than five (5) inches in length or 2 3/4 inches in diameter at the whorl.

S-50 DEFINITIONS

The following definitions shall apply to terms in Chapter 27, Title 7, Delaware Code relative to horseshoe crabs.

1) 'Dispose of said crabs properly' shall mean bury on the beach, incorporate into soil as fertilizer or any other

method approved by the Department.

2) 'Personal, non-commercial use' shall mean to be used as food, fertilizer or bait or otherwise properly disposed without trading, bartering, or selling by one individual to another, or without transporting, shipping, or causing to be transported or shipped, out of the state.

3) 'Collect' shall mean to take live horseshoe crabs by any means other than by dredge.

4) 'Dredge' shall mean to use any device to gather, scrape, scoop, fish for or otherwise take bottom dwelling horseshoe crabs.

S-51 SEASON'S AND AREA CLOSED TO COLLECTING AND DREDGING HORSESHOE CRABS

(a) It shall be unlawful for any person to collect or dredge horseshoe crabs from any state or federal land owned in fee simple or water within one thousand (1000) feet, measured perpendicularly from the mean low waterline, during the period beginning at 12:01 am on May 1 and continuing through midnight, June 7, except authorized persons may collect horseshoe crabs on Wednesdays, Thursdays and Fridays from state owned lands to the east of State Road 89. Provided, however, any person that has been issued a valid scientific collecting permit may collect horseshoe crabs at any time in any area as specified in the permit.

(b) It shall be unlawful for any person to dredge horseshoe crabs except from one's own leased shellfish grounds or with permission from the owner of leased shellfish grounds in an area of Delaware Bay within the boundaries that delineate leasable shellfish grounds and described as follows:

Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27279.67/42837.42 and then continuing west southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line".

S-52 REQUIREMENT FOR COLLECTING HORSESHOE CRABS FOR PERSONS UNDER 16

(a) It shall be unlawful for any person under the age of sixteen (16) years to possess more than six (6) horseshoe crabs unless accompanied by a person who has been issued a valid horseshoe crab scientific collecting,

commercial collecting or dredge permit.

S-53 NUMBER OF PERSONS ACCOMPANYING A PERSON WITH A VALID, HORSESHOE CRAB COLLECTING PERMIT

(a) It shall be unlawful for any person with a valid horseshoe crab commercial collecting permit when collecting horseshoe crabs to be assisted by more than three (3) persons who are not required to have valid horseshoe crab commercial collecting permits.

S-54 POSSESSION LIMIT OF HORSESHOE CRABS, EXCEPTIONS

(a) Unless otherwise authorized, it shall be unlawful for any person to possess more than six (6) horseshoe crabs, except a person with a validated receipt from a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

(b) Any person who has been issued a valid commercial eel fishing license by the Department is exempt from the possession limit of six (6) horseshoe crabs, provided said commercial eel fishing licensee has submitted an annual report of his/her previous year's harvest of horseshoe crabs to the Department on forms provided by the Department. Said exemption also applies to a commercial eel fisherman's alternate while the alternate is in the presence of the commercial eel fisherman. Any person who has been issued a commercial eel fishing license (and such person's Alternate while in the presence of the licensee) may collect or dredge horseshoe crabs without a horseshoe crab commercial collecting or dredge permit, provided all horseshoe crabs taken are for personal non-commercial use, as bait for the licensee's eel pots fished in this state.

DEPARTMENT OF EDUCATION

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

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

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

This amendment is recommended to bring the Regulations on School/Police Relations in line with the changes in the Delaware Code. The legislature amended 14 Del. C., Section 4112 entitled "Discipline Powers Reporting Requirement and Responsibilities of Superintendents, Principals, and Teachers" by striking it in its entirety and substituting a new Section 4112 entitled "Reporting School Crimes." This amended section of the Code changes and clarifies some of the reporting processes and procedures for specific criminal offenses and also defines key terms used in the legislation. The amendments to the Handbook for K-12 Education are important in order to reflect the new amended code and to eliminate references to the old code language and to unnecessary regulatory language.

The Handbook for K-12 Education is amended to include eliminating Section I.B.1. Discipline Powers and Responsibilities of Superintendents, parts a, b, c, and d, I.B.3. School/Police Relations Policy and Guidelines and Appendix D School/Police Relations Policy and Guidelines for School Administrators. Section 2 becomes Section 1, a new School Police Relations becomes I.B.2.a, b, c, d, and e, and Sections 4. and 5. become Sections 3. and 4.

C. IMPACT CRITERIA

1. Will the amendment help improve student achievement as measured against state achievement standards? (If so, how? If not, why?)

This amendment directly addresses school climate and severe discipline issues, not state achievement standards. However, research supports the correlation between a positive school climate and an increase in academic achievement.

2. Will the amendment help ensure that all students receive an equitable education? (If so, how? If not, why?)

This amendment addresses the mandatory reporting of serious disciplinary offenses in a fair and equitable manner for all students.

3. Will the amendment help to ensure that all students' health and safety are adequately protected? (If so, how? If not, why?)

This amendment clarifies and extends the reporting requirements of disciplinary infractions as defined in the original law known as H.B. 85. This amendment is intended to provide for the safety of all students and addresses the needs of students who engage in serious disruptive behavior.

4. Will the amendment help to ensure that all students' legal rights are respected? (If so, how? If not, why?)

Yes. The amendment continues to ensure that all students' rights are respected in an equitable manner.

5. Will the amendment preserve the necessary authority and flexibility of decision makers at the local board and school level? (If so, how? If not, why?)

This amendment increases local district authority, but does not change administrative accountability as defined in the original regulations. The amendment requires the reporting of additional criminal acts beyond the original regulations, as mandated by Delaware Code.

6. Will the amendment place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? (If so, why?)

While the addition of criminal offenses that are required to be reported has increased, the reporting instrument has been significantly simplified.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? (If not, why?)

This amendment focuses on reporting procedures and continues to keep the decision making authority and accountability with the same entity.

8. Will the amendment 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? (If inconsistent and/or an impediment to other policies, why?)

This amendment, as with the original regulations, is not

an impediment to other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the amendment? (If so, why is it appropriate to adopt the amendment?)

No, the amendment is a response to changes in the Delaware Code.

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

This amendment does not add additional costs beyond the existing requirements of the original regulations.

THIS PROPOSED AMENDMENT OF AN EXISTING REGULATION WILL BE PRESENTED TO THE STATE BOARD OF EDUCATION AT ITS MEETING OF SEPTEMBER 18, 1997.

Handbook for K-12 Education

B. DISCIPLINE

1. DISCIPLINE POWERS AND RESPONSIBILITIES OF SUPERINTENDENTS

b. ~~Student violence; mandatory complaints. In any instance where a school employee reports to the superintendent any assault or offensive touching (as prohibited in §§601, §611-613 of Title 11) against such employee by a pupil, the superintendent or his designee, after verifying the identity of the pupil involved and the probable cause to believe that a criminal charge is appropriate, without unreasonable delay after the incident being reported, shall file such appropriate charge against such pupil. The superintendent or his designee shall also file a report of such incident with the State Department of Public Instruction. The obligations of the superintendent as set forth in this subsection are mandatory, and are not discretionary.~~

c. ~~Student possession of weapons and unlawful drugs; mandatory complaints.--In any instance where a school employee reports to the superintendent any incident where a pupil has on his person, or concealed among his possessions, or placed elsewhere on the school premises any controlled drug (as prohibited by Title 16), dangerous instrument or deadly weapon (as prohibited by Title 11), the superintendent or his designee, after verifying the identity of the pupil involved and the probable cause to believe that a criminal charge is appropriate, without unreasonable delay after the incident being reported, shall report such incident to the po-~~

PROPOSED REGULATIONS

lice department having jurisdiction over the offense. The superintendent or his designee shall also file a report of such incident with the State Department of Public Instruction. The obligations of the superintendent as set forth in this subsection are mandatory, and are not discretionary.

d. Immunity from civil liability: Review of criminal complaint. A school employee, superintendent, or his designee who in good faith provides information to police and/or the State Department of Public Instruction under subsection (b) or (c) of this section shall not be held civilly liable for providing such information. Prior to lodging any criminal charges against a school employee, superintendent or his designee who provides information to police and/or the State Department of Public Instruction under subsection (b) or (c) of this section, the Attorney General's Office shall be consulted to determine the appropriateness of the charges. 14 Del. C. 4114.

3. SCHOOL/POLICE RELATIONS POLICY AND GUIDELINES

All local school districts must establish their own policies on school/police relations. The local district policy must be based on the policies and guidelines included in the State Board of Education document, School/Police Relations Policy and Guidelines for School Administrators, Appendix D. (State Board Approved October 1988, Revised June, 1993)

2. School/Police Relations

a. All local school districts must establish a policy on school/police relations. Each school district shall develop a Memorandum of Agreement (MOA) between the district board of education and each police department which provides police coverage to the district. Each district's MOA shall be in a form substantially similar to the Model Memorandum of Agreement Between Board(s) of Education and Law Enforcement Agencies in the State of Delaware (MMA) as approved by the Secretary of the Department of Education (Secretary). Section 6 of the MMA must be included in each district's MOA verbatim. Districts shall submit a signed copy of its current MOA to the Department of Education (DOE).

b. Each school administrator involved in the student disciplinary process shall complete DOE approved training in school/police relations and in student disciplinary matters in general and, thereafter, such additional training in those areas as the DOE may from time to time prescribe.

c. Each school district shall, at the time of hiring and at the beginning of each school year thereafter, advise each school employee (as that term is defined in 14 Del. C.

Section 4112) of his/her duty to report school crimes and the penalty for failure to so report.

d. The Superintendent of each school district, or his/her designee, shall report to the DOE all school crimes required to be reported pursuant to 14 Del. C. Section 4112 and any subsequent amendment thereto. Such reports shall be made on the Student Conduct Report (SCR) form to be provided by the DOE and filed with the DOE within the time prescribed by statute.

e. In addition to those school crimes required to be reported pursuant to statute, the Superintendent of each school district shall report to the DOE the following incidents of student misconduct:

Pornography, exhibitionism, peeping	Fraud offenses
Criminal mischief	Tampering with public records
Evidence of organized gambling	Computer/recorded sounds offenses
Offenses involving school property	Disorderly conduct/ fighting
Felony theft offenses	Offensive touching (non-employee)
Forgery offenses	Terroristic threatening (non-employee)

Such reports shall be made on the SCR form to be provided by the DOE and filed with the DOE not later than five working days following the incident of student misconduct.

APPENDIX D

SCHOOL/POLICE RELATIONS POLICY AND GUIDELINES FOR SCHOOL ADMINISTRATORS

Delaware State Board of Education
Approved: June 23, 1993

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MOA shall be established or reviewed, to incorporate State Board policy and current local procedures for school/police relations, by September 30, 1993. A copy of each district's executed memoranda shall be submitted to the State Board of Education by October 15, 1993. Thereafter, such memoranda shall be reviewed on a regularly established schedule enacted by the district board of education, and be reviewed subsequent to any changes made to the *Model Memorandum* at the State level.

RELATIONSHIPS BETWEEN LOCAL SCHOOL DISTRICTS AND LAW ENFORCEMENT AGENCIES

Introduction

The school/police function is only as effective as the communication and cooperation of the respective agencies and all the various other agencies involved with the education, safety and welfare of Delaware's youth. This belief has evolved into a well structured and cooperative set of policies and practices between and among the school/police agencies in Delaware which have been compiled into this document containing policy and guidelines for school/police relations. The *Model Memorandum of Agreement Between Board(s) of Education and Law Enforcement Agencies in the State of Delaware*, included in the document, was developed through the input of many highly experienced persons serving on the Task Force for School/Police Relations, all of whom are involved in the school/police function and represent many years of experience. It was first developed in 1968 and was revised in 1972 and 1988. In 1993, the policy elements of the document were added. This format, a memorandum of agreement, has been identified by the Task Force as the single most effective means of prescribing a guide for statewide use on the subject.

For law enforcement agencies to effectively serve the school community, there must be some flexibility in the documents which provide a basis for the procedures in use in the local school district. However, in some areas it is felt that the uniform establishment of statewide procedures are beneficial to the child, the police authorities and school administration.

State Board Regulations

In order to ensure such uniformity, the State Board of Education at its June 17, 1993 meeting established the following as statewide regulations:

- a. Section 6 of the *Model Memorandum* in this document, in regard to Reporting Crimes, is enacted as policy, and is mandated to be included, word for word, in each district's MOA(s) on school/police relations.
- b. Each school district shall develop a memorandum of agreement between the district board of education and each department providing police coverage to the district. The

e. A Special Task Force for School/Police Relations, composed of representatives of the school districts, of the law enforcement agencies which have responsibility for crimes in the school environment, and of the Fire Marshal's Office, shall meet to review the contents of the *Model Memorandum* at least every five years. The Special Task Force shall make recommendations for inservice training of school administrators involved in the student disciplinary process, as a result of these changes to the *Model Memorandum*, and as a result of all subsequent changes, if such training is deemed necessary.

d. Each school administrator involved in the student disciplinary process shall complete six hours of training in school/police relations, including the training of administrators as trainers of teachers in the above changes to the MOA and in student disciplinary matters in general, by September 30, 1993. The sessions shall be provided by the Department of Public Instruction, in consultation with a committee of members of the Special Task Force for School/Police Relations. Sessions on school/police relations shall be made available on an annual basis thereafter, and school administrators new to the student disciplinary process shall be required to attend such training.

e. The Department of Public Instruction shall develop the forms required by Section 6 of the *Model Memorandum*. Those forms shall be used by the districts to report crimes committed by students in the school environment in a timely fashion.

f. Each district shall ensure that teachers are informed at the time of hire and at the beginning of each school year thereafter of their duty to report immediately to the principal an act of violence as set out in 14 Del. C. 4112, i.e., assault and extortion against a pupil, or an assault, offensive touching, terroristic threatening or extortion against a school employee, or weapons or unlawful drug offenses (see 14 Del. C. 4112(d) and (f), and of the penalties established in 4112(f).

MODEL MEMORANDUM OF AGREEMENT BETWEEN THE BOARD(S) OF EDUCATION AND LAW ENFORCEMENT AGENCIES IN THE STATE OF

DELAWARE

1. The Board of Education of _____ and the following Law Enforcement Agency(ies): _____ hereby agree that the following practices and procedures shall govern their relations:

2. All law enforcement agency officers performing law enforcement functions under this Agreement will be governed by the provisions contained herein.

3. ARRESTS

a. When possible and appropriate, arrest by police should be made during non-school hours and away from school premises.

b. Arrest on school premises during school hours should be undertaken in such a manner as to avoid embarrassment to the pupil being arrested or to jeopardize the safety and welfare of other pupils.

c. In the event of an apprehension during school hours, the principal or designee should summon the student to his/her office before surrendering the student. Unless absolutely essential, the officer should not appear in the classroom to apprehend the student.

d. If the student is to be surrendered to the custody of the police officer, the principal or designee should record the name and organization of the officer, the time the officer leaves the school, the destination (police station, detention facility, or Family Court), and the offense for which the arrest was made. A substantial effort should be made by the principal or designee to immediately inform the parent(s) or guardian(s) of the student upon any contact by the police. If the student is arrested and removed from the premises before such contact is made, the police and the principal or designee share a joint responsibility for that contact.

4. QUESTIONING OR INTERROGATION BY POLICE ON SCHOOL PREMISES

a. Police investigations involving the questioning or interrogation of pupils should not be permitted on school premises unless in connection with a crime committed on school premises or in connection with an investigation which, if not immediately permitted, would compromise the success of that investigation or endanger the lives or safety of the student or other persons. Questioning becomes interrogation when it becomes accusatory in nature and is designed to elicit an admission of guilt from the suspected offender. Law enforcement officers must provide Miranda warnings, if the suspect is being interrogated and is not free to leave.

b. The principal or designee should be present throughout the questioning or interrogation, except in cases where the investigation concerns a student who is the victim of physical or sexual abuse where a member of the student's immediate family or household is suspected of being the perpetrator

of or a conspirator in such abuse and where the police investigator is a representative of a special unit trained to do such interviews:

e. In any case, where a student is in custody and being questioned regarding involvement in a criminal matter and where the student's Fifth Amendment protection against self-incrimination may apply, the law enforcement officer should consider the environment in which questioning takes place and the ability of the student to discontinue the questioning. Unless unreasonable to do so, the law enforcement officer should notify the principal or his designee when such questioning becomes custodial in nature. Questioning becomes "custodial in nature" when a law enforcement officer is conducting an interview and the party being interviewed is not free to leave the presence of the officer.

d. Before the police commence the questioning or interrogation of a minor on school premises, the principal should contact the student's parent(s) or guardian(s) to provide them an opportunity to be present or consult an attorney. Such contact is particularly important in the case of students below the high school level. Questioning or interrogation without such parental contact should only proceed where:

(1) The contact may endanger the safety of the student or other persons.

(2) The contact would compromise the success of the investigation because a member of the student's immediate family or household is suspected of being a perpetrator or conspirator or potential conspirator to a crime, or the delay caused by lack of contact would compromise the success of the investigation and a substantial effort has been made to contact the student's parent(s) or guardian(s) without success.

The police should ensure that the student is afforded all constitutional rights due in such a situation.

e. School officials should request the arresting officer to remove the student from the premises as soon as possible, after the arrest is made. In the absence of an arrest, school officials should not authorize the removal of a student from the school without the consent of the parent or guardian unless such contact would endanger the student or unreasonably compromise an investigation, or every reasonable effort to notify the parent or guardian has failed, in which case, if appropriate, the Division of Child Protective Services should be notified.

5. SEARCHES AND SEIZURES

a. Law enforcement officers in reliance upon probable cause that a crime is, has, or is about to be committed, may search for evidence of that crime. Whenever reasonable, a search warrant, issued by a court of competent jurisdiction, will be sought before a search is conducted. As a general policy, a school official will accompany the law enforcement officer. However, they will not participate in the actual search unless specifically requested to do so by the police.

b. Efforts should be made by police and school admin¹⁴

istrators to conduct searches in a manner which will minimize disruption of the normal school routine and will minimize embarrassment to pupils affected.

c. A frisk (pat-down) may be conducted by the police where the officer has reason to believe that the person being encountered is armed and presents a risk of injury to the officer or an innocent third party.

d. The principal or designee may, at any time, conduct such searches as are essential to the security, discipline, and sound administration of the particular school but are limited as stated above whenever the search is in connection with a police investigation. The appropriate police agency will respond to a request from a school official conducting an administrative search when the official feels that the search might reveal a violation of the law.

6. REPORTING CRIMES

a. School officials are charged with the responsibility to provide for the safety of students and for the security of school property. School officials shall report promptly evidence of criminal offenses which occur in the school environment, including incidents which occur on or in connection with school buses. Additionally, evidence of those crimes which has occurred off school property but which come to the attention of school authorities should be reported. The Delaware Code requires mandatory reporting of the offenses listed in 14 Del. C., §4112; a substantial fine can be assessed against any superintendent, principal or teacher who fails to make such a mandatory report {§4112(f)}. The following list is not all inclusive but, at a minimum, the following shall be reported to the appropriate law enforcement agency:

(1) Evidence that suggests the commission of the crimes of assault and extortion against pupil, or an assault, offensive touching, terroristic threatening or extortion against a school employee as defined in 11 Del. C., Ch. 5 {See 11 Del. C., 601, 611, 612, 613, 614, 621, and 846 (referring to 841); see also 14 Del. C., 4112(b) and (f)}.

(2) Evidence that suggests the commission of a felony (See 11 Del. C., Ch. 5), for example:

Reckless Endangering	Arson
Assault Offenses	Criminal Mischief
Homicide	Bombs, etc.
Unlawful sexual contact, penetration or intercourse	Unlawful Imprisonment,
	Kidnapping
Sexual exploitation of Children, Pornography	Offenses Involving Concealed
	Deadly or Destructive Weapons
Promoting Prostitution	Computer/Recorded
Burglary	Sounds Offenses
Robbery	Fraud Offenses
Felony Theft Offenses	Forgery Offenses

Extortion

(3) Evidence that suggests violations of the laws concerning controlled substances and alcohol (See 16 Del. C., Ch. 47 and 14 Del. C., 4112(c)), for example:

Manufacture, delivery or possession with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance
 Possession, delivery, possession with intent to deliver non-controlled prescription drugs (not obtained with valid prescription), including steroids, etc.

Riot

Possession, use or consumption of a controlled or counterfeit substance or of alcohol
 Trafficking in marijuana, cocaine, illegal drugs,
 methamphetamines, L.S.D., designer or other drugs
 Unauthorized possession or delivery of hypodermic syringe or drug paraphernalia

(4) Evidence that suggests incest, sexual abuse or the neglect or other abuse of children. See 11 Del. C., Ch. 5, Subchapter II, Subpart D and Subchapter V; see also 16 Del. C., Ch. 9 for required reporting by any "person who knows or reasonably suspects child abuse or neglect" to the Division of Child Protective Services.

(5) Evidence that suggests the use, possession or sale of dangerous instruments or deadly weapons, e.g., knives, firearms, ammunition, explosives or blasting caps. (See 14 Del. C. 4112(c) and 11 Del. C., Ch. 5, Subchapter VII, Subpart E, and 1338.)

(6) Evidence that suggests morals offenses, e.g., pornography, exhibitionism, peeping, etc. (See 11 Del. C., Ch. 5, Subchapter VII, Subparts B and C, and 820.)

(7) Evidence that suggests organized gambling. (See 11 Del. C., Ch. 5, Subchapter VII, Subpart D.)

(8) Evidence that suggests an assault, offensive touching, terroristic threatening or menacing of a school employee. (See 14 Del. C. 4112(b) and 11 Del. C., Ch. 5, Subchapter II, Subpart A.)

(9) Evidence of offenses involving school property, e.g., false fire alarms, telephone threats, computer crimes, vandalism and criminal mischief; trespass, burglary and theft; reckless driving and safety hazards. (11 Del. C., Ch. 5)

(10) Reports of suspicious persons or unauthorized persons on or near school grounds or property; or rumors, information or observations of gang rivalries or activities. These activities need not be reported to the State Board of Education.

b. Reportable offenses should not include conduct which has been traditionally treated as a matter of discipline to be handled at the discretion of school administra

tors. Whenever an administrator is unsure about whether a charge is appropriate, the applicable police authorities should be consulted. These reporting requirements shall not apply to offenses committed between students enrolled in grades kindergarten through third grade.

c. All conduct of a serious nature should be promptly reported to the parent or guardian concerned. Such persons should not be contacted where the student is the victim and the parent/guardian is a perpetrator of or conspirator in the reportable incident; see section 4.d of this Memorandum.

d. The school district superintendent or designee is required to report to the State Department of Public Instruction those incidents involving possession of weapons and unlawful drugs, {14 Del. C. 4112(c)}, and incidents of violence against pupils or school employees, {14 Del. C. 4112(b)}. In addition, the superintendent, or designee shall report to the State Department of Public Instruction all incidents of student behavior as described in Section 6.a. of this document. The procedures for filing these reports shall be as follows:

(1) When the building administrator has determined that there is probable cause to believe that a criminal charge is appropriate, the administrator shall immediately report their incident to the appropriate local police agency and to the district superintendent or designee.

(2) The parent or guardian will be notified of the action in accordance with Section 6.c. of this document, as soon as is reasonably possible.

(3) Within 5 days after the original report to the police, the superintendent or designee shall be in contact with the police to determine whether and/or how charges will be filed.

(4) The superintendent or designee shall complete the "District Superintendent's Student Conduct Report" and submit it to the State Department of Public Instruction within 5 days of the event precipitating the report. If the offense committed is one of assault and extortion against pupil, or an assault, offensive touching, terroristic threatening or extortion against a school employee as defined in 11 Del. C. Ch. 5 {See 11 Del. C., 601, 611, 612, 613, 614, 621 and 846 (referring to 841); see also 14 Del. C. 4112(b) and (f)}, or involving weapons or drug offenses as set out in 14 Del. C. 4112(c), a copy of the Report also shall be submitted to the Youth Division of the Delaware State Police.

(5) A short "Disposition Report" shall be sent to the appropriate agencies to follow up on the Report listed in (4) immediately above, if final disposition of the case takes place after the "District Superintendent's Student Conduct Report" form is submitted.

All of Paragraph 6 in bold above is State Board regulation and shall be included in all Memoranda of Agreement.

7. FILING OF CHARGES:

a. In any instance where a pupil, parent or guardian is found to have committed an assault, offensive touching, terroristic threatening or an extortion under 14 Del. C. 4112(b) against a school employee, the superintendent or his designee shall, without unreasonable delay, file the appropriate charge against the pupil, parent or guardian.

b. In all cases where a reportable offense has occurred, other than those listed in subparagraph a., immediately above, school officials should consult with police authorities to determine who will file the appropriate charges.

8. SCHOOL DISTURBANCES

a. The request for police assistance in a crisis situation requires special care because of the possibility of aggravating a situation:

(1) It is preferable that the principal or designee call the police. If a law enforcement officer is on the scene, it is desirable that the decision to call for additional police support be reached in collaboration with that officer.

(2) No person other than the principal or designee, the superintendent of the district or his designee, or the highest ranking police officer present and qualified, may request the tactical deployment of police to a school.

(3) Police manpower called to a school should be limited to that number which may reasonably be expected to be required to deal with the situation. This determination as to the level of force required can best be made by the ranking police officer on the scene, working jointly with the principal or designee.

b. In general, plain clothes officers are preferable to uniformed personnel in situations where student or faculty sensitivity may crucially influence the success of the short-term investigation required by the law enforcement agency. These sensitive situations will include most investigations where student informant must come forward, and most situations where inter-group tension may be intensified by the presence of uniformed officers. It is recognized that in many situations it may be possible to specify whether uniformed or plain clothes officers will or shall make the initial response to a routine school request, and for that reason, the Board of Education must recognize that any policy governing the use of these different categories of police officers must be flexible and that final authority rests with the police.

c. Tactical coordination between the principal or designee and police officers on the scene is a necessity. During any crisis situation, it will be the responsibility of the ranking police officer on the scene to ensure that direct, secure, continuing communication with the principal or designee is maintained.

9. SCHOOL ATTENDANCE

a. The code of the State of Delaware requires mandatory school attendance between the ages of five and sixteen;

Del. C. 2701:

b. School/Police Procedures in Attendance Cases:

(1) Normally, the school principal will refer attendance cases to the visiting teacher. Any court action against the parents for violation of the compulsory attendance statutes should be initiated by the school superintendent or his/her designee in the Magistrate Court.

(2) Police should not be requested to apprehend a student solely because the student is absent from school.

(3) A school-age student identified by a police officer as being off school property without official authorization may be returned to his or her home school or may be detained in accordance with 14 Del. C. 2713.

10. SIGNATURES

School District	Law Enforcement Agency
Date	

All appropriate agencies involved should be provided space for signature and date.

DEPARTMENT OF EDUCATION

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

The Department of Education recommends that Section B.1.a. Discipline Powers and Responsibilities of Superintendents, Parent Conferences, in the Handbook for K-12 Education be repealed due to the enactment of a change in 14 Del. C., Section 4112a. Parent Conferences (Subpoena Powers) found in 14 Del. C., Section 4112, Discipline Powers, Reporting Requirements of Superintendents, Principals and Teachers. This section has been amended by striking the section in its entirety and adding a new Section 4122 entitled Parent's Failure to Attend School Conference with Superintendent; Subpoena to Compel Attendance.

Since the regulation in Section B.1.a. of the Handbook for K-12 Education was a restatement of the old 14 Del. C., Section 4112, it must be repealed and it is not necessary to create a new regulation to restate the requirements already delineated in the new 14 Del. C., Section 4122.

Handbook for K-12 Education

B. DISCIPLINE

1. DISCIPLINE POWERS AND RESPONSIBILITIES OF SUPERINTENDENTS

a. Parent Conferences.--The authority of the superintendent of schools in each district shall include that of issuing subpoenas as such may be required, in his opinion, to compel the presence of a parent, parents or person having custody of a child going to school in such school district or attendance zone to discuss matters involving violations of school rules and regulations by such child; provided, however, before the issuance of such subpoena, the superintendent shall first schedule a conference with such parent, parents or custodian of such child at a time that does not conflict with the employment hours of such parent, parents or custodian of such child.

PUBLIC SERVICE COMMISSION

Statutory Authority: Title 26, Section of the Delaware Code (26 Del.C. §201)

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

<p>IN THE MATTER OF THE INVESTIGATION AND ADOPTION OF RULES TO GOVERN PAYPHONE SERVICES WITHIN THE STATE OF DELAWARE</p>	<p> </p> <p>PSC REGULATION DOCKET NO. 12</p>
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NOTICE OF COMMENT PERIOD AND PUBLIC HEARING ON PROPOSED RULES GOVERNING PAYPHONE SERVICES

In 1985, the Delaware Public Service Commission ("PSC") adopted "Rules and Regulations Governing Service by Customer Owned Coin-Operated Telephones" ("COCOT Rules"). The COCOT Rules govern the manner, terms, and conditions by which independent providers of coin-operated telephones can attach their telephones to Bell Atlantic-Delaware, Inc.'s public switched network. The present COCOT Rules are reproduced as Exhibit 1.

In the Telecommunications Act of 1996, Congress directed the Federal Communications Commission ("FCC") to pro-

mulgate regulations to ensure fair compensation for all payphone service providers ("PSPs") and to ensure competitive parity between independent PSPs and payphone services provided by Bell operating companies. 47 U.S.C. § 276. The FCC has entered two orders implementing § 276. See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Dckt. No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996).

In light of the enactment of § 276 and the entry of the two FCC Orders, the Public Service Commission re-opened this docket to investigate changes to its COCOT Rules. By Order No. 4525 (June 17, 1997), the PSC solicited comments on the content of such changes. The PSC Staff has now prepared proposed new payphone service rules which would replace the COCOT rules and govern all payphone service in Delaware. The text of Staff's proposed rules is reproduced as Exhibit 2. Staff's proposed rules differ from the present COCOT rules in that the proposed rules:

- (1) apply to all providers of payphone service, including independent providers and telecommunications carriers;
- (2) provide for certification of providers by entity rather than by each payphone;
- (3) allow the local coin calling rate to be determined by the payphone service provider;
- (4) re-define the information to be posted on payphones; and
- (5) impose annual reporting requirements.

The Commission has authority to issue such rules under 26 Del. C. § 209.

The PSC solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning Staff's proposed rules to govern payphone service. Ten copies of such materials shall be filed with the PSC at its office located at 1560 South DuPont Highway, Dover, Delaware 19901. Materials shall be filed on or before October 1, 1997.

In addition, the PSC's duly appointed Hearing Examiner will conduct a public hearing concerning Staff's proposed rules on Wednesday, September 24, 1997, beginning at 10:00 a.m. in the Gold Room, Goodstay Center, University of Delaware, Wilmington Campus, 2600 Pennsylvania Avenue, Wilmington, DE. Persons may present comments, evidence, and other materials at that public hearing.

The COCOT rules, Staff's proposed rules, and the materials submitted will be available for public inspection and copying at the PSC's Dover office during normal business hours. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in these proceedings should contact the PSC to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Ser-

vice, or otherwise. The PSC's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the PSC's Public Information Officer by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by e-mail at mcarl@state.de.us.

EXHIBIT 1

DELAWARE PUBLIC SERVICE COMMISSION RULES AND REGULATIONS GOVERNING SERVICE PROVIDED BY CUSTOMER OWNED COIN- OPERATED TELEPHONES

As amended through August 3, 1993

Rule 1

Whenever any person seeks to connect a customer-owned pay or coin operated telephone instrument (COCOT) to the Diamond State Telephone Company network in a location which would be a public or semipublic pay or coin operated service, if owned and operated by Diamond State Telephone Company, then such proposed installation shall be deemed for public use.

Rule 2

The owner or operator (whichever is the Diamond State Telephone Company customer) of each COCOT installed for public use which is capable of use in making or receiving intrastate telephone calls, shall be deemed to be a public utility under 26 Del. C. 102 and shall adhere to and abide by all lawful tariff requirements of the Diamond State Telephone Company.

Rule 3

In addition to compliance with Diamond State Telephone Company tariff requirements, each such COCOT must:

- (a) Be operated under a validly issued Certificate of Public Convenience and Necessity from the Delaware Public Service Commission, which must be issued prior to beginning business (see attached application form).
- (b) Provide access to local, intrastate toll and interstate toll services, and permit calls using credit cards, collect calls, calls billed to a third number, operator-handled emergency calls, calls to all applicable emergency numbers, and calls to toll free "800" and "950" numbers without charge and without the use of a coin.
- (c) Have a coin mechanism capable of accepting one or more coins which is also capable of returning coins for uncompleted calls.
- (d) Allow the completion of both local and long distance calls with not less than a three (3) minute time limit for a local call.

(e) Be installed and maintained in accordance with generally accepted telecommunications industry standards, applicable local codes, as well as the National Electric Code and the National Electric Safety Code. The Diamond State Telephone Company shall supply a one-party standard measured service business line per COCOT instrument, terminating at the point defined by its tariff for business access lines. When requested, the telephone company will provide inside wire and a modular jack at prevailing rates.

(f) Be registered with the FCC or connected through registered protective circuitry as required by FCC Regulations, Part 68.

(g) Comply with state and federal laws regarding accessibility by disabled individuals and hearing aid compatibility.

(h) Have conspicuously marked on or posted in close proximity to it, the operating instructions, call pricing, emergency numbers, procedure for receiving refunds, the telephone number, name, and address to be contacted for customer complaints and service difficulties, and the telephone number assigned to the instrument and the following legend:

“RATES FOR SOME TOLL CALLS WITHIN DELAWARE MADE FROM THIS TELEPHONE MAY EXCEED THE RATES FOR SIMILAR CALLS MADE FROM COIN TELEPHONES OF THE DIAMOND STATE TELEPHONE COMPANY.”

(i) Be equipped with an audible signaling device and provide two-way (originating and terminating) calling capability, or provide one-way (originating only) calling capability and, if desired, provided the type of calling capability is conspicuously indicated on or in close proximity to the instrument.

(j) Be installed and maintained in such a manner as to assure that privacy of use is not compromised through any type of electrical or acoustical coupling device, extension telephone, or similar instrument.

(k) Be installed upon a single standard measured service business line provided by Diamond State Telephone Company.

(l) Be installed by or with the written permission of the owner of the location where the instrument is to be connected.

(m) Have all required state and local business licenses.

(n) Charge rates for local telephone calls which are no higher than the rates charged under the effective Diamond State Telephone Company tariff for local calls from a pay telephone, except that a local call may be limited to three (3) minutes.

(o) Charge rates for intrastate toll calls which do not exceed fifty (50) cents per minute.

Rule 4

The telephone company tariff shall state that any COCOT service not meeting the requirements of Rules 1 through 3(n) shall be subject to disconnection until such time as the COCOT service in question meets these requirements.

Rule 5

All COCOTS which are placed in outdoor locations available twenty-four (24) hours a day must face a paved area such as a sidewalk or parking lot which is either flush with the surrounding surface or is wheelchair accessible by way of a ramp or reasonable graduated incline. If bumpers or posts are installed to protect the COCOT, they must be fifty (50) inches apart, thirty-six (36) inches high and be a minimum of six (6) inches and a maximum of nine (9) inches away from the front edge of the COCOT enclosure. This rule shall apply to all installations after November 16, 1988.

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO RESELL INTRASTATE TELEPHONE SERVICE USING A PRIVATELY OWNED PAY OR COIN OPERATED TELEPHONE FOR PUBLIC USE

1. Name and Address of Applicant (Must be the same as the customer taking the dial tone service from Diamond State Telephone Company. _____

2. Make, Model, and Identification Number of the Customer owned Instrument. _____
3. Location of Proposed Installation (e.g., Northern wall of B&G Bar and Grill, Corner of North and South Streets, any town, Delaware (zip). _____

4. Applicant's Business Telephone Number. _____
5. Telephone Number of the Certificated Instrument. _____
6. A description of the manner in which the Applicant will assure service and/or equipment maintenance. Including name, address, and telephone number of firm, if appropriate. _____

7. List rates to be charged for each local call and duration, if limited. Intrastate long distance rates are also to be stated. _____

PROPOSED REGULATIONS

8. Customer Account Number (to be provided by Diamond State Telephone Company to Applicant) _____

As Applicant for a Certificate of Public Convenience and Necessity, I hereby certify and agree that my pay or coin operated telephone complies and will be maintained in compliance with the hereto attached rules of the Public Service Commission and the applicable tariffs of the Diamond State Telephone Company.

I understand that certification as a public utility to provide pay or coin operated telephone service to the public at the location hereinabove described is nontransferable and may be revoked by the Delaware Public Service Commission for violation of Commission rules.

I further agree to notify the Commission in writing if for any reason I cease to be responsible for the resale of intrastate telephone service through the instrument described above.

Name of Applicant

By:

Date of Application: _____

9. Verification

STATE OF _____
COUNTY OF _____

Signed and sworn to (or affirmed) before me on

by _____
(name of applicant)

Signature of Notary

SEAL

Name of Notary (Printed or Typed)

(My Commission Expires: _____)

10. *Effective Date of Certificate

By: Robert J. Kennedy, III
Executive Director

*When this form is completed to include the effective date, the Diamond State Telephone Company assigned customer number and the signature of the Commission's Executive Director, it shall constitute a Certificate of Public Convenience and Necessity to provide intrastate telephone service for public use through the instrument herein described.

This certificate shall be valid for a period of twelve (12) months from the effective date. Thereafter, it shall be renewed annually by request in writing, confirming the continued validity of the information of the original certificate. Such renewals may be granted in writing by the Executive Director of the Commission.

EXHIBIT 2

PUBLIC SERVICE COMMISSION

REGULATIONS GOVERNING PAYPHONE SERVICE PROVIDERS IN DELAWARE

(PROPOSED)

REGULATIONS GOVERNING PAYPHONE SERVICE PROVIDERS IN DELAWARE

Section 1: Definitions

(a) "Coin-implemented payphone" means a payphone that requires the deposit of coins for calls other than those calls which are:

- (1) billed to another telephone or to a calling card;
- (2) 911 or telephone relay service calls; or
- (3) to toll free numbers, such as 800 or 888 numbers.

(b) "Interexchange carriers" means telephone companies who provide long distance interstate and/or intrastate telephone service.

(c) "Payphone" means any telephone made available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a credit card. The term "payphone" includes both instrument-implemented and central-office implemented telephones.

(d) "Payphone service provider" means a person or entity that offers telephone service by payphone. The term includes both independent owners or operators of payphones and telecommunications carriers, including local exchange carriers, who offer payphones.

(e) "Semi-public payphone" means a payphone for which the location provider is charged a recurring monthly rate for payphone service.

Section 2: Certification of Payphone Service Providers

(a) A person or entity providing intrastate payphone service shall be deemed to be a public utility under 26 Del. C. § 102(2) and shall be governed by these regulations.

(b) Except as permitted under paragraph (f) below, no person or entity shall install or offer for service a payphone in Delaware until that person or entity has received from the Commission a Certificate of Public Convenience and Necessity to provide payphone service.

(c) Each applicant seeking a Certificate of Public Convenience and Necessity to provide payphone service shall make application on a form prescribed by the Commission.

Each applicant seeking certification to provide payphone service shall supply the following:

- (1) the business name and address of the applicant;
- (2) the name and address of a contact person or persons;
- (3) the telephone and facsimile numbers and the e-mail address of the contact person;
- (4) a description of the manner the applicant will assure service and equipment maintenance for the payphones, including the name, address, and telephone number of the person or entity providing such services if different from the applicant;
- (5) a written statement affirming that the applicant has the required state and local business licenses;
- (6) a written statement affirming that the applicant agrees to comply with all the provisions of these regulations;
- (7) the applicant's signature and the title of the person signing the application; and
- (8) the date of signature of the application.

(d) A person or entity installing or offering for service a payphone shall comply with the provisions of 47 C.F.R. Part 68 and any other order, rule, or regulation of the Federal Communications Commission related to telephone service offered from payphones, unless exempted from compliance by the Federal Communications Commission.

(e) If an applicant correctly completes and submits the application, has complied with the requirements of the Federal Communications Commission, and has paid the required application fee, the application shall, upon execution by the Executive Director or the Chief of Technical Services, shall be deemed approved and shall act as a Certificate of Public Convenience and Necessity to provide payphone service within Delaware.

(f) Any person or entity providing payphone service on the effective date of these regulations pursuant to a previously-granted Certificate of Public Convenience and Necessity or pursuant to other legal authority may continue to provide such payphone service. Such person or entity shall, within ninety (90) days of the effective date of these regulations, file with the Commission an application under paragraph (c) of this section and the information required by paragraph (a) of Section 3.

(g) Each certificated payphone service provider shall notify the Commission in writing within ten (10) days following the change of any information required by paragraph (c) of this section.

(h) Each certificated payphone service provider shall provide written notice to the Commission ten (10) days prior to the cessation of operations.

(i) The application fee for a Certificate of Public Convenience and Necessity to provide payphone service is one hundred dollars (\$100). Such application fee is waived for persons or entities filing applications under paragraph (f) of this section.

Section 3: Location Reporting

(a) At the time of the application described in paragraph (c) of Section 2, the applicant shall provide to the Commission in writing the following information for each payphone to be installed and offered in Delaware:

- (1) the make, model, and identification number for the payphone;
- (2) the telephone number for the payphone; and
- (3) the location of the payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(b) If after certification, a payphone service provider intends to install or offer an additional payphone, relocate an existing payphone, or remove a existing payphone, the payphone service provider shall, prior to such new installation, relocation, or removal, notify the Commission in writing. Such written notification shall state:

- (1) the make, model, and identification number for the additional, relocated, or removed payphone;
- (2) the telephone number for the additional, relocated, or removed payphone; and
- (3) the location of the additional, relocated, or removed payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(c) The Commission may also require the information in paragraphs (a) and (b) of this Section to be submitted in electronic format.

(d) A payphone service provider shall not install or offer payphone where the installation or maintenance of the payphone would violate any state or local law designed to protect the health, safety, and welfare of citizens.

Section 4: Payphone Equipment

(a) All payphones shall be of a type registered with the Federal Communications Commission pursuant to 47 C.F.R. Part 68, unless such payphone has been exempted under an applicable order or ruling of the Federal Communications Commission. All payphones shall be installed in accordance with generally accepted telecommunications industry standards, applicable local codes, and the National Electrical Code and the National Electric Safety Code.

(b) All payphones shall provide, at no charge to the caller and without advance deposit of any coins:

- (1) dial tone;
- (2) access to 911, any other emergency number, and an operator qualified to route emergency calls;
- (3) access to a number for reporting repairs or service for the payphone; and
- (4) telecommunications relay service.

(c) Providers of payphone service shall provide that each payphone shall:

- (1) be equipped with an audible signaling device and receive incoming calls at no charge, except that a

payphone service provider may elect to bar the receipt of calls by a payphone if the provider posts notice of such restriction;

(2) except as provided in (d) and (e) of this Section, provide access to the network by a dial 0 and a dial 1 capability and/or 7-digit dialing;

(3) permit dialing of subscriber "800" or "888" toll-free numbers without the advance deposit of coins, except those numbers that have been permissibly blocked from the payphone;

(4) provide, without the advance deposit of coins, access to the caller's desired interexchange carrier or operator service provider by use of an "800," "888," or "950" access toll-free call or by use of a carrier access code; and

(5) permit calls using credit cards, collect calls, and calls billed to a third party without the advance deposit of coins and be programmed so that collect and third party calls cannot be billed to the payphone number, except, at the option of the payphone provider, in the case of semi-public payphones;

(d) Payphones provided for inmates shall not be required to comply with (c)(1), (c)(2), (c)(3) or (c)(4) of this Section.

(e) Coin-less payphones shall not be required to provide dial 1 capability;

(f) Each payphone service provider shall post on near the payphone, in plain view of callers:

(1) relevant emergency numbers;

(2) the rate, including any time increment, for a local call;

(3) the telephone number of the payphone;

(4) the name, address, and toll-free number of the payphone service provider or presubscribed operator service provider;

(5) a free phone number for maintenance and repairs;

(6) any restrictions in making or receiving calls, and if the payphone does not accept incoming calls, a statement to that effect;

(7) the primary intrastate or intraLATA carrier and the primary interstate or interLATA carrier and toll-free telephone numbers to call for the pre-subscribed carriers' rate information, along with a statement that the rates for operator-assisted calls are available upon request;

(8) any other information necessary to facilitate calls, refunds or repairs;

(9) dialing instructions and the charges, if any, for directory assistance; and

(10) a statement that callers have the right to obtain access to the toll carrier of their choice and may contact their preferred carriers for information on how to access that carrier's service by use of the payphone.

(g) A payphone service provider shall change the posted information required by paragraph (f) of this Section within thirty (30) days of any such change.

(h) All coin-implemented payphones shall be shall be

equipped to accept nickels, dimes and quarters and to return coins to the caller in the case of an incomplete call.

(i) All payphones shall be installed and maintained in a manner to assure the privacy of use is not compromised through any type of electrical or acoustical coupling device, extension telephone, or similar instrument.

(j) All payphones shall comply with federal and state laws and regulations regarding accessibility by individuals with disabilities and hearing aid compatibility. Any payphone which is placed in an outdoor location available twenty four hours a day must face a paved area such as a sidewalk of parking lot which is either flush with the surrounding surface or is wheelchair accessible by way of a ramp or reasonably graduated incline. If bumpers or posts are installed to protect the payphone, such posts or bumpers must be fifty (50) inches apart, thirty-six (36) inches in height, and a minimum of six (6) inches and a maximum of nine (9) inches from the front of the payphone enclosure.

Section 5: Local Coin Call Rates

(a) Payphone service providers need not file tariffs. The rate for local coin call for a payphone location may be determined by the payphone service provider. A payphone service provider may not charge for a local coin call or for directory assistance greater than the rate posted on the payphone. A payphone service provider may not charge for an uncompleted call.

(b) The Commission may undertake remedial action if it determines that market failures have not allowed for market-based local coin calling rates at specific payphone locations.

Section 6: Reporting.

(a) Each payphone service provider shall file an annual report with the Commission on or before March 31 of each year.

(b) Each payphone service provider shall provide in its annual report the following information:

(1) the name of the payphone service provider;

(2) the address and telephone and facsimile numbers of the payphone service provider;

(3) the total annual intrastate gross revenues from payphone services for the immediately preceding calendar year;

(4) the total number of payphones which the provider maintains in service as of the end of its fiscal year; and

(5) a signed and dated statement sworn to under oath by an authorized representative of the payphone service provider as to the accuracy of the information contained in the annual report.

(c) A payphone service providers shall be assessed as a public utility under the provisions of 26 Del. C. § 115. A payphone service provider shall submit the regulatory assessment with the payphone service provider's annual report.

(d) In addition to the annual report, each payphone service provider shall submit to the Commission by March 31 of each year, the following information:

(1) a description of each location within Delaware, where, during the preceding calendar year, the local calling rate charged by the payphone service provider exceeded fifty cents for a call of less than three minutes duration; and

(2) an affirmation by the payphone service provider that each payphone installed and maintained by that provider complies with all of these regulations, including the requirements of paragraphs (b), (c), and (f) of Section 4.

Section 7: Violations

(a) If, after notice and an opportunity to be heard, the Commission determines that good cause exists, it shall issue an order to a payphone service provider :

(1) revoking, suspending or modifying its Certificate of Public Convenience and Necessity;

(2) imposing fines or penalties, or;

(3) requiring reparation to a customer or affected party; or

(4) providing for such other relief as the Commission may reasonably require.

(b) Good cause, pursuant to (a) above, shall include, but is not be limited to, the following actions by a payphone service provider:

(1) violation of these regulations, including the information disclosure requirements;

(2) conducting business in an unfair or deceptive manner; or

(3) actions which result in revocation of its registration by the Federal Communications Commission.

Section 7: Miscellaneous

These regulations shall become effective on_____.

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. **[Bracked Bold language]** indicates text added at the time the final order was issued. ~~**[Braketed 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 NATURAL
RESOURCES & ENVIRONMENTAL
CONTROL**

TIDAL FINFISH REGULATION No. 8

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

**PLEASE NOTE THAT THE FOLLOWING
REGULATORY CHANGES WERE
INITIATED PRIOR TO THE EFFECTIVE
DATE OF THE CURRENT
ADMINISTRATIVE PROCEDURES ACT
THE FOLLOWING IS PRESENTED
FOR INFORMATIONAL PURPOSES
ONLY**

In Re: Adoption of amendment to Tidal Finfish Regulation No. 8 to facilitate commercial fishermen filling their striped bass quotas.

Order No. 97-F-0024

ORDER

NATURE OF PROCEEDINGS

Pursuant to due notice, the Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation No. 8 to do the following:

- To adjust the commercial fishing season dates for the harvest of striped bass by hook and line and gill nets in the fall to better account for the annual distribution of striped bass in the Delaware Estuary.
- To adjust the percentage of the State commercial quota of striped bass allotted to gill netters in order to improve the probability of landing the total quota.

A public hearing was held on June 10, 1997 in Dover,

DE in front of Roy W. Miller, Fisheries Program Manager for the Department and the Department's designee to receive evidence. The Advisory Council on Tidal Finfisheries discussed the proposed amendments on July 17, 1997 although a quorum was not present.

SUMMARY OF EVIDENCE

Under the provisions of the Striped Bass Fishery Management Plan, as amended, approved by the Atlantic States Marine Fisheries Commission, each coastal state from Maine to North Carolina is allocated an annual quota in pounds for the commercial harvest of striped bass. If this quota is exceeded, the poundage in excess must be subtracted from the next year's commercial quota. If the quota is not attained, no poundage is added to the next year's commercial quota. Delaware's commercial fishermen fail to land about 20% of their total quota.

At previous meetings of the Advisory Council on Tidal Finfisheries, it was recommended the Department extend the commercial seasons to allow hook and line fishermen and gill net fishermen more opportunity to harvest their individual allocations of striped bass in their fall fishing seasons due to annual variations in the distribution of striped bass in the Delaware Estuary relative to water temperature and salinity. In addition, the Division of Fish and Wildlife recommended an increase of 5% to the commercial gill net fishery with no penalty to the commercial hook and line fishery.

FINDINGS OF FACT

Delaware's commercial striped bass fishery is allotted an annual quota by the Atlantic States Marine Fisheries Commission. In return, this quota is allocated among commercial fishermen so that each participant is assigned a limited poundage of striped bass. Commercial gill netters and commercial hook and line fishermen, collectively, have consistently failed to harvest the state's quota by an average of 20%.

Extending the seasons by starting the hook and line fishing season a month earlier and the gill net season two weeks earlier will afford fishermen more opportunity to harvest their assigned allocations of striped bass without any adverse impact on the resource. Striped bass will leave low salinity areas of the Delaware estuary sooner relative to lower water temperatures.

In order to assign individuals their share of the annual quota, 5 pounds has been used as the average weight of a striped bass in order to figure the number of tags each fisherman will receive. The average weight of striped bass now fluctuates with the market. The 5 pound average should be eliminated. Calculations should be based on the previous years average weight.

Any overage of the state's quota for striped bass landed for commercial purposes must be subtracted from the following years quota assigned to the fishery that causes the overage as stated in the Striped Bass Fishery Management Plan, as amended.

No one provided any evidence that would substantiate any adverse affects on the striped bass or to the fisheries if the fall commercial striped bass fishing seasons are opened earlier.

With the comments received regarding the earlier openings of the fall commercial striped bass hook and line season and gill netting season, the Department finds the attached amendments to Tidal Finfish Regulation No. 8 should be adopted in the public interest for the conservation of striped bass.

ORDER

It is hereby ordered, the 16th day of July, 1997 that the above referenced amendments to Tidal Finfish Regulation No. 8, a copy of which is attached hereto, are adopted pursuant to 7 Del.C., § 903(e)(2)(a) and shall become effective 30 days from the date of this order.

Christophe A.G. Tulou,
Secretary Department of Natural
Resources and Environmental Control

Under the authority of the provisions of 7 Del.C., Chapter 9 and to be consistent with the Striped Bass Fishery Management Plan, as amended, adopted by the Atlantic States Marine Fisheries Commission, amendments to Tidal Finfish Regulation No. 8 are required to better facilitate the allowable harvest of the annual commercial quota of striped bass by the gill net fishery and the hook and line fishery in Delaware.

Be it adopted by the Department of Natural Resources and Environmental Control, amendments to Tidal Finfish Regulation No. 8, **STRIPED BASS COMMERCIAL FISHING SEASONS; QUOTAS; TAGGING AND REPORTING REQUIREMENTS.**

Section 1. Amend Tidal Finfish Regulation No. 8 in paragraph (a) by striking the words "December 1" as they appear in the third sentence thereof and substituting in lieu thereof the words "November 15."

Further amend Tidal Finfish Regulation No. 8 in paragraph (a) by striking the words "November 15" as they appear in the last sentence thereof and substituting in lieu thereof the words "November 1"

Section 2. Amend Tidal Finfish Regulation No. 8 in paragraph (b) by striking the words "October 1" as they appear in the second sentence thereof and substituting in lieu thereof the words "September 1"

Further amend Tidal Finfish Regulation No. 8 in paragraph (b) by striking the words "September 15" as they appear in the last sentence thereof and substituting in lieu thereof the words "August 15."

Section 3. Amend Tidal Finfish Regulation No. 8 in paragraph (d) by adding the words "November" between the words "... gill net fishery in" and "December and the striped bass..." in the first sentence.

Further amend Tidal Finfish Regulation No. 8 in paragraph (d) by striking the words "October" as they appear in the first and forth sentences and substituting in lieu thereof the word "September."

Further amend Tidal Finfish Regulation No. 8 in paragraph (d) by striking the figure "90%" as it appears in the forth sentence and substituting in lieu thereof the figure "95%."

Further amend Tidal Finfish Regulation No. 8 in paragraph (d) by adding the word "November" between the words "...said remainder for the" and "December gill net fishery" in the last sentence.

Further amend Tidal Finfish Regulation No. 8 in paragraph (d) after the period "." in the last sentence by adding a new sentence to read as follows: "Any overage in landings of the commercial quota shall be subtracted from the subsequent year's commercial quota in proportion to the appropriate fishery."

Section 4. Amend Tidal Finfish Regulation No. 8 in paragraph (g) by striking the words "five (5), five (5) being" as they appear in the second sentence thereof.

Section 5. These amendments to Tidal Finfish Regulation No. 8 will not have a significant impact on the conservation of striped bass.

Section 6. These amendments to Tidal Finfish Regulation No. 8 shall become effective 30 days after the order implementing said amendments is signed by the Secretary.

The Department of Natural Resources and Environmental Control, in accordance with 7 Del. C. 903 (e) (2) (a) has adopted amendments to Tidal Finfish Regulation No. 8, STRIPED BASS COMMERCIAL FISHING SEASONS; QUOTAS; TAGGING AND REPORTING REQUIREMENTS. The changes are summarized as follows:

- The commercial hook and line fishing season for striped bass will begin on September 1 rather than October 1 and continue to 4:00 p.m. on December 31.
- Commercial hook and line fishermen must sign up with the Division of Fish and Wildlife to participate in the commercial hook and line fishery for striped bass by no later than August 15.
- The commercial fall gill net season for striped bass will begin on November 15 rather than December 1 and continue to 4:00 p.m. on December 31.
- Commercial gill netters must sign up with the Division of Fish and Wildlife to participate in the commercial fall gill net fishery for striped bass by no later than November 1.
- The state's quota for the commercial striped bass fisheries will be allocated 95% to commercial gill netters and 10% to commercial hook and line fishermen in order to calculate individual shares. Any overage of the state's quota will be subtracted from the next year's quota in the fishery responsible for the overage.

The above amendment shall become effective on August 15, 1997.

A public hearing was held on June 16, 1997 at 7:30 p.m. in the DNREC auditorium, 89 Kings Highway, Dover, DE.

Anyone desiring a copy of the revised Tidal Finfish Regulation No. 8 may obtain a copy from the Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901.

The final date to receive comments was June 24, 1997.

TIDAL FINFISH REGULATION NO. 8, STRIPED BASS COMMERCIAL FISHING SEASONS; QUOTAS; TAGGING AND REPORTING REQUIREMENTS.

- a) It shall be unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to

participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 a.m. on March 1 and ending at 4:00 p.m. on April 30 next ensuing. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 a.m. on ~~December 1~~ November 15 and ending at 4:00 p.m. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the March - April gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 15 for the March - April gill net fishery and by ~~November 15~~ November 1 for the December gill net fishery.

b) It shall be unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 a.m. on ~~October 1~~ September 1 and ending at 4:00 p.m. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by ~~September 15~~ August 15.

c) It shall be unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection (b) herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.

d) The striped bass gill net fishery in March - April, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in ~~October~~ September - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department.

The total pounds of striped bass allotted to each fishery by the Department shall be as follows: ~~90%~~ 95% of the State's commercial quota, as determined by the ASMFC, for the March - April gill net fishery, 10% of the State's commercial quota for the ~~October~~ September - December hook and line fishery and, provided that in excess of two (2) % of the March - April gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

e) It shall be unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

f) It shall be unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill a tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass.

g) The Department shall issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of tags that is to be determined by the Department by dividing said participants assigned share in pounds by ~~five (5); five (5)~~ being the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

h) It shall be unlawful for a commercial food fisherman who has been issued striped bass tags by the Department to transfer said tags to another person.

i) It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued to said commercial food fisherman by the Department.

j) It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass if said tag had previously been applied to another striped bass.

k) It shall be unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have

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transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.

l) The Department shall appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

m) Each commercial food fisherman participating in a striped bass fishery shall file an acceptable report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued to a commercial food fisherman shall be returned to the Department with said report. Failure to file an acceptable report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

STATE PERSONNEL COMMISSION
MERIT EMPLOYEE RELATIONS BOARD
 Statutory Authority: 29 Delaware Code,
 Section, 5914, (29 Del.C. 5914)

<p>PLEASE NOTE THAT THE FOLLOWING REGULATORY CHANGES WERE INITIATED PRIOR TO THE EFFECTIVE DATE OF THE CURRENT ADMINISTRATIVE PROCEDURES ACT THE FOLLOWING IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY</p>

**BEFORE THE MERIT EMPLOYEE RELATIONS
 BOARD
 OF THE STATE OF DELAWARE**

**IN THE MATTER OF
 THE ADOPTION OF
 RULES FOR PROCESSING
 MAINTENANCE REVIEW
 REVIEW CLASSIFICATION
 APPEALS**

**ORDER
 ADOPTING
 RULES**

ORDER

AND NOW, this 19th day of June, 1997,
 WHEREAS, pursuant to 29 Del. C § 5915, the Merit Employee Relations Board ("Board") is directed to hear and consider appeals from maintenance review classification determinations approved by the Director of the State Personnel Office, the State Budget Director, and Controller General; and,

WHEREAS, the Board has determined to adopt Rules governing the filing and consideration of such appeals in a manner consistent with the terms of 29 Del. C § 5915; and,

WHEREAS, the Board has the authority, pursuant to 29 Del. C. § 10113 to adopt Rules of Practice and Procedure without the necessity of a formal rulemaking.
 NOW, THEREFORE, IT IS ORDERED:

1. That the attached Rules of Practice and Procedure governing the processing of Appeals of Maintenance Review Classification decisions before the Merit Employee Relations Board are effective with the date of this Order.

2. That the time requirements set forth in the attached Rules are suggested and permissive except where required by the provisions of 29 Del.C. § 5915 in which event they are mandatory and may be jurisdictional.

3. That the Merit Employee Relations Board reserves the jurisdiction and authority to modify such Rules within its authority to do so when the interest of justice so requires.

Katy K. Woo, Chairperson
 Robert Burns, Vice-Chairperson
 Walter Bowers, Member
 Dallas Green, Member

Mailing Date: 6/26/97

Merit Employees Relations Board (MERB)
 P.O. Box 1401, Tatnall Building, Ground Floor
 Dover, DE 19903
 (302) 739-6772

**CLASSIFICATION MAINTENANCE APPEAL
PROCEDURES FOR MERIT SYSTEM EMPLOYEES**

1. The position incumbent is notified in writing of a final classification decision and is given a copy of (a) the classification specification for the new classification assigned to the position, (b) Classification Maintenance Appeal Procedures for Merit System Employees, (c) the classification appeals form, and (d) the name of the designated agency representative (normally the agency personnel administrator or a high level personnel professional, or if the agency does not have a personnel professional, a high level agency manager). The classification decision may be appealed to MERB within thirty (30) calendar days from the notification to the employee of the classification decision.

2. The designated agency representative should within ten (10) calendar days offer to meet with the employee(s) considering filing a classification appeal to explain the process and answer questions about the appeals process. These meetings may be with individual employees or with groups of employees.

3. Within thirty (30) calendar days from the date the employee receives written notice of the final classification decision from the designated agency representative, the employee, who decides to appeal must complete the employee portion of the appeals form (items 1-4), send a copy of the appeal to the designated agency representative, and submit the appeal directly to MERB.

4. The Merit Employee Relations Board will forward a copy of the employee's appeal to the State Personnel Office Classification Unit upon receipt. Within ten (10) calendar days from the receipt of the employee appeal to MERB, the designated agency representative has the hiring agency head or designee complete the agency's portion of the classification appeals form (items 5-7), and submit the agency's portion of the employee's appeal form to the Merit Employee Relations Board.

5. Within ten (10) calendar days after receipt of the employee's appeal, MERB notifies the agency head, the designated agency representative, the employee, the Director of the State Personnel Office, and the State Personnel Classification Unit, in writing that the appeal has been received and is assigned to an Independent Reviewer. The State provides access to all documentation pertaining to the classification decision.

6. Within thirty (30) calendar days of assignment of the appeal, the Independent Reviewer reviews the appeal form as filed by, the employee and as completed by the

agency and any other relevant documentation that was used in the classification decision provided by the State Personnel Classification Unit. The Independent Reviewer may contact the employee and agency via the designated agency representative, and/or the State Personnel Classification Unit, to get additional information or clarification. Based on this review, the Independent Reviewer shall prepare a written report of findings and recommendations concerning the classification appeal and shall submit it to MERB, the employee, the Director of the State Personnel Office, and the Manager of the Classification Unit. In unusual circumstances, the Board may authorize the Independent Reviewer an additional thirty (30) calendar days to issue findings and recommendations to the parties.

When the Independent Reviewer makes his/her findings and recommendations, he/she shall consider whether:

(a) One or more major duties and responsibilities and/or major knowledge, skills and abilities are not included in the class specification;

(b) Another class specification is clearly a more accurate description of the position.

7. Within thirty (30) calendar days of the date of the Independent Reviewer's findings and recommendations, the State Personnel Director and the employee shall accept, deny, or ignore the findings rendered by the Independent Reviewer and notify, in writing, the Merit Employee Relations Board.

8. If the Independent Reviewer's findings and recommendations are accepted by the employee and the Director, MERB is required to also accept the findings and to so notify the parties.

9. If the Independent Reviewer's findings are rejected or ignored by the Director or employee within thirty (30) calendar days after the Independent Reviewer's findings and recommendations, MERB has sixty (60) calendar days to conduct a hearing. At this same time, the appeal file containing the PCQ/JAQ, the written analysis by the Independent Reviewer, the interview record (if applicable), and any other documentation provided by the employee or agency and the State Personnel Classification Unit is available for review by the employee and the Director. Parties may call the Merit Employee Relations Board if he/she wishes to schedule a time to review the file.

10. The employee or the Director may respond in writing to the findings and recommendations of the

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Independent Reviewer. Such written response, which may include affidavits, should be filed with MERB, served upon the opposing party, and provided to the Independent Reviewer within thirty (30) days of the issuance of the Independent Reviewer's findings and not less than ten (10) days prior to the scheduled hearing for oral argument.

11. The Independent Reviewer shall forward a decision binder containing the appeal form completed by the agency and the employee, and any pertinent documentation from the State Personnel Classification Unit's classification maintenance review decision file, and the written findings and recommendations by the Independent Reviewer and any written responses thereto and any other pertinent material to the members of MERB not less than ten (10) calendar days prior to the scheduled hearing for oral argument.

12. The Board shall hold a hearing at which all parties may attend and have the opportunity to present brief oral arguments. The Independent Reviewer will summarize the grounds for the appeal, the primary points made by the parties, and his/her findings and recommendations based on review of the facts. The appellant will have the opening argument (normally no more than 15 minutes) followed by the Director (normally no more than 15 minutes), and the appellant may close (normally 5 minutes). The Board may question the parties and the Independent Reviewer as deemed necessary.

13. Within fifteen (15) calendar days of the hearing, the Board shall render a final and binding decision considering the following criteria:

- (a) the findings of the Independent Reviewer;
- (b) the Director's initial determination;
- (c) the Director's response to the Independent Reviewer's findings;
- (d) the employee's response to the Independent Reviewer's findings;
- (e) the oral argument;
- (f) the consistency with other existing classified positions of a similar nature;
- (g) the minimization of the number of classifications.

14. The Board shall notify the employee and the State Personnel Director, in writing, of the Board's decision.

ADOPTED BY THE BOARD: JUNE 19, 1997

(Note that the following form is only a representation of the form supplied by the Merit Employee Relations Board and is not official)

CLASSIFICATION MAINTENANCE REVIEW
STATE OF DELAWARE

EMPLOYEE APPEAL FORM

TO BE COMPLETED BY AGENCY PERSONNEL
SECTIONS

Position Number: _____
 Department/Division/Section: _____
 Date Employee was Notified by Agency of Classification Decision: _____
 Date Appeal was Submitted by Employee: _____
 Name of Personnel Representative: _____

Title: _____ Phone No. _____ Fax. No. _____
 Date Bargaining Unit Representative Notified of Appeal (if applicable): _____

Note: The information in items 1-4 are to be completed by the employee who is appealing the classification decision. Items 5-7 are to be completed by the Division Director and/or the appropriate agency manager who is knowledgeable of the duties and responsibilities of the employee in this position.

TO BE COMPLETED BY EMPLOYEE

1. Name: _____
 Phone No. _____ Fax No. _____
 Class Title: _____
 (Former title)

 (New title)

Date Employee was Notified by Agency of Classification Decision: _____
 Agency: _____

2. Grounds for classification appeal (See guidelines for classification appeals to the Merit Employee Relations Board)

A. _____ One or more major duties and responsibilities or major knowledge, skills and abilities are not included in the class specification.

B. _____ Another class specification is clearly a more accurate description of the position.

3.A. If you checked 2(A) or 2(B) above, list the duties and responsibilities that are assigned to your position that are not included in the new class specification.

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3.B. If you checked 2(A) or 2(B) above, list the knowledge, skills and abilities that are required for your position that are not included in the new class specification. (Please note: personal qualifications and job performance of employees are not relevant factors in classifying positions.)

Employee

Date

Immediate Supervisor

Date

Division Director

Date

Personnel Representative

Date

4. Relief sought (check one of the following):

1. Revisions to class specification.
2. Reclassification of position to: _____
Name of Classification

(If No. 2 was checked, the requested class title must be listed.)

TO BE COMPLETED BY AGENCY MANAGER OR
DIVISION DIRECTOR

5. Name of Manager: _____
Phone No. _____ Fax No. _____
Title: _____

6. If the employee completed section 3(A), please verify that each of the duties and responsibilities listed are assigned to the position. How long have these duties been assigned to this position? If possible, indicate the specific date these duties were assigned.

If the employee completed section 3(B), please verify that the knowledge, skills and abilities listed are required to perform this job. (Please note: Personal qualifications and job performance of employees are not relevant factors in classifying positions.)

cc: Agency Head
Designated Agency Representative

APPEAL FORM ADOPTED BY THE
MERIT EMPLOYEE RELATIONS BOARD
JUNE 19, 1997

**DEPARTMENT OF NATURAL
RESOURCES & ENVIRONMENTAL
CONTROL**
DIVISION OF AIR & WASTE MANAGEMENT

Statutory Authority: Title 7, Chapter 63 of the
Delaware Code
(7 Del.C. Ch. 63)

**PLEASE NOTE THAT THE FOLLOWING
REGULATORY CHANGES WERE
INITIATED PRIOR TO THE EFFECTIVE
DATE OF THE CURRENT
ADMINISTRATIVE PROCEDURES ACT
THE FOLLOWING IS PRESENTED FOR
INFORMATIONAL PURPOSES ONLY**

Secretary's Order No. 97-A-0022

**Re: Changes to the *Delaware Regulations
Governing Hazardous Waste***

Date of Issuance: July 21, 1997

I. Background

On June 24, 1997, a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The public hearing concerned amendments to the *Delaware Regulations Governing Hazardous Waste*. The public hearing was noticed pursuant to 7 Del. C. Chapter 63 and the Department's Regulatory Development Policy. Prior to the public hearing, these proposed changes were the subject of two Regulatory workshops. The workshops were held on May 13, 1997, in New Castle, and on May 21, 1997, in Dover. The proposed amendments are necessary in order for Delaware's regulations to mirror the federal regulations and must be adopted in order for Delaware to maintain its Hazardous Waste Program delegation from the U.S. EPA.

II. Findings

1. Proper notice was provided as required by law.
2. Absolutely no members of the public appeared at the public hearing or submitted any written comments concerning this proposed regulation.
3. These amendments are necessary in order for Delaware

to maintain its Hazardous Waste Program delegation from the U.S. EPA.

III. Order

In view of the above findings, it is hereby ordered that the attached changes to the *Delaware Regulations Governing Hazardous Waste* be adopted and promulgated according to the 7 Del. C. Chapters 60 and 63 and the Administrative Procedures Act. Further, it is hereby ordered that the effective date of the Regulatory changes shall be August 21, 1997.

V. Reasons

These amendments to the *Delaware Regulations Governing Hazardous Waste* will further the policies and purposes of 7 Del. Code Chapter 63 and contribute to the protection of human health and the environment. The adoption of these amendments enable Delaware to maintain equivalency with the federal program and authorization of the Department's Hazardous Waste Management Program from the U.S. EPA.

Christophe A. G. Tulou,
Secretary

*** Due to the number of amendments to the Delaware Regulations Governing Hazardous Waste it was not possible to publish the full text of the regulations. For more information contact the Department of Natural Resources & Environmental Control at (302) 739-4764 or the Division of Research at (302) 739-7727.**

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER FORTY-SIX

TO: HEADS OF ALL STATE DEPARTMENTS,
AGENCIES AND AUTHORITIES, AND ALL
POLITICAL SUBDIVISIONS AND
GOVERNMENTAL UNITS OF THE STATE OF
DELAWARE

RE: AMENDMENT TO EXECUTIVE ORDER
NUMBER FORTY-SIX REGARDING THE
GOVERNOR'S TASK FORCE ON VIOLENT
CRIME

WHEREAS, the Attorney general's Office has agreed to provide legal advice and to otherwise work cooperatively with The Governor's Task Force on Violent Crime; and

WHEREAS, sound and timely legal advice is crucial to the ongoing success of The Governor's Task Force on Violent Crime; and

WHEREAS, coordinated investigations and prosecutions will send a clear signal that state and local law enforcement agencies are committed to reducing violent crime.

NOW, THEREFORE, I Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. Executive Order Number Forty-Six is amended by striking the text of paragraph number five and inserting in lieu thereof the following:

"The task force shall be composed of officers from the Delaware State Police, Probation and Parole Officers for the Department of Correction, Probation and Parole Officers for the Department of Services for Children, Youth and their Families, a Deputy Attorney General representing the Delaware Department of Justice, and such others as the Governor shall direct to be deployed to assist the task force."

2. Copies of this amendment to Executive Order Number forty-Six shall be distributed along with copies

of Executive Order Number Forty-Six.

Approved this 25th day of July, 1997.

/Thomas R. Carper
Governor

Attest:

/Ed Freel
Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER FORTY-SIX

TO: HEADS OF ALL STATE DEPARTMENTS,
AGENCIES AND AUTHORITIES, AND ALL
POLITICAL SUBDIVISIONS AND
GOVERNMENTAL UNITS OF THE STATE OF
DELAWARE

RE: GOVERNOR'S TASK FORCE ON VIOLENT
CRIME

WHEREAS, the health and safety of our communities and neighborhoods is of paramount importance to the quality of life of Delawareans; and

WHEREAS, violent crime and drugs in our neighborhoods greatly diminishes the quality of life in those communities and undermines public confidence in government and community; and

WHEREAS, violent crime is on the rise in certain areas of our State; and

WHEREAS, those areas of concentrated criminal activity tax the resources of local law enforcement, making it difficult for local law enforcement to respond in a manner sufficient to address the problem; and

WHEREAS, the studies of many experts conclude that a high percentage of violent crime is committed by a small number of offenders who are already known to the criminal justice system; and

WHEREAS, the studies of many experts conclude that an aggressive, concentrated law enforcement effort in high crime areas along with intense supervision of those persons

GOVERNOR'S EXECUTIVE ORDERS

on probation and parole will help reduce violence, thereby greatly benefiting the law-abiding citizens in those communities; and

WHEREAS, the Delaware State Police often join forces with local law enforcement in cooperative law enforcement initiatives; and

WHEREAS, the Delaware State Police and the Wilmington Police Department conducted one such successful operation in 1996 called Operation Joint Venture which resulted in one hundred and ninety-four people arrested and three hundred and thirty felony drug charges; and

WHEREAS, state probation and parole officers, both juvenile and adult, are often charged with monitoring the most dangerous offenders in our community; and

WHEREAS, state probation and parole officers are aware of each offenders' probation conditions and are afforded broader arrest powers than police officers; and

WHEREAS, state probation and parole officers working together with local law enforcement agencies can undertake a high impact initiative against offenders with proven criminal tendencies; and

WHEREAS, Delaware has a proud tradition of cooperation among our law enforcement agencies.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The Governor's Task Force on Violent Crime is hereby created to work in cooperation and conjunction with local law enforcement agencies to provide support and assistance to address violent crime in the most crime-prone areas of our State.

2. Each mission of the Task Force shall be initiated at the invitation of the relevant local law enforcement agency and shall be preceded by a thorough analysis of the crime problem at issue.

3. The Task Force, in conjunction with the Criminal Justice Council, shall analyze such requests in terms of the extent and nature of violent crime problems in a particular area.

4. The Task Force shall review and, where appropriate, propose modifications of existing initiatives

so as to provide the most effective assistance to local communities.

5. The Task Force shall be composed of officers from the Delaware State Police, probation and parole officers for the Department of Correction, probation and parole officers for the Department of Services for Children, Youth and Their Families, a Deputy Attorney General representing the Delaware Department of Justice, and such others as the Governor shall direct to be deployed to assist the Task Force.

6. The Governor shall appoint a commander of the Task Force who will oversee the operations of the Task Force working in coordination with local law enforcement agencies.

Approved this 28th day of May, 1997.

/Thomas R. Carper
Governor

Attest:

/Ed Freel
Secretary of State

GOVERNOR'S APPOINTMENTS

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**BOARD/COMMISSION
OFFICE**

APPOINTEE

**TERM OF
OFFICE**

Cash Management Policy Board	John C. Sargent	07/15/00
Vice-Chancellor of the Court of Chancery	Stephen P. Lamb	07/28/09

BEFORE THE PUBLIC SERVICE
COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE
IMPLEMENTATION
OF THE UNIVERSAL
SERVICE | PSC REGULATION
PROVISIONS OF THE | DOCKET NO. 48
TELECOMMUNICATIONS |
ACT OF 1996 |
(OPENED AUGUST 12, 1997 |

ORDER NO. 4571

This 12th day of August, 1997, the Commission directs and orders the following:

A. INTRODUCTION

1. In the Telecommunications Act of 1996 ("the Act"),¹ Congress directed the Federal Communications Commission ("FCC") and the state utility commissions to take various steps to establish explicit support mechanisms to ensure the delivery of affordable telecommunications service to all Americans. 47 U.S.C. § 254. Specifically, Congress directed the Commission, in conjunction with the states, to devise methods to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas . . . have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3). Congress further directed that telecommunications and other advanced services be made available, at discounted rates, to eligible schools and libraries and, at equalized rates, to eligible rural health care providers. 47 U.S.C. § 254(h). To provide funding for such services, Congress directed the creation of federal universal service mechanisms. 47 U.S.C. § 254(b)(5), (d). Under the Act, States may also create complementary state universal service programs and state support mechanisms. 47 U.S.C. § 254(f).

2. In May, 1997, the FCC released its Universal Service Order ("USF Order") implementing the various universal service obligations imposed under § 254. In the Matter of Federal-State Joint Board on Universal Service, CC Dckt. No. 96-45, Report & Order, FCC 97-157 (rel. May 8, 1997). Both the USF Order and the Act itself impose on this state Commission various obligations related to the implementation of the federal universal service support programs and funding mechanisms. In Regulation Docket No. 47, this Commission has undertaken the task necessary to allow telecommunications carriers and other providers in this State

to receive federal support for the discounted services provided to eligible schools and libraries. The Commission now opens this docket as a procedural vessel to be used to navigate through the other universal service obligations which arise under § 254 and the USF Order. At some time, the Commission may also investigate and determine in this docket whether the Commission can, and should, implement any complementary state universal service program with attendant state funding.

3. This Order deals with three issues. On one issue - involving the submission of a state-specific cost study to the FCC - the Commission now directs some immediate action while ordering further investigation. For the other two - which deal with the possible implementation of Lifeline rates for low-income customers and the determination of standards for "essential telecommunications carriers" - the Commission starts a process to allow final determinations by January 1, 1998.

B. STATE-SPECIFIC COST STUDIES AND MODEL FOR HIGH COST SUPPORT

4. In the USF Order, the FCC determined that federal universal support in high cost areas would be determined by subtracting a national benchmark revenue amount from the forward-looking cost of providing universal service, calculated by using a forward-looking cost methodology. USF Order at ¶¶ 223-26, 232. The FCC is currently in the process of attempting to adopt or construct a specific cost model platform to be used by that agency. However, in the USF Order, the FCC invited the states to submit to the FCC the state's own forward-looking cost studies which, if approved, could then be used to calculate the level of universal support available to carriers in that state. If approved by the FCC, the state-specific cost study would govern support under both the federal support mechanism and any complementary state mechanism. USF Order at ¶¶ 206, 246, 248-54. If a state chooses not to submit a cost study, the FCC will determine costs and, hence, the support levels for that state according to the FCC's methodology.

5. In granting the states the option to submit state-specific cost studies, the FCC noted that a state might find it beneficial to coordinate the methodologies it might use for setting permanent prices for unbundled network elements and those it might choose to determine universal support levels. This coordination would, in the FCC's view, reduce duplication and diminish inefficient arbitrage opportunities which might arise if inconsistencies arose due to the use of differing methodologies. USF Order at ¶¶ 247, 251. A state commission must notify the FCC of its decision to conduct a state-specific cost study by August 15, 1997. The study must be filed by February 6, 1998.

6. In the proceeding involving Bell Atlantic-Delaware, Inc.'s ("BA-Del") submission of a "Statement of Generally Available Terms and Conditions" (PSC Docket No. 96-324), this Commission declined to adopt a specific cost model for determining prices for unbundled network elements. However, it did determine prices for various unbundled network elements. These prices, with an adjustment for the allocation of common costs, were consistent with prices generated by using a proprietary Bellcore costing model sponsored by BA-Del, but with the use of specific inputs determined by the Commission. PSC Order No. 4542 (July 8, 1997).

7. The Commission is not now prepared to definitively determine whether to submit a state-specific cost study to the FCC and, if so, what should be the content of the underlying cost methodology or model. Instead, the Commission believes that the Commission Staff should undertake further investigation on those questions. However, to avoid foreclosing the option of using a state-specific cost study, the Commission will direct the Executive Director to notify the FCC that this Commission has elected to submit a state-specific cost study, while reserving the authority to withdraw such election if, upon later consideration, the Commission determines that a state-specific study is neither necessary nor appropriate.

8. Staff should explore all relevant issues surrounding a state-specific cost study, including the need for a state-specific model and the identification of one or more appropriate cost models or methodologies. Staff should also investigate whether the Commission can, or should, use the prices for unbundled elements as determined in PSC Docket No. 96-324 as bases for determining costs for universal service support. Staff may conduct such investigation by soliciting comments on any relevant issue, by convening workshops, or by any other procedure likely to allow for input by interested persons. The Commission Staff shall endeavor to submit a first report on the advisability of a state-specific cost study and the possible cost methodology platforms by September 19, 1997.

C. LIFELINE AND LINK-UP PROGRAMS FOR LOW-INCOME CONSUMERS

9. Since 1985, the FCC has administered two programs designed to increase subscribership by reducing charges for certain services to low-income consumers. The Lifeline program reduces qualifying consumers' monthly charges, and the Link Up program provides federal support to reduce eligible consumers' initial connection charges by up to one-half. Under present rules, in order for a state to participate, that state must generate state funds to support a matching

state reduction in end-user charges. In the past, this Commission did not think participation in the Lifeline program was necessary because of the high penetration level of telephone service and the low dial-tone rates in this State. The Commission also believed that the decision to participate in such a program was a social policy decision which should be made by the General Assembly. The Commission did approve participation in the Link-Up program. See PSC Order No. 3713 (Nov. 30, 1993) (PSC Dckt. No. 92-47).

10. In the USF Order, the FCC has modified, effective January 1, 1998, the manner of providing Lifeline and Link Up support. Under the new program, a baseline of federal Lifeline support in the amount of \$3.50 (the amount of the SLC charge) will be available for all eligible low-income consumers without the need for any state participation. USF Order at ¶¶ 347-49. In addition, if a state commission reduces the amount paid by eligible low-income consumers for eligible services by \$1.75, federal Lifeline support in that amount will be paid to a carrier providing Lifeline service to that customer. This additional support is available from federal support mechanisms without the need for the state to generate any state funds. USF Order at ¶ 351. States may gain even more federal Lifeline support if they make further reductions in rates and generate state matching support amounts. USF Order at § 352. See 47 C.F.R. § 54.403(a). Federal support is available for the Link Up program without state involvement. 47 C.F.R. §§ 54.411, 54.413.

11. The Commission believes that, in light of the above-described changes in the manner of providing funding for the Lifeline program, the Commission should revisit the question whether the Commission can, and should, develop Lifeline rates, to be supported by federal universal service support, for eligible low-income customers within this State. The Commission is concerned that if monies for such federal mechanisms are to be collected from carriers serving Delaware, it might be in this State's interest to implement such rates to allow carriers serving low-income customers in this State to obtain a portion of such federal funds.

12. The Commission directs Staff (including counsel) to explore whether the Commission can, and should, now approve Lifelines rates for eligible low-income consumers so that carriers in this state may receive the additional \$1.75 from the federal universal service support fund. Staff should explore the relevant legal and policy issues surrounding the implementation of such Lifeline Rates by both BA-Del and other competitive carriers. In doing so, Staff may solicit comments, convene workshops, or proceed by any other appropriate means which will allow interested persons the opportunity to express their views. Staff shall endeavor to submit an initial report and recommendation by September 5, 1997.

E. ELIGIBLE TELECOMMUNICATIONS CARRIERS

13. In most instances, federal universal service support may only be distributed to carriers designated as "eligible telecommunications carriers." 47 U.S.C. §§ 214(e)(1), 254(e). To be eligible to be such a carrier, the carrier must provide all services supported by federal support mechanisms in a designated service area. Eligible telecommunications carriers must also advertise the availability of, and the charges for, universal service elements using media of general distribution. 47 U.S.C. § 214(e)(1)(A)-(B).

14. Under the Act and the USF Order, this Commission must designate the geographic parameters of the service area; designate (on its own motion or upon request of carriers) one or more essential telecommunications carriers for such service area; and certify that such designated carriers are eligible to receive federal universal service support. 47 U.S.C. §§ 214(e)(2), (3); USF Order at ¶¶ 148, 184-85, 198.

15. The Commission directs the Commission Staff to promptly begin an investigation into the number of potential "eligible telecommunications carriers" that might receive federal universal service support within this State. Staff should also promptly explore and investigate what criteria and standards the Commission should adopt to govern the designation of service areas and the designated carriers' responsibility to provide notice of supported services. Staff should also explore the appropriate procedural methodology to be followed when a carrier requests designation as an essential carrier or when the Commission must appoint a carrier in an unserved area. Staff should endeavor to submit its initial recommendation and report by September 19, 1997.

Now, therefore, IT IS ORDERED:

1. That the Secretary shall cause a copy of this Order to be transmitted to the Delaware Registrar of Regulations for publication in the next available edition of the Delaware Register. The Secretary shall also cause a copy of this Order to be mailed, by United States mail, to all parties on the Service List in PSC Docket No. 96-324.

2. That the Executive Director shall, upon behalf of the Commission, notify the Federal Communications Commission by August 15, 1997, that this Commission has elected to undertake the submission of a specific forward-looking economic cost study for Delaware. Such notice shall, however, reserve to this Commission the opportunity to withdraw that election at some later time.

3. That P. Clarkson Collins, Jr., Esquire, is appointed Rate Counsel for the portion of this Order relating to the

election to submit a state-specific cost study. Francis J. Murphy, Jr., Esquire, is appointed Rate Counsel for the portion of this Order relating to the creation of criteria and standards to govern "essential telecommunications carriers."

4. That the Commission Staff shall promptly undertake the investigations and explorations as described in the body of this Order. The Staff shall endeavor to file its initial reports and recommendations on or before the following dates:

State Specific Forward-Looking Cost Model -
September 19, 1997

Lifeline Rates - September 5, 1997

Eligible Telecommunications Carriers - September 19,
1997

Staff may conduct such investigations by soliciting comments to particular questions or issues, convening workshops, or undertaking any other appropriate procedure to allow for input by interested persons.

5. That, if during the course of the investigations undertaken above, Staff undertakes to formulate rules or regulations which may require notice under the provisions of the Administrative Procedures Act (29 Del. C. ch. 101) or the Register of Regulation Act (29 Del. C. ch. 11), Staff is delegated the authority to provide such required notice.

6. That the Commission will determine the course of further proceedings in this docket after submission of the above reports. However, the Commission reserves the right to modify the above schedule or format, on its own motion or upon application of any interested person.

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

BY ORDER OF THE COMMISSION:

/s/ Robert J. McMahon, Chairman
/s/ Joshua M. Twilley, Vice Chairman
/s/ Arnetta McRae, Commissioner
/s/ Donald J. Puglisi, Commissioner
/s/ John R. McClelland, Commissioner

ATTEST:

/s/ Linda A. Mills, Secretary

¹ Pub. L. No. 104-104, 110 Stat. 56 to be codified at various parts of 47 U.S.C.

DEPARTMENT OF STATE
OFFICE OF THE STATE BANK COMMISSIONER

**NOTICE OF PROPOSED AMENDMENT OF
REGULATIONS OF THE STATE BANK
COMMISSIONER**

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.1101(f).0001, 5.1101etal.0002, 5.1101etal.0003, 5.1101etal.0004, 5.1101etal.0005, 5.1101etal.0006, 5.1101etal.0007, 5.1105.0008, 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011. Proposed revised Regulation 5.1101(f).0001 ("Election to be Treated for Tax Purposes as a 'Subsidiary Corporation' of a Delaware Chartered Banking Organization or Trust Company, National Bank Having Its Principal Office in Delaware, or Out-of-State Bank that Operates a Resulting Branch in Delaware") provides for certain corporations to elect to be treated as "subsidiary corporations" of Delaware banks for purposes of the bank franchise tax, and is being amended to permit elections to be made under certain circumstances after April 1 of the tax year, and to require taxpayers to provide information about elections on estimated franchise tax reports. Proposed revised Regulations 5.1101etal.0002 ("Instructions for Preparation of Franchise Tax"), 5.1101etal.0003 ("Estimated Franchise Tax Report"), and 5.1101etal.0004 ("Final Franchise Tax Report"), which are applicable to most banks and trust companies (but not to out-of-state federal savings banks or resulting branches of out-of-state banks), are being amended to conform to statutory changes in Senate Bill 483 ("SB483"), signed by the Governor on July 11, 1996, Senate Bill 44 ("SB44"), signed by the Governor on April 23, 1997, and House Bill 257, as amended ("HB257"), signed by the Governor on July 23, 1997. Proposed revised Regulations 5.1101etal.0005 ("Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in This State"), 5.1101etal.0006 ("Estimated Franchise Tax Report -- Federal Savings Banks Not Headquartered in Delaware"), and 5.1101etal.0007 ("Final Franchise Tax Report -- Federal Savings Banks Not Headquartered in Delaware"), which are applicable to out-of-state federal savings banks with Delaware branches, also are being amended to conform to statutory changes in SB483, SB44 and HB257. Proposed revised Regulation 5.1105.0008 (Instructions for Calculation of Employment Tax Credits") is being amended to conform to SB483.

Proposed revised Regulations 5.1101etal.0009 ("Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks"), 5.1101etal.0010 ("Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks"), and 5.1101etal.0011 ("Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks"), which are applicable to resulting branches in Delaware of out-of-state banks, are being amended to conform to SB483, SB44 and HB257. Proposed revised Regulations 5.1101(f).0001, 5.1101etal.0002, 5.1101etal.0003, 5.1101etal.0004, 5.1101etal.0005, 5.1101etal.0006, 5.1101etal.0007, 5.1105.0008, 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011 would be adopted by the State Bank Commissioner on or after October 2, 1997. Other regulations issued by the State Bank Commissioner are not affected by these proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

Copies of the proposed revised regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received by October 2, 1997.

A public hearing will be held on the proposed revised regulations in the Second Floor Cabinet Room in the Townsend Building, 401 Federal Street, Dover, Delaware 19901, on Thursday, October 2, 1997 at 10:00 a.m.

DEPARTMENT OF FINANCE**DIVISION OF REVENUE****DELAWARE STATE LOTTERY OFFICE**

The Commission proposes these amendments pursuant to 29 Del.C. sections 4805(a), 4805 (a)(24)(f), 4805(25) and 29 Del.C. section 10115. The proposed rules would require employee organization seeking to represent video lottery employees to register with the Lottery Office. The employee organization and its key employees would be subject to a registration and background investigation process. The new rules would also promulgate procedures for background investigations of new Lottery employees in positions involving access to sales agents or video lottery agents.

The proposed Rules will be considered by the Lottery at a public hearing on September 23, 1997 at 3:00 p.m. at the DNREC Auditorium, 89 Kings Highway, Dover, Delaware. Copies of the proposed rules may be obtained from the Lottery Office. Comments may be submitted in writing to the Lottery Office on or before 4:00 p.m. on September 30, 1997 and/or in person at the hearing. The Lottery Office is located at 1575 McKee Road, Suite 102, Dover, Delaware 19901 and the phone number is (302)739-5291.

DEPARTMENT OF AGRICULTURE**DELAWARE THOROUGHBRED RACING
COMMISSION**

Proposed Rule Amendments

The Commission proposes these amendments pursuant to 3 Del. C. sections 10103 and 10128(m)(1), and 29 Del. C. section 10115. The proposed revision to Rule 13.16 would extend the time period for an owner to claim horses in a new race meet when the owner's stable has been previously eliminated due to claims. The proposed amendment to Rule 15.02(e) would allow for the use of lasix in two year old horses after September 1st of the race meet. The amendment is intended to follow the practice of the majority of surrounding states that permit the use of lasix in two year old horses to control bleeding.

The proposed Rules will be considered by the Commission at its next regularly scheduled meeting on September 23, 1997 at 11:00 a.m. at Delaware Park, Stanton, DE. Copies of the proposed rules may be obtained from the Commission. Comments may be submitted in writing to the Commission office on or before 4:00 p.m. on September 30, 1997 and/or in person at the hearing. The Commission Office is located at 2320 South DuPont Highway, Dover, DE 19901 and the phone number is(302)739-4811.

**DEPARTMENT OF NATURAL
RESOURCES & ENVIRONMENTAL
CONTROL****SHELLFISHERIES ADVISORY COUNCIL**

The Department of Natural Resources and Environmental Control, in consultation with the Shellfisheries Advisory Council, proposes to amend Shellfish Regulation No. S-48 CONCH MINIMUM SIZE LIMITS, to increase the minimum size limit on channeled conchs from 5 inches in length or 2 ¾ inches in diameter to 6 inches in length or 3 1/8 inches in diameter with an allowance of 5 conchs per 60 pound bushel to be less than the minimum size or dimension. The minimum size limits on knobbed conchs would remain at 5 inches in length or 2 ¾ inches in diameter with no allowance for any under sized knobbed conchs per any measure. This change in minimum size for channeled conchs will better conserve their spawning stock and will provide a higher yield per recruit and price per pound.

Individuals may present their opinions and/or request additional information by writing or visiting the Fisheries Section, 89 Kings Highway, Dover, DE 19901 prior to 4:30 p.m. on October 10, 1997. A public hearing on this proposal will be held in the DNREC auditorium, 89 Kings Highway, Dover, DE at 7:30 p.m. on Monday, October 6, 1997.

DEPARTMENT OF EDUCATION**STATE BOARD OF EDUCATION REGULAR MONTHLY
MEETING SEPTEMBER 18, 1997.**

PUBLIC SERVICE COMMISSION**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF		
THE INVESTIGATION		
AND ADOPTION OF		
RULES TO GOVERN		PSC REGULATION
PAYPHONE SERVICES		DOCKET NO. 12
WITHIN THE		
STATE OF DELAWARE		

**NOTICE OF COMMENT PERIOD AND PUBLIC
HEARING ON PROPOSED RULES GOVERNING
PAYPHONE SERVICES**

In 1985, the Delaware Public Service Commission ("PSC") adopted "Rules and Regulations Governing Service by Customer Owned Coin-Operated Telephones" ("COCOT Rules"). The COCOT Rules govern the manner, terms, and conditions by which independent providers of coin-operated telephones can attach their telephones to Bell Atlantic-Delaware, Inc.'s public switched network. The present COCOT Rules are reproduced as Exhibit 1.

In the Telecommunications Act of 1996, Congress directed the Federal Communications Commission ("FCC") to promulgate regulations to ensure fair compensation for all payphone service providers ("PSPs") and to ensure competitive parity between independent PSPs and payphone services provided by Bell operating companies. 47 U.S.C. § 276. The FCC has entered two orders implementing § 276. See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Dckt. No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996).

In light of the enactment of § 276 and the entry of the two FCC Orders, the Public Service Commission re-opened this docket to investigate changes to its COCOT Rules. By Order No. 4525 (June 17, 1997), the PSC solicited comments on the content of such changes. The PSC Staff has now prepared proposed new payphone service rules which would replace the COCOT rules and govern all payphone service in Delaware. The text of Staff's proposed rules is reproduced as Exhibit 2. Staff's proposed rules differ from the present COCOT rules in that the proposed rules:

- (1) apply to all providers of payphone service, including independent providers and telecommunications carriers;
 - (2) provide for certification of providers by entity rather than by each payphone;
 - (3) allow the local coin calling rate to be determined by the payphone service provider;
 - (4) re-define the information to be posted on payphones;
- and
- (5) impose annual reporting requirements.

The Commission has authority to issue such rules under 26 Del. C. § 209.

The PSC solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning Staff's proposed rules to govern payphone service. Ten copies of such materials shall be filed with the PSC at its office located at 1560 South DuPont Highway, Dover, Delaware 19901. Materials shall be filed on or before October 1, 1997.

In addition, the PSC's duly appointed Hearing Examiner will conduct a public hearing concerning Staff's proposed rules on Wednesday, September 24, 1997, beginning at 10:00 a.m. in the Gold Room, Goodstay Center, University of Delaware, Wilmington Campus, 2600 Pennsylvania Avenue, Wilmington, DE. Persons may present comments, evidence, and other materials at that public hearing.

The COCOT rules, Staff's proposed rules, and the materials submitted will be available for public inspection and copying at the PSC's Dover office during normal business hours. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in these proceedings should contact the PSC to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The PSC's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the PSC's Public Information Officer by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by e-mail at mcarl@state.de.us.