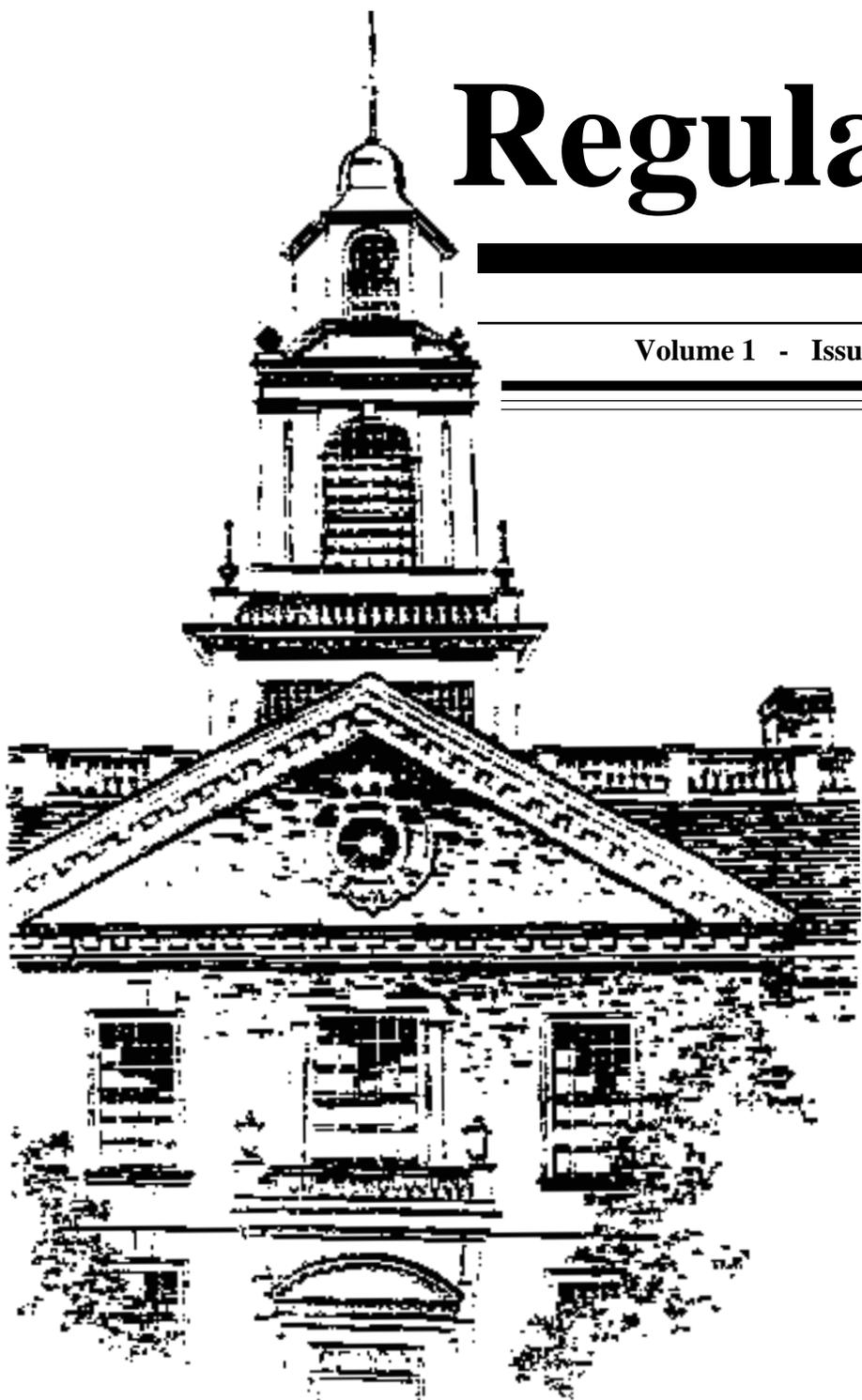


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# Delaware Register of Regulations



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Issue Date: January 1, 1998

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Volume 1 - Issue 7

Pages 776 - 992

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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 December 15, 1997.

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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## 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.

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## SUBSCRIPTION INFORMATION

A yearly subscription for the Delaware Register of Regulations costs \$100.00 per year from January - December, for 12 issues. Single copies are available at a cost of \$9.00 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.

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**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**

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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.

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

Statutory Authority: 7 Delaware Code,  
Section 903 (e)(2)(a)(3) (7 **Del.C.** 903(e)(2)(a)(3))

**REGISTER NOTICE****Brief Synopsis of the Subject, Substance and Issues**

The stock of Atlantic sturgeon is so depressed that the species is being considered as threatened or endangered under the federal Endangered Species Act. At a recent meeting of the Atlantic States Marine Fisheries Commission, the Atlantic Sturgeon Fishery Management Board requested that Delaware adopt a moratorium on the harvest of Atlantic sturgeon.

The Atlantic Sturgeon Fisheries Management Plan, adopted by the Atlantic States Marine Fisheries Commission in 1990, requires Atlantic Coastal States to implement one of three options: 1) A minimum total length of at least seven feet and institute a monitoring program; 2) A moratorium on all harvest; or 3) submit

alternative measures to the Atlantic States Marine Fisheries Commission's Atlantic Sturgeon Plan Review Team for determination of conservation equivalency. Delaware adopted the minimum total length of seven feet in 1991. This currently allows the landing of Atlantic sturgeon over seven feet. Delaware is the only Atlantic Coastal state that does not have a moratorium on the harvest or possession of Atlantic sturgeon. The management board recommends Delaware adopt the moratorium to keep the Atlantic sturgeon off the endangered species list and prevent any sturgeon from being landed.

The Division of Fish and Wildlife, Department of Natural Resources and Environmental Control proposes to promulgate an amendment to Shellfish Regulation No. 12 that will replace the minimum size limit on Atlantic sturgeon with a prohibition on the possession, landing or harvesting of any Atlantic Sturgeon in Delaware.

**Possible Terms of the Agency Action**

It would be unlawful to land, harvest or possess Atlantic Sturgeon in Delaware.

**Statutory Basis on Legal Authority to Act**

Subsection 903 (e)(2)(a)(3), 7 Del. C

## Other legislation that may be impacted

None

## Notice of Public Comment

Additional information may be obtained from the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE, 19901, (302) 739-3441. Comments on this proposed amendment may be submitted to the Fisheries Section until 4:30 p.m. on February 13, 1998. A public hearing is scheduled in the DNREC auditorium, 89 Kings Highway, Dover, DE at 7:30 p.m. on Tuesday February 10, 1997. The public is invited to attend and comment.

"TIDAL FINFISH REGULATION NO. 12 ATLANTIC STURGEON SIZE LIMITS

"TIDAL FINFISH REGULATION NO. 12 ATLANTIC STURGEON; MORATORIUM ON POSSESSION.

a) It shall be unlawful for any person to possess, land or harvest any Atlantic Sturgeon, Acipenser oxyrhynchus or part thereof.

b) It shall be unlawful for any person to attempt to possess, land or harvest any Atlantic sturgeon or part thereof."

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## TIDAL FINFISH REGULATIONS

As of July 1, 1997, the following Tidal Finfish Regulations are in effect.

These regulations are in addition to Tidal Finfish Laws in Chapter 9, Title 7, Delaware Code.

**TIDAL FINFISH REGULATION 2. STRIPED BASS SPAWNING SEASON AND AREA RESTRICTIONS.**

a) The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 A.M. on April 1 and continue through midnight on May 31 of each calendar year.

b) It shall be unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.

c) It shall be unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.

d) It shall be unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a draft gill net of multi- or mono-filament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 2) inches.

e) It shall be unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.

**TIDAL FINFISH REGULATION NO. 4. SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS.**

a) It shall be lawful for any person to take and reduce to possession summer flounder from the tidal waters of this State at any time except as otherwise set forth in this regulation.

b) It shall be unlawful for any recreational fisherman to have in possession more than ten (10) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than fourteen and one-half (14.5) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, other than a licensed commercial finfisherman with a gill net permit, while on board a vessel, to have in possession any part of a summer flounder that measures less than fourteen and one-half (14.5) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) It shall be unlawful for any licensed commercial finfisherman with a gill net permit to have in possession any part of a summer flounder that measures less than fourteen (14) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer

flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Notwithstanding the size limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail, provided said person has one of the following:

1) A valid commercial finfishing license and gill net permit issued by the Department; or

2) A valid vessel permit issued by the Regional director, NMFS, to fish for and retain summer flounder in the EEZ or a dealer permit issued by the Regional Director or NMFS, as set forth in 50CFR, Part 625.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ten (10) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

#### TIDAL FINFISH REGULATION 5. AREAS CLOSED TO GILL NET FISHING.

a) It shall be unlawful for any person to fish with gill nets for foodfish in areas described as follows:

1) The Assawoman Canal from White Creek to Assawoman Bay;

2) Indian River from Millsboro Pond dam to the first Canal marker approximately 1,000 yards down river;

3) Maseys Ditch from Canal marker 12 in Rehoboth Bay to a line connecting the southern most part of Middle Island and the nearest point of land to the west;

4) The Lewes and Rehoboth Canal from Roosevelt Inlet to its entrance into Rehoboth Bay;

5) The Broadkill River from Roosevelt Inlet to a point up river 1,000 yards;

6) Mispillion River from the tip of the jetty up river to a line drawn perpendicularly across the Mispillion river from the Mispillion Lighthouse;

7) Cedar Creek from its entrance to the Mispillion River up river to a point 500 yards south of the Route 36 bridge;

8) The Murderkill River from the mouth up river to Webbs Landing;

9) The Fenwick Ditch from Little Assawoman Bay to the Delaware - Maryland state line.

#### TIDAL FINFISH REGULATION 6. STRIPED BASS RECREATIONAL FISHING SEASONS; METHODS OF TAKE; CREEL LIMIT; POSSESSION LIMIT.

a) It shall be lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulation Nos. 2 and 7.

b) It shall be unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.

c) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass per day from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.

d) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than two (2) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.

#### TIDAL FINFISH REGULATION 7. STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS.

a) Notwithstanding, the provisions of '929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measures less than twenty-eight (28) inches in total length.

b) Notwithstanding, the provisions of '929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less

than twenty (20) inches in total length.

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than 28 inches, total length, unless said striped bass is in one or more of the following categories:

1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or

2) It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3) It is packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

4) It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

d) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

e) The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than twenty eight (28) inches in total length.

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

## TIDAL FINFISH REGULATION 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 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 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 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 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 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: 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 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 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 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.

#### TIDAL FINFISH REGULATION 9. BLUEFISH POSSESSION LIMITS.

a) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than ten (10) bluefish (*Pomatomus saltatrix*) at or between the place caught and his/her personal abode or temporary or transient place of lodging).

#### TIDAL FINFISH REGULATION 10. WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS.

a) It shall be unlawful for any person to possess weakfish *Cynoscion regalis* taken with a hook and line, that measure less than thirteen (13) inches, total length.

b) It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than six (6) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than six (6) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of six (6) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the

## PROPOSED REGULATIONS

Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

- Beginning at 12:01 AM on May 3, 1997 and ending at midnight on May 11, 1997;
- beginning at 12:01 AM on May 16, 1997 and ending at midnight on May 18, 1997;
- beginning at 12:01 AM on May 23, 1997 and ending at midnight on May 26, 1997;
- beginning at 12:01 AM on May 30, 1997 and ending at midnight on June 1, 1997;
- beginning at 12:01 AM on June 6, 1997 and ending at midnight on June 8, 1997;
- beginning at 12:01 AM on June 13, 1997 and ending at midnight on June 15, 1997;
- and beginning at 12:01 AM on June 20, 1997 and ending at midnight on June 28, 1997.

f) The Department shall indicate on a persons food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of six (6) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than six (6) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of six (6) weakfish.

### TIDAL FINFISH REGULATION 11. RED DRUM SIZE LIMITS; CREEL LIMITS.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any red drum, (*Sciaenops ocellatus*), that measures less than eighteen (18) inches, total length or more than twenty-seven (27) inches, length, except as otherwise provided in paragraph (b) in this regulation.

b) Unless otherwise authorized, it shall be unlawful for any person to possess more than five (5) red drum, one of which may exceed twenty-seven (27) inches, total length.

### TIDAL FINFISH REGULATION 12. ATLANTIC STURGEON SIZE LIMITS. MORATORIUM ON POSSESSIONS.

~~a) Notwithstanding the provisions of '929(b)(5), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any person to possess~~

~~any Atlantic sturgeon, (*Acipenser oxyrinchus*), that measures less than eighty-four (84) inches total length.~~

~~a) It shall be unlawful for any person to possess, land or harvest any Atlantic Sturgeon, *Acipenser oxyrinchus* or part thereof.~~

~~b) It shall be unlawful for any person to attempt to possess, land or harvest any Atlantic sturgeon or part thereof."~~

### TIDAL FINFISH REGULATION 13. SPOTTED SEATROUT SIZE LIMIT.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any spotted seatrout, (*Cynoscion nebulosus*), that measure less than twelve (12) inches total length.

### TIDAL FINFISH REGULATION 14. SPANISH MACKEREL SIZE LIMIT AND CREEL LIMIT.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any Spanish mackerel, (*Scomberomorus maculatus*), that measure less than fourteen (14) inches total length.

b) Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to have in possession more than ten (10) Spanish mackerel at or between the place caught and his/her personal abode or temporary or transient place of lodging.

### TIDAL FINFISH REGULATION 15. ELECTRIC LIGHTS.

a) 'Lights used for illumination for visual purposes' shall mean any light that is fixed in position anywhere directly above the hull or deck of any vessel, dock or shore area or any electric flood light less than 500 watts and fixed in position no less than ten (10) feet directly above the surface of the water. An electric flood light is any electric light that does not have a focused beam.

b) It shall be legal for any person to fish in the tidal waters of this State with the aid of 'lights used for illumination for visual purposes' in addition to the equipment and methods listed in '910, Title 7, Delaware Code.

### TIDAL FINFISH REGULATION 16. GILL NET MESH SIZE RESTRICTIONS.

a) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to fish any gill net having a mesh size less than 3 1/8 inches, stretched measure; in the tidal waters of this State during a period beginning at 12:01 A.M. on April 1 and ending midnight on June 30,

next ensuring.

b) Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to fish any gill net having a mesh size less than 3 1/4 inches, stretched measure, in the Delaware River, Delaware Bay and Atlantic Ocean under the jurisdiction of this State.

**TIDAL FINFISH REGULATION 18. STRIPED BASS; TOTAL LENGTH MEASUREMENT.**

a) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

**TIDAL FINFISH REGULATION 19. SPEAR FISHING.**

a) Unless otherwise prohibited, it shall be lawful for any recreational fisherman while submerged in the tidal waters of this State to use a spear that is propelled by a gun or a mechanical or pneumatic device to take a species of food fish whenever a hook and line is authorized as legal fishing equipment to take said species of food fish in the Department's tidal finfish regulations.

**TIDAL FINFISH REGULATION 20. WINTER FLOUNDER SIZE LIMIT.**

a) It shall be unlawful for any person to possess any winter flounder, (*Pleuronectes americanus*), that measure less than ten (10) inches, total length.

**TIDAL FINFISH REGULATION 21. SCUP SIZE LIMIT.**

a) It shall be unlawful for any recreational fisherman to have in possession any scup, *Stenotomus chrysops*, that measures less than seven (7) inches, total length.

b) It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to possess any scup that measures less than nine (9) inches, total length.

c) It shall be unlawful for any commercial finfisherman to sell, trade or barter or attempt to sell, trade or barter any scup or part thereof that is landed in this State by said commercial finfisherman after a date when the de minimis amount of commercial landings of scup is determined to have been landed in this State by the Department. The de minimis amount of scup shall be 0.1% of the coastwide commercial quota as set forth in the Scup Fishery Management Plan approved by the Atlantic State Marine Fisheries Commission.

**TIDAL FINFISH REGULATION NO. 22 TAUTOG; SIZE LIMITS.**

a) Notwithstanding 7 Del. C. 929 (b) (7) it shall be unlawful for any person to possess any tautog that measures less than thirteen (13) inches in total length during the period beginning at 12:01 AM on January 1, 1997 and ending at midnight on March 31, 1997 or during the period beginning at 12:01 AM on July 1, 1997 and ending at midnight on December 31, 1997.

b) Notwithstanding 7 Del. C. 929 (b) (7) it shall be unlawful for any person to possess any tautog that measures less than fourteen (14) inches in total length during the period beginning at 12:01 AM on January 1, 1998 and ending at midnight on March 31, 1998 or during the period beginning at 12:01 AM on July 1, 1998 and ending at midnight on December 31, 1998 or during said periods in all years thereafter.

**TIDAL FINFISH REGULATION NO. 23 BLACK SEA BASS SIZE LIMIT**

a) It shall be unlawful for any person to have in possession any black sea bass *Centropritis striata* that measures less than nine (9) inches, total length.

b) It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to have in possession any black sea bass, after January 1, 1998, that measures less than ten (10) inches, total measure.

**TIDAL FINFISH REGULATION NO. 24 FISH POT REQUIREMENTS**

a) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has an escape vent placed in a lower corner of the parlor portion of said pot which complies with one of the following minimum sizes: 1.125 inches by 5.75 inches; or a circular vent 2 inches in diameter; or a square vent with sides of 1.5 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least 1.125 inches between one set of lathes.

b) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:

1.) Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or

2.) Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or

3.) Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.

## TIDAL FINFISH REGULATION 25. ATLANTIC SHARKS;

## A) Definitions

1) Fillet means to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

2) Large coastal sharks species means any of the species, or a part thereof, listed in paragraph (a) of the definition of management unit.

3) Land or Landing shall mean to put or cause to go on shore from a vessel.

4) Management Unit means any of the following species in the Western Atlantic Ocean, Delaware's Territorial Sea or tidal waters of Delaware:

## (a) Large coastal species:

Hammerhead sharks-- Sphyrnidae  
Great hammerhead, Sphyrna mokarran  
Scalloped hammerhead, Sphyrna lewini  
Smooth hammerhead, Sphyrna zygaena  
Mackerel sharks--Lamnidae  
White shark, Carcharodon carcharias  
Nurse sharks--Ginglymostomatidae  
Nurse shark, Ginglymostoma cirratum  
Requiem sharks--Carcharhinidae  
Bignose shark, Carcharhinus altimus  
Blacktip shark, Carcharhinus limbatus  
Bull shark, Carcharhinus leucas  
Caribbean reef shark, Carcharhinus perezi  
Dusky shark, Carcharhinus obscurus  
Galapagos shark, Carcharhinus galapagensis  
Lemon shark, Negaprion brevirostris  
Narrowtooth shark, Carcharhinus brachyurus  
Night shark, Carcharhinus signatus  
Sandbar shark, Carcharhinus plumbeus  
Silky shark, Carcharhinus falciformis  
Spinner shark, Carcharhinus brevipinna  
Tiger shark, Galeocerdo cuvieri

## (b) Small coastal species:

Angel sharks--Squatinae  
Atlantic angel shark, Squatina dumerili  
Hammerhead sharks--Sphyrnidae  
Bonnethead, Sphyrna tiburo  
Requiem sharks--Carcharhinidae  
Atlantic sharpnose shark, Rhizoprionodon

terraenovae

Blacknose shark, Carcharhinus acronotus  
Caribbean sharpnose shark, Rhizoprionodon

porosus

Finetooth shark, Carcharhinus isodon  
Smalltail shark, Carcharhinus porosus

## (c) Pelagic species:

Cow sharks--Hexanchidae  
Bigeye sixgill shark, Hexanchus vitulus

Sevengill shark, Heptranchias perlo  
Sixgill shark, Hexanchus griseus  
Mackerel sharks--Lamnidae  
Longfin mako, Isurus paucus  
Porbeagle shark, Lamna nasus

Shortfin mako, Isurus oxyrinchus  
Requiem sharks--Carcharhinidae  
Blue shark, Prionace glauca  
Oceanic whitetip shark, Carcharhinus

longimanus

Thresher sharks--Alopiidae  
Bigeye thresher, Alopias superciliosus  
Thresher shark, Alopias vulpinus

## (d) Prohibited species:

Basking sharks--Cetorhinidae  
Basking shark, Cetorhinidae maximus  
Mackerel sharks--Lamnidae  
White shark, Carcharodon carcharias  
Sand tiger sharks--Odontaspidae  
Bigeye sand tiger, Odontaspis noronhai  
Sand tiger, Odontaspis taurus  
Whale sharks--Rhincodontidae  
Whale shark, Rhincodon typus

(5) Pelagic species means any of the species, or a part thereof, listed in paragraph (c) of the definition of management unit.

(6) Prohibited species means any of the species, or a part thereof, listed in paragraph (d) of the definition of management unit.

(7) Small coastal species means any of the species, or part thereof, listed in paragraph (b) of the definition of management unit.

## (B) Prohibitions

1) It shall be unlawful for any person to fish for, purchase, trade, barter, or possess or attempt to fish for, purchase, trade, barter, or possess a prohibited species.

2) It shall be unlawful for any person to remove the fins from any shark in the management unit and discard the remainder prior to landing said shark.

3) It shall be unlawful for any person to fillet a shark in the management unit except that a shark may be eviscerated and the head and fins removed prior to landing said shark.

4) It shall be unlawful to release any shark in the management unit in a manner that will not ensure maximum probability of survival.

5) It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than two sharks in the management unit except that two Atlantic sharpnose sharks also may be on board.

6) It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce and published in the Federal Register.

No person shall hold himself out to the public as engaged in the business of installing, repairing, maintaining or erecting any kind of electrical wiring conduits, machinery, appliances, motors, fixtures, signs, electrically operated heating equipment, air-conditioners, elevators or any other electrically operated apparatus, or device in or about any premises in the State of Delaware without having first obtained a Certificate of Registration as required by, or having otherwise complied with, these regulations; other than specifically exempted by Section 1432, 1 through 8.

Rule 2. Applications:

Applications may be procured in person or by mail from the office of the State Board of Electrical Examiners, each weekday during office hours except Saturdays, Sundays or legal holidays. Applications must be made in the name of the individual, not the company, for one of the following registrations:

“Master Electrician General”, means any person engaged in the business of installing, erecting, repairing or contracting to install, erect or repair electric wire of conductors to be used for the transmission of electrical current for electric light, heat or power purposes, or moldings, ducts, raceways, or conduits for the reception or protection of such wires or conductors, or to electrical machinery, apparatus, devices, or fixtures to be used for electric light, heat, or power purposes, or planning, estimating, laying out, and supervising such electrical work.

“Master Electrician Limited”, means any person engaged in house wiring LIMITED to not over four family dwellings. In the case of row or town houses, if there are more than four houses in one row and there is no break in the roof for a fire wall, the electrical work must be installed by a Master Electrician General. If the row or town houses have a fire wall protruding through the roof and thus dividing the houses in groups of no more than four, the electrical work may be performed by a Master Electrician Limited.

“Master Electrician, General Special”, has the same requirements as for master electrician general, except that the applicant must exhibit knowledge in electrical matters relating to the applicant’s specialty.

Page 2

Rule 3. Qualifications.

Every applicant must be at least 18 years of age and shall have had a minimum practical experience, or

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
DELAWARE BOARD OF ELECTRICAL EXAMINERS**  
Statutory Authority: 24 Delaware Code,  
Section 1406(a) (24 **Del.C.** 1406(a))

**ELECTRICAL CONTRACTORS  
DELAWARE BOARD OF ELECTRICAL  
EXAMINERS RULES & REGULATIONS**

A public hearing will be held on February 4, 1998 at the Office of Professional Regulation, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware. Anyone desiring a copy of the proposed rules and regulations may obtain same from the Delaware Electrical Board of Examiners, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be submitted to the Board office at the above address on or before February 4, 1998. Those individuals wishing to make oral comments at the public hearing are requested to notify the Board office at (302) 739-4522, extension 205 - Louise A. Holt.

The State Board of Electrical Examiners does hereby adopt the provisions of the current National Electrical Code, plus the amendments thereto to date. County and city codes applicable as the official rules and requirements for performance of electrical work in the State of Delaware, plus any amendments or additions to the following rules which the Board may adopt from time to time.

Rule 1. Registration required to engage in the electrical business:

equivalent in technical training as prescribed for Master Electrician General or Master Electrician Limited.

(a) Qualifications for Master Electrician General:

Each applicant for Master Electrician General shall have had at least four years of full time or its equivalent of technical training in a technical school or college, plus two years of full time practical experience.

(b) Qualifications for Master Electrician Limited:

Each applicant for Master Electrician Limited, shall have had at least two years of full time practical training or its equivalent of technical training in a technical school or college, plus one year of full time practical experience.

(c) Qualifications for Master Electrician General Special:

Must have the same requirements as for Master Electrician General, except that the applicant must exhibit knowledge in electrical matters relating to the applicant's specialty.

(d) Qualifications for Master Electrician Limited Special:

Must have the same requirements as for Master Electrician Limited, except that the applicant must exhibit knowledge in electrical matters relating to the applicant's specialty.

Rule 4. Low Voltage Special Certificate.

Pursuant to 24 Del. C., Section 1425 (d)(6), the Board establishes a special certificate in the category of low voltage electrical wiring.

(a) Low voltage electrical wiring shall be defined as wiring carrying 50 volts of electricity or less.

(b) A special certificate in the category of low voltage wiring shall be required to perform and/or supervise the electrical work directly associated with, but not limited to, the examples listed below:

1. CATV wiring installation and repair
2. Telephone/data wiring installation and repair
3. Fiber optic wiring installation and repair
4. Burglar alarm installation and repair
5. Fire alarm installation and repair

Rule-4. 5. Examinations.

Examinations shall consists of a knowledge of the current National Electrical Code and a general knowledge of electrical work as prescribed by this law.

(a) Applicants for examination will be required to obtain a grade of at least 75% in order to obtain a Certificate of Registration.

(b) Applicants who fail to obtain a grade of at least 75% on an examination shall be re-examined

within 90 days thereafter; applicants who fail two consecutive examinations with a grade of less than 50% will be required to wait a period of one year before being permitted to take the examination again.

(c) Any person found referring to notes or books, other than the National Electrical Code book, or misbehaving during any examination will be barred from that examination and must wait at least six months for re-examination.

(d) Any person aggrieved by any decision of the Board on any question relating to examinations, may be given a hearing before the Board, provided request is made in writing to the Secretary/Treasurer of the Board within thirty days of notice of said decision. Said decision of the Board regarding any person, shall be mailed to the aggrieved and copies of the decisions kept on file at the office of the State Board of Electrical Examiners.

(e) All requests for rulings by the Board shall be submitted in writing to the Secretary/Treasurer.

(f) Examinations shall be held as required in the presence of at least two members of the State Board of Electrical Examiners. All examinations will be reviewed by the Board at their next regular board meeting.

(g) Applicants will be notified by mail of the examination results within thirty days.

Rule 5- 6. Fees and Bond

(a) The registration fee for Master Electrician General, Master Electrician General Special, Master Electrician Limited and Master Electrician Limited special, shall be set by the Director, Division of Professional Regulation. Ten dollars of the required fee shall accompany the application, the remainder to be paid upon notification that the applicant has passed the required examination. The initial \$10.00 fee deposit shall be retained as an application fee. The Board shall not be responsible for cash sent through the mail.

(b) Before any Certificate of Registration will be issued, the applicant must furnish a good and sufficient bond, meeting with the approval of the Board, in the name of the State of Delaware, in the amount of \$1,000.00 conditioned upon the faithful performance of any or all work entered upon or contracted for, and to save harmless the owner or real party in interest in the property for which any material is furnished for services performed by the applicant, against loss, damage and injury resulting through want of skill or

negligence on the part of the applicant, his agents, or employees, provided action is maintained thereon by such owner or real party in interest within one year from the date of installation of materials furnished or performance of such work or service, and provided that the aggregate liability of the surety for all such loss, damage, or injury shall in event exceed the sum of such bond.

**Rule 6-7. Certificate of Registration:**

All Certificates of Registration, when received from the Board, must be displayed in a prominent place in the principal office or establishment of Certificate holder.

(a) No registration shall be transferable under penalty of revocation.

(b) Each registration shall be issued for the State fiscal year during which it is issued and the full fee shall be payable irrespective of the state of

issue.

(c) All persons receiving a Certificate of Registration shall display, on the vehicles used in the performance of their work, the words, "Registered Electrician" and the number assigned to them in not less than three inch letters and numbers.

**Rule 7-8. Expirations and Renewals:**

(a) Certificates of Registration shall expire on the last day of the month of June on alternate years. Master Electrician General and Master Electrician General Special certificates expire on June 30th of even years, i.e., 1986, 1988, 1990, 1992, etc. Master Electrician Limited and Master Electrician Limited Special certificates expire on June 30th of odd years, i.e., 1987, 1989, 1991, 1993, etc. Certificates shall become invalid on that day unless renewed.

(b) Renewal may be effective any time during the month of June, by payment of the biennial fee which shall be set by the Director, Division of Professional Regulation. The failure on the part of any registrant to renew his Certificate biennially in the month of June, as required, shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a Certificate after the month of June shall include a late charge of \$10.00 plus \$1.00 each month or fraction of the month that payment of renewal fee is delayed.

If an applicant has not renewed his registration within a 36 month period, such registration is automatically canceled and he must reapply as a new applicant.

Before any Certificate of Registration will be issued to an approved applicant, the applicant shall pay a fee as set by the Director, Division of Professional Regulation to the State Board of Electrical Examiners.

When a registered holder does not do electrical work, he may pay only his fee and late charges, if there are any. It is not necessary to renew the bond, as long as he is not engaged in the electrical contracting business.

(c) Continuing Education (Adopted March 23, 1988 Public Hearing)

Every registrant shall accrue (10) ten hours of approved continuing education per renewal period. Written proof of ten (10) hours of approved continuing education shall be submitted biennially during the month of June along with payment of the renewal fee. Continuing education accruals in excess of 10 hours will not be carried over and credited toward the next year's required accrual of continuing education hours.

**Rule 8-9. Revocation of Certificate of Registration:**

(a) The Board may revoke the Certificate of Registration of any registrant that is found guilty of:

(1) The practice of any fraud or deceit in obtaining a Certificate of Registration.

(2) Any gross negligence, incompetency, or misconduct in supplying material or performing services as an electrical contractor.

(3) Permitting or causing defective electrical work, if done deliberately or if not corrected within 15 days, or longer if necessary, at the discretion of the Board following notice thereof.

(a) Any person may prefer charges of fraud, deceit, gross negligence or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the Secretary/Treasurer of the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board within three months after the date on which they shall have been preferred.

(c) The time and place for the hearing shall be fixed by the Board, and a copy of the charges, together with a notice of the time and place for hearing, shall be personally served on or

mailed to the last know address of the registrant, at least 15 days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel to cross-examine witness appearing against him and to produce evidence and witness in his own defense. If, after such hearing, four or more members of the Board vote in favor of finding the accused guilty, the Board may revoke the Certificate of Registration of such registrant.

(4) Loses or has the bond required in sub-section 1424 canceled.

(5) Is found guilty of using the certificate of registration or allowing the certificate of registration to be used for any work that the registrant has not directly supervised as a full time employee or owner of the company that performed the work.

(6) Uses or attempts to use a certificate number for which the registrant is not entitled.

(b) Procedure for Revocation

First Offense: A letter of reprimand and/or a temporary revocation of the certificate of registration up to seven days.

Second Offense: A temporary revocation of certificate of registration up to thirty days.

Third Offense: Certificate of registration may be revoked.

(c) Electrical Work by Non-holder of Certificate of Registration:

False Representation:

(1) No person not the holder of a Certificate of Registration, shall install, alter or repair any wiring or appliances for electric light, heat, or power in or on any building, and no person not the holder of such registration, unless employed by and working under the supervision of a person holding a registration as defined herein, shall use in any advertising the words "Master Electrician" or the words "Registered Electrician" or the words "Electrical Contractor", or any words of the similar meaning or import on any sign, card, letterhead, or in any other manner, except as noted under Section 1432(a)(1) - (6).

(d) False Statement:

Any person who, with intent to defraud or deceive, knowingly makes a false statement in an application for certificate of electrical inspection and approval or in any application provided for in this title or in any proof or instrument in writing in connection therewith, or who shall in an examination hereunder, deceive or substitute, shall be in violation of this regulation.

Rule 9- 10. Annual Inspection:

- (a) All persons, firms, or corporations that are exempt under Section 1432(2) and Section 1432(6) provisions of this law from having a Registered Master Electrician, shall keep a record for the electrical inspection authority of all additional equipment or alterations to the existing electrical system. An applicant listing all changes and additions shall be filed with the authorized inspection agency recognized by the Board.
- (b) In lieu of keeping such records, all persons, firms or corporations may file application for each change or additions at the time of completion or must request an annual inspection each year of their complete electrical installation.
- (c) All the above applications shall be sent to an authorized inspection agency recognized by this Board.

The following is the Board's ruling on how to comply with Section 1432(6);

1. Have in your employment a Registered Electrician, this electrician must file on all electrical installations that he performs and/or supervises. This electrician must be registered with the Delaware State Board of Electrical Examiners. Any electrical installation performed by a registered electrician must be inspected upon completion.

2. Have in your employment a Professional Engineer with ten years experience in electrical planning and design, who is responsible for and supervises the plant's electrical installations. This engineer must be registered with the Delaware State Board of Electrical Examiners and the Delaware Association of Professional Engineers. If a plant employs a Professional Engineer, all new installations performed during the year must be inspected on an annual basis.

Electrical Inspection Procedures and Regulations for Industrial Plants:

The following procedures and regulations are set fourth by the Delaware State Board of Electrical Examiners as requirements of Delaware Licensed Electrical Inspection Agencies when conducting an annual inspection of Industrial Plants.

Title 24, Chapter 14, Subsection 4321(6), paragraph (c) of the Delaware Code, requires all Manufacturing and Industrial establishments to have all electrical work inspected at least once annually.

Work Qualified for Annual Inspections:

All electrical installation in manufacturing and industrial facilities, performed by Owner's employees or by a properly registered and licensed Delaware Electrical Contractor, which have been inspected by a Registered Professional Engineer meeting the qualifications of Subsection 1432, paragraph (6) qualify for annual inspection. This work must be inspected and inspection must be requested by the Owner's authorized Engineer.

Where an Owner contracts electrical work with a Contractor who is not properly licensed or does not have in his employ an electrician registered in the State of Delaware, said Contractor is in violation and is subject to legal action and work can be stopped until compliance with the law.

#### Work Not Qualified for Annual Inspection:

All electrical installations performed by the Owner's employees, under the supervision of an electrician registered in the State of Delaware or by an Electrical Contractor properly licensed and registered in the State of Delaware, must be inspected as required in Subsection 1433, paragraph (b), with the exception of work inspected by a Professional Engineer pursuant to Subsection 1432, paragraph 6.

#### Industrial Qualifications:

1. For industrial facilities that have in their employ a full time, qualified electrical maintenance force and/or experience engineering staff, inspections will be conducted on a sample or random basis. A representative sample of each type of electrical work will be inspected. If no serious violations are found and it can be safely assumed that the uninspected work will be of the same quality, a letter of approval can be issued for all work subject to inspection. Plant personnel will be responsible to check for and correct on the uninspected work, any violations cited on the inspected work.

2. On industrial facilities that do not have qualified electrical maintenance personnel, inspections will be conducted on a more thorough basis. A larger percentage of work will be inspected and if necessary on small facilities, all work may be inspected until the inspector is satisfied that all work conforms to the National Electrical Code.

#### Procedures:

1. Owner submits written "Application for Electrical Inspection". This may be initiated by telephone and if requested, inspector will assist Owner in completing

written application.

2. Prior to inspector's visit, Owner's representative will prepare a list of all electrical work performed during the past year, that had not been previously inspected.

If the qualifications are questionable, the inspector will refer the case to the State Board.

3. Inspector contacts plant and arranges mutually suitable date for inspection.

4. Inspector is accompanied by qualified plant personnel, who will assist in locating work to be inspected. Inspector has the authority to choose and be shown those installations that he feels have the highest safety priorities.

5. The inspection will be based on the National Electrical Code. He will also report any deteriorated, damaged or abused installations that are a safety hazard.

6. Inspection agency will file report within two weeks. Report will cite all violations and refer to appropriate sections of the National Electrical Code. A reasonable time will be indicated for plant to make corrections.

7. Plant must make corrections within scheduled time and notify the inspection agency for reinspection. If additional time is needed, industry must notify in writing, with a copy to the State Board of Electrical Examiners, the cause for delay and request a reasonable extension. The Board will exercise its authority to take legal action if adequate effort is not made to correct violations.

#### Regulations:

Inspection Agencies shall adhere to the following regulations.

1. Has authority to inspect only those installations covered by the National Electrical Code or Title 24 of the Delaware Code.

2. Shall at all times adhere to plant's safety, sanitation and security regulations.

3. Shall not involve himself in trivia that is not pertinent to the National Electrical Code.

4. If required, sign a non-disclosure agreement to which he legally binds himself and the agency which he represents.

5. Will not interfere with the plant's normal production procedure. If necessary to shutdown or de-energize production related equipment, he will schedule this at the earliest convenience of the plant's representative to minimize or avoid loss of production.

6. Will be expedient and attempt to conduct a thorough and impartial inspection as quickly as possible.

7. Inspection agency will invoice the industry at an hourly rate (rates subject to Board approval), with a

minimum two hour billing. Invoice will include time for.

- a. On site inspections.
- b. Travel time.
- c. Reinspection.
- d. Report writing.
- e. Letter of Approval with copy to the State Board.
- f. Reviewing and/or advising industrial client as to reason for violations or possible corrective action. Invoice will be for inspectors or supervisors time only and will not include clerical or secretarial services.

**Appeal:**

Industry has at all times the right to appeal the action of the inspection agency and its personnel to the State Board. Prior to notifying the Board, problems should be brought to the attention of the District's Manager of the Inspection Agency.

**Rule ~~10~~ 11. Reciprocity:**

The Board may, upon application therefore, and the payment of the regular fee and without examination, issue a Certificate of Registration as a Master Electrician General and Master Electrician General Special to any person who holds a certificate of qualification or registration issued to him by the proper authorities of any State or Territory or District of the United States, or of any country, provided that the requirements for the registration of electrical contractors, General or Limited, under which such certificate of qualification or registration was issued do not conflict with the provision of this chapter and are of a standard not lower than that specified in this chapter, provided the same rights are given to the electrical contractors of this State.

**General Rules:**

1. All electrical work installed by any registrant shall be installed in accordance with the rules and regulations of the National Electrical Code, the local light and power company and all state, city and county building codes.
2. All electrical work, appliances or any related installations shall be installed in a work man like manner.
3. The State Board of Electrical Examiners shall have the authority to appoint representatives (other than board members) from various specialized fields to investigate written complaints which, in the opinion of the Board, warrants investigation: however, these representatives shall act only in an advisory capacity and all opinions and decisions shall be formulated or made by the State Board of Electrical Examiners.
4. It is resolved that the original Rules and Regulations for the general supervision and control of the

electrical business in the State of Delaware were Adopted October 1, 1974.

The following were added to the General Rules already submitted by the State Board of Electrical Examiners.

5. All applications for electrical inspection must be signed by the registration holder. These applications are not to be accepted if the registrant's name and registration number are typed or stamped on the application.

6. The State Board of Electrical Examiners is to be notified by the registration holder within ten (10) days, if the registrant terminates employment with a company or changes the name of his company or corporation. This notification is to be in writing to the Board office.

7. Any person holding an electrical registration with the State Board of Electrical Examiners, upon becoming an electrical inspector, shall have his registration suspended until such time as he is no longer affiliate with the inspection agency. A late fee will not be charged by the Board during the time of suspension.

8. All new inspectors hired by recognized inspection agencies may be required to take a written examination within ninety (90) days after being hired.

9. In the case of one registered contractor taking over and completing a job started by another contractor, the following procedure is to be followed:

1) The contractor leaving the job must obtain a final electrical approval on the work he has installed.

2) The contractor completing the job must file a letter with the Board office stating that he is assuming complete responsibility for the completion of the job and obtaining the necessary electrical inspections and approval on same.

10. Joint Venture: The Board has deemed joint ventures acceptable provided that all parties involved are registered with the State Board of Electrical Examiners as Electrical Contractors.

11. The following is the procedure for processing service changes:

1) Electrical contractor to pick up the meter socket and jumper bars after the meter inspector has been consulted.

2) Upon completion of work (some maximum period) the electrical contractor is to make temporary connections, install jumpers, apply for inspection and advise the meter department.

3) If final inspection agency approval is not received in fifteen (15) days, the State Board of Electrical Examiners is to be informed.

**DEPARTMENT OF SERVICES  
FOR CHILDREN, YOUTH  
AND THEIR FAMILIES**

**OFFICE OF CHILD CARE LICENSING**

Statutory Authority: 11 Delaware Code  
Section 8563(e) (11 **Del.C.** §8563(e))

The Department's has developed proposed regulations pursuant to 19 Del.C, Chapter 7, Section 708, which authorizes the Department to conduct Child Abuse Registry checks on certain child care and health care personnel. The purpose of these regulations is the protection for the "vulnerable" population in child care and health care facilities.

Interested parties are invited to present their views at the public hearing which is scheduled as follows:

January 22, 1998 - Beginning at 9:00 A.M., Delaware Youth and Family Center, Room 199, 1825 Faulkland Road, Wilmington, Delaware 19805.

Copies of the proposed regulations will be available at the hearing and may be obtained at the Office of Child Care Licensing, Barley Mill Plaza, Building 18, 4417 Lancaster Pike, Wilmington, Delaware 19805.

The public comment period is December 20, 1997 through February 20, 1998. You are invited to share your oral comments at the public hearing. Your written comments may be submitted to me as follows:

Beth Kramer, Criminal History Supervisor  
Office of Child Care Licensing  
1825 Faulkland Road  
Wilmington, Delaware 19805

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DEPARTMENT OF SERVICES FOR CHILDREN,  
YOUTH AND THEIR FAMILIES  
OFFICE OF CHILD CARE LICENSING

REGULATIONS FOR CHILD ABUSE REGISTRY  
CHECKS FOR CHILD CARE AND HEALTH CARE  
PERSONS

**I. LEGAL BASE**

The legal base for these regulations is in the Delaware Code, Title 19, Chapter 7, Section 708.

**II. PURPOSE**

The overall purpose of these regulations is the protection for the "vulnerable" population in child care

and health care facilities. To this end, persons seeking employment in a licensed child care facility or health care facility shall submit to a Child Abuse Registry check. A search of the Child Abuse Registry will be conducted to determine if the person is a perpetrator in any substantiated cases of child abuse or neglect.

**III. DEFINITIONS**

A. "Child Abuse Registry" means a central registry of information about persons the Division of Family Services has found cause to believe, or a court has substantiated through court adjudication, have committed child abuse or neglect.

B. "Child Abuse Registry Check" means a computer search of the Child Abuse Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or neglect.

C. "Child Care Facility" means any child care facility which is required to be licensed by The Department of Services for Children, Youth and Their Families.

D. "Child Care Person" means any person in a child care facility in a position which provides the opportunity to have direct access to children without the presence of other employees or adults.

E. "Conditional Child Care Person" means a child care person who has been offered a position or has agreed to volunteer in a child care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child abuse registry check by the employer.

F. "Conditional Health Care Person" means a health care person who has been offered a position or has agreed to volunteer in a health care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child abuse registry check by the employer.

G. "Criminal History Unit" means the Unit located in the Division of Family Services that is responsible for the implementation of the Child Abuse Registry checks for child care and health care persons.

H. "Department" means the Department of Services for Children, Youth and Their Families or any of the Divisions.

I. "Direct Access" means the opportunity to have

# PROPOSED REGULATIONS

personal contact with persons receiving care during the course of one's assigned duties.

J. "Division of Family Services" means the Division that maintains the Child Abuse Registry.

K. "Employer" means any child care facility or health care facility as defined.

L. "Health Care Facility" means any custodial or residential facility where health, nutritional, or personal care is provided for persons including nursing homes, hospitals, home health care agencies and adult day care facilities.

M. "Health Care Person" means any person in a health care facility in a position which provides the opportunity to have direct access to persons receiving care without the presence of other employees or adults.

N. "Person Seeking Employment" means any person applying for employment in a child care or health care facility that affords direct access to persons receiving care at such a facility, or a person applying for licensure to operate a child care facility.

O. "Volunteer" means any person who has direct access to persons receiving care during the performance of unpaid duties.

## **IV. PERSONS SUBJECT TO THE LAW**

Persons subject to the law shall be those persons who are hired or apply for the status described below on or after January 1, 1998.

A. Child care and health care persons subject to the Child Abuse Registry check shall be persons in a child care or health care facility who are in a position which involves:

1. Supervisory or disciplinary authority over persons receiving care, or
2. The opportunity to have direct access to persons receiving care without the presence of other employees or adults.

## **V. EMPLOYER RESPONSIBILITIES**

A. No employer who operates a child care facility or health care facility shall hire any person without requesting a Child Abuse Registry check for that person. The Child Abuse Registry check shall relate to substantiated cases of child abuse or neglect reported after

August 1, 1994.

B. The employer shall obtain a full release from each person subject to the law. The release must be completed and signed in order for the employer to obtain the information provided pursuant to the Child Abuse Registry check. The release is a form developed by the Department.

C. Any person hired prior to the employer receiving the results of the Child Abuse Registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and contingent upon the receipt and evaluation of the Child Abuse Registry check.

## **VI. CHILD ABUSE REGISTRY CHECK PROCESS**

A. The child care or health care person completes and signs a release form in order for a Child Abuse Registry check to be conducted.

B. Upon receipt of the of the signed release, the Criminal History Unit will conduct a Child Abuse Registry check to determine if the person is named as a perpetrator in any substantiated cases of child abuse or neglect.

C. When the person is not listed in the Child Abuse Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the appropriate employer.

D. When the person is listed in the Child Abuse Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the employer along with details on how to obtain further information pertaining to the substantiated case(s) of child abuse or neglect.

## **VII. REVIEW OF DEPARTMENT RECORDS**

A. When a person is listed in the Child Abuse Registry as a perpetrator they will be allowed the opportunity to review the record information maintained by the Division of Family Services.

B. The following procedures shall be established to permit the review of record information.

1. The person shall submit a request in writing to the address provided as part of the results of the Child Abuse Registry Request.

2. Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.

3. The review shall take place in the presence of a Division of Family Services staff member. The employer may also be present.

**VIII. CONFIDENTIALITY**

The Department shall ensure that confidentiality regarding case file reviews and the dissemination of information is followed according to Department policy.

**X. PENALTY**

Any employer who hires a person seeking employment without requesting a Child Abuse Registry check for such person shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00 for each violation.

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**DEPARTMENT OF HEALTH  
AND SOCIAL SERVICES**

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

Statutory Authority: 11 Delaware Code,  
Section 8564(e) (11 Del.C. §8564(e))

**NOTICE OF PUBLIC HEARING**

The Division of Services for Aging and Adults with Physical Disabilities of the Department of Health and Social Services, will hold public hearings to discuss proposed Regulations for the Adult Abuse Registry. These proposed regulations describe employer inquiry requirements and procedures, and administrative hearing rights of individuals against whom a finding of abuse has been preliminary substantiated.

These public hearings will be held on January 21, 1998 at 10:00 A.M. in the Buck Library, Buena Vista Conference Center, 661 South Dupont Highway, New Castle, DE 19720, and at 10:00 A.M. January 22, 1998 in the Training Room, 18 North Walnut Street, Milford State Service Center Complex, Milford, DE 19963.

Copies of the proposed regulations are available for review by calling the following locations:

Division of Services for Aging and Adults with Physical Disabilities  
1901 N. Dupont Highway  
New Castle, DE 19720  
(302) 577-4791

Division of Services for Aging and Adults with Physical Disabilities  
256 Chapman Road, Suite 200  
Newark, DE 19702  
(302) 453-3820

Division of Services for Aging and Adults with Physical Disabilities  
Milford State Service Center  
18 North Walnut Street  
Milford, DE 19963  
(302) 422-1386

Anyone wishing to present their oral comments at one of these hearings should contact Debbie Moore at (302) 577-4791 by January 16, 1998. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by February 2, 1998 to:

Jeffrey Beaman, Hearing Officer  
Division of Public Health  
PO Box 637  
Dover, DE 19903

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**DEPARTMENT OF HEATH AND SOCIAL  
SERVICES  
REGULATIONS GOVERNING THE ADULT  
ABUSE REGISTRY**

Section 1: Definitions

(A) "Adult Abuse" means:

- (1) Physical abuse including the intentional and unnecessary infliction of pain or injury to an infirm adult or the threat thereof. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair, or any sexual contact, or the threat of any of the above acts.
- (2) Emotional abuse including, but not limited to:
  - (a) Ridiculing or demeaning an infirm adult.
  - (b) Making derogatory remarks to an infirm adult.
  - (c) Cursing directed towards an infirm adult.
  - (d) Threatening retaliation, directly or indirectly
- (3) Mistreatment including the inappropriate use of medications, isolation or physical or chemical restraints on or of an infirm adult.
- (4) Neglect including:
  - (a) Intentional lack of attention to physical needs of the infirm adult including, but not

# PROPOSED REGULATIONS

limited to, toileting, bathing, meals and safety.

- (b) Intentional failure to report health problems or changes in health problems or changes in health condition of an infirm adult to an immediate supervisor, doctor or nurse.
- (c) Intentional failure to carry out a prescribed treatment plan for an infirm adult.
- (5) Misappropriation of property including the theft of money or property from the infirm adult, use of money or property without permission of the infirm adult or guardian, and mishandling of money or property belonging to the infirm adult.

(B) “Substantiated Abuse” means that, weighing the facts and circumstances, a reasonable person has concluded that more likely than not the identified individual has committed adult abuse.

(C) “Person Seeking Employment” means any person applying for employment in a health care facility or child care facility that affords direct access to persons receiving care at such a facility, or a person applying for licensure to operate a child care facility.

(D) “Health Care Facility” means any custodial or residential facility where health, nutritional or personal care is provided for infirm adults, including nursing homes, hospitals, home health care agencies, and adult day care facilities.

(E) “Child Care Facility” means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

(F) “direct access” means the opportunity to have personal contact with persons receiving care during the course of one’s assigned duties.

(G) “Infirm adult” means any person 18 years of age or over who is physically or mentally impaired, either permanently or temporarily.

(H) “proposed concern” refers to a temporary classification used until the final determination is made.

(I) “Department” means the Department of Health and Social Services.

## Section 2: Use of Registry

(A) No employer who operates a health care facility or child care facility shall hire any person seeking employment without requesting and receiving an Adult

Abuse Registry check for such person.

- (1) Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check.
- (2) The employer shall call the Adult Abuse Registry, provide the name and social security number of the person seeking employment, and will be informed of any information contained in the registry.

(B) When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.

- (1) The employment of the person shall be conditional and contingent upon receipt of the Adult Abuse Registry check by the employer.
- (2) The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.

## Section 3: Investigation of Adult Abuse.

(A) The Department shall investigate any individual against whom an allegation of adult abuse has been made.

(B) If the investigator determines preliminarily that the facts and circumstances conclude that more likely than not the individual has committed abuse or neglect, the individual’s name shall be placed on the Adult Abuse Registry with a finding of “Proposed Concern“.

## Section 4: Administrative Hearings

(A) Individuals against whom an allegation is preliminarily substantiated shall be notified in writing of the intent to place their name on the Adult Abuse Registry with a finding of “Substantiated Abuse“ and shall be offered a right to an administrative hearing. Information contained in the finding of substantiated abuse shall consist of:

- (1) The date of the incident
- (2) The type of facility where the incident occurred
- (3) A brief description of the incident
- (4) Length of time the finding remains on the Abuse Registry

(B) Individuals must request in writing an administrative hearing within 30 days of the date of the notice that a

finding of abuse has been preliminarily substantiated.

(C) Individuals who fail to request an administrative hearing within 30 days shall have their name and information regarding the incident changed from a finding of "Proposed Concern" to a finding of "Substantiated Abuse" on the Adult Abuse Registry 30 days after the date of the notice.

(D) Individuals who have entered a plea or who have been convicted by a court of law of adult abuse, shall not have the right to an administrative hearing. Their name and information regarding the incident shall be entered directly to the Adult Abuse Registry.

(E) The Department shall make a scheduling decision within 10 days of receipt of a request for an administrative hearing by an individual who has received notice of a preliminary finding of substantiated abuse.

- (1) An individual requesting an administrative hearing shall be entitled to a statement describing the incident, the date and location of the incident, and the name of the victim.
- (2) The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Department presents.
- (3) If, at the conclusion of the hearing, the hearing officer concludes that, weighing the facts and circumstances, more likely than not, the identified individual has committed adult abuse, a notice of "substantiation" shall be placed on the registry.
- (4) The hearing officer shall render a written decision and will notify the individual and the Office of the Ombudsman of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the registry.
- (5) The decision of the hearing officer is final.

Section 5: Length of time on the Abuse Registry

The length of time on the Abuse Registry shall be no less than five years and may be permanent. The length of time shall be based on the actual injury or risk of injury to the infirm adult and whether there exists a pattern of adult abuse. Notwithstanding the above, the length of time on the registry may be less than five years if there is evidence of mitigating circumstances indicating that adult abuse by the individual was a singular event and not likely to reoccur.

Section 6: Registry of Nurse Aides

The names of registrants with findings of abuse, neglect, or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR § 483 shall be entered into the Adult Abuse Registry with a finding of substantiated abuse. The finding shall remain on the Adult Abuse Registry for so long as the finding remains on the Registry of Nurse Aides. There shall be no right of appeal for findings entered on the Adult Abuse Registry under this section.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF VETERINARY MEDICINE**

Statutory Authority: 24 Delaware Code,  
Section 3306(a)(1) (24 **Del.C.** 3306(a)(1))

The Delaware Board of Veterinary Medicine proposes to revise its rules and regulations in accordance with 24 Del.C. 3306. The proposed rules and regulations pertain to:

- (1) Regulation I - Filing Date for Examinations
- (2) Regulation II - Qualification for Licensure by Examination as a Veterinarian
- (3) Regulation III - Character of Examination - National Board Examination and Clinical Competency Test
- (4) Regulation IV - Continuing Education

A public hearing will be held on Tuesday, January 20, 1998 at 1:00 p.m. in the Cannon Building, Conference Room B, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed rules and regulations may obtain same from the Board Office, Division of Professional Regulation, Cannon Building, Suite 203, P.O. Box 1401, Dover, Delaware 19903. Written comments should be submitted to the Board Office at the above address on or before January 20, 1998.

Those individuals wishing to make oral comments at the public hearing are requested to notify the Board Office at (302) 739-4522, ext. 203.

# PROPOSED REGULATIONS

## DELAWARE STATE BOARD OF VETERINARY MEDICINE

### RULES AND REGULATIONS

#### **Regulation I. Filing Date for Examinations**

A. An applicant taking examinations in the State of Delaware must have the completed application filed with the Board office ~~sixty (60) days prior to~~ nine weeks before the announced date of the examination as established by the testing service.

B. The examination will be given at least once annually on the date(s) established by the testing service.

#### **Regulation II. Qualification for Licensure by Examination as a Veterinarian**

A. Applicant shall file the following documents ~~sixty (60) days prior to the announced date of examination:~~

1. Completed application form obtained from the Board office.

2. ~~Two (2) letters of recommendation from veterinarians~~ Official transcript from an AVMA approved veterinary college or university or its equivalent (Educational Commission for Foreign Veterinary Graduates.

3. ~~Authenticated copy of applicant's veterinary college or university transcript or a notarized letter from the college dean verifying status of graduation~~ Letters of good standing from any other jurisdictions in which applicant is/or has been licensed.

4. ~~Graduates of foreign veterinary schools must submit a translated copy of their grades and course work toward their degree along with a copy of their diploma. These documents should be certified as true and correct copies. Graduates of foreign veterinary schools must also submit a letter from the AVMA verifying satisfactory completion of the ECFVG program~~ Official National Board Examination (NBE) and Clinical Competency Test (CCT) scores.

5. ~~Copy of license(s) issued to the applicant in other jurisdictions and certificate(s) of good standing from those jurisdictions. Check or money order payable to the "State of Delaware" for the amount prescribed by the Division of Professional Regulation~~

6. ~~Check or money order payable to the "State of Delaware" for the amount prescribed by the Division of Professional Regulation. This fee is not refundable and cannot be carried over to a future examination.~~

B. Only completed applications will be accepted. In

case of incomplete applications, omissions will be noted to the applicant. Any information provided to the Board is subject to verification

#### **Regulation III. Character of Examination -- National Board Examination and Clinical Competency Test**

A. Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the National Board Examination ("NBE") and the Clinical Competency Test ("CCT").

1. ~~Passing scores for the NBE and CCT shall be 1.5 standard deviation units (given as "z" scores) below the average score for the criterion group~~ the score as recommended by the National Board Examination Committee.

#### **Regulation IV. Licensure -- Renewal**

A. All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

B. All licensees must meet the continuing education requirements of ~~twelve (12) hours for each year of the biennial license--~~ a total of twenty-four (24) hours for two (2) years.

C. Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a 50% late fee established by the Division of Professional Regulation in addition to the prescribed renewal fee.

#### **Regulation V. Licenses, Certifications and Registrations -- Display**

A. Each licensed veterinarian shall have posted or displayed at his/her office, in full view of clients, his/her Delaware license to practice veterinary medicine.

#### **Regulation VI. Continuing Education**

A. Any veterinarian (active or inactive) licensed to practice in the State of Delaware shall meet the following

continuing education requirements to the satisfaction of the Board.

1. Twenty-four (24) hours of approved certified continuing education credits for the immediate two year period preceding each biennial license renewal date.

2. The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board.

B. The Board may approve continuing education courses or sponsors upon written application ~~to the Board office on Board supplied forms~~. In addition, the Board may approve continuing education courses or sponsors on its own motion ~~and may issue from time to time a list of accredited courses and sponsors it deems to meet the requirements set forth in subsection C of this Regulation. A list of accredited courses and sponsors will be kept in the Board's office.~~

C. ~~Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine~~ The following organizations are approved for formal continuing education activities.

1. AVMA

2. AVMA accredited schools

3. Federal/State/County Associations

4. Correspondence and In-House: Compendium on continuing education for the practicing veterinarian; Internet; NOAH; VIN. This may be used to satisfy ½ of the continuing education requirement.

5. Other forms of CE as long as a Veterinary Board Certified Diplomat or Veterinary Board Qualified Presenter presents the activity and the activity is approved by the Delaware Board of Veterinary Medicine. This may be used to satisfy ½ of the continuing education requirement.

6. University course work consisting of post-graduate credits, subject to Board approval.

D. ~~The Board may at any time re-evaluate an accredited course or sponsor and withdraw its approval of a previously accredited continuing education course or sponsor~~ Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

E. The Board may at any time re-evaluate an

accredited course or sponsor and withdraw its approval of a previously accredited continuing education course or sponsor.

### **Regulation VII. Reciprocity**

A. Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the same application requirements set forth in Regulation II.

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## **DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL**

### **DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Sections 2701, 1902 (7 Del.C. §1902, 2701)

### **REGISTER NOTICE**

**Title of the Regulations:   HORSESHOE CRAB  
REGULATIONS**

#### Brief Synopsis of the Subject and Issue

The Department of Natural Resources and Environmental Control is authorized to establish and administer a program for the conservation and management of horseshoe crabs to include the promulgation of regulations to: administer a permitting system; designate areas for harvest; to protect sensitive habitat and public safety; define equipment and methods of harvest; designate seasons for collecting; and establish reporting requirements for all those individuals authorized to take horseshoe crabs.

The Department of Natural Resources and Environmental Control proposes to enact regulations to: define the criteria for eligibility for a horseshoe crab commercial collecting permit; control the times and areas where horseshoe crabs may be harvested; limit the number of horseshoe crabs that may be dredged in one day; define the equipment that may be used to store and/or transport horseshoe crabs and require monthly reporting of the harvest of horseshoe crabs. The Department's goal is to allow a sufficient harvest of horseshoe crabs to sustain the local need for bait in the eel and conch pot fisheries without adversely affecting migratory shore birds or the supply of horseshoe crabs available to the pharmaceutical industry.

Possible Terms of the Agency Action

The Department of Natural Resources and Environmental Control may reject or approve regulations to control the harvest of horseshoe crabs.

Statutory Basis or Legal Authority to Act

§ 2701, 7 Del. C. and § 1902, 7 Del. C.

Notice of Public Comment

Individuals may present their opinions and evidence and /or request information by writing or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, Delaware 19901 prior to 4:30 PM on January 30, 1998. A public hearing on these proposals will be held in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware at 7:30 PM on Monday, January 26, 1998.

For further information please contact Charles A. Lesser/ 302-739-3441

**PROPOSED HORSESHOE CRAB REGULATIONS**

Amend Shellfish Regulation No. S-51 by striking it in its entirety and substitute in lieu thereof the following:

**“S-51 SEASONS AND AREAS CLOSED TO TAKING HORSESHOE CRABS.**

(a) It shall be unlawful for any person to collect or dredge or attempt to collect or dredge horseshoe crabs from any state or federal lands owned in fee simple or the tidal waters of this state channelward of the mean low water line during a period beginning at 12:01 a.m. on May 1 and continuing through midnight, June 30, except that authorized persons may collect horseshoe crabs on Tuesdays and Thursdays from state owned lands to the east of state road No. 89 (Port Mahon Road).

(b) It shall be unlawful for any person to collect or attempt to collect, any horseshoe crabs from any lands not owned by the state or federal government during the period beginning at 12:01 a.m. or May 1 and continuing through midnight, June 30, except that authorized persons may collect horseshoe crabs on Mondays, Wednesdays and Fridays.”

Amend Shellfish Regulation No. S-54, POSSESSION LIMIT OF HORSESHOE CRABS, EXCEPTIONS by striking paragraph (b) in its entirety and substitute in lieu thereof the following:

“(b) Any person who has been issued a valid

commercial eel fishing license by the Department or his alternate while in the presence of the licensee is exempt from the possession limit of six (6) horseshoe crabs, provided said commercial eel fishing licensee has submitted all required reports of his and his alternates previous months harvest of horseshoe crabs to the Department on forms provided by the Department. Any person who has been issued a commercial eel fishing license and said person’s alternate while in the presence of the licensee, may collect horseshoe crabs by hand without a horseshoe crab commercial collecting provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee’s eel pots fished in this state.”

Add a new Shellfish Regulation No. S-55 to read as follows:

**“S-55 HORESESHOE CRAB DREDGING RESTRICTIONS**

(a) 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.”

(b) It shall be unlawful for any person who uses dredges to take horseshoe crabs to have on board to land more than 1500 horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight.

(c) It shall be unlawful for any person with a dredge of any kind on board a vessel to possess on board said vessel any horseshoe crabs at any time during the period beginning at 12:01 a.m. on May 1 and continuing through midnight, June 30.”

Add a new Shellfish Regulation No. S-56 to read as follows:

**“S-56 HORSESHOE CRAB SANCTUARIES**

(a) All state and federal lands owned in fee simple are horseshoe crab sanctuaries during the period beginning at 12:01 a.m. on May 1 through midnight June 30.

(b) Any private land owner(s) may register his or their land with the Department to be designated as a horseshoe crab sanctuary.

(c) It shall be unlawful to collect any horseshoe crabs at any time from a horseshoe crab sanctuary.”

Add a New Shellfish Regulation No. S - 57 to read as follows:

**“S - 57 HORSESHOE CRAB REPORTING REQUIREMENTS**

(a) It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a person who has been issued a commercial eel pot license and collects horseshoe crabs for his/her personal use as bait to not file a monthly report with the Department on or before the 10th day of the next month. Monthly reports on horseshoe crabs shall be filed for each month whether horseshoe crabs are dredged or collected or not dredged or collected. Said forms shall require the reporting of the date, location, sex and number of horseshoe crabs dredged or collected.

(b) Any person who fails to file a completed monthly report with the Department on horseshoe crabs collected or dredged on the form, on or before the 10th day of the following month shall have his horseshoe crab dredge permit, horseshoe crab commercial collecting permit or authority to collect horseshoe crabs as a commercial eel fisherman, suspended until such time that all delinquent reports are received by the Department.”

Add a New Shellfish Regulation No. S - 58 to read as follows:

**“S-58 HORSESHOE CRAB CONTAINMENT AND TRANSPORTATION RESTRICTIONS**

(a) It shall be unlawful for any person to put, place, contain or cause to be contained any horseshoe crabs in any enclosure, container or facility, other than cold storage or a freezer, that contains more than 300 cubic feet of storage space.

(b) It shall be unlawful for any person to transport or cause to be transported any horseshoe crab in any vehicle or trailer that contains more than 300 cubic feet of storage space.”

Add a New Shellfish Regulation No. S - 59 to read as follows:

**“S-59 HORSESHOE CRAB COMMERCIAL COLLECTING PERMIT ELIGIBILITY AND RENEWAL REQUIREMENTS**

(a) The Department may only issue a horseshoe crab commercial collecting permit to a person who makes

application for such a permit in calendar year 1998, and who, prior to July 1, 1997, had applied for and secured from the Department at least 2 valid horseshoe crab commercial collecting permits. Any person holding a horseshoe crab commercial collecting permit may apply for renewal of their horseshoe crab commercial collecting permit by April 1. Failure of any person holding a horseshoe crab commercial collecting permit to apply for renewal of their horseshoe crab commercial collecting permit by April 1, will limit their eligibility to obtain a horseshoe crab commercial collecting permit to the lottery process of subsection (b).

(b) When the total number of horseshoe crab commercial collecting permits drops to 45 or below, as of April 2 of any year, the Department may schedule a lottery to take place prior to April 30 of that year to allow the total number of horseshoe crab commercial collecting permits to increase to 50.”

**A COMPLETE SET OF SHELLFISH REGULATIONS APPEAR IN THE FINAL REGULATIONS SECTION OF THIS ISSUE**

**EXISTING HORSESHOE CRAB REGULATIONS**

**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 SEASONS AND AREA CLOSED TO COLLECTING AND DREDGING TAKING 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 feet offshore, coterminous with the existing shoreline to the point of beginning on the "East Line".~~

~~(a) It shall be unlawful for any person to collect or dredge or attempt to collect or dredge horseshoe crabs from any state or federal lands owned in fee simple or the tidal waters of this state channelward of the mean low water line during a period beginning at 12:01 a.m. on May 1 and continuing through midnight, June 30, except that authorized persons may collect horseshoe crabs on Tuesdays and Thursdays from state owned lands to the east of state road No. 89 (Port Mahon Road).~~

~~(b) It shall be unlawful for any person to collect or attempt to collect, any horseshoe crabs from any lands not owned by the state or federal government during the period beginning at 12:01 a.m. or May 1 and continuing through midnight, June 30, except that authorized persons may collect horseshoe crabs on Mondays, Wednesdays and Fridays.~~

#### 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.~~

~~(b) Any person who has been issued a valid commercial eel fishing license by the Department or his alternate while in the presence of the licensee is exempt from the possession limit of six (6) horseshoe crabs, provided said commercial eel fishing licensee has submitted all required reports of his and his alternates previous months harvest of horseshoe crabs to the Department on forms provided by the Department. Any person who has been issued a commercial eel fishing license and said person's alternate while in the presence of the licensee, may collect horseshoe crabs by hand without a horseshoe crab commercial collecting provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee's eel pots fished in this state.~~

#### S-55 HORSESHOE CRAB DREDGING RESTRICTIONS

~~(a) 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."

(b) It shall be unlawful for any person who uses dredges to take horseshoe crabs to have on board to land more than 1500 horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight.

(c) It shall be unlawful for any person with a dredge of any kind on board a vessel to possess on board said vessel any horseshoe crabs at any time during the period beginning at 12:01 a.m. on May 1 and continuing through midnight, June 30.

#### **S-56 HORSESHOE CRAB SANCTUARIES**

(a) All state and federal lands owned in fee simple are horseshoe crab sanctuaries during the period beginning at 12:01 a.m. on May 1 through midnight June 30.

(b) Any private land owner(s) may register his or their land with the Department to be designated as a horseshoe crab sanctuary.

(c) It shall be unlawful to collect any horseshoe crabs at any time from a horseshoe crab sanctuary.

#### **S - 57 HORSESHOE CRAB REPORTING REQUIREMENTS**

(a) It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a person who has been issued a commercial eel pot license and collects horseshoe crabs for his/her personal use as bait to not file a monthly report with the Department on or before the 10th day of the next month. Monthly reports on horseshoe crabs shall be filed for each month whether horseshoe crabs are dredged or collected or not dredged or collected. Said forms shall require the reporting of the date, location, sex and number of horseshoe crabs dredged or collected.

(b) Any person who fails to file a completed monthly report with the Department on horseshoe crabs collected or dredged on the form, on or before the 10th day of the following month shall have his horseshoe crab dredge permit, horseshoe crab commercial collecting permit or authority to collect horseshoe crabs as a commercial eel fisherman, suspended until such time that all delinquent reports are received by the Department.

#### **S - 58 HORSESHOE CRAB CONTAINMENT AND TRANSPORTATION RESTRICTIONS**

(a) It shall be unlawful for any person to put, place, contain or cause to be contained any horseshoe crabs in

any enclosure, container or facility, other than cold storage or a freezer, that contains more than 300 cubic feet of storage space.

(b) It shall be unlawful for any person to transport or cause to be transported any horseshoe crab in any vehicle or trailer that contains more than 300 cubic feet of storage space.

#### **"S-59 HORSESHOE CRAB COMMERCIAL COLLECTING PERMIT ELIGIBILITY AND RENEWAL REQUIREMENTS**

(a) The Department may only issue a horseshoe crab commercial collecting permit to a person who makes application for such a permit in calendar year 1998, and who, prior to July 1, 1997, had applied for and secured from the Department at least 2 valid horseshoe crab commercial collecting permits. Any person holding a horseshoe crab commercial collecting permit may apply for renewal of their horseshoe crab commercial collecting permit by April 1. Failure of any person holding a horseshoe crab commercial collecting permit to apply for renewal of their horseshoe crab commercial collecting permit by April 1, will limit their eligibility to obtain a horseshoe crab commercial collecting permit to the lottery process of subsection (b).

(b) When the total number of horseshoe crab commercial collecting permits drops to 45 or below, as of April 2 of any year, the Department may schedule a lottery to take place prior to April 30 of that year to allow the total number of horseshoe crab commercial collecting permits to increase to 50."

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## **DEPARTMENT OF STATE**

### **OFFICE OF THE STATE BANKING COMMISSIONER**

Statutory Authority: 5 Delaware Code,  
Section 121(b) (5 Del.C. 121(b))

#### **NOTICE OF THE STATE BANK COMMISSIONER'S PROPOSAL TO ADOPT NEW REGULATIONS**

##### Summary:

The State Bank Commissioner proposes to adopt new Regulation Nos. 5.2111(b).0005, 5.2210(e).0005, 5.2318.0001, 5.2906(e).0003 and 5.2111/2210/2906.0006. Proposed new regulation 5.2111(b).0005 ("Report of Delaware Loan Volume") requires licensed mortgage loan brokers to report their Delaware loan volume twice a year. Proposed new regulation 5.2210(e).0005 ("Report of Delaware Loan Volume") requires licensed lenders to report their Delaware loan volume twice a year. Proposed new

5.2111(b).0005 ("Report of Delaware Loan Volume") requires licensed lenders to report their Delaware loan volume twice a year. Proposed new regulation 5.2318.0001 ("Report of Delaware Sale of Checks, Drafts and Money Orders Volume") requires licensed sellers of checks and money orders and money transmitters to report the volume of their Delaware business twice a year. Proposed new regulation 5.2906(e).0003 ("Report of Delaware Loan volume -- Motor Vehicle Installment Contracts") requires licensed motor vehicle sales finance companies to report their Delaware loan volume twice a year. Proposed new regulations 5.2111(b).0005, 5.2210(e).0005, 5.2318.0001, and 5.2906(e).0003 will assist the Office of the State Bank Commissioner in scheduling examinations of licensees based on the volume of their Delaware business. Proposed new regulation 5.2111/2210/2906.0006 ("Report of Delaware Assets") requires licensed mortgage loan brokers, lenders and motor vehicle sales finance companies to report their Delaware assets as of December 31 of each year for purposes of determining the amount of their supervisory assessments in accordance with Section 127(b) of Title 5 of the Delaware Code. Proposed new Regulation Nos. 5.2111(b).0005, 5.2210(e).0005, 5.2318.0001, 5.2906(e).0003 and 5.2111/2210/2906.0006 would be adopted by the State Bank Commissioner on or after February 4, 1998. 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 new regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Lookerman 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 February 4, 1998.

#### **Public Hearing:**

A public hearing on the proposed new regulations will be held in the Second Floor Cabinet Room in the Townsend Building, 401 Federal Street, Dover, Delaware 19901, on Wednesday, February 4, 1998 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. 5.2111(b).0005

Proposed

### **Report of Delaware Loan Volume (Chapter 21, Title 5 of the Delaware Code)**

This report shall be completed by all institutions licensed under Chapter 21, Title 5 of the Delaware Code and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 15 and must contain figures from January 1 through June 30 of the current year. The second report is due on or before January 15 and must contain figures from January 1 through December 31 of the previous year. **In the event that you fail to provide this information in the period requested, you will be in violation of this regulation. Additionally, an examination will be scheduled, and staff allocated, without respect to the volume of your Delaware business. This may result in additional examination costs to you.**

Licensees with multiple licensed locations, whose loan files are serviced at a consolidated, centralized location, may file a consolidated report. Otherwise, a separate report must be submitted for each licensed location

1. Name of Licensee: \_\_\_\_\_
2. Is this a consolidated report? Yes \_\_\_\_\_ No \_\_\_\_\_
3. License No.: \_\_\_\_\_  
(If consolidated, list all license numbers): \_\_\_\_\_
4. List the address where the loan files are maintained:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You will be billed for examiner time (including travel). Therefore, you may reduce your costs by providing complete, reliable and convenient directions that minimize travel time. If your records are maintained out of state and you have not previously provided this office with directions to the location identified above where your loan files are maintained, please provide us with directions. Provide directions for the nearest airport (if air transportation is appropriate) and/or driving directions, and a map of the area to which your directions refer. Please provide a name, telephone number and address of the nearest hotel providing safe and convenient accommodations, and include directions to the hotel as well as to your office. In addition, please provide the name, title, and telephone number of the person responsible for these directions, if that person is different from the examination contact referenced in item 5, below:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Examination contact person's name, title, phone number and fax number:  
\_\_\_\_\_  
\_\_\_\_\_

6. Please report the Delaware business conducted (number of loans) in each of the following categories:

- Loans Placed, per agreement:
Total Dollar Value:
Loans Rescinded:
Applications Denied:

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

Date Signature Title
Printed Name Phone Number

Regulation No.: 5.2210(e).0005
Proposed

Report of Delawar Loan Volume
(Chapter 22, Title 5 of the Delaware Code)

This report shall be completed by all institutions licensed under Chapter 22, Title 5 of the Delaware Code and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 15 and must contain figures from January 1 through June 30 of the current year. The second report is due on or before January 15 and must contain figures from January 1 through December 31 of the previous year. In the event that you fail to provide this information in the period requested, you will be in violation of this regulation. Additionally, an examination will be scheduled, and staff allocated, without respect to the volume of your Delaware business. This may result in additional examination costs to you.

Licenseses with multiple licensed locations, whose loan files are maintained at a consolidated, centralized location, may file a consolidated report. Otherwise, a separate report must be submitted for each licensed location.

- 1. Name of Licensee:
2. Is this a consolidated report? Yes No
3. License No.: (If consolidated, list all license numbers):
4. List the address where the loan files are maintained:

You will be billed for examiner time (including travel). Therefore, you may reduce your costs by providing complete, reliable and convenient directions that minimize travel time.

If your records are maintained out of state and you have not previously provided this office with directions to the location identified above where your loan files are maintained, please provide us with directions. Provide directions for the nearest airport (if air transportation is appropriate) and/or driving directions, and a map of the area to which your directions refer. Please provide a name, telephone number and address of the nearest hotel providing safe and convenient accommodations, and include directions to the hotel as well as to your office. In addition, please provide the name, title, and telephone number of the person responsible for these directions, if that person is different from the examination contact referenced in item 5, below:

5. Examination contact person's name, title, phone number and fax number:

6. Please report the Delaware business conducted (number of loans) in each of the following categories:

- Loans Executed:
Total Dollar Value:
Loans Paid-Off at Maturity:
Loans Paid Off Prior to Maturity:
Applications Denied:
Loans in Litigation:
Credit Life Insurance Claims:
Credit A & H Insurance Claims:

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

Date Signature Title
Printed Name Phone Number

Regulation No.: 5.2318.0001
Proposed

Report of Delaware Sale of Checks, Drafts and Money Orders Volume
(Chapter 23, Title 5 of the Delaware Code)

This report shall be completed by all institutions licensed under Chapter 23, Title 5 of the Delaware Code and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 15 and must contain

# PROPOSED REGULATIONS

figures from January 1 through June 30 of the current year . The second report is due on or before January 15 and must contain figures from January 1 through December 31 of the previous year.

**In the event that you fail to provide this information in the period requested, you will be in violation of this regulation. Additionally, an examination will be scheduled, and staff allocated, without respect to the volume of your Delaware business. This may result in additional examination costs to you.**

1. Name of Licensee: \_\_\_\_\_
2. License No.: \_\_\_\_\_
3. List the address where the books and records are maintained: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You will be billed for examiner time (including travel). Therefore, you may reduce your costs by providing complete, reliable and convenient directions that minimize travel time. If your records are maintained out of state and you have not previously provided this office with directions to the location identified above where your loan files are maintained, please provide us with directions. Provide directions for the nearest airport (if air transportation is appropriate) and/or driving directions, and a map of the area to which your directions refer. Please provide a name, telephone number and address of the nearest hotel providing safe and convenient accommodations, and include directions to the hotel as well as to your office. In addition, please provide the name, title, and telephone number of the person responsible for these directions, if that person is different from the examination contact referenced in item 4, below:

4. Examination contact person's name, title, phone number and fax number: \_\_\_\_\_  
\_\_\_\_\_

5. Please report the Delaware business conducted in each of the following categories:

Number of travelers checks/cheques sales: \_\_\_\_\_  
Total dollar value: \_\_\_\_\_  
Number of money order sales: \_\_\_\_\_  
Total dollar value: \_\_\_\_\_  
Number of times funds were transmitted: \_\_\_\_\_  
Total dollar value of funds transmitted: \_\_\_\_\_

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

Date	Signature	Title
	Printed Name	Phone Number

Regulation No.: 5.2906(e).0003  
Proposed

**Report of Delaware Loan Volume  
Motor Vehicle Installment Contracts  
(Chapter 29, Title 5 of the Delaware Code)**

This report shall be completed by all institutions licensed under Chapter 29, Title 5 of the Delaware Code and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 15 and must contain figures from January 1 through June 30 of the current year. The second report is due on or before January 15 and must contain figures from January 1 through December 31 of the previous year. **In the event that you fail to provide this information in the period requested, you will be in violation of this regulation. Additionally, an examination will be scheduled, and staff allocated, without respect to the volume of your Delaware business. This may result in additional examination costs to you.**

Licenses with multiple licensed locations, whose retail installment contract files are maintained at a consolidated, centralized location, may file a consolidated report. Otherwise, a separate report must be submitted for each licensed location

1. Name of Licensee: \_\_\_\_\_
2. Is this a consolidated report? Yes \_\_\_ No \_\_\_\_\_
3. License No.: \_\_\_\_\_ (If consolidated, list all license numbers): \_\_\_\_\_
4. List the address where the retail installment contract files are maintained: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You will be billed for examiner time (including travel). Therefore, you may reduce your costs by providing complete, reliable and convenient directions that minimize travel time. If your records are maintained out of state and you have not previously provided this office with directions to the location identified above where your loan files are maintained, please provide us with directions. Provide directions for the nearest airport (if air transportation is appropriate) and/or driving directions, and a map of the area to which your directions refer. Please provide a name, telephone number and address of the nearest hotel providing safe and convenient accommodations, and include directions to the hotel as well

as to your office. In addition, please provide the name, title, and telephone number of the person responsible for these directions, if that person is different from the examination contact referenced in item 5, below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Examination contact person's name, title, phone number and fax number:

\_\_\_\_\_

6. Please report the Delaware business conducted (number of contracts) in each of the following categories:

- Contracts Executed: \_\_\_\_\_
- Total Dollar Value: \_\_\_\_\_
- Contracts Paid-Off at Maturity: \_\_\_\_\_
- Contracts Paid Off Prior to Maturity: \_\_\_\_\_
- Applications Denied: \_\_\_\_\_
- Contracts in Litigation: \_\_\_\_\_
- Credit Life Insurance Claims: \_\_\_\_\_
- Credit A & H Insurance Claims: \_\_\_\_\_

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

_____	_____	_____
Date	Signature	Title
	_____	_____
	Printed Name	Phone Number

Regulation No.: 5.2111/2210/2906.0006  
Proposed

**REPORT OF DELAWARE ASSETS**

This report shall be completed annually by all institutions licensed under Chapters 21, 22, and 29, Title 5 of the Delaware Code. This report must be received by the Office of the State Bank Commissioner no later than April 1st of each year. The figure reported should reflect **DELAWARE** assets only (including the value of any Delaware loans or contracts in your portfolio, any funds deposited in Delaware, and any fixed assets located in Delaware or any other assets allocated to the Delaware operations).

- 1. Name of Licensee: \_\_\_\_\_
- 2. Address of Principal License: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. To whom should we mail the supervisory assessment invoice? Please provide name, title, complete mailing address, telephone number (include area code and extension

numbers, if applicable) and fax numbers:

\_\_\_\_\_

4. Total DELAWARE assets as of December 31st of the immediately previous year:

\$ \_\_\_\_\_

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

_____	_____	_____
Date	Signature	Title
	_____	_____
	Printed Name	Phone Number

**DEPARTMENT OF EDUCATION**

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

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

**GUIDELINES FOR APPROVAL OF SCHOOL IMPROVEMENT GRANTS**

**A. TYPE OF REGULATORY ACTION REQUESTED**

New Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Guidelines for Approval of School Improvement Grants are recommended for adoption as regulation. The Delaware Code directs the Department of Education to adopt guidelines for the approval of school improvement grants. The Del. C., Title 14, Chapter 8, Section 807, requires that when the principal of an eligible school submits a request for a school improvement grant the request should include the information identified in the Guidelines for Approval of School Improvement Grants as adopted by the Department of Education.

**C. IMPACT CRITERIA**

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

This regulation simply sets guidelines for grant applications for school improvement plans, these plans address the improvement of student achievement.

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

The regulation does not address equity issues specifically but the Guidelines require the same information

from every school.

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

This regulation does not address health and safety issues.

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

This regulation does not address the legal rights of students.

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

The school improvement plans and the Guidelines for the Approval of School Improvement Grants are all part of a shared decision making program in the local schools which places decision making at the local level.

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

The regulation requires additional reporting and some administrative requirements but these are internal and support the reporting that is necessary in involving local constituents and stakeholders as the shared decision making process develops.

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

The intent of the total program is to make more decisions at the district and school level.

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

The regulation fully supports the efforts to implement the State content standards and improve student achievement.

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

The Delaware Code directs the Department of Education to adopt such Guidelines.

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

This regulation is for guidance for grant applications and will not add any cost for state and local boards.

Furthermore participation in the process is voluntary.

### Guidelines for Approval of School Improvement Grants

A school that has an approved shared decision-making transition plan as specified in Delaware Code, Title 14, Chapter 8, Section 806, may apply for a school improvement implementation grant. To apply for a grant, the principal of the eligible school should submit a letter of request to the Office of the Secretary of Education, Delaware Department of Education, P. O. Box 1402, Townsend Building, Dover, DE 19903. Requests should include the following information:

1. Evidence that the local board of education has adopted the school's transition plan; and

2. The school improvement plan containing the following components:

- Comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these and other goals identified by the school, including staff development and parental involvement;
- A description of the rationale for the proposed governance structure, stating how and why the governance process should improve decision-making and support continuous improvement in teaching and student learning;
- Evidence of review by the broader school community with agreement that the school improvement plan is consistent with the school district plan and evidence that the local board of education has formally adopted the school's improvement plan;
- A proposed budget that explains the use of resources allocated to the school to support strategies for achieving the school improvement goals;
- The structural changes or procedures for providing the necessary time and skill-building to support shared decision-making and continuous improvement in teaching and student learning;
- The assessment and evaluation process that the school will use to measure its progress toward achieving its stated goals;
- A proposed timeline for phasing-in the school improvement plan; and
- A proposed budget for the use of the school improvement grant.

A school with an approved application shall be eligible for a school improvement grant for the following (3) years as

provided in the annual appropriations act. Subsequent applications may be made only after the review and evaluation of the school improvement plan required by Delaware Code, Title 14, Chapter 8, Section 808 is completed and the results of such are included in the school's application.

THE ABOVE REGULATORY CHANGE WILL BE PRESENTED  
TO THE STATE BOARD OF EDUCATION AT ITS MEETING  
ON JANUARY 15, 1998

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## DEPARTMENT OF EDUCATION

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

### REPEAL OF MINIMUM-MAXIMUM PROGRAM ASSIGNMENT, EXPERIMENTATION AND MODIFICATION OF STUDIES, AND CHARTER SCHOOL ADMISSIONS

Two of the regulations from the Handbook for K-12 Education are recommended for repeal because they are technical assistance statements and should not be made regulatory. They are IV.A.5, page D-6, Minimum-Maximum Program Assignment, and IV.B, page D-6, Experimentation and Modification of Studies. The third regulation also from the Handbook for K-12 Education is I.D.1.c, page A-6, Charter School Admissions should be repealed because it is no longer relevant for Charter Schools.

1. *Handbook for K-12 Education - Page D-6*
  5. ~~MINIMUM-MAXIMUM PROGRAM ASSIGNMENT~~
    - a. There is no mandated minimum or maximum program assignment for any particular student. It should be anticipated that through appropriate guidance counseling and proper scheduling, all students would be assigned a program schedule to make the most profitable use of their educational time while in school.
    - b. The requirements for graduation would indicate that a student should normally be scheduled for not less than three full credits per year. It is understandable that certain capable and talented students might be scheduled for as many as 6 full credits plus health and physical education.
2. *Handbook for K-12 Education - Page D-6*
  - B. ~~EXPERIMENTATION AND MODIFICATION IN PROGRAM OF STUDIES~~

The State Department of Public Instruction strongly encourages administrative and instructional staff at the local

school district to go beyond the minimum requirements established in this Handbook and either implement experimental programs or else modify the organization of program of studies to provide the best possible teacher-learning situation for all students.

3. *Handbook for K-12 Education - Page A-6*
  - e. ~~Charter Schools - Admissions~~

For the purpose of admission decisions made pursuant to the provisions of the Delaware Public School Choice Program, and the Delaware Charter School Program, no Regular school district or Charter School shall accept for admission a student who is currently enrolled in a Delaware public school district after April 15th of the school year preceding the student's requested admission. The purpose of this regulation is to provide ample time for Districts of residence to make staff decisions in accordance with the notification requirements of the Delaware Code. This regulation does not apply to decisions affecting nonpublic student admissions, intra-district choice transfers, admissions to Kindergarten, or admission decisions made in accordance with the good cause provisions of the Choice law. (State Board Approved October, 1995)

THE ABOVE REGULATORY CHANGE WILL BE PRESENTED  
TO THE STATE BOARD OF EDUCATION AT ITS MEETING  
ON JANUARY 15, 1998

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## DEPARTMENT OF EDUCATION

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

### REPEAL OF SIX REGULATIONS THAT ARE IN THE DELAWARE CODE

The following six regulations found in the Handbook for K-12 Education are recommended for repeal. These regulations are simply a restatement of the Delaware Code. Although they have provided helpful technical assistance to the user of the Handbook for K-12 Education, they are in the Code and do not have to be regulated by the Department of Education. These regulations include the following: I.B.2, page A-2, Lawful Authority of Teachers and Pupils, I.D.1.a,b, pages A-4 to A-6, School Admission Policies, I.D.5, Pages A-8 to A-9, Reading of the First Amendment of the United States Constitution, I.D.6, Page A-9, Period of Silence, I.D.7, page A-9, Salute to the Flag and Pledge of Allegiance and I.G 1, pages A-18 to A-21, Pupil Units.

1. *Handbook for K-12 Education - Page A-2*2. ~~LAWFUL AUTHORITY OF TEACHERS AND PUPILS~~

Every teacher and administrator in the public schools of this state shall have the right to exercise the same authority as to control behavior and discipline over any pupil during any school activity, as the parents or guardians may exercise over such pupil. The above authority may include corporal punishment where deemed necessary. Where corporal punishment is deemed necessary, it may be administered by any public school teacher or administrator in accordance with district board of education policy. 14 Del. C. §701.

2. *Handbook for K-12 Education - Pages A-4 to A-6*

## 1. SCHOOL ADMISSION POLICIES

a. ~~Compulsory Attendance Requirements; Evaluation of Readiness~~

(1) ~~Except as otherwise set forth in this Section, every person in the State having control of a child between 5 years of age and 16 years of age shall send such child to a free public school, in the district of residence of the parents, except as determined in accordance with Chapter 6 of this Title, and shall send the child to such school each day of the minimum school term of 180 days. For purposes of this Section, a child shall be considered 5 years of age if he or she celebrates his or her fifth birthday according to the following schedule:~~

1993-94 school year	<del>fifth birthday on or before November 30, 1993</del>
1994-95 school year	<del>fifth birthday on or before October 31, 1994</del>
1995-96 school year	<del>fifth birthday on or before September 30, 1995</del>
1996-97 school year	<del>fifth birthday on or before August 31, 1996</del>
Subsequent school years	<del>fifth birthday on or before August 31 of the respective year</del>

Local school authorities may grant exceptions to the above schedule for entry into school if they determine that such exception is in the best interest of the child.

(2) The following provisions shall be applicable to the administration of subsection (1) of this section in regard to compulsory attendance in the kindergarten for a child age 5 years:

(a) If a child is a resident of the State at the time of his or her eligibility for admission to the kindergarten at age 5, the parents, guardian or legal custodian of that child

~~may request that school authorities evaluate the child's readiness for attendance and may request a delay of 1 year in that attendance. However, admission to first grade will be authorized only after school authorities evaluate the child's readiness for attendance.~~

(b) ~~If a child was not a resident of the State at the time of his or her eligibility for admission to the kindergarten at age 5, the parents, guardian or legal custodian of that child may request that school authorities evaluate the child's readiness for attendance and on the basis of that evaluation authorize admission to grade 1.~~

Reference: 24 Del. Laws, c. 121, §1; Code 1915, §2313; 32 Del. Laws, c. 160, §41; Code 1935, §2685; 14 Del. C. 1953, §2702; 49 Del. Laws, c. 403, §§1-3; 57 Del. Laws, c. 112; 60 Del. Laws, c. 449, §3; 63 Del. Laws, c. 290, §2; 64 Del. Laws, c. 315, §§6, 7; 69 Del. Laws, c. 28, §2.

b. ~~In accordance with Subpart I.E., Eligibility and Subpart I.F., Programs and Placement as contained in the Administrative Manual: Programs for Exceptional Children, Adopted 3/87, and Title 14 and 31 of the Delaware Code, programs may be provided for exceptional children who are between the ages of 4 and 20, inclusive (14 Del. C. §3101); and for children who are visually impaired, hearing impaired, deaf/blind, and autistic from birth through age 20, inclusive (31 Del. C. §2501 and §2503, 14 Del. C. §1703).~~

(1) ~~Three year olds with disabilities will continue to be eligible for services under Part b. as of their third birthday. (Subject to the flexibility agreed to under the Part H Interagency Agreement) Entry dates for four year olds with disabilities have always been tied to the entry date for kindergarten. Therefore, over the next three years entry into four year old programs will be realigned along with those for five year old kindergarten entry. This means:~~

- ~~1994-95 school year fourth birthday on or before September 30, 1994~~
- ~~1995-96 school year fourth birthday on or before August 31, 1995~~
- ~~Subsequent school years fourth birthday on or before August 31 of the respective year~~

~~Districts should follow the same phase-in schedules as established for kindergarten (five year old) students. According to the law, local education agencies may grant exceptions to the schedule if such an exception is in the best interest of the child. The IEP process also allows considerable latitude to design programs to meet the individual needs of children. Districts should rely on the IEP~~

process to make appropriate decisions for children who fall in the phase-in months.

Children with disabilities covered under the birth mandate programs (Autism, Deaf/Blind, Hearing Impairment) are not affected by this change except as it affects age appropriate placements and entry into kindergarten programs.

(2) Gifted or talented children who have become four years of age on or before September 1 may be admitted for educational placement at the beginning of the school year in September at the discretion of the local district. If applicable in a district,

(a) application must be made to the superintendent of the district in which the child resides. Such application must be completed before April 1 whereupon arrangement will be made for testing of the child applicant.

(b) the child must be identified as gifted or talented according to the procedures contained in the Program Standards for Gifted and Talented Education in the State of Delaware, June 1986.

3. *Handbook for K-12 Education - Pages A-8 to A-9*

5. ~~READING OF FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION~~

At the commencement of the first period of study on the first day of school of each school year in all public schools of the State of Delaware, the First Amendment of the Constitution of the United States of America shall be read or recited by the teacher in charge of such period to the students therein assembled. 14 Del. C. §4101.

The First Amendment of the U. S. Constitution (adopted 1791) Freedom of Religion, Speech, Press, Assembly, and Petition reads as follows:

~~Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise therefore; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.~~

4. *Handbook for K-12 Education - Page A-9*

6. ~~PERIOD OF SILENCE~~

During the initial period of study on each school day all students in the public schools in Delaware may be granted a brief period of silence, not to exceed two minutes in duration, to be used according to the dictates of the individual conscience of each student. During that period of silence no other activities shall take place. 14 Del. C. §4101A(b). (State Board Approved August 1985)

5. *Handbook for K-12 Education - Page A-9*

7. ~~SALUTE TO THE FLAG AND PLEDGE OF ALLEGIANCE~~

a. In the opening exercises of every free public school each morning, the teachers and pupils assembled shall salute and pledge allegiance to the American flag as follows: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all." 14 Del. C. §4105.

b. An Attorney General's opinion (9/26/74, #113) ruled that any attempt to require participation in flag salute by teachers or students violates their rights to free speech and is therefore unconstitutional.

6. *Handbook for K-12 Education - Pages A-18 to A-21*

1. ~~PUPIL UNITS~~

a. "Units" or "unit of pupils" is defined according to this schedule of number of pupils for elementary schools:

Beginning July 1, 1984	
Grades 1 - 3	19 students per unit
Grades 4 - 6	20 students per unit

In grades 7 through 12, the unit, except for the vocational-technical unit, is defined as 20 pupils. A major fraction shall be considered a unit and shall be considered any fraction greater than one-half of the total number of pupils authorized per unit for a given year. (See Page E-7 for computing the Vocational-Technical unit).

In the case of kindergarten, "unit" or "unit of pupils" is defined as 40 pupils (as of July 1980).

Kindergarten pupils may be enrolled for one-half school days in groups approximating one-half the unit authorized, thus providing that each "unit" represents two instructional groups within the unit authorized. A major fraction shall be considered a unit and shall consist of any fraction greater than one-half of the unit authorized.

The State Board of Education shall make uniform rules relative to the administration of kindergarten in the public school districts of the State in accordance with this Title.

b. ~~Number of Units in a School District~~

The number of units to be used in determining state financial support in each school district shall be calculated by the State Board of Education each year in accordance with the procedures specified in this section:

(1) The number of units shall be calculated based upon the total enrollment of pupils in each school district as of the last school day of September. The number of units so determined shall be known as the "actual unit count."

(2) The actual unit count as determined in subdivision (1) of this section shall be categorized: kindergarten, elementary (grades 1-6), secondary (grades 7-

12), net vocational (vocational units less the vocational deduct), and special education, in accordance with the definitions contained in this Title. Each of these categories of units in each school district shall be multiplied by 93%.

The product of this multiplication for each category shall be known as the "guaranteed unit count."

(3) The Department of Education shall annually (after September 30) certify and report the number of units required by §1710 of this Title, by certifying for each category of unit specified in subdivision (2) of this section whichever is the greater of the following:

(a) the actual unit count for the current school year; or

(b) the guaranteed unit count calculated for the preceding year.

The implementation of this subdivision shall be subject to a specific annual appropriation in the annual Appropriations Act. In the event that no appropriation is made, the State Board of Education shall certify and report the actual count.

(4) A school district which experiences an enrollment growth during the school year, but after the actual unit count has been certified and reported, may at its option participate in an "optional unit count" on the first school day of January. The "optional unit count" shall be the nearest whole number computed by multiplying the total actual unit count, as specified in subdivision (1) of this section, by one less than the ratio of the total district enrollment on the first school day in January to the total district enrollment on the last school day in September.

(5) The Department of Education shall annually (after January 1) certify and report the "optional unit count" to the State Budget Commission. School districts shall qualify only for the following state financial support for each unit generated by the optional unit count:

(a) A Division I allocation for a teacher paid in accordance with §1305 of this Title for a period of 92 days, or a Division I allocation for two class aides paid in accordance with §1324 of this Title for a period of 92 days.

(b) The state-paid other employment costs, for a teacher or two aides, specified in 29 Del. C. §6340.

(c) One-half the Division II appropriation per unit specified in the annual Appropriations Act.

The implementation of this subdivision shall be subject to a specific annual appropriation in the annual Appropriations Act.

c. Unit of Pupils For Exceptional Children

In the cases of exceptional children the following conditions for the calculations of the number of units shall prevail:

(1) Classes for the educable mentally handicapped, one unit for fifteen children;

(2) Classes for the trainable mentally handicapped and severely mentally handicapped, one unit for

six children;

(3) Classes for students with serious emotional disturbances, one unit for ten children;

(4) Classes for the partially sighted, one unit for ten children, except that even though the pupil count may be less than otherwise required by this chapter, there shall be a minimum of one class for the partially sighted in each county;

(5) Classes for the physically impaired, one unit for six children;

(6) Classes for autistic children, one unit for four children;

(7) When classes for the blind are established as approved by the State Board of Education and the Delaware Commission for the Blind, the unit for classes for the blind shall be eight;

(8) When classes for the deaf/blind are established as approved by the State Board of Education, the unit for these classes shall be four;

(9) For those children in the classification designated as having "learning disabilities" the unit shall be eight;

(10) For a person identified as an "intensive learning center pupil" and assigned to an intensive learning center approved by the State Board of Education, the unit shall be 8.6; and

(11) A major fraction shall be considered a unit and shall consist of any fraction greater than one-half. The number of children mentioned in these paragraphs shall not be counted in any other calculation of units. 14 Del. C. §1703.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS IN OPTOMETRY**  
Statutory Authority: 24 Delaware Code,  
Section 2104 (24 Del.C. §2104)

The Delaware Board of Examiners in Optometry proposes to revise its rules and regulations in accordance with 24 Del. C., section 2104.

A public hearing will be held on Thursday, January 22, 1998 at 6:30 p.m. in the Cannon Building, Conference Room A, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed rules and regulations may obtain same from the Board Office, Division of Professional Regulation, Cannon Building, Suite 203, P.O. Box 1401, Dover, Delaware 19903. Written comments should be submitted to the Board Office

at the above address on or before January 22, 1998. Those individuals wishing to make oral comments at the public hearing are requested to notify the Board Office at (302)739-4522, ext. 203.

**PLEASE NOTE THAT THE FOLLOWING REGULATIONS ARE A TOTAL REWRITING OF EXISTING REGULATIONS. IT WAS THEREFORE NOT POSSIBLE TO PUBLISH IN CONTEXT.**

## DELAWARE STATE BOARD OF EXAMINERS IN OPTOMETRY

### RULES AND REGULATIONS

- SECTION 1. Definitions
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- SECTION 4. Reciprocity
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- SECTION 6. Use of Therapeutic Drugs
- SECTION 7. Minimum Standards of Practice
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- SECTION 12. Unprofessional Conduct

## DELAWARE BOARD OF EXAMINERS IN OPTOMETRY

### RULES AND REGULATIONS

#### SECTION 1. DEFINITIONS

##### A. Premises:

For purposes of 24 Del.C. Section 2118(b) and these regulations, the phrase "on the same premises" shall be defined as:

being within the immediate physical boundaries of the office of the licensed supervising practitioner.

The "office" of the licensed supervising practitioner shall not include space, within a building or structure owned or leased by the licensed supervising practitioner, in which the licensed supervising practitioner does not engage in the practice of medicine, osteopathy, ophthalmology or optometry.

##### B. Supervision:

For purposes of 24 Del.C. Section 2118(b) and these regulations, the term "supervision" shall be defined as:

the physical presence of the licensed practitioner at

some time during the fitting for the purpose of evaluating and verifying the contact lens fit and the patient's ocular health.

##### C. Duly licensed:

For purposes of 24 Del.C. Section 2106(a) and these regulations, the term "duly licensed" shall be defined as:

a person who satisfies the applicable requirements under 24 Del.C. Section 2107, 2108, 2110 and 2111 (or alternatively Section 2109 and 2111), and who has been issued a license in good standing in accordance with Section 2112. A person holding a valid temporary license shall not be deemed to be duly licensed for purposes of Chapter 21, Title 24 and these regulations, and may only engage in the practice of optometry as outlined in Section 2110 and Section 3 of these regulations.

##### D. Dispensing:

The practice of optometry shall include the dispensing of contact lenses. "Dispensing" shall be defined as:

"Contact lens dispensing" means the fabrication, ordering, mechanical adjustment, dispensing, sale and delivery to the consumer of contact lenses. Contact lenses must be dispensed in accordance with a written contact lens prescription from a licensed physician or optometrist which includes lens curvature, diameter, power, material, manufacturer and an expiration date not to exceed one year, together with appropriate instructions for the care and handling of the lenses. The term does not include the taking of any measurements of the eye or the cornea and evaluating the physical fit of the contact lenses.

#### SECTION 2. QUALIFICATIONS AND EXAMINATIONS

2.01 Every candidate for registration must meet the following qualifications:

A. Have received a degree of "Doctor of Optometry" from a legally incorporated and accredited optometric college or school which has been approved by the appropriate accrediting body of the American Optometric Association.

B. Pass the substantive and clinical examinations required by 2.02 of these regulations.

C. Complete the internship required by 24 Del.C. Section 2110 and Section 3 of these regulations. An individual is duly licensed after completing the internship requirement as well as all the other requirements in Section 2107 of this Statute. (For reciprocal applicants, see Section 4 of these regulations)

D. All applicants for therapeutic licensure must be CPR

certified for both children and adults. All therapeutic optometrists must keep their CPR certification for both children and adults current.

E. Has not engaged in conduct that would constitute grounds for disciplinary action, and has no unresolved disciplinary proceedings pending in this or any other jurisdiction. It shall be the responsibility of the candidate to submit to the Board a certified statement of good standing from each jurisdiction where he/she is currently or has been previously licensed.

2.02 Every candidate shall pass, at a score determined by the National Board of Examiners in Optometry, the substantive and clinical portions of the examination given by the National Board of Examiners in Optometry. The clinical examination given by the National Board of Examiners in Optometry may be taken as part of the National Board Examination or as a separate clinical skills and/or TMOD examination given by the National Board of Examiners in Optometry as the State Board shall designate.

### SECTION 3. INTERNSHIP

3.01 An internship is a course of study in which applicants receive part of their clinical training in a private practice setting under the supervision of a licensed optometrist or ophthalmologist. An active, licensed Optometrist or Ophthalmologist may act as a supervisor. Any applicant's participation in such an internship program must be approved by the Board and is subject to the following terms and conditions:

A. A letter from the practitioner with whom the applicant will be interning stating the goals, duties and the number of hours he/she will be working. If the applicant is not doing his/her internship with a therapeutically certified optometrist or ophthalmologist, he/she must also complete an additional one hundred (100) hours of clinical internship with a therapeutically certified Optometrist, Medical doctor or Osteopathic physician.

B. Each applicant who will be participating in the internship program, must provide the name and address of the supervisor and the dates of the internship for approval by the Board before the internship may begin.

3.02 Subject to the approval requirements stated above, a candidate's internship requirements may be satisfied while the candidate is a member of the Armed Forces if he/she:

A. Functions as a fully credentialed therapeutically certified optometric practitioner; and (for purposes of this Section equivalent to the Air Force regulations).

B. Performs his optometric duties on a full-time basis in a completely equipped eye clinic.

3.03 Full-time: minimum of 35 hours per week.

3.04 All supervising optometrists must supervise the interns on a one-to-one basis whenever an applicant performs a task which constitutes the practice of optometry. No supervising optometrist may be a supervisor for more than one intern at a time. Only one intern shall be permitted at any office for any period of time.

3.05 All acts which constitute the practice of optometry under 24 Del.C. Section 2101(a) may be performed by the intern only under the following conditions:

A. The supervising optometrist shall be on the premises and immediately available for supervision at all times;

B. All intern evaluations of any patient shall be reviewed by the supervisor prior to final determination of the patient's case before the patient leaves the premises; and

C. A supervising optometrist shall at all times effectively supervise and direct the intern.

3.06 A violation of any of the conditions enumerated in this rule may be grounds for the Board to revoke their approval of an internship program. The Board may also revoke its approval of an internship program if it determines that either the supervising optometrist or the intern has engaged in any conduct described by 24 Del.C. Section 2113(a). Furthermore, any violation of the terms of this rule by a supervising optometrist who is a licensed optometrist shall be considered unprofessional conduct and a violation of 24 Del.C. Section 2113(a)(7).

### SECTION 4. RECIPROCITY (ENDORSEMENT)

A. The Board shall waive the internship requirement for an applicant holding a valid license to practice optometry, issued by another jurisdiction, and who has practiced for a minimum of five years in such other jurisdiction with standards of licensure which are equal to or greater than those of 24 Del.C., Chapter 21 and grant a license by reciprocity to such applicant. The applicant shall contact the National Practitioner Data Bank requesting that verification be sent to the Board regarding his/her licensure status. In addition, the applicant shall contact each jurisdiction where he/she currently is licensed, or has been previously licensed, or otherwise authorized to practice optometry, and request that a certified statement be provided to the Board stating whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved. In addition, the applicant shall include, as part of the application, copies of state licensing and/or practice statutes and regulations pertaining to the practice of Optometry for the jurisdiction through which he/she is seeking reciprocity.

B. Applicants from jurisdictions which have the same basic qualifications for licensure as this State, but do not have

essentially comparable or higher standards to qualify for 'therapeutic' licensing, shall be required to meet the conditions of subsections (a) and (b), 24 Del.C. Section 2108.

C. "Standards" as used in this Section are defined in Sections 6 & 7 of these regulations.

#### SECTION 5. USE OF DIAGNOSTIC DRUGS

5.01 Licensees who have been duly authorized by the Board may, for diagnostic purposes only, make use of the following classes of topical ophthalmic drugs: (1) anesthetics, (2) mydriatics, (3) cycloplegics, and (4) miotics; provided, however, that any such authorization by the Board shall not be construed as authorizing any licensee to dispense or issue a prescription for diagnostic drugs.

5.02 Authorization by the Board under this regulation shall be evidenced by an appropriate designation on the certificate of registration and license.

5.03 The provisions of Section 5.01 shall not preclude a licensee from using: ancillary diagnostic agents including, but not limited to dyes, schirmer strips, etc.

#### SECTION 6. USE OF THERAPEUTIC DRUGS

6.01 Therapeutically certified optometrist may use and/or prescribe the following pharmaceutical agents for the treatment of ocular diseases and conditions:

A. Topical and oral administration:

- (a) Antihistamines and decongestants
- (b) Antiglaucoma
- (c) Analgesics (non-controlled)
- (d) Antibiotics

B. Topical administration only:

- (a) Autonomics
- (b) Anesthetics
- (c) Anti-infectives, including antivirals and antiparasitics
- (d) Anti-inflammatories

6.02 Authorization by the Board under this regulation shall be evidenced by an appropriate designation on the certificate of registration and license.

#### SECTION 7. MINIMUM STANDARDS OF PRACTICE

A. Equipment

- (a) Acuity chart
- (b) Ophthalmoscope
  - (1) Direct
  - (2) Indirect
- (c) Keratometer
- (d) Biomicroscope
- (e) Tonometer

- (f) Gonioscope
- (g) Access to Visual Field
- (h) Access to Retinal Camera
- (i) Phoropter

B. Examination and Treatment

1. General Examination:

- (a) Case history
- (b) Acuity measure
- (c) Internal tissue health evaluation
- (d) External tissue health evaluation
- (e) Refraction
- (f) Tonometry
- (g) Visual fields (in appropriate cases)
- (h) Retinal photos (in appropriate cases)
- (i) Treatment, recommendations and directions

to the patients, including prescriptions

- (j) Name of attending optometrist

2. During a contact lens examination:

- (a) Assessment of corneal curvature
- (b) Acuity through the lens
- (c) Directions for the care and handling of lenses and an explanation of the implications of contact lenses with regard to eye health and vision
- (d) Name of attending optometrist
- (e) Assessment of contact lens fit

3. During a follow-up contact lens examination:

- (a) Assessment of fit of lens
- (b) Acuity through the lens
- (c) Name of attending optometrist
- (d) Ocular health assessment

C. A complete record of examinations and treatment shall be kept in a current manner.

#### SECTION 8. ETHICS

8.01 It shall be the ideal, the resolve and the duty of all licensees to:

A. Keep the visual welfare of the patient uppermost at all times.

B. Promote in every possible way, better care of the visual needs of mankind.

C. Enhance continuously their educational and technical proficiency to the end that their patients shall receive the benefits of all acknowledged improvements in vision and eye care.

D. See that no person shall lack for visual care, regardless of his financial status.

E. Advise the patient whenever consultation with an optometric colleague or reference for other professional care seems advisable.

F. Hold in professional confidence all information concerning a patient and use such data only for the benefit of the patient.

G. Conduct themselves as exemplary citizens.

H. Maintain their offices and their practices in keeping with current professional standards of care.

I. Promote and maintain cordial and unselfish relations with members of their own profession and other professionals for the exchange of information to the advantage of mankind.

J. Maintain adequate records on each patient for a period of not less than five years from the date of the most recent service rendered.

#### 8.02

A. A licensee must honor a patient's request to forward the patient's complete prescription and ophthalmic or contact lens specification to another licensed physician of medicine, osteopath, optometrist, or a nationally registered contact lens technician working under the direct supervision of an optometrist, ophthalmologist or osteopathic physician, if all financial obligations to the licensee have been satisfied. It shall be the obligation of a licensee to tender to a patient upon request his/her final prescription for ophthalmic lenses or contact lens(es) specification, if all financial obligations to the licensee have been satisfied. For purposes of this section, a final prescription or specification results when a patient is released to routine follow-up care. No licensee shall be required to tender a contact lens prescription beyond one (1) year from the date the contact lens(es) were dispensed.

8.03 It shall be considered unlawful for a licensee to delegate to a lay individual, whether an employee or not, any act or duty which would require, on the part of such individual, professional judgment. The fitting of contact lenses, tonometry, refraction, treatment of eye disease, low vision and vision therapy, etc. shall not be so delegated unless under the direct supervision of the licensee.

8.04 No licensee shall do anything inconsistent with the professional standards of the optometric and allied health professions.

8.05 No licensee shall use unethical, misleading or unprofessional advertising methods, including, but not limited to: baiting patients to purchase materials in exchange for free or reduced fees for professional services.

8.06 No licensee when using the doctor title shall qualify it in any other way than by use of the word "optometrist". He/she may, however, when not using the prefix, use after his/her name the "O.D." degree designation, consistent with other provisions of 24 Del.C., Chapter 21.

8.07 No licensee shall practice in or on premises where any materials, other than those necessary to render his professional services, are dispensed to the public.

8.08 No licensee shall locate in a merchandising store or

practice his profession among the public as the agent, employee or servant of, or in conjunction with either directly or indirectly, any merchandising firm, corporation, lay firm or unlicensed individual.

8.09 No licensee shall practice his profession in conjunction with, or as an agent or employee of an ophthalmic merchandising business (commonly known as "opticians") either directly or indirectly in any manner. Nor shall any licensee use any name other than the name recorded in the files of the State Board for his optometric registration and licensure.

8.10 Corporations, except those allowed under Chapter 6 of Title 8 of the Delaware Code, lay firms and unlicensed individuals are prohibited from the practice of optometry directly or indirectly and from employing, either directly or indirectly, registered and licensed optometrists to examine the eyes of their patients. Licensees so employed will be considered guilty of unprofessional conduct, and in violation of 24 Del.C. Sections 2113(a)(3) and (6).

8.11 No licensee shall hold himself forth in such a way as to carry the slightest intimation of having superior qualifications or being superior to other optometrists, unless he is qualified by a specialty board approved by the State Board.

8.12 No licensee holding an official position in any optometric organization shall use such position for advertising purposes or for self-aggrandizement.

8.13 Since the law states that a certificate must be displayed in every office where the profession of optometry is practiced, and since no certificate for branch offices has previously been issued, the State Board shall issue branch office certificates with the words "Branch Office" thereon emblazoned under the registry number, with the certificate being a duplicate of that originally issued.

8.14 A violation of any of the provisions of these regulations will be considered to be unprofessional conduct.

#### SECTION 9. HEARINGS

9.01 All complaints shall be referred to the Division of Professional Regulation for investigation and a contact person from the Board will be appointed at the next meeting.

9.02 Hearings are conducted in accordance with the Administrative Procedures Act.

#### SECTION 10. CONTINUING EDUCATION REQUIREMENTS

All persons licensed to practice Optometry in the State of Delaware shall be required to acquire 12 hours of continuing education every two years. All therapeutic licensed optometrists shall be required to acquire an additional 12 hours of therapeutics and management of ocular disease and keep their CPR certification for both children and adults current. No practice management courses will be accepted.

10.01 These continuing optometric education requirements are necessary for licensure every two years.

10.02 Licensees will be required to comply before May 1 of odd numbered years.

10.03 It shall be the responsibility of the candidate for relicensure to submit to the appropriate State of Delaware agency evidence of his/her compliance with these requirements. The appropriate state agency shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the continuing education requirements stated herein, along with other fees and documents required. Failure to be notified by such agency shall not relieve licensee from this obligation.

10.04

A. Non-therapeutic - Of the 12 hours biennial requirement for non-therapeutic licensees, a maximum of 2 hours may be fulfilled by self-reported study.

B. Therapeutic - Of the 24 hours biennial requirement for therapeutic licensees, a maximum of 4 hours may be fulfilled by self-reported study.

C. Self-reported study may include:

- a. Reading of Optometric journals
- b. Optometric tape journals
- c. Optometric audiovisual material
- d. Other materials given prior approval by the

Board.

Proof of completion from the sponsoring agency is required for credit.

10.05 Any new licensee shall be required to complete continuing education equivalent to one hour for each month between the date of licensure and the biennial renewal date. The first twelve (12) hours of pro-rated continuing education must be in the treatment and management of ocular disease.

10.06 Continuing Education courses given by the following organizations will receive credit.

Meetings of (Scientific Session Portion Only)

- a. American Optometric Association
- b. Delaware Optometric Association
- c. American Academy of Optometry

d. Recognized state regional or national optometric societies

e. Schools and colleges of Optometry

f. Meetings of other organizations as may be approved by the Board.

g. COPE approved courses (with the exception of Practice Management courses)

10.07 Failure to Comply

When the State Board of Examiners in Optometry deems someone to be deficient in continuing education requirements, the license will be revoked. In the event that any optometrist licensed in this State fails to meet continuing education requirements, his or her license shall be revoked, except when proven hardship makes compliance impossible. The Board shall reinstate such license upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

10.08 Licensure--Renewal

A. All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

B. Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee in addition to the prescribed renewal fee.

C. Any licensee who intends not to renew his/her license because he/she retired from practice or has ceased practice in the State of Delaware, shall so indicate such reason(s) on the renewal application. Failure to do so will result in the Board taking mandatory action to revoke the license.

Exemptions

An exemption may be granted to any optometrist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, etc.

**SECTION 11. THERAPEUTIC CERTIFICATION**

11.01 The examination identified in 24 Del.C. Section 2108(b) is the national examination administered by the National Board of Examiners in Optometry (formerly the International Association of Boards of Examiners in Optometry) for treatment and management of ocular disease. A copy of the certificate representing passage of the examination must be submitted with the application for therapeutic licensure.

11.02 All applicants for therapeutic licensure must be CPR certified for both children and adults. All optometrists must keep their CPR certification for both children and adults current.

11.03 For applicants currently licensed in Delaware, 40 hours of treatment and management of ocular disease training may be accumulated with a therapeutically certified optometrist, a medical doctor, or an osteopathic doctor. Proof of 40 hours of treatment and management of ocular disease training must be submitted by letter. If an applicant's supervisor is a therapeutically certified optometrist in a state other than Delaware, proof of similar licensing requirements in the other state must be submitted.

11.04 Applicants must have completed their forty (40) hours of clinical experience within twenty-four (24) months of their initial application for therapeutic licensure.

11.05 The same reciprocity rules apply for therapeutic licensing as for other optometry licensing.

11.06 All newly licensed optometrists shall be required to be therapeutically certified. Their six month internship should be done with a therapeutically certified optometrist, M.D. or D.O. However, if a therapeutically certified optometrist, M.D. or D.O. is not available, the intern may do an internship with a non-therapeutically certified optometrist provided, the intern complete an additional 100 hours of clinical experience in the treatment and management of ocular disease, supervised by a therapeutically certified optometrist, M.D. or D.O. during their internship.

11.07 For applicants not currently licensed in Delaware (Refer to Reciprocity).

**SECTION 12. UNPROFESSIONAL CONDUCT**

A violation of any of the provisions of these regulations will be considered to be unprofessional conduct.

**DEPARTMENT OF FINANCE****DIVISION OF REVENUE****DELAWARE STATE LOTTERY OFFICE**

Statutory Authority: 29 Delaware Code,  
Sections 4805 (a)(29 **Del.C.** §4805 (a))

**Introduction**

The Lottery Law, 29 Delaware Code, Chapter 48 provides statutory authority for the Delaware Lottery to develop and adopt regulations. The purpose of this proposed regulation is to ensure that the Delaware Lottery is in compliance with the Americans with Disabilities Act (ADA).

The ADA (P.L. 101-336, U.S.C. §§ 12131-12134) was signed into law on July 26, 1990. The fundamental purpose of the ADA is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The programs offered by the Delaware Lottery are covered by the ADA under title II.

People with disabilities have the right to participate in the Delaware Lottery programs. It is necessary, therefore, to establish a minimum standard of accessibility for lottery retailer facilities that will enable persons with disabilities to enter retailer facilities and play lottery games. In those rare instances where exemptions are granted in accordance with these regulations, access to the program must be provided through alternative methods.

The Delaware Lottery will initiate a survey of all current lottery retailers and applicants to determine if any barrier removal actions are necessary in order to meet a minimum standard of accessibility. An inspection report will be provided to each retailer and applicant. If deficiencies are identified, retailers will be required to address them within a specified time frame. Applicants, prior to the granting of a license, will also have to remove identified barriers.

The Lottery Office is located at McKee Business Park, Suite 102, 1575 McKee Road, Dover, DE 19904-1903. Copies of this proposed regulation can be obtained from the Lottery Office. The Lottery's phone number is 739-5291.

Interested persons may submit written comments to the Delaware Lottery at the above address. Comments must be received on or before 4:00 p.m. on January 31, 1998. A public hearing, open to the public will be held on January 29, 1998 at the Lottery Office, second floor conference room. .

## Proposed Regulation

## Non-Discrimination on the Basis of Disability in Delaware Lottery Programs

## (1) Definitions

a) "Accessible" means complying with the technical requirements found in the ADA Accessibility Guidelines (ADAAG).

b) "Accessible Route" means a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

c) "ADA" means the Americans with Disabilities Act (42 United States Code. §§12101-12213 and 47 United States Code §225 and §611).

d) "Director" means the Director of the State Lottery Office.

e) "Entrance" means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

f) "Facility" means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

g) "Lottery Program" means on-line and instant games offered to the public through retailer licensees.

h) "Lottery" or "State Lottery Office" means the lottery established by the Delaware State Lottery Law, Chapter 348, Volume 59, of the Laws of Delaware.

i) "Lottery Retailer" or "Retailer" means a business entity housed in a specific retail facility that is under license with the Delaware Lottery to provide lottery related services.

j) "Inspection Report" means a completed survey of the retailer or applicant facility that identifies barriers to program accessibility, if any and suggests possible solutions.

k) "Service Site" means an area within a lottery retailer facility where a customer can purchase a lottery related product. This is usually the cashier's station.

## (2) Purpose

a) The Americans with Disabilities Act (P.L. 101-336, U.S.C. §§ 12131-12134), known as the ADA, prohibits discrimination on the basis of disability in the delivery of programs offered by entities of state or local government. The purpose of this regulation is to ensure that the Delaware Lottery is in compliance with the ADA by ensuring that people with disabilities have access to Delaware Lottery programs.

## (3) General Requirements

a) Prohibition of discrimination. No lottery retailer shall discriminate against any individual on the basis of a disability in the full and equal enjoyment of lottery related goods, services, facilities, privileges, advantages, or accommodations of any lottery licensed facility.

b) Standard of accessibility. Each Retailer is required to meet a standard of accessibility that enables people with disabilities, including those who use wheelchairs, to enter the lottery licensed facility and participate in the lottery program. An accessible route must be provided comprised of the following accessible elements:

1) Parking, if parking is provided to the general public;

2) Exterior route connecting parking (or a public way if no parking is provided) to an accessible entrance;

3) Entrance;

4) Interior Route connecting the entrance to a service site.

c) Each element shall meet the design standards set forth in the ADA Accessibility Guidelines (ADAAG) published in the Federal Register on July 26, 1991.

d) Current Licensees. The State Lottery Office shall inspect the site of each lottery retailer for compliance with this subchapter.

e) License applicants. The State Lottery Office shall inspect the site of applicants for compliance with this subchapter prior to granting a license. The State Lottery Office will not grant a license to an applicant who is not in compliance with this subchapter.

f) Inspection reports (applicants). The State Lottery Office, prior to granting a license, shall provide lottery applicants with an Inspection Report that shall identify barrier removal actions, if any, necessary to provide program accessibility. The identified actions must be completed prior to the granting of a license.

g) Inspection reports (current retailers). The State Lottery Office shall provide to all current retailers an Inspection Report that shall identify barrier removal actions necessary to provide program accessibility. The identified actions must be completed within 90 days of receipt of notification.

h) Extensions. The Director may grant an extension upon written request setting forth good and sufficient reasons.

## (4) Permitted exemptions

a) The following exemptions to the requirements of this rule may be granted by the Director. The Director shall review the circumstances and supporting documentation provided by the retailer to determine if the retailer's request for an exemption should be granted. The Director shall determine the type and scope of documentation to be required for each exemption classification. All decisions made by the

Director shall be final; any retailer whose request for an exemption is denied by the Director shall be required to satisfy the requirements of this rule as a condition for maintaining its eligibility for a Lottery retailer contract.

b) Historic properties. To the extent a historic building is exempt under federal law, this rule shall not apply to a qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

c) Legal impediment to barrier removal. Any law, act, ordinance, state regulation, ruling or decision which prohibits the lottery retailer from removing a structural impediment or from making a required improvement to the facility may be the basis for an exemption to this rule. A lottery retailer requesting an exemption for a legal impediment will not be required to formally seek a zoning variance to establish such impediment, but will be required to document that they have applied for and have been refused whatever permit(s) are necessary to remove the identified barrier(s).

d) Landlord refusal. An exemption may be granted based on the refusal of a landlord to grant permission to a Lottery retailer to make structural improvements required by the Lottery under this rule. The exemption shall only apply to the retailer's current lease term. To request such an exemption, the retailer must submit documentation to the Director that the retailer requested the Landlord's permission to make the required structural improvements, that such request was denied by the landlord, and the reasons for the denial. In making a decision on the exemption request, the Director shall take into consideration, but not be limited to, the sufficiency of the reasons provided by the landlord for denying the retailer's request.

e) Undue financial hardship. A limited exemption may be granted if a retailer can demonstrate that the cost of removing a structural barrier or of making the required structural modification(s) to the retailer's facility is an undue financial hardship in that the cost of making such a change(s) exceeds 25% of the retailer's compensation from the Lottery for the prior calendar year (An annualized sales figure based upon the retailer's most current 13-week sales period shall be used for those retailer locations with less than a full year's history of sales.) Under the terms of this limited exemption, a retailer would be required to annually make those improvements and modifications that can be financed within an amount that is approximately equal to 25% of the total compensation earned from the Lottery in the prior calendar year. This requirement would continue on a year-to-year basis until all the improvements and modifications required by this rule have been completed. A retailer shall provide all supporting documentation requested by the Director to substantiate the cost estimates of making the required improvements to the retailer's location.

f) Alternative methods. Where an exemption is granted

in accordance with the provisions of this sub-chapter, the lottery retailer shall make the lottery related goods and services available through alternative methods. Examples of alternative methods include, but are not limited to:

- 1) Providing curb service;
- 2) Directing by signage to the nearest accessible lottery retailer.

(5) Complaints Relating to Non-Accessibility

a) The Lottery Director or designee will receive and process all accessibility complaints concerning lottery retailers. complaints must be in writing and, where possible, submitted on an ADA complaint form. As soon as practical, but not later than 30 days after the filing of a complaint, each complaint will be investigated. After the completion of the investigation, if the agency determines that the lottery retailer is not in compliance with this subchapter, a letter of non-compliance will be issued to the lottery retailer with a copy to the complainant. If the lottery retailer is determined to be in compliance, a letter so stating will be mailed to the retailer and complainant. Regardless of whether a complaint has been filed, the agency will issue a letter of non-compliance within 30 days after the completion of an onsite inspection of the lottery retailer facility if the agency determines that the lottery retailer is not in compliance with this subchapter.

b) If the letter of non-compliance shows deficiencies in the accessibility of the retailer facility, the lottery retailer shall submit a plan to the agency within 30 days of the issuance of the letter of non-compliance. The plan shall describe in detail how the lottery retailer will achieve compliance with this subchapter. Compliance shall be accomplished within 90 days of the letter of non-compliance. The Lottery may, upon request, grant the lottery retailer additional time to submit the plan for good cause.

c) Within 20 days of the submission of the plan to the agency, the Lottery shall notify the lottery retailer of the agency's acceptance or rejection of the plan. If the plan is rejected, the notification shall contain the reasons for rejection of the plan and the corrections needed to make the plan acceptable to the Lottery. If the retailer agrees to make the required corrections, the Lottery shall accept the plan as modified.

d) If a retailer fails to submit a plan within 30 days of issuance of the letter of non-compliance and has not requested an extension of time to submit a plan, the Lottery may proceed to initiate termination proceedings.

e) If approved, the plan must be completely implemented within 60 days of the agency's notice of approval. The Lottery may, upon request, grant the lottery retailer additional time for good cause. Notice of any extension will also be sent to the complainant, if applicable. Any such extension will commence immediately upon expiration of the first 60 day period.

f) If the corrective action taken by the lottery retailer

corrects the deficiencies specified in the letter of non-compliance as originally issued or as later revised or reissued or if the onsite inspection of the lottery retailer facility reveals compliance with this subchapter, the Lottery will issue a notice of compliance. Until this notice is issued, a complaint will be considered pending.

g) Failure to make the identified modifications in compliance with the accessibility standards and within the required time period will result in the initiation of proceedings to suspend or revoke the lottery license by the agency.

h) A license will be suspended if the Lottery determines that the lottery retailer has made significant progress toward correcting deficiencies listed in the compliance report, but has not completed implementation of the approved compliance plan. If the Lottery determines that the lottery retailer has not made a good faith effort to correct the deficiencies listed in the compliance report, this inaction will result in the revocation of the lottery license for that lottery licensed facility.

i) While proceedings to suspend or revoke a lottery retailer's license are pending pursuant to this subchapter, and until a notice of compliance is issued pursuant to subsection (c) of this section, the Lottery shall withhold incentive payments from the lottery retailer. In addition, if a license is revoked pursuant to this subchapter, and incentive payments and other privileges have been withheld from the affected retailer pending review of the complaint, the lottery retailer forfeits any claim to such incentive payments or other privileges.

(6) Request for Hearings

a) If the Lottery proposes the denial of an application for a license or the suspension or revocation of a lottery retailer's license pursuant to this subchapter, the agency shall give the applicant or lottery retailer written notice of the time and place of the administrative hearing not later than 30 days before the date of the hearing.

b) All relevant rules of evidence and time limits established in these rules shall apply to hearings conducted under this subchapter.

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## Symbol Key

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

## Final Regulations

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

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

## DEPARTMENT OF HEALTH & SOCIAL SERVICES

### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,  
Section 122(3)(e) (16 Del.C. 122(3)(e))

### Regulations Governing a Detailed Plumbing Code

#### Summary

Delaware Health and Social Services, Division of Public Health, is charged with adopting and enforcing a plumbing code for the State of Delaware. The Division utilizes a model code from the Building Officials and Code Administrators (BOCA) which is amended to make the code specific to Delaware. The BOCA code itself is revised every three years and Delaware updates its code as well. In 1995 BOCA joined with the Southern Building Code Congress International and the International Conference of Building Officials to produce the International Plumbing Code 1995 (IPC 1995). The

attached regulations are the latest amendments to the IPC 1995 for adoption in Delaware.

The Board of Plumbing Examiners, after reviewing the IPC 1995, has limited the number of technical amendments to this new code. This has resulted in a reduction in the number of amendment sections to the code. The remaining sections deal with the administrative aspects of the code. There are no significant changes to the administrative portions of the code.

Public Hearings were held on May 23, 1997, in Milford, Delaware, and on May 29, 1997, in New Castle, Delaware. The announcements regarding both hearings were advertised in both the News Journal and the Delaware State News at least 30 days prior to the hearings. During this 30 day period the public was given an opportunity to make written comments or make arrangements to make oral comments during the hearings. The purpose of these hearings was to provide an opportunity for the public to ask questions, make comments and afford their participation in this process. There was full support for the regulations. There were no objections. These regulations were adopted by Gregg Sylvester, MD, Acting Secretary, on November 17, 1997.

**DUE TO THE LENGTH OF THE ENTIRE SET OF REGULATIONS ONLY THE CHANGES ARE PUBLISHED HERE. FOR MORE INFORMATION CONCERNING THESE REGULATIONS PLEASE CONTACT THE DEPARTMENT**

**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**

STATE OF DELAWARE  
REGULATIONS GOVERNING A DETAILED  
PLUMBING CODE

These regulations were adopted April 17, 1978, effective August 1, 1978; amended December 19, 1983, effective February 1, 1984; amended April 26, 1991; amended February 19, 1992; amended May 11, 1995, by the Delaware State Board of Health; amended November 17, 1997, by the Secretary, Delaware Health and Social Services in conformance within Chapter 79, Section 7906 and Chapter 1, Section 122(3)e, Title 16, Delaware Code, and supersedes regulations previously adopted by the Delaware State Board of Health. These Regulations shall be effective January 11, 1998.

SECTION 110.0 - ADOPTION: is amended by adding the following underlined words at the end thereof:

"That certain document entitled, "The International Plumbing Code\1995" is made a part hereof and the supplements therein include, identified as "Section 111.0., Additions, Deletions, Amendments, Clarifications," are hereby adopted as the "Detailed Plumbing Code of the State of Delaware." NOTE: These Amendments have been renumbered to coincide with the changes in the International Plumbing Code\1995.

SECTION 111.0 - ADDITIONS, DELETIONS, AMENDMENTS, CLARIFICATIONS:

SECTION 111.1- TITLE - SECTION 101.1: is amended to read as follows:

"These Regulations shall be known as the "Plumbing Code of The State of Delaware "hereinafter referred to as "this Code."

SECTION 111.2 - SCOPE - SECTION - 101.2: is amended by adding the following underlined words in the first sentence, first paragraph:

"The design and installations of gas piping in accordance to Reference Standards of the International Plumbing Code\1995, Chapter 19 chilled water piping in connection with refrigeration process and comfort-cooling and hot water piping in connection with building heating shall be in accordance with any applicable Federal, State, or local statutes or ordinances.

The design and installation of piping for fire sprinklers and standpipes shall be in accordance with the requirements of any applicable Federal, State or local statutes, regulations, or ordinance. Water and drainage connections to such installations shall be made in accordance with the requirements of this Code."

SECTION 111.3 - INTENT - SECTION - 101.3: is amended by adding the following at the end thereof:

"Registration Required: This Code shall provide for examination and registration of all plumbers engaged in plumbing in the State of Delaware."

SECTION 111.4 - EXISTING INSTALLATIONS - SECTION - 102.2: is amended to read as follows:

"The legal use and occupancy of any structure existing on date, or for which it had been heretofore approved, may be continued without change except as may be specifically covered in this Code or deemed necessary by the Plumbing Inspector(s) for the general safety and welfare of the occupants and the public."

SECTION 111.5 DEPARTMENT OF PLUMBING INSPECTION - SECTION 103: is deleted in its entirety.

SECTION 111.6 DUTIES AND POWERS OF THE CODE OFFICIAL - SECTION 104.1: is deleted in its entirety and the following is inserted in lieu of:

"Plumbing Inspectors: Plumbing Inspectors who are duly appointed by the Secretary, Delaware Health and Social Services shall have such duties and powers as are enumerated in Title 16, of the Delaware Code, Section 7907."

SECTION 120.7 APPLICATION FOR PERMIT - PERMIT REQUIRED - SECTION 111.7 - PAYMENT OF FEES - SECTION - 106.5: is deleted in its entirety and the following is inserted in lieu of:

“Plumbing work shall not be commenced until a permit for such work has been issued by the Plumbing Inspector(s). A permit is not required for repairs which involve only the working parts of a faucet or valve. New piping additions to an existing piping system and the addition of any fixtures will require a permit.

Plumbing work as described above, that does not require a permit, and does not have to be done by a licensed plumber, shall be done in accordance with all Code standards and subject to inspection by the Plumbing Inspector(s) at any time.”

SECTION 111.8 - FEE SCHEDULE - SECTION - 106.5.2. is deleted in its entirety and the following is inserted in lieu of:

“Prior to receiving a license as a registered plumber, said plumber shall pay a fee of \$5.00 to the Secretary, Delaware Health and Social Services. This license shall expire on the 30th day of June each year. A fee of \$5.00 is required for each annual renewal of a license.” proof of liability insurance in the amount of \$300,000.00 for bodily injury and \$100,000.00 for property damage each year at the time of renewal of his/her plumbing license. No permits will be issued without proof of insurance.”

SECTION 111.9 - UNLAWFUL ACTS - SECTION - 108.1: is amended by adding the following underlined in the first and second paragraphs:

“It shall be unlawful for any person to work as a registered plumber in the State of Delaware unless such person has received a “Certificate of Registry” showing that said person has been duly registered as a plumber by the Secretary, Health and Social Services and has shown proof of insurance.

Except that the owner of a single family residence occupied or to be occupied by him/her, and not for sale, rent or lease, may perform plumbing work only on such residence itself, and/or auxiliary structures. Such residence must be occupied for one (1) year before it can be sold,

if plumbing is done by the owner after complying with all conditions of this Code.”

SECTION 111.10 - NOTICE OF VIOLATIONS - SECTION 108.2: is amended by adding the following:

“General: Written notice of any violation of this Code shall be given any violator thereof, and upon failure to remove the violation(s) within a reasonable time, but not more than seven (7) days, unless extended for cause by the Secretary, Delaware Health and Social Services, prosecution for violations by this Code shall be commenced against him/her.”

SECTION 111.11 - VIOLATION PENALTIES - SECTION 108.4: is amended by replacing the words Plumbing Officials to Plumbing Inspectors and the following underlined to be added at the end of the paragraph to read as follows:

“Any person who shall violate any provisions of this Code, or shall fail to comply with the requirements thereof, or who shall install plumbing work in violation of an approved plan or directive of the Plumbing Inspector(s), or of a permit or certificate issued under the provisions of this Code, shall be subject to penalties as provided by Title 16, Delaware Code, Section 107. Violations shall be subject to penalties as provided by Title 16., Delaware Code, Section 7933.”

SECTION 111.12 - STOP WORK ORDER - SECTION 108.5: is amended to read as follows:

“No person shall continue any plumbing work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe conditions.”

SECTION 111.13 - GENERAL DEFINITIONS - SECTION 201.0: is amended by deleting the second paragraph and the following inserted in lieu of; and by adding the following underlined words in the last paragraph:

“Definition of a Registered Plumber: The term “Registered Plumber” shall mean a person who has complied with the provisions of Section 111.17.5, taken and passed the examination and has further met the certification, testing, bonding, and licensing requirements of the

jurisdiction in which he/she plans to engage in the business of plumbing.”

“Supervision of Work: For the purposes of these regulations, supervision of work shall be defined as work completed under the license of a registered plumber while employed by the register plumber, or the same firm, partnership, corporation, or owners of the company as the registered plumber.”

“Certificate of Registry: “Certificate of Registry: shall mean a license issued by the Secretary, Delaware Health and Social Services to an individual registered plumber certifying that he/she has met all the requirements of the Board of Plumbing Examiners required in order to be issued a license.”

SECTION 111.14 - SEWER DEPTH - SECTION 306.6: is deleted in its entirety.

SECTION 111.15 - HANDICAP PLUMBING FACILITIES SECTION- 405.0: is amended by the following:

“All mention of handicapped facilities in the International Plumbing Code\1995 will be replaced by the “American National Standards Institute., (ANSI)1992.

SECTION 111.16 - WATER SERVICE PIPE - TABLES 606.4 & 606.5: are amended by the following:

“The piping and fitting must meet the National Sanitation Foundation Standard #14 for the intended use of this product.”

SECTION 111.16.1 - TABLE 606.4 & 606.5: are amended by deleting the letters “M“ and “WM“ from copper tubing:

SECTION 111.17 - STANDPIPES - SECTION 803.4: is amended by adding the following sentence at the end thereof:

“Top of standpipes have to be (42) inches (1066mm) above the finished floor.”

SECTION 111.18 - MAIN VENT REQUIRED- SECTION 904.1: is deleted in its entirety and following is inserted in lieu of:

“Every sanitary drainage system receiving the

discharge of a sanitary fixture shall have a main vent (3) inches in diameter, that is, either a vent stack or stack vent. The vent shall connect to a drainage pipe that is a minimum of (3) inches in diameter.”

SECTION 111.19 - REQUIREMENTS FOR EXAMINATION AND CERTIFICATION:

SECTION 111.19.1 - EXAMINATION REQUIRED:

“Each applicant desiring a “Certificate of Registry” by the Secretary, Health and Social Services, must give satisfactory proof that he/she is competent to fulfill the requirements necessary to do plumbing in a safe and sanitary manner, and in accordance with this Code by submitting to an examination before the Board of Plumbing Examiners.

However, any person registered as a plumber by the Secretary, Health and Social Services at the effective date of these Regulations need not submit to re-examination unless that person fails to renew his/her registration for a period of not longer than one year. If a registered plumber’s registration is revoked by the Secretary, Health and Social Services, he/she must submit to re-examination.”

SECTION 111.19.2 - MEMBERSHIP OF THE BOARD OF PLUMBING EXAMINERS:

“The Board of Plumbing Examiners shall be composed of at least eight (8) members who shall be representatives of the industry and the Division of Public Health, said members are to be selected by the Secretary, Health and Social Services and to serve at its pleasure. Each county shall be represented by at least two (2) members and there shall also be one (1) member-at-large and one (1) member of the Division of Public Health acting as Secretary. This Board of Plumbing Examiners has the authority to establish criteria for the examination of the plumber and to conduct a hearing regarding a plumber’s competency or violation of this Code, unless altered by law.

SECTION 111.19.3 - HEARING AND REVOCATION OF CERTIFICATE:

“The Board of Plumbing Examiners may conduct hearings against any registered plumber on charges of incompetency or willful violation of

this Code, and make recommendations to the Secretary, Health and Social Services. Said recommendations may include revocation of said registered plumber's certificate. A person whose license has been revoked cannot reapply for licensing for three (3) years from the date of revocation."

#### SECTION 111.19.4 - PROCEDURES FOR LICENSE:

"Every person desiring to register as a plumber engaged in the business of plumbing in the State of Delaware shall file an application with the Office of Health Systems Protection Section, Division of Public Health, Federal and Water Streets, Dover, Delaware. The applications shall be made on forms prepared by the Division of Public Health."

#### SECTION 111.19.5 - REQUIREMENTS FOR EXAMINATION:

A. "Prior to applying for a plumbing license with the State of Delaware, each applicant must attend a state-approved apprenticeship school for four (4) years, then serve two (2) years under a licensed plumber for a total of six (6) years consecutively; or

B. Must serve seven (7) years consecutively under the supervision of a licensed plumber or plumbers, and complete the series of tests prepared by the state approved apprenticeship school to determine if experience is equal to four (4) years of school; or

C. If applying from out-of-state, all credentials to be reviewed by the Board of Plumbing Examiners who determine whether the experience of the plumbing license from another state meets or exceeds the requirements of Delaware to allow the applicant to sit for examination.

Examination by the Board of Plumbing Examiners shall be quarterly. An acceptable and qualifying average under such examinations shall not be less than 70 percent. An applicant failing to satisfactorily qualify upon examination may submit for re-examination upon subsequent scheduled examining dates, in accordance with the rules of the Board of Plumbing Examiners. An applicant can re-apply for re-examination after thirty (30) days of their initial examination and must meet the requirements which are in

effect at the time of application; an application for second or third retake of the examination may be made after sixty (60) days of the last examinations taken and after six (6) months may apply for the fourth retake."

SECTION 111.20 - VARIANCES: is amended by adding the following underlined to read as follows:

"Upon receipt of written application for a variance, the Board of Plumbing Examiners may:

(a) From time to time recommend granting written permission to vary from particular provisions set forth in this Regulation, when the extent of the variation is clearly specified and it is documented to the Secretary, Health and Social Services or its appointed designee's satisfaction that:

(1) Such variation is necessary to obtain a beneficial use of an existing facility, and:

(2) The variation is necessary to prevent a practical difficulty or unnecessary hardship; and

(3) Appropriate alternative measures have been taken to protect the health and safety of the public and assure that the purpose of the provisions from which the variation is sought will be observed.

(b) Within thirty (30) business days of the receipt of a written application for a variance, the Board of Plumbing Examiners shall recommend either granting the variance, or denying the variance or will request further information from the applicant.

(c) The Board of Plumbing Examiners recommend that copies of the written variance(s) be sent to the Secretary, Health and Social Services within ten (10) business days of their recommendation of granting a variance.

(d) The applicant has been denied a variance by recommendation by the Board of Plumbing Examiners may appeal the decision by filing a written Notice of Appeal to the Secretary, Health and Social Services, Division of Public Health, P.O. Box 637, Dover, Delaware 19903."

SECTION 111.21 - DELAWARE LICENSE NUMBERS: is amended by adding the following underlined to read as follows:

"The license number of the registered plumber(s) shall be placed on the vehicles used in the course of the plumbing trade. The number shall be at least 3" in height and designated as that of a registered plumber."

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

Statutory Authority:  
7 Delaware Code, Section 1902(a)(2)  
( 7 Del.C. 1902(a)(2))  
7 Delaware Code, Section 1902(a)(3)  
(7 Del.C. 1902(a)(3))

In Re: **Amendment to Shellfish Regulation No. S-41**  
**SHELLFISH GROWING AREAS**  
**CLOSED TO HARVESTING CLAMS,**  
**MUSSELS AND OYSTERS.**

Order No. 97-F-0040

**ORDER****SUMMARY OF EVIDENCE AND INFORMATION**

Pursuant to due notice, the Department of Natural Resources and Environmental Control proposed to amend Shellfish Regulation No. S-41 to reflect the legislative change of authority to classify shellfish growing areas from the Department of Health and Social Services to the Department of Natural Resources and Environmental Control. Subsequently, the Department of Natural Resources and Environmental Control promulgated Shellfish Sanitation Regulations that classify shellfish growing areas as approved, prohibited, seasonally approved or conditionally approved based upon theoretical pollution loading, sanitary survey data and bacteriological monitoring. In order to reflect this change in authority, an amendment to Shellfish Regulation No. S-41, which prohibits the harvest of shellfish from prohibited or seasonally closed shellfish grounds, is required.

**FINDINGS OF FACT**

Legislative authority to classify shellfish growing areas was changed from the Division of Health and Social Services to the Department of Natural Resources and Environmental Control in 1996. The Department of Natural Resources and Environmental Control adopted Shellfish Sanitation Regulations that classified all shellfish growing areas as approved, prohibited, seasonally approved or conditionally approved.

Shellfish Regulation No. S-41, that prohibits the harvesting of clams, mussels and oysters from prohibited and conditionally approved but closed shellfish growing areas, currently references the authority to classify

shellfish growing areas as the Division of Health and Social Services. This must be amended to change the authority to Department of Natural Resources and Environmental Control.

The Council on Shellfisheries recommended approval of this amendment at it's meeting on October 14, 1997.

No one opposed the proposed amendment to Shellfish Regulation No. S-41.

With the evidence and information received regarding the legislative change in authority to classify shellfish growing areas in Delaware, the Department finds the attached amendment to Shellfish Regulation No. S-41, SHELLFISH GROWING AREAS CLOSED TO HARVESTING CLAMS, MUSSELS AND OYSTERS, should be adopted in the public interest to safeguard individuals from harvesting possible contaminated clams, mussels and oysters.

**ORDER**

It is hereby ordered, this 25th day of November, 1997 that the above referenced amendment to Shellfish Regulation No. S-41, a copy of which is attached hereto, is adopted pursuant to 7 Del.C. § 1902 (a) (2) and is supported by the Departments findings on the evidence and information received. This Order shall become effective on January 31, 1998.

Christophe A.G. Tulou, Secretary  
Department of Natural Resources and  
Environmental Control

<b>* PLEASE NOTE: THE COMPLETE REGULATION FOLLOWS THE ORDER FOR SHELLFISH REGULATIONS NO. S-55 &amp; S-56.</b>
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**DEPARTMENT OF NATURAL  
RESOURCES & ENVIRONMENTAL  
CONTROL****DIVISION OF FISH & WILDLIFE**

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

In Re: **Amendment to:**  
**Shellfish Regulation No. S-48,**  
**CONCH MINIMUM SIZE LIMITS.**

Order No. 97-F-0039

**ORDER****SUMMARY OF THE EVIDENCE AND INFORMATION**

Pursuant to due notice, the Department of Natural Resources and Environmental Control proposed to amend Shellfish Regulation No. S-48, to increase the minimum size limit for channeled conch, *Busycotypus canalicalatum* from 5 inches in length or 2 3/4 inches in diameter at the whorl to 6 inches in length or 3 1/2 inches in diameter at the whorl. The minimum size limits on knobbed conchs, *Busycon carica*, would remain at 5 inches in length or 2 3/4 inches in diameter at the whorl. This change in minimum size for channeled conchs would better conserve their spawning stock and provide a higher yield per recruit and price per pound.

A public hearing was held on January 30, 1997 in Dover, Delaware, in front of Charles A. Lesser, Fisheries Administrator for the Department, and the Department's designee to receive evidence. Public comments supported the 6 inch minimum size limit for channeled conchs, but it did not support the 3 1/2 inch diameter at the whorl. Division staff was requested to analyze conchs landed in Delaware for the relationship of length to diameter measurements. Staff measured 171 channeled conchs for length and maximum retention diameter as measured in a series of rings between 2 1/2 inches and 3 1/2 inches diameter. Sixty-six percent (66%) of the variation in ring retention size was explained by shell length. Staff concluded that 3 1/8 inches to be the diameter predicted by regression analyses for a channel conch 6 inches in length. Further, discussions by the Council on Shellfisheries, resulted in their motion to support the 6 inch length and the 3 1/8 inch diameter with up to five (5) conchs less than 6 inches in length or 3 1/8 inches in diameter per 60 pound bushel as a legal allowance for variation.

Due to a significant variance from the originally announced proposed minimum size limits for channeled conchs and the addition of an allowance for variance in whorl diameter to length, a second public hearing was held on October 6, 1997 to increase the minimum size limits for channeled conchs from 5 inches in length or 2 3/4 inches in diameter at the whorl to 6 inches in length or 3 1/8 inches in diameter at the whorl with an allowance of 5 channeled conchs per 60 pounds to be less than either the minimum length in diameter. No one attended the second public hearing.

**FINDINGS OF FACT**

The channel conch fishery has increased dramatically since the early 1990's. Legislation was enacted in 1994 to control the conch fishery. § 2804, 7 Del. C. authorizes the Department to promulgate regulations to establish

minimum possession size limits for conchs.

Members of the Council on Shellfisheries recommended the size limit on conchs be increased from 5 inches to 6 inches in length to provide for an improved market price. Larger channeled conchs, which have larger edible portions, are greatly preferred over knobbed conchs. Knobbed conchs, which are mostly dredged, versus channeled conchs, which are mostly potted, bring a lower price per pound regardless of their size.

Channeled conch are slow growing and take up to 13 plus years to reach sexual maturity. Harvesting channeled conchs at 6 inches instead of 5 inches in length, will add to their spawning stock population to better conserve this resource.

Ocean dwelling conchs have a shell that is more brittle than Delaware Bay dwelling conchs. Through handling, the siphon end of the shell can be broken, thus negating a length measurement. Therefore, a correlated diameter measurement at the whorl, is the preferred measurement for enforcement. Sixty-six percent (66%) of conchs measuring 6 inches in length will not pass through a ring with a diameter of less than 3 1/8 inches.

Channeled conchs are not predators of oysters as are the knobbed conchs. Consequently, individuals expressing concern about channeled conchs predatorizing oysters in the Delaware Bay are supportive of an increase in the minimum size limit from 5 inches to 6 inches for channeled conchs but not for knobbed conchs.

The Council on Shellfisheries, at their May 20, 1997 meeting, unanimously supported the increase in minimum size limit from 5 inches to 6 inches in length, with a 3 1/8 inches minimum diameter at the whorl for channeled conchs with an allowance of up to 5 undersized conchs per 60 pound measure.

With the evidence and information received regarding the minimum size limits on channeled conchs in possession in Delaware, the Department finds the attached amendment to Shellfish Regulation No. S-48, CONCH MINIMUM SIZE LIMITS, should be adopted in the public interest for the conservation of channeled conchs.

**ORDER**

It is hereby ordered, this 25th day of November, 1997 that the above referenced amendment to Shellfish Regulation No. S-48, a copy of which is attached hereto, is adopted pursuant to 7 Del. C. § 2804 and is supported by the Departments findings on the evidence and information received. This Order shall become effective on January 31, 1998.

Christophe A.G. Tulou, Secretary  
Department of Natural Resources and  
Environmental Control

**\* PLEASE NOTE: THE COMPLETE REGULATION FOLLOWS THE  
ORDER FOR SHELLFISH REGULATIONS NO. S-55 & S-56.**

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**DEPARTMENT OF NATURAL  
RESOURCES & ENVIRONMENTAL  
CONTROL**

**DIVISION OF FISH & WILDLIFE**

Statutory Authority:

7 Delaware Code, Section 1902(a)(2)  
( 7 Del.C. 1902(a)(2))

7 Delaware Code, Section 1902(a)(3)  
(7 Del.C. 1902(a)(3))

IN RE: **PROPOSED SHELLFISH REGULATION  
NO. S-55, CRAB TROTTLINES AND  
NO. S-56, CRAB TRAPS**

**SUMMARY OF THE EVIDENCE AND  
INFORMATION**

Pursuant to due notice, 1:4 Del. R. 354-361 (October 1, 1997), the Department of Natural Resources and Environmental Control proposed to promulgate new shellfish regulations that would limit the number and length of recreational crab trotlines to one per person no more than three hundred (300) feet in length. The Department also proposed to promulgate a new shellfish regulation to limit the number of recreational crab traps to no more than twelve (12) per person. The Department also proposed to promulgate a shellfish regulation to require each recreational crab trotline and crab trap to have a white buoy with the owners name and address clearly legible on the buoy.

Comments at a public hearing on October 30, 1997 and the evidence and information received by the Department did not support the proposed regulations. Enforcement Agents of the Division of Fish and Wildlife presented information that restrictions on the length and number of crab traps will not solve the problem of recreational crabbers harvesting more than their daily limit of one bushel per person.

Enforcement Agents have found compliance with the one bushel of crabs per person is too easily circumvented by individuals who simply carry extra passengers in a vessel and claim more than one bushel of crabs in possession belong to different individuals on board.

**FINDINGS OF FACT**

Limiting the length and number of recreational crab trotlines and number of crab traps will not resolve the problem of recreational crabbers harvesting over their daily limit. Restrictions on the number of bushels of crabs on board a vessel would facilitate enforcement and reduce the probability of any one person exceeding one bushel of crabs per day.

The Advisory Council on Tidal Finfisheries recommended that any crab trotline limit should apply to the vessel and not single persons.

Complaints of too many recreational crab trotlines and crab traps and too few crabs in July and August in the Inland Bays, does not necessarily mean this is a cause and effect direct relationship on the population of crabs in the Inland Bays.

Testimony from some recreational crabbers indicate that the marking and identifying of recreational crab trotlines and crab traps would serve no purpose, since a majority of recreational crabbers constantly remain in attendance to their trotlines and crab traps.

**DECISION TO TAKE NO ACTION**

Based on the evidence and information received, it is the decision of the Secretary of the Department of Natural Resources and Environmental Control to take no action this 25<sup>th</sup> day of November, 1997 to limit the number and length of recreational crab trotlines, the number of recreational crab traps, or require the marking and identifying of recreational crab trotlines and crab traps. The Department will continue to seek a better definition of the problem with recreational crabbers harvesting efforts and the disposition of their harvests.

Christophe A.G. Tulou, Secretary  
Department of Natural Resources and  
Environmental Control

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**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, *Harnarus 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 I 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. 2304, 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 colorcoded 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 covers 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 stem 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 stem 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 40-05178/02/2, 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 form 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 form 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.~~ Department of Natural Resources and Environmental Control, Division of Water Resources under authority of section 1902(a)(2) in Title 7 of the Delaware Code.

#### 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 27279.67/42837A2 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 ~~5~~ 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.

\* Please note that the following two proposed amendments were withdrawn at the time of the final Order.

~~S-55 CRAB TROTLINE; DEFINITION; LIMITS; IDENTIFICATION.~~

~~a) Crab trotline shall mean a length of line with a series of attached baits spaced along said line. It is placed on the bottom and raised to the surface to dip net crabs on the baits.~~

~~b) It shall be unlawful for any person to use or otherwise cause to be in the waters of this State more than one crab trotline.~~

~~c) It shall be unlawful for the operator of any vessel to tend to more than one trotline from said vessel.~~

~~d) It shall be unlawful for any person who uses or otherwise causes to be in the waters of this State a crab trotline unless attached thereto is an all white buoy with said persons name and permanent mailing address inscribed on said buoy or on a waterproof tag attached to said buoy.~~

~~S-56 CRAB TRAP; DEFINITION; LIMITS; IDENTIFICATION.~~

~~a) Crab trap shall mean any device constructed with wire mesh or netting or other similar material that when lifted or activated by a person, it is capable of capturing a crab.~~

~~b) It shall be unlawful for any person to use or otherwise cause to be in the waters of this State more than twelve (12) crab traps.~~

~~c) It shall be unlawful for the operator of any vessel to tend to more than twelve (12) crab traps from said vessel.~~

~~d) It shall be unlawful for any person to use or otherwise cause to be in the waters of this State any crab trap unless said crab trap is either attached by a line to a fixed structure or a vessel or is attached to an all white buoy with said persons' name and permanent mailing address inscribed on said buoy or on a waterproof tag attached to said buoy.~~

## DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

### DIVISION OF FISH & WILDLIFE

Statutory Authority: 7 Delaware Code,  
Section 902(e)(3) ( 7 Del.C. 902(e)(3))

In Re: **Adoption of a new Tidal Finfish  
Regulation No. 25 in accordance  
with the approved Fishery Management  
Plan for Atlantic sharks.**

Order No. 97-F-0038

### ORDER

#### SUMMARY OF THE EVIDENCE AND INFORMATION

Pursuant to due notice, the Department of Natural Resources and Environmental Control proposes to add a new Tidal Finfish Regulation No. 25, ATLANTIC SHARKS, to be consistent with the Fishery Management Plan for Sharks of the Atlantic Ocean, as amended, and final rules approved by the Secretary of Commerce ( 50 CFR Part 678).

This regulation will make it illegal to possess certain sharks in the management unit after a federal semi-annual commercial quota is landed for large pelagic sharks, small coastal sharks or pelagic sharks; implement a recreational creel limit; prohibit directed commercial fishing for, landing of, or sale of five species of sharks; prohibit filleting of sharks at sea and prohibit the removal of any fins from a shark in the management unit and discarding the remainder at sea. These regulations are intended to reduce effective fishing mortalities, stabilize the large coastal shark population, facilitate enforcement and improve management of Atlantic shark resources. Sharks in the management unit are currently at very low populations due to recent increases in their harvest.

A public hearing was held on, October 27, 1997, in Dover, Delaware, in front of Charles A. Lesser, Fisheries

Administrator for the Department and the Department's designee to receive evidence. All public comments supported the Departments proposed regulations on sharks. Some of the commentators also recommended a 58 inch minimum size limit for large coastal sharks in order to further protect juveniles.

#### FINDINGS OF FACT

Legislation (H.B. 169), recently enacted by the 139th General Assembly, authorizes the Department of Natural Resources and Environmental Control to promulgate regulations for species of finfish that are consistent with management plans approved by the U.S. Secretary of Commerce. The Secretary of Commerce has approved Amendment One to the Fishery Management Plan for Atlantic sharks and federal regulations for Atlantic sharks (50 CFR Part 678).

Sharks comprise a valuable marine resource to U.S. Atlantic States. Unfortunately, Atlantic sharks have been seriously overfished in the past two decades leading to declines of as much as 80% in some stocks. The Delaware regulations would bring state fishery management in line with the current federal fishery management plan for sharks of the Atlantic Ocean. This would assist greatly the effort to stop overfishing and help rebuild critical stocks of sharks.

Because sharks reproduce very slowly, giving live birth in most cases to a very few young per year in a way much more like land mammals than the other fishes, the protection of the young sharks in their nursery areas is of paramount importance. Delaware state waters contain some shark nurseries, including an important one in Delaware Bay for the sand tiger shark, a popular aquarium animal and a species that has been decimated by overfishing. Delaware Bay also is an important pupping and nursing area for the sandbar shark. Measures to protect the young sharks in their nurseries in state waters, therefore, will help conserve these biologically limited stocks and rebuild populations along the Mid-Atlantic coast.

The Advisory Council on Tidal Finfisheries discussed the proposed shark regulation at their September 16, 1997 meeting. They supported the regulations provided the no finning and no filleting sections were reworded to not contradict each other.

With the evidence and information received regarding Atlantic sharks, the Department finds the attached Tidal Finfish Regulation No. 25, ATLANTIC SHARKS, should be adopted in the public interest for the conservation of certain Atlantic sharks in Delaware.

**ORDER**

It is hereby ordered, this 25<sup>th</sup> day of November, 1997 that the above referenced Tidal Finfish Regulation No. 25, a copy of which is attached hereto, is adopted pursuant to 7 Del. C. 903 (e)(3) and is supported by the Department's finding on the evidence and information received. This order shall become effective on January 31, 1997.

Christophe A.G. Tulou, Secretary  
Department of Natural Resources  
and Environmental Control

**TIDAL FINFISH REGULATIONS**

As of July 1, 1997, the following Tidal Finfish Regulations are in effect.

These regulations are in addition to Tidal Finfish Laws in Chapter 9, Title 7, Delaware Code.

**TIDAL FINFISH REGULATION 2. STRIPED BASS SPAWNING SEASON AND AREA RESTRICTIONS.**

a) The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 A.M. on April 1 and continue through midnight on May 31 of each calendar year.

b) It shall be unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.

c) It shall be unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.

d) It shall be unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a draft gill net of multi- or mono-filament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 2) inches.

e) It shall be unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.

**TIDAL FINFISH REGULATION NO. 4. SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS.**

a) It shall be lawful for any person to take and reduce to possession summer flounder from the tidal waters of this State at any time except as otherwise set forth in this regulation.

b) It shall be unlawful for any recreational fisherman to have in possession more than ten (10) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than fourteen and one-half (14.5) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, other than a licensed commercial finfisherman with a gill net permit, while on board a vessel, to have in possession any part of a summer flounder that measures less than fourteen and one-half (14.5) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) It shall be unlawful for any licensed commercial finfisherman with a gill net permit to have in possession any part of a summer flounder that measures less than fourteen (14) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Notwithstanding the size limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail, provided said person has one of the following:

1) A valid commercial finfishing license and gill net permit issued by the Department; or

2) A valid vessel permit issued by the Regional

director, NMFS, to fish for and retain summer flounder in the EEZ or a dealer permit issued by the Regional Director or NMFS, as set forth in 50CFR, Part 625.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ten (10) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

#### TIDAL FINFISH REGULATION 5. AREAS CLOSED TO GILL NET FISHING.

a) It shall be unlawful for any person to fish with gill nets for foodfish in areas described as follows:

- 1) The Assawoman Canal from White Creek to Assawoman Bay;
- 2) Indian River from Millsboro Pond dam to the first Canal marker approximately 1,000 yards down river;
- 3) Masseys Ditch from Canal marker 12 in Rehoboth Bay to a line connecting the southern most part of Middle Island and the nearest point of land to the west;
- 4) The Lewes and Rehoboth Canal from Roosevelt Inlet to its entrance into Rehoboth Bay;
- 5) The Broadkill River from Roosevelt Inlet to a point up river 1,000 yards;
- 6) Mispillion River from the tip of the jetty up river to a line drawn perpendicularly across the Mispillion river from the Mispillion Lighthouse;
- 7) Cedar Creek from its entrance to the Mispillion River up river to a point 500 yards south of the Route 36 bridge;
- 8) The Murderkill River from the mouth up river to Webbs Landing;
- 9) The Fenwick Ditch from Little Assawoman Bay to the Delaware - Maryland state line.

#### TIDAL FINFISH REGULATION 6. STRIPED BASS

#### RECREATIONAL FISHING SEASONS; METHODS OF TAKE; CREEL LIMIT; POSSESSION LIMIT.

a) It shall be lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulation Nos. 2 and 7.

b) It shall be unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.

c) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass per day from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.

d) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than two (2) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.

#### TIDAL FINFISH REGULATION 7. STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS.

a) Notwithstanding, the provisions of '929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measures less than twenty-eight (28) inches in total length.

b) Notwithstanding, the provisions of '929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less than twenty (20) inches in total length.

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than 28 inches, total length, unless said striped bass is in one or more of the following categories:

- 1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or
- 2) It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
- 3) It is packed or contained for shipment,

either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

4) It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

d) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

e) The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than twenty eight (28) inches in total length.

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

#### TIDAL FINFISH REGULATION 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 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 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 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 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 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: 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 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 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 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.

TIDAL FINFISH REGULATION 9. BLUEFISH POSSESSION LIMITS.

a) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than ten (10) bluefish (*Pomatomus saltatrix*) at or between the place caught and his/her personal abode or temporary or transient place of lodging).

TIDAL FINFISH REGULATION 10. WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS.

a) It shall be unlawful for any person to possess weakfish *Cynoscion regalis* taken with a hook and line, that measure less than thirteen (13) inches, total length.

b) It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than six (6) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than six (6) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of six (6) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Beginning at 12:01 AM on May 3, 1997 and ending at midnight on May 11, 1997;

beginning at 12:01 AM on May 16, 1997 and ending at midnight on May 18, 1997;

beginning at 12:01 AM on May 23, 1997 and ending at midnight on May 26, 1997;

beginning at 12:01 AM on May 30, 1997 and

ending at midnight on June 1, 1997;

beginning at 12:01 AM on June 6, 1997 and ending at midnight on June 8, 1997;

beginning at 12:01 AM on June 13, 1997 and ending at midnight on June 15, 1997;

and beginning at 12:01 AM on June 20, 1997 and ending at midnight on June 28, 1997.

f) The Department shall indicate on a persons food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of six (6) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than six (6) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of six (6) weakfish.

#### TIDAL FINFISH REGULATION 11. RED DRUM SIZE LIMITS; CREEL LIMITS.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any red drum, (*Sciaenops ocellatus*), that measures less than eighteen (18) inches, total length or more than twenty-seven (27) inches, length, except as otherwise provided in paragraph (b) in this regulation.

b) Unless otherwise authorized, it shall be unlawful for any person to possess more than five (5) red drum, one of which may exceed twenty-seven (27) inches, total length.

#### TIDAL FINFISH REGULATION 12. ATLANTIC STURGEON SIZE LIMITS.

a) Notwithstanding the provisions of '929(b)(5), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any person to possess any Atlantic sturgeon, (*Acipenser oxyrinchus*), that measures less than eighty-four (84) inches total length.

#### TIDAL FINFISH REGULATION 13. SPOTTED SEATROUT SIZE LIMIT.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any spotted seatrout, (*Cynoscion nebulosus*), that measure less than twelve (12) inches total length.

#### TIDAL FINFISH REGULATION 14. SPANISH MACKEREL SIZE LIMIT AND CREEL LIMIT.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any Spanish mackerel, (*Scomberomorus maculatus*), that measure less than fourteen (14) inches total length.

b) Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to have in possession more than ten (10) Spanish mackerel at or between the place caught and his/her personal abode or temporary or transient place of lodging.

#### TIDAL FINFISH REGULATION 15. ELECTRIC LIGHTS.

a) 'Lights used for illumination for visual purposes' shall mean any light that is fixed in position anywhere directly above the hull or deck of any vessel, dock or shore area or any electric flood light less than 500 watts and fixed in position no less than ten (10) feet directly above the surface of the water. An electric flood light is any electric light that does not have a focused beam.

b) It shall be legal for any person to fish in the tidal waters of this State with the aid of 'lights used for illumination for visual purposes' in addition to the equipment and methods listed in '910, Title 7, Delaware Code.

#### TIDAL FINFISH REGULATION 16. GILL NET MESH SIZE RESTRICTIONS.

a) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to fish any gill net having a mesh size less than 3 1/8 inches, stretched measure; in the tidal waters of this State during a period beginning at 12:01 A.M. on April 1 and ending midnight on June 30, next ensuing.

b) Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to fish any gill net having a mesh size less than 3 1/4 inches, stretched measure, in the Delaware River, Delaware Bay and Atlantic Ocean under the jurisdiction of this State.

#### TIDAL FINFISH REGULATION 18. STRIPED BASS; TOTAL LENGTH MEASUREMENT.

a) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

#### TIDAL FINFISH REGULATION 19. SPEAR FISHING.

a) Unless otherwise prohibited, it shall be lawful

for any recreational fisherman while submerged in the tidal waters of this State to use a spear that is propelled by a gun or a mechanical or pneumatic device to take a species of food fish whenever a hook and line is authorized as legal fishing equipment to take said species of food fish in the Department's tidal finfish regulations.

#### TIDAL FINFISH REGULATION 20. WINTER FLOUNDER SIZE LIMIT.

a) It shall be unlawful for any person to possess any winter flounder, (*Pleuronectes americanus*), that measure less than ten (10) inches, total length.

#### TIDAL FINFISH REGULATION 21. SCUP SIZE LIMIT.

a) It shall be unlawful for any recreational fisherman to have in possession any scup, *Stenotomus chrysops*, that measures less than seven (7) inches, total length.

b) It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to possess any scup that measures less than nine (9) inches, total length.

c) It shall be unlawful for any commercial finfisherman to sell, trade or barter or attempt to sell, trade or barter any scup or part thereof that is landed in this State by said commercial finfisherman after a date when the de minimis amount of commercial landings of scup is determined to have been landed in this State by the Department. The de minimis amount of scup shall be 0.1% of the coastwide commercial quota as set forth in the Scup Fishery Management Plan approved by the Atlantic State Marine Fisheries Commission.

#### TIDAL FINFISH REGULATION NO. 22 TAUTOG; SIZE LIMITS.

a) Notwithstanding 7 Del. C. 929 (b) (7) it shall be unlawful for any person to possess any tautog that measures less than thirteen (13) inches in total length during the period beginning at 12:01 AM on January 1, 1997 and ending at midnight on March 31, 1997 or during the period beginning at 12:01 AM on July 1, 1997 and ending at midnight on December 31, 1997.

b) Notwithstanding 7 Del. C. 929 (b) (7) it shall be unlawful for any person to possess any tautog that measures less than fourteen (14) inches in total length during the period beginning at 12:01 AM on January 1, 1998 and ending at midnight on March 31, 1998 or during the period beginning at 12:01 AM on July 1, 1998 and ending at midnight on December 31, 1998 or during said periods in all years thereafter.

#### TIDAL FINFISH REGULATION NO. 23 BLACK SEA BASS SIZE LIMIT

a) It shall be unlawful for any person to have in possession any black sea bass *Centropristis striata* that measures less than nine (9) inches, total length.

b) It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to have in possession any black sea bass, after January 1, 1998, that measures less than ten (10) inches, total measure.

#### TIDAL FINFISH REGULATION NO. 24 FISH POT REQUIREMENTS

a) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has an escape vent placed in a lower corner of the parlor portion of said pot which complies with one of the following minimum sizes: 1.125 inches by 5.75 inches; or a circular vent 2 inches in diameter; or a square vent with sides of 1.5 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least 1.125 inches between one set of lathes.

b) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:

- 1.) Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or
- 2.) Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or
- 3.) Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.

#### TIDAL FINFISH REGULATION 25. ATLANTIC SHARKS;

##### A) Definitions

1) Fillet means to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

2) Large coastal sharks species means any of the species, or a part thereof, listed in paragraph (a) of the definition of management unit.

3) Land or Landing shall mean to put or cause to go on shore from a vessel.

4) Management Unit means any of the following species in the Western Atlantic Ocean, Delaware's Territorial Sea or tidal waters of Delaware:

- (a) Large coastal species:  
Hammerhead sharks-- Sphyrnidae  
Great hammerhead, *Sphyrna mokarran*  
Scalloped hammerhead, *Sphyrna lewini*

Smooth hammerhead, Sphyrna zygaena  
Mackerel sharks--Lamnidae  
White shark, Carcharodon carcharias  
Nurse sharks--Ginglymostomatidae  
Nurse shark, Ginglymostoma cirratum  
Requiem sharks--Carcharhinidae  
Bignose shark, Carcharhinus altimus  
Blacktip shark, Carcharhinus limbatus  
Bull shark, Carcharhinus leucas  
Caribbean reef shark, Carcharhinus perezi  
Dusky shark, Carcharhinus obscurus  
Galapagos shark, Carcharhinus galapagensis  
Lemon shark, Neqapron brevirostris  
Narrowtooth shark, Carcharhinus brachyurus  
Night shark, Carcharhinus signatus  
Sandbar shark, Carcharhinus plumbeus  
Silky shark, Carcharhinus falciformis  
Spinner shark, Carcharhinus brevipinna  
Tiger shark, Galeocerdo cuvieri

(b) Small coastal species:

Angel sharks--Squatinae  
Atlantic angel shark, Squatina dumerili  
Hammerhead sharks--Sphyrnidae  
Bonnethead, Sphyrna tiburo  
Requiem sharks--Carcharhinidae  
Atlantic sharpnose shark, Rhizoprionodon

terraenovae

Blacknose shark, Carcharhinus acronotus  
Caribbean sharpnose shark, Rhizoprionodon

porosus

Finetooth shark, Carcharhinus isodon  
Smalltail shark, Carcharhinus porosus

(c) Pelagic species:

Cow sharks--Hexanchidae  
Bigeye sixgill shark, Hexanchus vitulus  
Sevengill shark, Heptranchias perlo  
Sixgill shark, Hexanchus griseus  
Mackerel sharks--Lamnidae  
Longfin mako, Isurus paucus  
Porbeagle shark, Lamna nasus

Shortfin mako, Isurus oxyrinchus  
Requiem sharks--Carcharhinidae  
Blue shark, Prionace qlauca  
Oceanic whitetip shark, Carcharhinus

longimanus

Thresher sharks--Alopiidae  
Bigeye thresher, Alopias superciliosus  
Thresher shark, Alopias vulpinus

(d) Prohibited species:

Basking sharks--Cetorhinidae  
Basking shark, Cetorhinidae maximus  
Mackerel sharks--Lamnidae  
White shark, Carcharodon carcharias

Sand tiger sharks--Odontaspidae  
Bigeye sand tiger, Odontaspis noronhai  
Sand tiger, Odontaspis taurus  
Whale sharks--Rhincodontidae  
Whale shark, Rhincodon typus

(5) Pelagic species means any of the species, or a part thereof, listed in paragraph (c) of the definition of management unit.

(6) Prohibited species means any of the species, or a part thereof, listed in paragraph (d) of the definition of management unit.

(7) Small coastal species means any of the species, or part thereof, listed in paragraph (b) of the definition of management unit.

(B) Prohibitions

1) It shall be unlawful for any person to fish for, purchase, trade, barter, or possess or attempt to fish for, purchase, trade, barter, or possess a prohibited species.

2) It shall be unlawful for any person to remove the fins from any shark in the management unit and discard the remainder prior to landing said shark.

3) It shall be unlawful for any person to fillet a shark in the management unit except that a shark may be eviscerated and the head and fins removed prior to landing said shark.

4) It shall be unlawful to release any shark in the management unit in a manner that will not ensure maximum probability of survival.

5) It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than two sharks in the management unit except that two Atlantic sharpnose sharks also may be on board.

6) It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce and published in the Federal Register.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF DENTAL EXAMINERS**

Statutory Authority: 24 Delaware Code,  
Section 1105(1) (24 Del.C. 1105(1))

BEFORE THE DELAWARE STATE BOARD OF  
DENTAL EXAMINERS

IN THE MATTER OF THE ADOPTION OF A REVISED REGULATION NO. 7 CONCERNING THE ADMINISTRATION OF ANESTHESIA AND THE REPEAL OF EXISTING REGULATION NO. 7		FINAL ORDER
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**ORDER ADOPTING REVISED REGULATION NO. 7  
AND REPEALING PRIOR REGULATION NO. 7**

Pursuant to 29 *Del. C.* Ch. 101 and 24 *Del. C.* § 1104, the Delaware State Board of Dental Examiners (“Board”) gave notice of its intent to consider adoption of a revised Regulation No. 7 governing the administration of anesthesia by Dentists together with the simultaneous repeal of existing Regulation No. 7. A public hearing was held upon due public notice on December 2, 1997 to receive oral public comment concerning the proposed new Regulation No. 7 and the repeal of the prior Regulation No. 7.

**SUMMARY OF EVIDENCE**

The Board received and admitted proof of publication of the notice of the hearing on this matter in two newspapers of general circulation. (Exhibit No. 1). The Board also received and admitted a copy of the publication of the proposed adoption of the revised Regulation No. 7 and the repeal of the prior Regulation No. 7 and of the hearing in regard thereto in the Delaware Register of Regulations, Vol. 1, Issue 5, published on November 1, 1997.

There were no comments received in writing concerning the proposed Regulation No. 7, nor the proposed repeal of the prior Regulation No. 7, and no one appeared at the public hearing other than Lawrence Giordano, D.D.S, the Board’s consultant concerning the administration and regulation of the administration of anesthesia by Dentists.

Dr. Giordano advised the Board that the American

Dental Association (“ADA”) guidelines for the administration of anesthesia which were adopted in 1985 had formed the basis for the prior Regulation No. 7 of the Board. In July, 1993, the ADA updated the guidelines for pain management and, in 1996, published more guidelines for the use of anesthesia. On the basis of these generally accepted revisions, Dr. Giordano drafted the proposed revisions to the Board’s Regulation No. 7. By way of examples of the new standards, Dr. Giordano noted that for a Restricted Permit I, originally the Delaware Board had required 60 hours of training and experience while the ADA standard was only 40 hours. He observed that the ADA had revised its guidelines and is now at 60 hours where the Delaware Board was originally. With respect to Restricted Permit II, Nitrous Oxide, the revised guidelines provide for 14 hours rather than the 8 hours presently required in the old Regulation No. 7. Dr. Giordano also noted that there had been numerous minor, non-significant changes in several of the definitions, and therefore, it was deemed to be more efficacious to repeal the old Regulation No. 7 and replace it with the revised Regulation No. 7 based on the revised ADA guidelines.

During the hearing, Dr. Giordano suggested one clarification to the proposed Regulation No. 7 to make it clear that the Board’s anesthesia consultants would utilize the appropriate current guidelines in their reviews and evaluations. Dr. Giordano suggested that in Section IV(B) of the proposed Regulation, the following sentence be added: “The Anesthesia Advisory Consultants shall utilize the ‘Guidelines for the use of conscious sedation, deep sedation and general anesthesia for Dentist,’ as approved by the American Dental Association in October, 1996, or any current update thereof.”

Dr. Giordano also recommended that in the order adopting the revised Regulation No. 7 that the Board clearly specify that its application would be prospective and that dentists with existing permits would be able to renew their permits then without further training and in accordance with Section VI(B) of the revised Regulation No. 7, with the revised standards for training and education applying for new applicants only.

**FINDING OF FACT AND CONCLUSIONS**

The Board finds that it is necessary and proper to protect the public to revise Regulation No. 7 to bring it into conformity with the latest ADA guidelines with the non-substantive modification to Section IV(B) recommended by Dr. Giordano concerning the use of the most current standards by the Board’s Anesthesia Consultants. The Board also finds reasonable the recommendation that the application of the Revised Regulation No. 7 be limited to new applicants with applications filed after the effective date of the repeal of

the prior Regulation No. 7 and the enactment of the revised Regulation No. 7.

**ORDER**

NOW, THEREFORE, the Delaware State Board of Dental Examiners, by the affirmative vote of the undersigned members, hereby adopts the proposed repeal of the prior Regulation No. 7 and the adoption of the revised Regulation No. 7 as set forth on the attached Exhibit "A" with the one non-substantive modification to Section IV(B) recommended by Dr. Giordano and discussed above.

The Board further orders that the application of the revised Regulation No. 7 shall be prospective and shall apply to applications for permits filed after the effective date of the revised Regulation which shall be ten (10) days after the publication of the Revised Regulation in the Delaware Register of Regulations. Permits granted prior to the effective date of revised Regulation No. 7 may be renewed without meeting the revised educational requirements and without further inspections in accordance with revised Regulation No. 7, Section VI(B).

BY ORDER OF THE BOARD this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

Richard L. Sklut, D.D.S., Board President  
Connie F. Cicorelli, D.D.S., Board Member  
Martin W. Scanlon, D.D.S., Board Member  
John A. McManus, II, Public Member  
Mario P. DiSabatino, D.D.S., Board Member  
Wilson M. Reed, Public Member  
Nancy T. Brohawn, R.D.H., Dental Hygiene Board Member

7. ANESTHESIA REGULATIONS: (Proposed to be Revoked)

~~I. DEFINITIONS: The following definitions are taken from the GUIDELINES FOR TEACHING THE COMPREHENSIVE CONTROL OF PAIN AND ANXIETY IN DENISTRY (November 1985). These terms refer to the extent of a drug's depressant effect upon the central nervous system and should not be confused with the route by which the drug is administered.~~

~~A. Analgesia: -- the diminution or elimination of pain in the conscious patient through the use of drugs that act on the central nervous system.~~

~~B. Local Anesthesia: -- the diminution or elimination of pain through the use of injected or topically applied drugs~~

~~that act on peripheral nerves to produce neural blockade.~~

~~C. Conscious Sedation: -- a minimally depressed level of consciousness. (For the purpose of these regulations, consciousness will be defined as a state in which the patient is capable of rational response to command and has all protective reflexes intact, including the ability to maintain his own airway in a patent state.)~~

~~For purposes of these regulations, conscious sedation shall be divided into two classifications:~~

~~Class A -- conscious sedation induced by parenteral or rectal routes. This is not to include the usual and customary pre-operative sedation.~~

~~Class B -- conscious sedation induced by nitrous oxide inhalation analgesia.~~

~~D. Deep Sedation -- a controlled state of depressed consciousness, accompanied by partial loss of protective reflexes, including inability to respond purposefully to verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.~~

~~E. General Anesthesia -- a controlled state of unconsciousness accompanied by partial, or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.~~

~~F. Adverse Occurrences -- any mortality or other incident occurring in the out-patient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, the conscious sedation or general anesthesia related thereto.~~

~~H. Conscious Sedation:~~

~~A. No dentist shall employ or use conscious sedation, Class A or Class B., for dental patients unless such dentist possesses a Permit of Authorization issued by the Delaware State Board of Dental Examiners ("Board"). The dentist holding such a Permit shall be subject to review and such Permit must be renewed biennially.~~

~~B. In order to receive such a Permit, the dentist shall produce evidence show that he/she:~~

~~1. For Class A Conscious Sedation:~~

~~(a) Has completed a minimum of 60 hours of~~

instruction, including management of at least 10 patients per participant (to achieve competency in this technique):

(b) Must also be certified in CPR as documented by the American Heart Association or the American Red Cross.

(c) Must also have a properly equipped facility for the administration of Class A conscious sedation, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the team may be determined by the constants appointed by the Board. A list of emergency drugs and equipment that should be on hand would consist of the following:

(A) Agents capable of treating:

- (1) hypotension and bradycardia
- (2) allergy/bronchospasm
- (3) seizures
- (4) narcotic-induced respiratory depression, e.g., narcotic antagonists
- (5) angina pectoris
- (6) adrenal insufficiency, e.g. steroids
- (7) nausea

(B) Equipment necessary to provide artificial respiration and assist in airway maintenance not including endotracheal intubation:

(C) Equipment necessary to establish an intravenous infusion and to inject medications:

2. For Class B Conscious Sedation:

a. Has completed a minimum of 8 instructional hours including supervised clinical experience in managing patients (in a course required to achieve competency in nitrous oxide inhalation sedation):

b. Must also show certification in CPR as certified by the American Heart Association or the American Red Cross.

III. Deep Sedation and General Anesthesia:

A. No dentist shall employ or use deep sedation or general anesthesia for his/her dental patients unless such dentist possesses a Permit of Authorization issued from the Board.

B. In order to receive such a Permit, the dentist must produce evidence that he/she:

1. Has completed a minimum of one year of advanced

training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program as described in Part II of the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry or; is a Diplomate of the American Board of Oral and Maxillofacial Surgeons, or has satisfactorily completed a residency in oral and maxillofacial surgery at an institution approved the Council of Dental Education, American Dental Association, or is a fellow of the American Dental Society of Anesthesiology; or employs or works in conjunction with a trained M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility until any patient given a general anesthetic or deep sedation regains consciousness.

2. Has a properly equipped facility for the administration of deep sedation and general anesthesia, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team may be determined by the consultant appointed by the Board and who is certified in CPR, as documented by the American Heart Association or the American Red Cross.

IV. Facility and Staff Requirements:

A. Prior to the issuance of a Permit for Class A Conscious Sedation or Deep Sedation or General Anesthesia, the Board shall require an on-sit inspection of the facility, equipment and personnel to determine if in fact, the aforementioned requirements have been met. The evaluation shall be carried out by a team of consultants appointed by the Board.

B. Advisory Committee:

1. The Board shall appoint a team of Advisory Consultants and alternates who will visit the facility concurrently to conduct the on-site inspection and evaluation of the facilities, equipment and personnel of a licensed dentist applying for written authorization to administer or to employ another to administer Class A Sedation, Deep Sedation or General Anesthesia. The Advisory Consultants shall also aid the Board in the adoption of criteria and standards relative to the regulation and control of Conscious Sedation, Deep Sedation and General Anesthesia. If the applicant has been satisfactorily evaluated by another, similar organization, e.g., the Delaware Society of Oral and Maxillofacial Surgeons, which uses the AAOMS Office Anesthesia Evaluation Manual Standards, then the Board may accept this

evaluation and not require additional on-site evaluation.

2. If the results of the initial evaluation of an applicant are deemed unsatisfactory, upon written request of the applicant, a second evaluation shall be conducted by a different team of consultants.

3. Re-evaluation -- The Board may at any time re-evaluate credentials, facilities, equipment, personnel and procedures of a licensed dentist who has previously received a written authorization or Permit from the Board to determine if he/she is still qualified to have such written authorization. If the Board determines that the licensed dentist is no longer qualified to have such written authorization, it may revoke or refuse to renew such authorization, after an opportunity for a hearing has been given to the licensed dentist.

## V. Applications:

A. Submittal of form, fee and documented evidence of requirements:

B. For new applicants who are otherwise properly qualified, a temporary, provisional Permit of one year in duration, may be granted by the Board based solely upon the credentials contained in the application pending complete processing of the application and thorough investigation via an on-sit evaluation as described therein. THIS IS NOT RENEWABLE.

C. Each dentist who has been using or employing Class A Sedation, Deep Sedation or General Anesthesia prior to adoption of these rules, shall make application on the prescribed form to the Board within one year of the effective date of these rules, if such dentist desires to continue to use or employ Class A Conscious Sedation, Deep Sedation or General Anesthesia. If he/she meets the requirements of these rules as herein-outlined, he/she shall be issued such a Permit. An on-sit evaluation of the facilities and personnel shall be required prior to the issuance of such Permit.

## VI. Report of Adverse Occurrences:

A. All licensed dentists engaged in the practice of dentistry in the State of Delaware must submit a complete report within a period of 30 days to the Board of any mortality or other incident occurring in the out-patient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during or as a direct result of, the conscious sedation or general anesthesia related thereto.

B. Failure to comply with this rule when said occurrence related to the use of conscious sedation or general anesthesia may result in the loss of such Permit described above.

## 7. ANESTHESIA REGULATIONS: (Proposed to be Adopted)

### I. Definitions:

The following definitions are taken from the GUIDELINES FOR TEACHING THE COMPREHENSIVE CONTROL OF PAIN AND ANXIETY IN DENTISTRY, American Dental Association, Council on Dental Education (July 1993). These terms refer to the extent of a drug's depressant effect upon the central nervous system and should not be confused with the route by which the drug is administered.

A. Analgesia -- the diminution or elimination of pain in the conscious patient.

B. Local Anesthesia -- the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

C. Conscious Sedation -- a minimally depressed level of consciousness that retains the patients ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command and that is produced by a pharmacologic or non-pharmacologic method or a combination thereof.

In accord with this definition, the conscious patient is also defined as "one who has intact protective reflexes, including the ability to maintain an airway, and who is capable of rational response to question or command." The drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

For purposes of these regulations, Conscious Sedation Permits shall be divided into two classifications:

Restricted Permit I -- Conscious Sedation induced by parenteral or enteral or rectal routes. This is not to include the usual and customary pre-operative oral sedation.

Restricted Permit II -- Conscious Sedation induced by nitrous oxide inhalation.

D. Deep Sedation -- is a controlled state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to verbal command, and is produced by a pharmacologic or non-pharmacologic method or combination thereof.

E. General Anesthesia -- is a controlled state of unconsciousness accompanied by partial or complete loss

of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacologic or non-pharmacologic method or a combination thereof.

The same level of advanced training is necessary for the administration of both Deep Sedation and General Anesthesia.

F. Adverse Occurrences -- any mortality or other incident occurring in the out-patient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, the conscious sedation, or deep sedation, or general anesthesia related thereto.

## II. Conscious Sedation:

A. No dentist shall employ or use Conscious Sedation, Restricted Permit I or Restricted Permit II, for dental patients unless such dentist possesses a permit of authorization issued by the Delaware State Board of Dental Examiners. The dentist holding such a permit shall be subject to review and such permit must be renewed biennially.

B. In order to receive such a permit, the dentist shall produce evidence showing that he or she:

### 1. For Restricted Permit I Conscious Sedation:

a. Has completed a minimum of 60 hours of instruction, including management of at least 20 patients per participant (to achieve competency in this technique).

b. Must be certified in CPR as documented by the American Heart Assn. or the American Red Cross Advanced Cardiac Life Support Certification is encouraged.

c. Must also have a properly equipped facility for the administration of Restricted Permit I Conscious Sedation, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the team is to be determined by the Anesthesia Advisory Consultants appointed by the Board. A certified registered nurse anesthetist may be utilized for Restricted Permit I Conscious Sedation only if the dentist also possesses such a permit.

A list of emergency drugs and equipment that should be on hand would consist of the following:

#### (A) Agents capable of treating:

- (1) hypotension and bradycardia
- (2) allergy/bronchospasm
- (3) seizures
- (4) narcotic-induced respiratory depression (e.g., narcotic antagonists)

(5) angina pectoris

(6) adrenal insufficiency

(e.g., steroids)

(7) nausea

(B) Equipment necessary to provide artificial respiration and assist in airway maintenance.

(C) Equipment necessary to establish an intravenous infusion and to inject medications.

### 2. For Restricted Permit II Conscious Sedation:

a. Has completed a minimum of 14 instructional hours including supervised clinical experience in managing patients (in a course required to achieve competency in nitrous oxide inhalation sedation).

b. Must also show certification in cardiopulmonary resuscitation as certified by the American Heart Association or the American Red Cross.

## III. Deep Sedation and General Anesthesia (Unrestricted Permit):

A. No dentist shall employ or use deep sedation or general anesthesia for his or her dental patients unless such dentist possesses a permit of authorization issued from the Delaware State Board of Dental Examiners. This permit also includes all Conscious Sedation techniques. The dentist holding such a permit shall be subject to review and such permit must be renewed biennially.

B. In order to receive such a permit, the dentist must produce evidence showing that he or she:

1. Has completed a minimum of two years of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program as described in Part II of the Guidelines For Teaching The Comprehensive Control of Pain and Anxiety in Dentistry or, is a Diplomat of the American Board of Oral and Maxillofacial Surgeons, or has satisfactorily completed a residency in Oral and Maxillofacial Surgery at an institution approved by the Council of Dental Education, American Dental Association, or is a fellow of the American Dental Society of Anesthesiology, or employs or works in conjunction with a trained M.D. or D.O. who is a member of The Anesthesiology staff of an accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility until any patient given a general anesthetic or deep sedation regains consciousness. A certified registered nurse anesthetist may be utilized for deep sedation or general anesthesia only if the dentist also possesses an Unrestricted Permit.

2. Has a properly equipped facility for the administration of deep sedation and general anesthesia, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and

emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team is determined by the Anesthesia Advisory Committee Consultants appointed by Delaware State Board of Dental Examiners.

3. And is certified in Advanced Cardiac Life Support by the American Heart Association.

#### IV. Facility and Staff Requirements:

A. Inspections: Prior to the issuance of a permit for Restricted Permit I (parenteral, enteral, or rectal Conscious Sedation) or an Unrestricted Permit (Deep Sedation or General Anesthesia), the Board shall require an on site inspection of the facility, equipment and personnel to determine if, in fact, the aforementioned requirements have been met. The evaluation shall be carried out in a manner described by the Board. The evaluation shall be carried out by the Anesthesia Advisory Consultants appointed by the Board. Each office that the dentist utilizes for Restricted Permit I Conscious Sedation or Deep Sedation or General Anesthesia requires individual inspection and must meet the requirements of that permit for which the dentist is applying.

##### B. Anesthesia Advisory Consultants:

1. The Board of Dental Examiners shall appoint a team of Advisory Consultants and alternates who will visit the facility concurrently to conduct the on-site inspection and evaluation of the facilities, equipment and personnel of a licensed dentist applying for written authorization to administer or to employ another to administer Restricted Permit I Conscious Sedation, or Deep Sedation or General Anesthesia (Unrestricted Permit). The Advisory Consultants shall also aid the Board in the adoption of criteria and standards relative to the regulation and control of Conscious Sedation, Deep Sedation and General Anesthesia. **[The Anesthesia Advisory Consultants shall utilize the “Guidelines for the use of conscious sedation, deep sedation and general anesthesia for Dentist”, as approved by the American Dental Association in October, 1996, or any current update thereof.]** If the applicant has been satisfactorily evaluated by another similar organization (e.g., the Delaware Society of Oral and Maxillofacial Surgeons which uses the AAOMS Office Anesthesia Evaluation Manual Standards), then the Board may accept this evaluation and not require additional on-site evaluation.

2. If the results of the initial evaluation of an applicant are deemed unsatisfactory, upon written request of the applicant, a second evaluation shall be conducted by a different team of consultants.

C. Re-evaluation: The Board may at any time re-evaluate credentials, facilities, equipment, personnel and procedures of a licensed dentist who has previously received a written authorization or permit from the Board

to determine if he or she is still qualified to have such written authorization. If the Board determines that the licensed dentist is no longer qualified to have such written authorization, it may revoke or refuse to renew such authorization, after an opportunity for a hearing is given to the licensed dentist.

#### V. Report of Adverse Occurrences:

A. All licensed dentists engaged in the practice of dentistry in the State of Delaware must submit a complete report within a period of thirty (30) days to the Delaware State Board of Dental Examiners of any mortality or other incident occurring in the out-patient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, the Conscious Sedation or Deep Sedation or General Anesthesia related thereto.

B. Failure to comply with this rule when said occurrence is related to the use of Conscious Sedation or Deep Sedation or General Anesthesia may result in the loss of such permit described above, and will be considered unprofessional conduct.

#### VI. Applications and Reapplications:

A. A dentist who desires to obtain a permit to administer Conscious Sedation, Deep Sedation, or General Anesthesia shall submit an application on the form provided by the Board, pay the permit fee, and meet the requirements for the permit described herein.

B. A dentist who desires to renew a permit shall submit a renewal application on the form provided by the Board and pay the permit renewal fee. Re-inspection of the facility, equipment, and staff shall not be necessary unless new techniques or criteria arise, as determined by the Board with the aid of the Anesthesia Advisory Committee.

C. A permit issued by the Board under these regulations will expire at the same time as the permit holder's dental license and may be renewed biennially at the same time as the dental license is renewed.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

IN THE MATTER OF:

### REVISION OF THE REGULATIONS OF THE MEDICAID/MEDICAL ASSISTANCE PROGRAM

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies to include a written definition of medical necessity. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

On February 17th and 18th, 1997, the Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 requesting written materials and suggestions from the public concerning the proposed regulations to be produced by March 10, 1997, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

The notice was published in the News Journal (2/17/97) and the Delaware State News (2/18/97). Copies of the notices are available upon request.

Written comments were received from five entities. The comments were considered and letters sent responding to the concerns and issues raised. Copies of the comments and responses are available upon request.

**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**

CONTENT OF REVISED REGULATION:

#### **MEDICAL NECESSITY is defined as:**

the essential need for medical care or services (all covered State Medicaid Plan services, subject to age and eligibility restrictions and/or EPSDT requirements) which, when prescribed by the beneficiary's primary physician care manager and delivered by or through authorized and qualified providers, **will:**

- be directly related to the diagnosed medical condition or the effects of the condition of the

beneficiary (the physical or mental functional deficits that characterize the beneficiary's condition), and be provided to the beneficiary only;

- be appropriate and effective to the comprehensive profile (e.g. needs, aptitudes, abilities, and environment) of the beneficiary and the beneficiary's family;
  - be primarily directed to treat the diagnosed medical condition or the effects of the condition of the beneficiary, in all settings for normal activities of daily living, but will not be solely for the convenience of the beneficiary, the beneficiary's family, or the beneficiary's provider (this means that services which are primarily used for educational, vocational, social, recreational, or other non-medical purposes are not covered under the Medicaid program);
  - be timely, considering the nature and current state of the beneficiary's diagnosed condition and its effects, and will be expected to achieve the intended outcomes in a reasonable time;
  - be the least costly, appropriate, available health service alternative, and will represent an effective and appropriate use of program funds;
  - be the most appropriate care or service that can be safely and effectively provided to the beneficiary, and will not duplicate other services provided to the beneficiary;
  - be sufficient in amount, scope and duration to reasonably achieve its purpose;
  - be recognized as either the treatment of choice (i.e. prevailing community or statewide standard) or common medical practice by the practitioner's peer group, or the functional equivalent of other care and services that are commonly provided;
  - be rendered in response to a life threatening condition or pain, or to treat an injury, illness, or other diagnosed condition, or to treat the effects of a diagnosed condition that has resulted in or could result in a physical or mental limitation, including loss of physical or mental functionality or developmental delay,
- and will be reasonably determined to:**
- diagnose, cure, correct or ameliorate defects and physical and mental illnesses and diagnosed conditions or the effects of such conditions; or
  - prevent the worsening of conditions or effects of conditions that endanger life or cause pain, or result in illness or infirmity, or have caused or threaten to cause a physical or mental

dysfunction, impairment, disability, or developmental delay; or

- effectively reduce the level of direct medical supervision required or reduce the level of medical care or services received in an institutional setting or other Medicaid program; or
- restore or improve physical or mental functionality, including developmental functioning, lost or delayed as the result of an illness, injury, or other diagnosed condition or the effects of the illness, injury or condition; or
- provide assistance in gaining access to needed medical, social, educational and other services required to diagnose, treat, or support a diagnosed condition or the effects of the condition.

**in order that**

the beneficiary might attain or retain independence, self-care, dignity, self-determination, personal safety, and integration into all natural family, community, and facility environments and activities.

**FINDINGS OF FACT:**

A minor amendment to the definition of medical necessity to incorporate footnotes into the body of the language was made as written above. It was found that no substantive changes were necessary or appropriate.

The Department finds that the proposed changes as set forth in the above text should be adopted as amended.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall become effective January 10, 1998.

*December 5, 1997*

Date of Signature

Gregg C. Sylvester, MD  
Acting Secretary

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**DEPARTMENT OF STATE**

**OFFICE OF THE STATE BANKING COMMISSIONER**

Statutory Authority: 5 Delaware Code,  
Section 121(b) (5 **Del.C.** 121(b))

**ORDER ADOPTING REVISED REGULATIONS**

5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005,  
5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004  
AND 5.844.0009,  
AND RESCINDING REGULATIONS 5.769.0006 AND  
5.772.0014

IT IS HEREBY ORDERED, this 10th day of December, 1997, that revised regulations 5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009 are adopted, and regulations 5.769.0006 and 5.772.0014 are rescinded, as regulations of the State Bank Commissioner. Copies of revised regulations 5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009 are attached hereto and incorporated herein by reference. Revised regulations 5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009 supersede previous regulations 5.121.0002, 5.701/774.0002.P/A, 5.777.0001.P, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009, respectively. The effective date of revised regulations 5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009, is January 12, 1998. Regulations 5.769.0006 and 5.772.0014 are rescinded, effective January 12, 1998. Revised regulations 5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009 are issued by the State Bank Commissioner, and regulations 5.769.0006 and 5.772.0014 are rescinded, in accordance with Title 5 of the Delaware Code.

Revised regulations 5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009 are adopted, and regulations 5.769.0006 and 5.772.0014 are rescinded, pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amendments and the text of amended regulations 5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009, and notice of

the proposed rescission of regulations 5.769.0006 and 5.772.0014, were published in the November 1, 1997 issue of the **Delaware Register of Regulations**. The Notice also was published in the **News Journal** and the **Delaware State News** on November 7, 1997, and mailed on or before that date to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before December 3, 1997, and stated that the proposed amended regulations were available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on December 3, 1997 at 10:00 a.m. in the Second Floor Library Conference Room in the Townsend Building, 401 Federal Street, Dover, Delaware 19901.

2. No comments were received on or before December 3, 1997.

3. A public hearing was held on December 3, 1997 at 10:00 a.m. regarding the proposed amended regulations 5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009, and the proposed rescission of regulations 5.769.0006 and 5.772.0014. The State Bank Commissioner, the Deputy Bank Commissioner for Supervisory Affairs, and the Court Reporter attended the hearing. No other person attended the hearing. The State Bank Commissioner and the Deputy Bank Commissioner for Supervisory Affairs summarized the proposed amended regulations for the record. No other comments were made or received at the hearing on the proposed amended regulations.

4. After review and consideration, the State Bank Commissioner decided to adopt revised regulations 5.121.0002, 5.701/774.0001, 5.777.0002, 5.771.0005, 5.770.0009, 5.795etal.0016, 5.761.0017, 5.833.0004 and 5.844.0009, and to rescind regulations 5.769.0006 and 5.772.0014, as proposed.

Timothy R. McTaggart  
State Bank Commissioner

Document Control No: 20-15/97/12/01

Regulation No.: 5.121.0002  
Effective Date: January 12, 1998

### PROCEDURES GOVERNING THE CREATION AND EXISTENCE OF AN INTERIM BANK

This regulation establishes procedures governing the creation and existence of an Interim Bank, which shall have no authority to conduct a banking business until merged with an Insured Bank.

#### 1. Definitions

(a) "Articles of Association" means the articles of association described in Section 723 of Title 5 of the Delaware Code.

(b) "Articles of Organization" means the articles of organization described in Section 728 of Title 5 of the Delaware Code.

(c) "Bank" means a Delaware State Bank, Out-of-State State Bank, Delaware National Bank or Out-of-State National Bank.

(d) "Bank Holding Company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

(e) "Certificate Authorizing the Transaction of Business" means the certificate described in Section 733 of Title 5 of the Delaware Code.

(f) "Delaware Bank" means a Delaware National Bank or a Delaware State Bank.

(g) "Delaware National Bank" means a national banking association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is located in this State.

(h) "Delaware State Bank" means a bank (as defined in § 101(1) of Title 5 of the Delaware Code) chartered under the laws of this State.

(i) "Insured Bank" means a bank that is an insured depository institution, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c).

(j) "Interim Bank" means a bank established exclusively for the temporary purposes set forth in this regulation.

(k) "Interim Bank Agreement" means an agreement that expressly provides, among other things, for the creation of an Interim Bank and its merger with an Insured Delaware Bank.

(l) "Located in this State" means, with respect to a state-chartered bank, a bank created under the laws of this State and, with respect to a national banking association, a bank whose organization certificate identifies an address in this State as the place at which its discount and deposit operations are to be carried out.

(m) "Notice of Intent" means a notice of the intention of the incorporators to form an Interim Bank, as provided in Section 5 of this regulation.

(n) "Out-of-State Bank" means an Out-of-State State Bank or an Out-of-State National Bank.

(o) "Out-of-State Bank Holding Company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

(p) "Out-of-State National Bank" means a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is not located in this State.

(q) "Out-of-State State Bank" means 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 the laws of this State.

(r) "Public Notice" means a public notice, as provided in Section 5 of this regulation.

**2. Scope**

An Interim Bank may only be formed to facilitate:

(a) The establishment of a Bank Holding Company by an Insured Delaware Bank's stockholders. The proposed Bank Holding Company, once incorporated, applies in the manner set forth at Section 5 of this regulation for an Interim Bank charter for a subsidiary to be newly formed. An agreement is executed between the proposed Bank Holding Company and the Insured Delaware Bank that provides, among other things, that the Insured Delaware Bank will be merged or consolidated with the Interim Bank and become a subsidiary of the Bank Holding Company upon the receipt of all necessary federal and state approvals for the proposed Bank Holding Company so to act; or

(b) The acquisition of an Insured Delaware Bank by another Insured Delaware Bank or Bank Holding Company (e.g., pursuant to Subchapter VI of Chapter 7 or Subchapters IV or V of Chapter 8 of Title 5 of the Delaware Code). In such instances, the Interim Bank is used to assure that the to-be-acquired Insured Delaware Bank will become wholly-owned through a merger or consolidation pursuant to an agreement between the Insured Delaware Banks or between an Insured Delaware Bank and a Bank Holding Company that provides, among other things, for an Insured Delaware Bank to merge or consolidate with the Interim Bank.

(c) The merger of one or more Out-of-State Banks with or into one or more Delaware Banks to result in a Delaware State Bank, in accordance with Section 795D or Section 795G of Title 5 of the Delaware Code.

**3. Interim Bank Agreement Required**

An Interim Bank may not be chartered unless there is an Interim Bank Agreement.

**4. Who May Incorporate**

An Interim Bank may be incorporated, in accordance

with Section 722 of Title 5 of the Delaware Code, by three or more individual persons, at least two of whom must be citizens and residents of Delaware.

**5. Application Procedures**

An application to form an Interim Bank shall be submitted as follows, except as otherwise provided in connection with a contemporaneous application in accordance with another regulation (e.g., Regulation 5.844.0009, "Application by an Out-of-State Bank Holding Company to Acquire a Delaware Bank or Bank Holding Company"):

(a) The Notice of Intent shall be filed in duplicate in the Office of the Commissioner and shall state:

- (i) the purpose for forming an Interim Bank;
- (ii) the proposed name of the Interim Bank;
- (iii) the name and address of the incorporators; and
- (iv) the amount of the capital stock of the Interim Bank.

(b) The Notice of Intent shall attach as exhibits:

- (i) the Interim Bank Agreement;
- (ii) a copy of the proposed Articles of Association of the Interim Bank;
- (iii) a copy either of the certificate of public convenience and advantage or the legislative and/or corporate instruments of banking authority for the Insured Bank which is to be merged with the Interim Bank pursuant to the Interim Bank Agreement.

(c) Upon notification by the Commissioner that the Application to form an Interim Bank is complete, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for three (3) consecutive weeks, a Public Notice of its intention to form an Interim Bank. The Public Notice shall include the proposed name of the Interim Bank, the names of the incorporators, the amount of the capital stock of the Interim Bank, and a brief summary of the purpose of the Interim Bank, shall identify this regulation under which the Interim Bank is to be formed, and shall inform interested persons of their right to comment on the application before the Commissioner decides whether to approve the Interim Bank.

**6. Decision of Commissioner; Incorporation**

Within two weeks of the last publication of the Public Notice, the Commissioner shall issue a decision as to whether to charter the Interim Bank. This two week period may be extended by two additional weeks if the Commissioner requires more time or information.

Upon the Commissioner's approval, the Incorporator shall take the necessary steps to form the Articles of Organization and the Commissioner shall endorse the

Articles. The Incorporator shall then incorporate the Interim Bank and file the necessary documents with the Secretary of State.

A Certificate Authorizing the Transaction of Business shall not be issued until the Interim Bank has been merged with the Insured Bank.

#### 7. Powers of Interim Bank Before Merger

An Interim Bank may not engage in any banking activity or operate as a bank until it has merged with an Insured Bank. An Interim Bank may take only those corporate and fiduciary steps and actions reasonably incidental and necessary to facilitate and complete the merger. Such limitation shall not preclude the Commissioner from granting a certificate of public convenience and advantage, and to otherwise facilitate and authorize the formation and incorporation of the Interim Bank, provided that no Certificate Authorizing the Transaction of Business pursuant to § 733 of Title 5 of the Delaware Code shall be issued prior to the consummation of the merger of the Interim Bank with an Insured Bank.

The receipt by the Commissioner of an Interim Bank Agreement and a copy of either the certificate of public convenience and advantage or the legislative and/or corporate instruments pursuant to which the Insured Bank with which the Interim Bank will merge derives its banking powers shall constitute sufficient authority for the Commissioner to issue a certificate of public convenience and advantage to the Interim Bank.

#### 8. Proof of Merger: Revocation of Certificate

From the date an Interim Bank is authorized pursuant to this regulation, the parties to the Interim Bank Agreement shall have six (6) months in which to effect the merger with the Insured Bank. Proof of the merger must be timely supplied to the Commissioner.

Upon proof of the consummation of the merger of the Interim Bank with the Insured Bank, a Certificate Authorizing the Transaction of Business, as required by § 733 of Title 5 of the Delaware Code shall be issued immediately by the Commissioner to the surviving entity if the Interim Bank is the survivor.

Extensions may be granted by the Commissioner if the parties to the Interim Bank Agreement can show good cause as to why an extension is needed to complete the merger.

The Commissioner may revoke the certificate of public convenience and advantage of the Interim Bank (and may take such other steps he deems appropriate at any time) if proof of the merger between the Interim Bank and the Insured Bank has not been provided to the Commissioner at the end of the authorized time, if the Interim Bank actually conducts any banking business prior

to its proposed merger, or if any related merger or acquisition application is denied or withdrawn.

#### 9. Fees

A non-refundable investigation fee of \$1,150 to offset the administrative expense of the Commissioner's office shall be included with the Notice of Intent; provided, however, that such fee shall be considered as part of and not in addition to any fee being paid at the same time to the Commissioner's office in connection with a contemporaneous application for a merger or acquisition. In addition, depending on the structure of the transaction, other fees may be required in accordance with applicable statutes or regulations (e.g., Section 735 of Title 5 of the Delaware Code).

Document Control No.: 20-15/97/12/02

Regulation No.: 5.701/774.0001

Effective Date: January 12, 1998

### PROCEDURES FOR APPLICATIONS TO FORM A BANK, BANK AND TRUST COMPANY OR LIMITED PURPOSE TRUST COMPANY PURSUANT TO CHAPTER 7 OF TITLE 5 OF THE DELAWARE CODE

#### 1. Scope

This Regulation establishes procedures for filing an application to organize a bank or bank and trust company (hereinafter collectively referred to as a "Bank") or limited purpose trust company pursuant to Chapter 7 of Title 5 of the Delaware Code and the manner in which determinations will be made by the State Bank Commissioner (the "Commissioner") respecting such applications.

#### 2. Notice of Intent

(a) Notice of the intention ("Notice of Intent") of the incorporators (the "Incorporators") to form a Bank or limited purpose trust company shall be filed with the Commissioner. All filings must be in duplicate.

(b) A \$1,150 non-refundable investigation fee shall be submitted with the Notice of Intent, payable to "Office of the State Bank Commissioner."

(c) The Notice of Intent shall specify: (i) the names of all Incorporators; (ii) the name of the proposed Bank or limited purpose trust company (note: the word "trust" may be used only if a limited purpose trust company or a bank with trust powers is being formed); (iii) the city or town in which the Bank or limited purpose trust company will be located; and (iv) the amount of capital stock of the proposed Bank or limited purpose trust company.

(d) The Notice of Intent shall have attached as exhibits: (i) a copy of the application for a Certificate

of Public Convenience and Advantage (the "Application") in the form the Incorporators intend to file pursuant to Section 4 of this Regulation; (ii) a copy of the proposed form of written agreement in which the subscribers thereto associate themselves with the intent of forming a Bank or limited purpose trust company (the "Articles of Association"); (iii) a proposed form of public notice as provided for in Section 3 of this Regulation (the "Public Notice"); and, (iv) where the Incorporators are acting on behalf of a corporate entity in the application process, a copy of the corporate resolution, sworn to and subscribed by a president or vice-president and certified by the secretary or an assistant secretary, authorizing the Incorporators to execute and file the Notice of Intent and Application on behalf of the corporation.

### 3. Public Notice

(a) If the Notice of Intent and the attached exhibits filed with the Commissioner are in the form required by this Regulation, conform to applicable provisions of law and are approved by the Commissioner, the Commissioner shall schedule a formal, public evidentiary hearing to receive testimony and documentary evidence relevant to determining whether the public convenience and advantage would be promoted by the establishment of the Bank or limited purpose trust company and whether the Articles of Association are in compliance with applicable provisions of law (such hearing to be held within 60 days following the third publication of Public Notice in accordance with Section 3(b) of this Regulation, but not prior to the expiration of thirty days following the date of the third publication).

(b) The Incorporators shall cause a Public Notice in such form as the Commissioner shall have approved to be published at least once a week, for three successive weeks, in at least two Delaware newspapers of general circulation designated by the Commissioner, at least one of which newspapers shall be published in the county where it is proposed to establish the Bank.

(c) The Public Notice shall (i) specify the names of all Incorporators; (ii) set forth the name of the proposed Bank or limited purpose trust company; (iii) identify the city or town where the Bank or limited purpose trust company is to be located; (iv) specify the amount of the Bank's capital stock; (v) describe the subject matter of the proceedings; (vi) give the date, time and place fixed for a hearing on the Application; (vii) cite the law (5 Del. C. § 726 for a Bank, and 5 Del. C. § 777 for a limited purpose trust company) and regulations (State Bank Commissioner Regulations 5.701/774.0001 and 5.725/726.0003.P/A for a Bank, and 5.701/774.0001 and 5.777.0002 for a limited purpose trust company) giving the Commissioner authority to act; (viii) inform interested parties of their right to present evidence, to be

represented by counsel and to appear personally or by other representatives; and (ix) state the Commissioner's obligation to reach his decision based upon the evidence received.

### 4. Application For A Determination of Public Convenience and Advantage

(a) Within sixty days following the third publication of Public Notice, and prior to or on the date of the public hearing, but not prior to the expiration of thirty days following the date of the third publication, the Incorporators shall file the definitive fully executed Application in the form prescribed by the Commissioner. See Commissioner's Regulation No. 5.725/726.0003.P/A for a Bank, and 5.777.0002 for a limited purpose trust company.

(b) The Application shall include the information specifically requested in the form of application supplied by the Commissioner and any supplemental information requested by the Commissioner.

### 5. Public Hearing

(a) The public hearing provided for in this Regulation may be conducted by the Commissioner or his designee. At such hearing, the Commissioner or his designee shall accept all relevant, non-cumulative evidence offered by or on behalf of the Incorporators or by any interested person. Interested parties may appear at the public hearing, in person or by counsel or by other representative. Anyone wishing to present testimony is requested to register with the Commissioner in advance of the hearing.

(b) A record from which a verbatim transcript can be prepared shall be made. The Incorporators shall be responsible for arranging for a certified court reporter to be present at the public hearing and shall bear the expense of an original written transcript for the Commissioner's use (which shall be supplied to the Commissioner as promptly as practical following the public hearing). Additional transcripts provided to any interested person shall be at the expense of the person requesting the transcript.

(c) The Commissioner or his designee may request the Incorporators or any other party or parties who appear at the public hearing to submit proposed findings of fact and conclusions of law.

### 6. Record

(a) With respect to each Application, all notices, correspondence between the Commissioner and the Incorporators or other interested parties, all exhibits, documents and testimony admitted into evidence and all recommended orders, summaries of evidence and findings, and all interlocutory and final orders shall be included in the Commissioner's record of the matter and

shall be retained for a period of at least five (5) years following final action on the Application.

(b) A copy of the proposed order shall be mailed or hand delivered to the Incorporators (or their agent) and to each person who presented data, views or argument at the public hearing, each of whom shall thereafter have twenty (20) days to submit in writing to the Commissioner exceptions, comments and arguments respecting the proposed order.

(c) If the decision on the Application is not adverse to the Incorporators, the Commissioner may waive the entry of a proposed order and may instead proceed directly to the entry of a final order under Section 7 of this Regulation.

#### 7. Decision and Final Order

(a) Every decision on an Application shall be incorporated in a final order which shall include: (i) a brief summary of the evidence; (ii) findings of fact based upon the evidence; (iii) conclusions of law; (iv) any other conclusions or findings required by law; and (v) a concise statement of the determination or action on the case.

(b) Every final order shall be authenticated by the signature of the Commissioner and shall be mailed or delivered to (i) the Incorporators (or their agent); (ii) each person that presented data, views or argument at the hearing; and (iii) any other person requesting a copy of the final order.

#### 8. Organization Meeting of Incorporators

(a) The first meeting of the Incorporators shall be called by a notice signed by the Incorporator designated in the Articles of Association for that purpose or by a majority of Incorporators (see 5 Del. C. § 727). The statutory purpose of the first meeting is to organize by: (i) choosing by ballot a temporary secretary; (ii) adopting bylaws; and (iii) electing in such manner as the bylaws may determine directors, a president, a secretary, and such other officers as the bylaws may prescribe. All of the officers elected shall be sworn to the faithful performance of their duties. Action permitted to be taken at the organization meeting may be taken without a meeting if each Incorporator signs a written consent in lieu of meeting which states the action so taken.

(b) The President and a majority of directors elected at the organization meeting of the Incorporators shall make, sign and make oath to a certificate (hereinafter the "Articles of Organization") setting forth: (i) a true copy of the Articles of Association; (ii) the names of the subscribers thereto; (iii) the name, residence, and mailing address of each officer; and (iv) the date of the first meeting of the Incorporators (see 5 Del. C. § 728).

(c) The Articles of Organization and attachments shall be submitted to the Commissioner. The

Commissioner may require such amendments or additional information as he may consider proper or necessary. The Commissioner shall endorse approval upon the Articles of Organization at such time as he has determined that the applicable provisions of law have been complied with (see 5 Del. C. § 729).

#### 9. Incorporation and Commencement of Business

(a) The Articles of Organization shall be filed with the Secretary of State within 30 days after the date of the Commissioner's endorsement (see 5 Del. C. § 730).

(b) Upon issuance of a Certificate of Incorporation by the Secretary of State and compliance with all provisions of law, a certified copy of the Certificate of Incorporation together with the endorsed Articles of Organization shall be recorded in the Office of the Recorder of Deeds for the county in which the place of business of the Bank or limited purpose trust company is to be located (see 5 Del. C. § 731).

(c) A certified copy of the Bank's or limited purpose trust company's Certificate of Incorporation together with its bylaws and its Articles of Organization shall be filed with the Commissioner together with the \$5,750 fee for the certificate to transact business. No transaction of business can begin until authorized by the Commissioner by the issuance of a certificate to transact business (see 5 Del. C. §§ 733, 735, 902, 903).

(d) An application for a certificate to transact business shall include a certification as to the issuance of the whole capital stock of the Bank or limited purpose trust company (unless the Articles of Organization otherwise specifically provide) and receipt of payment therefor in cash; a list of stockholders (including the number of shares held by each and the residence and post office address of each stockholder), which list shall be certified by the president and the cashier or treasurer of the Bank; evidence of the deposit of the proceeds of the sale of capital stock in an account for the benefit of the Bank or limited purpose trust company; and, for a Bank, evidence satisfactory to the Commissioner demonstrating that FDIC deposit insurance for the Bank has been approved by the FDIC.

(e) The Commissioner shall review the application and, in the case of a Bank, the status of the applicant's FDIC insurance. If the above referenced \$5,750 fee has been paid and it appears that all requirements of this Regulation and applicable law have been complied with, the Commissioner shall issue a certificate authorizing the Bank or limited purpose trust company to begin the transaction of business.

Document Control No.: 20-15/97/12/03

Regulation No.: 5.761.0017  
Effective Date: January 12, 1998

**INCIDENTAL POWERS**  
**(5 Del. C. § 761(a)(17))**

This regulation describes activities that are within the scope of the powers incident to a banking corporation pursuant to Section 761(a)(17) of Title 5, Delaware Code (each a “Permissible Activity”), and provides a procedure for determining other Permissible Activities. This regulation also establishes procedures to be used to exercise incidental powers under Section 761(a)(17) of Title 5, Delaware Code, to engage in any Permissible Activity by: (i) banks established pursuant to Chapter 7 of Title 5, Delaware Code; (ii) banks established pursuant to other law of this State that are entitled to amend their charters or certificates of incorporation in accordance with Section 749 of Title 5, Delaware Code; or (iii) by the subsidiaries of all such banks, in accordance with Section 761(a)(13) of Title 5, Delaware Code. This regulation is not intended to be in derogation of any other powers granted to banks by statute or legislative charter.

**I. Specific Permissible Activities.**

Any bank established pursuant to Chapter 7 of Title 5, Delaware Code, any bank established pursuant to other law of this State that is entitled to amend its charter or certificate of incorporation in accordance with Section 749 of Title 5, Delaware Code, or any subsidiary of any such bank, that desires to exercise its incidental powers under Section 761(a)(17) of Title 5, Delaware Code, to engage in one or more of the activities described below, in paragraphs A, B, C and D of this Part I of this regulation, shall provide 30 days prior written notice of its intent to conduct such activity to the State Bank Commissioner (the “Commissioner”). If the Commissioner does not object in writing to the proposed activity within 30 days of his receipt of such notice, the bank may engage in the activity. The Commissioner may also permit the bank to begin engaging in the activity before the end of the 30 day notice period. In the interest of bank safety and soundness, the Commissioner may require that any Permissible Activity be conducted through a subsidiary of the bank.

If the Commissioner objects in writing to the proposed activity within the 30 day notice period, the bank or its subsidiary may not engage in the activity until the Commissioner issues a written Order approving such activity. The bank or its subsidiary may submit an application to the Commissioner seeking approval of the proposed activity. The Commissioner at his discretion may require additional information as deemed necessary, and the application shall not be considered complete until

such additional information is provided. Within 30 days of the completed application, if any, the Commissioner shall issue an Order approving or disapproving the application.

**A. Activities Permissible For A National Bank Or Bank Holding Company.**

Any activity that is permissible for a national bank as principal or permissible for a bank holding company under Section 4(c)(8) of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., is a Permissible Activity.

**B. Activities Permissible For A State Chartered Bank Under Section 24 Of The Federal Deposit Insurance Act.**

Any activity identified in Part 362.4(c)(3) of the Rules and Regulations of the Federal Deposit Insurance Corporation (the “FDIC”) as an activity that does not pose a significant risk to the FDIC deposit insurance fund, and therefore is permitted to a state chartered bank by the FDIC pursuant to Section 24 of the Federal Deposit Insurance Act, and which is not expressly prohibited by the law of this State or otherwise permitted by paragraph I.A of this regulation, is a Permissible Activity.

**C. Travel Agency.**

The provision of travel agency services is a Permissible Activity. Banks chartered by the Delaware General Assembly before 1933 traditionally provided travel agency services to their customers, in reliance on the broad grants of agency power typically conferred by their charters. Delaware bank customers historically relied upon Delaware banks as providers of travel agency services, and continue to look to Delaware banks for such services. Accordingly, the Commissioner has concluded that travel agency services constituted part of the generally accepted business of banking when Delaware’s Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of travel agency services continues to be authorized by the powers incident to a banking corporation pursuant to Section 761(a)(17) of Title 5, Delaware Code.

**D. General Management Consulting.**

The provision of general management consulting services is a Permissible Activity. Many banks chartered by the Delaware General Assembly before 1933 were given broad powers to act in a fiduciary capacity, and the fulfillment of fiduciary duties in the context of banking affairs ordinarily involves the provision by banks of disinterested advice on many business and financial matters. Accordingly, the Commissioner has concluded that general management consulting services constituted part of the generally accepted business of banking when Delaware’s Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of general management consulting services continues to

be authorized by the powers incident to a banking corporation pursuant to Section 761(a)(17) of Title 5, Delaware Code.

## II. Other Permissible Activities.

A bank established pursuant to Chapter 7 of Title 5, Delaware Code, a bank established pursuant to other law of this State that is entitled to amend its charter or certificate of incorporation in accordance with Section 749 of Title 5, Delaware Code, or any subsidiary of any such bank, may apply to the Commissioner for permission to conduct any other Permissible Activity not described in Part I of this regulation. The bank or subsidiary making such application must demonstrate that the proposed activity is both authorized by the powers "incident to a banking corporation" and "necessary or proper" to the transaction of its business, within the meaning of Section 761(a)(17) of Title 5, Delaware Code. The Commissioner at his discretion may require additional information as deemed necessary, and the application shall not be considered complete until such additional information is provided. Within 30 days of the completed application, and after considering all the circumstances raised in the application, including the general financial condition and performance of the applicant, the Commissioner shall issue an Order approving or disapproving the application. In the interest of bank safety and soundness, the Commissioner may require that any Permissible Activity be conducted through a subsidiary of the bank.

Document Control No.: 20-15/97/12/08

Regulation No.: 5.770.0009

Effective Date: January 12, 1998

**ESTABLISHMENT OF A BRANCH OFFICE BY A  
BANK OR TRUST COMPANY  
(5 Del. C. § 770)**

### 1. Scope

This regulation establishes procedures for the filing of an application to establish a branch office of a bank or trust company pursuant to Section 770 of Title 5 of the Delaware Code and states the manner in which the State Bank Commissioner (the "Commissioner") will review and act upon such applications.

### 2. Application

An application pursuant to Section 770 of Title 5 of the Delaware Code shall be in writing and shall include the following:

- A. Name of applying bank or trust company.
- B. Location of proposed branch, including

address.

C. The name, address and phone number of the person(s) to whom inquiries may be directed.

D. Explanation of the necessity for the opening of the branch.

### 3. Fee

The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

### 4. Notice

Upon notification by the Commissioner that the application conforms to the requirements for applications pursuant to Section 770 of Title 5 of the Delaware Code and this regulation, the applicant shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

### 5. Additional Information, Investigation and Hearing

In addition to the documents filed in accordance with this regulation, the Commissioner at his discretion may require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code.

### 6. Decision

No earlier than 20 days after publication of the Notice described in section 4 of this regulation, the Commissioner shall issue a written Order approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience of the public of this State, and whether there is good and sufficient reason that the bank or trust company should have the branch office.

### 7. Certificate of Authority

A Certificate of Authority shall be issued by the Commissioner for each approved branch.

### 8. Time to Open Approved Branch Office

Branch offices approved in accordance with Section 770 of Title 5 of the Delaware Code and this regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for

such branch extend the initial opening date to a date greater than one year, if by his review he determines that the proposed completion date will exceed one year. In no instance shall the initial opening date exceed the planned completion date by ninety (90) days. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the initial opening date prescribed on approval of the branch unless the branch is actually opened for business. Unavoidable delay in opening the branch due to construction problems or controls or other matters beyond the control of the bank or trust company may be taken into consideration and the Commissioner may extend the Certificate of Authority for periods of six months in the event of such circumstances.

Document Control No.: 20-15/97/12/06

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Regulation No.: 5.771.0005  
Effective Date: January 12, 1998

**PROCEDURES GOVERNING APPLICATIONS TO  
OPEN BRANCH OFFICES OUTSIDE THE STATE OF  
DELAWARE**

This regulation establishes procedures for the consideration and determination of applications under § 771(a) of Title 5 of the Delaware Code for permission to open branch offices outside of the State of Delaware.

**I. Branch Offices In the United States Outside the State of Delaware**

**A. Application**

An application to open a branch office in the United States outside the State of Delaware pursuant to Section 771(a) of Title 5 of the Delaware Code shall be in writing and shall include the following:

1. Name of applying bank or trust company.
2. Location of proposed branch, including address.
3. The name, address and phone number of the person(s) to whom inquiries may be directed.
4. Explanation of the necessity for the opening of the branch.

**B. Fee**

The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

**C. Notice**

Upon notification by the Commissioner that the application to open a branch office in the United States outside the State of Delaware conforms to the requirements for applications pursuant to Section 771(a) of Title 5 of the Delaware Code and this regulation, the applicant shall cause a single notice of such application to be published in a newspaper of general circulation in the locality of the proposed branch. The notice shall provide a brief synopsis of the application, and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

**D. Additional Information, Investigation and Hearing**

In addition to the documents filed in accordance with this regulation, the Commissioner at his discretion may require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code.

**E. Decision**

No earlier than 20 days after publication of the Notice described in section I.C. of this regulation, the Commissioner shall issue a written Order approving or disapproving the application.

**F. Certificate of Authority**

A Certificate of Authority shall be issued by the Commissioner for each approved branch office in the United States outside the State of Delaware.

**G. Time to Open Approved Branch Office In the United States Outside the State of Delaware**

Branch offices in the United States outside the State of Delaware approved in accordance with Section 771(a) of Title 5 of the Delaware Code and this regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch extend the initial opening date to a date greater than one year. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the time prescribed for the opening of the branch unless the branch is actually opened for business.

**II. Branch Offices in Foreign Countries**

This section applies to applications under § 771(a) of Title 5 of the Delaware Code for permission to open branch offices in foreign countries where the applicant has no existing foreign branch office.

**A. Application**

An application to open a branch office in a foreign country pursuant to § 771(a) of Title 5 of the Delaware Code shall be in writing, signed by the President of the applicant, and include the following information.

1. Name of the applying bank or trust company.
2. Location (city and country) of the proposed branch, including the address, if available.
3. a) Existing representation in the foreign country, if any;  
b) Reasons for the proposed branch, including the ways in which it is believed the branch would further the development of the applying bank or trust company's international or foreign business.
4. The type of business to be conducted and types of services to be offered, including:
  - a) Volume of business now conducted through subsidiaries or parents for customers in the proposed market;
  - b) Whether any existing or planned future business will be transferred to the proposed branch, indicating the volume and type of such business;
  - c) Whether the branch will engage in trust activities, and whether that business will be conducted on behalf of customers in the United States.
5. a) Where appropriate, if there has been more than a 25% change in the Bank's (and its affiliates') consolidated exposure in the country of the proposed branch from that reported in the most recently filed Federal Reserve Board Country Exposure Report (F.R. 2036), show the consolidated direct and indirect exposure to borrowers from this country. The exposure in question is both: (a) cross-border exposure (which may be calculated for this purpose by adding the figures under columns 4, 10 and 12 of the form and subtracting the sum of columns 9 and 11); and (b) local currency exposure (column 18 of the form);  
b) If projections indicate that at the end of the third year of operations of the proposed branch, the direct and indirect exposure, as calculated above, will increase by more than 25% from present levels and this amount is greater than 10% of consolidated capital, show the projected consolidated country exposure.
6. Estimated start-up costs and projected balance sheets and income statements for at least three years, or until the break-even point is reached if longer.
7. Management of the proposed branch.
8. Description of the competitive situation in the foreign country, including representation of other U.S. financial institutions, any existing representation of applicant, its subsidiaries, or parent bank holding company. Status of foreign government approvals, if any. A summary of the bank or trust company's experience in international banking or trust activities, including the

volume and character of present international business, a description of the foreign or international department, the number of its staff, and background of its officers. Details of any locally imposed capital requirements and any other special requirements relating to the utilization of capital funds.

**B. Fee**

The application shall be accompanied by a non-fundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

**C. Notice**

Upon receipt of any application pursuant to Section II of this regulation, the State Bank Commissioner will afford notice of the filing of such application to such persons as he deems appropriate.

**D. Additional Information**

In addition to the foregoing, the State Bank Commissioner may, in a particular case, request any additional information he deems appropriate.

**E. Decision**

The Commissioner shall issue a written Order approving or disapproving the application.

**F. Certificate of Authority**

If, on the basis of the information submitted, the State Bank Commissioner concludes that the application for the proposed branch office in a foreign country should be approved, he shall issue a Certificate of Authority permitting such office to be opened; such Certificate may contain such conditions as the State Bank Commissioner deems appropriate.

**G. Time to Open Approved Branch Office In a Foreign Country**

Branch offices in foreign countries approved in accordance with Section 771(a) of Title 5 of the Delaware Code and this regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch extend the initial opening date to a date greater than one year. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the time prescribed for the opening of the branch unless the branch is actually opened for business.

Document Control No.: 20-15/97/12/05

Regulation No.: 5.795etal.0016  
Effective Date: January 12, 1998

**MERGER WITH OUT-OF-STATE BANKS\***  
**(§§ 795D, 795F, 795G, 795H)**

This regulation establishes procedures governing: (i) the merger of one or more out-of-state banks with or into one or more Delaware banks to result in a Delaware state bank, pursuant to § 795D of Title 5, Delaware Code; (ii) the merger of one or more Delaware state banks with or into one or more out-of-state banks to result in an out-of-state state bank, pursuant to § 795F of Title 5, Delaware Code; (iii) the merger with an out-of-state bank of a Delaware state bank that is in default or in danger of default, pursuant to § 795G of Title 5, Delaware Code; and (iv) the approval by the Commissioner, pursuant to § 795H of Title 5, Delaware Code, of a merger in accordance with §§ 795C, 795D, 795E, 795F or 795G of Title 5, Delaware Code, even though the resulting bank (including all insured depository institutions, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c), which would be affiliates of the resulting bank), upon consummation of the transaction, would control 30 percent or more of the total amount of deposits of insured depository institutions in this State. This regulation is to be used in conjunction with statutory provisions included by reference in §§ 795D, 795F, 795G and 795H of Title 5, Delaware Code, and the merger procedure prescribed in Subchapter IX of Chapter 1 of Title 8, Delaware Code, for the merger or consolidation of domestic and foreign corporations.

**1. Merger Application By A Delaware State Bank**

A merger application by a Delaware state bank in accordance with § 795D, § 795F and § 795G of Title 5, Delaware Code, in which the resulting bank will be a state bank, shall be filed with the Commissioner. Such application shall include: a merger agreement in the same form as that prescribed in § 784 of Title 5, Delaware Code; certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank, as provided in § 784(b) of Title 5, Delaware Code; a copy of the complete application as submitted to the Federal Deposit Insurance Corporation (the "FDIC"), the Board of Governors of the Federal Reserve System (the "FRB") or the Office of the Comptroller of the Currency (the "OCC"), as applicable; the \$1,150 investigation fee as provided in § 792 of Title 5, Delaware Code; a cover letter indicating that the application is made pursuant to § 795D, § 795F or § 795 G of Title 5, Delaware Code, as applicable, and providing information about the

disposition of existing locations of the merging Delaware state bank, if any; and, when applicable, the information required by regulation 5.803.0011.

**2. Application For Waiver Of The 30% Concentration Limit**

A Delaware bank that is a party to a merger in accordance with §§ 795D or 795F (with a resulting state bank) or § 795G (with a resulting state or national bank) of Title 5, Delaware Code, in which the resulting bank, upon consummation of the transaction, would control 30% or more of the total amount of deposits of insured depository institutions in this State, may apply for a waiver of the 30% concentration limit in accordance with § 795H of Title 5, Delaware Code, as part of the merger application to the Commissioner.

A Delaware bank that is a party to a merger in accordance with §§ 795C or 795E of Title 5, Delaware Code, in which the resulting bank would be a national bank and, upon consummation of the transaction, would control 30% or more of the total amount of deposits of insured depository institutions in this State, may apply for a waiver of the 30% concentration limit in accordance with § 795H of Title 5, Delaware Code, by submitting to the Commissioner a copy of the complete application as submitted to the FDIC, the FRB or the OCC, as applicable, and a cover letter indicating that the application is made pursuant to § 795H of Title 5, Delaware Code, and providing information about the disposition of existing locations of the merging Delaware bank.

**3. Additional Information, Investigation, Notice, Comment and Hearing**

In addition to the documents filed in accordance with this regulation, the Commissioner at his discretion may require additional information as deemed necessary, conduct an investigation, order public notice of the merger, period for public comment, and/or a public hearing. The application shall not be considered complete until such additional matters, if any, are completed.

**4. Findings and Decision**

Within 30 days of receipt of the completed application, the Commissioner shall issue Findings and Decision approving or disapproving the application. Any merging bank whose application is disapproved shall receive an opportunity to amend its application to satisfy the objections of the Commissioner.

**5. Filing Of Merger Agreement With The Secretary Of State**

Upon receipt of approval of the merger by the FDIC, the FRB or the OCC, as applicable, and verification that the provisions of § 252 of Title 8, Delaware Code, have

been complied with, the Commissioner shall affix his signature of approval to the merger agreement for filing with the Secretary of State.

\* Terms used in this regulation are as defined in § 795 of Title 5, Delaware Code, unless otherwise noted.

Document Control No.: 20-15/97/12/07

**Regulation No.: 5.833.0004**

**Effective Date: January 12, 1998**

**APPLICATION BY AN OUT-OF-STATE SAVINGS INSTITUTION, OUT-OF-STATE SAVINGS AND LOAN HOLDING COMPANY OR OUT-OF-STATE BANK HOLDING COMPANY TO ACQUIRE A DELAWARE SAVINGS BANK OR DELAWARE SAVINGS AND LOAN HOLDING COMPANY (5 DEL. C. §833)**

**INSTRUCTIONS**

This Application is to be filed by an “out-of-state savings institution”, “out-of-state savings and loan holding company” or an “out-of-state bank holding company” (as defined in Section 831 of Title 5 of the Delaware Code), or subsidiary thereof, for the purpose of acquiring a Delaware savings bank or Delaware savings and loan holding company pursuant to the Savings Bank Acquisition Act (5 Del. C. §831 et seq.).

This Application is to be completed, executed and acknowledged by a lawfully empowered officer of the out-of-state savings institution, savings and loan holding company or bank holding company. The completed Application and required exhibits should be filed with the Office of the State Bank Commissioner, Dover, Delaware, in duplicate, accompanied by a non-refundable filing fee made payable to the State of Delaware in the amount of five thousand seven hundred and fifty dollars (\$5,750.00), together with a non-refundable processing fee in the amount of one thousand one hundred and fifty dollars (\$1,150.00) made payable to the Office of the State Bank Commissioner. **THE COMMISSIONER WILL NOT DEEM ANY APPLICATION AS FILED UNTIL THE COMMISSIONER HAS DETERMINED THAT ALL OF THE INFORMATION REQUESTED IN THE APPLICATION HAS BEEN PROVIDED; THAT THE CERTIFICATE HAS BEEN PROPERLY SIGNED AND ACKNOWLEDGED; THAT ALL REQUIRED EXHIBITS ARE ATTACHED; AND THAT ALL FEES HAVE BEEN PAID.**

**Application Process**

Upon notification by the Commissioner that this

Application is deemed as filed, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for three (3) consecutive weeks, a notice of its intention to acquire a Delaware savings bank or Delaware savings and loan holding company, and, if applicable, to form an interim savings bank in connection therewith. Such notice shall include the date, time and location of the public hearing on the application as established by the Commissioner. Such notice shall expressly invite members of the public to examine the Application on file with the Office of the State Bank Commissioner and to submit comments regarding the Application to the Office of the State Bank Commissioner. A public hearing will be conducted by the Commissioner or the Commissioner’s designee in accordance with Chapter 101 of Title 29, Delaware Code, to review the Application and to take such testimony and to gather such evidence as the Commissioner or the Commissioner’s designee deems necessary to determine whether the proposed acquisition (and, where applicable, the formation of the proposed interim savings bank) will serve the public convenience and advantage pursuant to the criteria set forth in 5 Del. C. §833 (b). When applicable, the Commissioner or his designee will also consider whether a proposed acquisition should be approved even though the acquiring out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary thereof, would control, together with any affiliated insured depository institution, 30 percent or more of the total amount of deposits of insured depository institutions in this State, as provided in 5 Del. C. §832(b). A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of any transcription of the proceedings requested by the Commissioner or the Commissioner’s designee shall be borne by the applicant; in all other instances, the expense of such transcription shall be borne by the person requesting it. The Commissioner or the Commissioner’s designee will issue preliminary findings of fact and law and make the same available for comment to the applicant and all parties shall have thereafter twenty (20) days to submit in writing to the Commissioner or the Commissioner’s designee exceptions, comments and arguments respecting the preliminary findings. If the Commissioner or the Commissioner’s designee presides at a hearing conducted pursuant to this regulation and if the decision on the applicant is not adverse to the applicant, the Commissioner or the Commissioner’s designee has the right to waive the preliminary findings of fact and law and proceed directly to the entry of a final order.

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CONFIDENTIAL INFORMATION

An applicant may request that specific information included in this Application be treated as confidential. Any information or exhibits for which the applicant claims the designation of confidential shall be segregated at the end of the Application as a separate exhibit which the applicant shall designate as "confidential". The Commissioner, in his sole discretion, will determine whether any or all of the information for which the "confidential" designation is requested by the applicant meets the criteria for confidentiality set forth in 29 Del. C. §10112(b)(4). All portions of this Application which the Commissioner does not designate as "confidential" will be made available for public inspection and copying.

**APPLICATION FOR AUTHORITY OF AN OUT-OF-STATE SAVINGS INSTITUTION, O U T - O F - S T A T E SAVINGS AND LOAN HOLDING COMPANY OR OUT-OF-STATE BANK HOLDING COMPANY TO ACQUIRE A DELAWARE SAVINGS BANK OR DELAWARE SAVINGS AND LOAN HOLDING COMPANY**

**I. Certification**

The undersigned, \_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Name of out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company) having first been duly authorized, does hereby make application on behalf of \_\_\_\_\_  
to acquire \_\_\_\_\_  
(Name of Delaware Savings Bank or Delaware Savings and Loan Holding Company)

The undersigned acknowledges that he/she has read and is familiar with the provisions of the Savings Bank Acquisition Act of 1987 and all rules and regulations issued in connection therewith; that all of the information provided as part of this Application is, to the best of the knowledge and belief of the undersigned, true and accurate; and that he/she is duly authorized to execute this certification on behalf of the applicant.

\_\_\_\_\_

**WITNESS**

\_\_\_\_\_

Sworn to and subscribed before me, a Notary Public of the State of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_

**II. Identification of Applicant**

A. State formal name and state of incorporation of applicant.

B. Identify the name and address of a resident of the State of Delaware who is designated as agent of the applicant for the service of any paper, notice or legal process upon applicant in connection with any matter arising out of Subchapter III, Chapter 8, Title 5, Delaware Code.

**III. Acquisition**

A. Identify the Delaware savings bank or Delaware savings and loan holding company to be acquired (if a savings and loan holding company, further identify the savings bank subsidiary or subsidiaries of such holding company).

B. Describe the method of acquisition of the Delaware savings bank or Delaware savings and loan holding company (enclose as an exhibit to this Application a copy of the acquisition agreement between the applicant and the Delaware savings bank or Delaware savings and loan holding company).

C. Indicate whether this Application is the only pending application for the acquisition of a Delaware bank or savings bank or Delaware bank holding company or savings and loan holding company. If not, identify and attach a copy of any other application pending.

D. Attach as an exhibit a statement of counsel that the Delaware savings bank or Delaware savings and loan holding company is not prohibited by its articles of incorporation, charter, or legislative act from being acquired.

E. If not previously filed, attach as exhibits the most recent statement of income and condition, together with the three most recent annual statements of income and condition of each savings bank subsidiary of the Delaware savings and loan holding company to be acquired filed with the Office of the State Bank Commissioner or, if a federal savings bank, the Office of Thrift Supervision.

F. State whether the proposed acquisition has received: (1) the necessary approval of the stockholders of the out-of- state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company and the Delaware savings and loan holding company or Delaware savings bank (if so, attach certified copies of the resolutions of such approval; if not, describe the status of such approval processes); and (2) whether all necessary federal regulatory approvals have been obtained (if so, provide copies of such approvals; if not, describe the status of the application process for such approvals and attach actual or pro forma applications without exhibits except for transmittal correspondence, and any responses from the federal regulatory authorities).

IV. Information regarding formation of interim savings bank (OPTIONAL).

If applicant has applied for a certificate of public convenience and advantage for an interim savings bank from the Office of Thrift Supervision, attach the certificate of public convenience and advantage issued with respect to such interim savings bank. If such certificate has not been issued, provide a copy of the application to form such interim savings bank without exhibits other than the transmittal letter and any responses received from the Office of Thrift Supervision.

V. Information addressing the criteria for approving or disapproving an acquisition provided for at 5 Del. C. §833(b).

A. Financial history of the applicant.

1. Describe in narrative fashion the financial history of the applicant, its affiliates, and its bank, savings bank and non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the out-of-state savings institution operates or where the out-of-state bank holding company or out-of-state savings and loan holding company maintains a bank or savings bank subsidiary, or with the Office of the Comptroller of the Currency or the Office of Thrift Supervision; provided, that such filings shall not be required with respect to any bank or savings bank under the jurisdiction of a bank regulatory authority with whom the State Bank Commissioner shall have entered into a cooperative agreement for the provision of such reports pursuant to the provisions of 5 Del. C. §834(4) or any other provision of Title 5.

2. Provide for the past three calendar years, copies of all Form 10-K's and quarterly reports filed on Form 10-Q (or their state equivalents) (if required) with respect to the out-of-state savings institution, out-of-state bank holding company or out-of-state savings and loan holding company, together with all proxy statements, tender offer materials, other disclosure documents, etc., relating to the proposed application (if required), or any other acquisition undertaken by applicant.

If an applicant is not required to file any report under the Securities and Exchange Act of 1934 (15 U.S.C. §78 et seq. as amended), or an equivalent state filing, the applicant shall file information substantially equivalent to the information which would otherwise be contained in such reports in a form reasonably satisfactory to the Bank Commissioner, including the previous three years' statements of condition and a three year income statement, statements of changes in shareholders' equity, all as prepared in accordance with generally accepted

accounting principles.

B. Provide a statement in narrative form of a three (3) year business plan of the applicant for the Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, or the Delaware savings bank to be acquired. Such plan should include but is not limited to a description of:

1. In detail, any proposed change during the first year of operation in the products or services offered by the Delaware savings bank or the subsidiary or subsidiaries of the Delaware savings and loan holding company;

2. In detail, any contemplated or proposed change during the first year after the effective date of the acquisition in the executive officers of the Delaware savings bank or the Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, with specific reference to the termination, transfer, or reduction of authority or responsibilities of any such executive officers;

3. Using the current table of organization of the Delaware savings bank or Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, describe proposed changes in levels of employment among non-management personnel;

4. Any change in the geographic market to be served by the Delaware savings bank or the subsidiary of the Delaware savings and loan holding company (with specific reference to the opening, closing or expansion of branches);

5. Additional products or services which the Delaware savings bank or subsidiary of the Delaware savings and loan holding company will provide after the acquisition;

6. For the next three (3) years, proposed changes in the capitalization of the Delaware savings bank or the Delaware savings and loan holding company and any subsidiary thereof;

With respect to each of the above subject areas, include specific references, if any, to any relevant sections of the acquisition agreement, merger agreement with an interim savings bank, any other agreement or understanding (with any person or party) not incorporated in such acquisition or merger agreements or any exhibits or supplements as to any of such items.

C. State whether the applicant, or any subsidiary thereof, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State after the proposed acquisition. If so, explain why the Application should be approved in accordance with the convenience and needs of the public of this State.

D. If applicant has acquired or has made application to acquire any other Delaware bank holding company, Delaware savings and loan holding company, Delaware bank, or Delaware savings bank describe in detail the extent to which the acquisition which is the subject of this Application will affect present competition between the savings bank or savings bank subsidiaries of a Delaware savings and loan holding company to be acquired under this Application and the Delaware bank or Delaware savings bank or subsidiary of a Delaware bank holding company or Delaware savings and loan holding company previously acquired or pending acquisition approval.

E. Describe in detail the activities which applicant proposes for fostering economic development and employment within the State of Delaware. By way of historical background, and as part of such description, include the following information:

1. With respect to the commercial loan activity of the applicant and the Delaware savings bank or subsidiary of the Delaware savings and loan holding company to be acquired, the total dollar value, and the percentage of total commercial loans outstanding, of the following categories of commercial loans:

- a. Small business loans (SBA);
- b. Other small business loans;
- c. Industrial authority development loans;
- d. Financing of ESOP's and leveraged buy-outs;

e. Financing directly or indirectly of non-profit, community development projects;

f. Loans in other categories designed to stimulate industrial growth and employment.

2. Enclose for both the applicant and/or its subsidiaries and the Delaware savings bank or subsidiaries of the Delaware savings and loan holding company to be acquired copies of the most recent report filed pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. §§2801-9.

Document Control No.: 20-15/97/12/09

Regulation No.: 5.844.0009  
 Effective Date: January 12, 1998

APPLICATION BY AN OUT-OF-STATE BANK  
 HOLDING COMPANY TO ACQUIRE A DELAWARE  
 BANK OR BANK HOLDING COMPANY  
 5 DEL. C. §844

INSTRUCTIONS

This Application is to be filed by an "out-of-state bank holding company" (as defined in Section 801 of Title 5

of the Delaware Code) for the purpose of acquiring a Delaware bank or bank holding company pursuant to the Delaware Interstate Banking Act (5 Del.C. §841 et seq.).

This Application is to be completed, executed and acknowledged by a lawfully empowered officer of the out-of-state bank holding company. The completed Application and required exhibits should be filed with the Office of the State Bank Commissioner, Dover, Delaware in duplicate, accompanied by a non-refundable filing fee made payable to the State of Delaware in the amount of five thousand seven hundred and fifty dollars (\$5,750.00), together with a non-refundable processing fee made payable to the Office of the State Bank Commissioner in the amount of one thousand one hundred and fifty dollars (\$1,150.00). THE COMMISSIONER WILL NOT DEEM ANY APPLICATION AS FILED UNTIL THE COMMISSIONER HAS DETERMINED THAT ALL OF THE INFORMATION REQUESTED IN THE APPLICATION HAS BEEN PROVIDED; THAT THE CERTIFICATE HAS BEEN PROPERLY SIGNED AND ACKNOWLEDGED; THAT ALL REQUIRED EXHIBITS ARE ATTACHED; AND THAT ALL FEES HAVE BEEN PAID.

APPLICATION PROCESS

Upon notification by the Commissioner that this Application is deemed as filed, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for three (3) consecutive weeks, a notice of its intention to acquire a Delaware bank holding company or bank, and, if applicable, to form an interim bank in connection therewith. Such notice shall include the date, time and location of the public hearing on the application as established by the Commissioner. Such notice shall expressly invite members of the public to examine the Application on file with the Office of the State Bank Commissioner and to submit comments regarding the Application to the Office of the State Bank Commissioner. A public hearing will be conducted by the Commissioner or his designee in accordance with Chapter 101 of Title 29, Delaware Code to review the Application and to take such testimony and to gather such evidence as the Commissioner or his designee deems necessary to determine whether the proposed acquisition (and, where applicable, the formation of the proposed interim bank) will serve the public convenience and advantage pursuant to the criteria set forth in 5 Del.C. §844(b). When applicable, the Commissioner or his designee will also consider whether a proposed acquisition should be approved even though the acquiring out-of-state bank holding company, or any subsidiary thereof, would control, together with any affiliated insured depository

institution, 30 percent or more of the total amount of deposits of insured depository institutions in this State, as provided in 5 Del. C. § 843(b). A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of any transcription of the proceedings requested by the Commissioner or his designee shall be borne by the applicant; in all other instances, the expense of such transcription shall be borne by the person requesting it. The Commissioner or his designee will issue preliminary findings of fact and law and make the same available for comment to the applicant and all parties having presented data, views or argument at the hearing. Said parties shall have thereafter twenty (20) days to submit in writing to the Commissioner exceptions, comments and arguments respecting the preliminary findings. If the Commissioner or his designee presides at a hearing conducted pursuant to this regulation and if the decision on the Application is not adverse to the applicant, the Commissioner or his designee has the right to waive the preliminary findings of fact and law and may instead proceed directly to the entry of a final order.

CONFIDENTIAL INFORMATION

An applicant may request that specific information included in this Application be treated as confidential. Any information or exhibits for which the applicant claims the designation of confidential shall be segregated at the end of the Application as a separate exhibit which the applicant shall designate as "confidential". The Commissioner, in his sole discretion, shall determine whether any or all of the information for which the "confidential" designation is requested by the applicant meets the criteria for confidentiality set forth in 29.Del. C. §10112(b)(4). All portions of this Application which the Commissioner shall not designate as "confidential" shall be made available for public inspection and copying in the manner provided by law.

APPLICATION FOR AUTHORITY OF AN OUT-OF-STATE BANK HOLDING COMPANY TO ACQUIRE A DELAWARE BANK OR BANK HOLDING COMPANY

I. Certification

The undersigned, \_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Name of Bank Holding Company)

having first been duly authorized, does hereby make application on behalf of \_\_\_\_\_ to acquire \_\_\_\_\_  
(Name of Delaware Bank or Bank Holding Company)

The undersigned acknowledges that he/she has read and is familiar with the provisions of the Delaware Interstate Banking Act and all rules and regulations issued in connection therewith; that all of the information provided as part of this Application is, to the best of the knowledge and belief of the undersigned, true and accurate; and that he/she is duly authorized to execute this certification on behalf of the applicant.

WITNESS

Sworn to and subscribed before me, a Notary Public of the State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

II. Identification of Applicant

A. State formal name and state of incorporation of applicant.

B. Identify the name and address of a resident of the State of Delaware who is designated as agent of the applicant for the service of any paper, notice or legal process upon applicant in connection with any matter arising out of Subchapter IV, Chapter 8, Title 5, Delaware Code.

III. Acquisition

A. Identify the Delaware bank or bank holding company to be acquired (if a bank holding company, further identify the bank subsidiary or subsidiaries of such holding company).

B. Describe the method of acquisition of the Delaware bank holding company or bank (if not otherwise included as part of the Application for Formation of an Interim Bank, enclose as an exhibit to this Application a copy of the acquisition agreement between the applicant and the Delaware bank or bank holding company).

C. Indicate whether this Application is the only pending application for the acquisition of a Delaware bank or bank holding company. If not, identify and attach a copy of any other application pending.

D. Attach as an exhibit a statement of counsel that the Delaware bank holding company and/or Delaware bank are not prohibited by its articles of incorporation, charter, or legislative act from being acquired.

E. If not previously filed, attach as exhibits the most recent statement of income and condition, together with the three most recent annual statements of income and condition of each bank subsidiary of the Delaware bank

holding company to be acquired filed with the Office of the State Bank Commissioner or, if a national bank, the Comptroller of the Currency.

F. State whether the proposed acquisition has received: (1) the necessary approval of the stockholders of the out-of-state bank holding company and the Delaware bank holding company or bank (if so, attach certified copies of the resolutions of such approval; if not, describe the status of such approval processes); and (2) whether all necessary federal regulatory approvals have been obtained (if so, provide copies of such approvals; if not, describe the status of the application process for such approvals and attach actual or pro forma applications without exhibits except for transmittal correspondence, and any responses from the federal regulatory authorities).

#### IV. Information regarding formation of interim bank (OPTIONAL).

A. If applicant is seeking a certificate of public convenience and advantage from the Commissioner for an interim bank as part of this Application, then applicant should comply with the provisions of Regulation No. 5.121.0002 with respect to the formation of such interim bank as part of this Application; provided, however, that an application for authorization to form an interim bank which is filed as part of this Application by an out-of-state bank holding company shall be governed by the notice, publication and hearing requirements of this Application as described in the section captioned "Application Process", rather than the notice and publication requirements of Regulation No. 5.121.0002.

B. If applicant has previously applied for a certificate of public convenience and advantage for an interim bank from the Comptroller of the Currency, attach the certificate of public convenience and advantage issued with respect to such interim bank. If such certificate has not been issued, provide a copy of the application to form such interim bank without exhibits other than the transmittal letter and any responses received from the Office of the Comptroller of the Currency.

#### V. Information addressing the criteria for approving or disapproving an acquisition provided for at 5 Del.C. §844(b).

##### A. Financial history of the applicant.

1. Describe in narrative fashion the financial history of the applicant, its affiliates, and its bank and non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided, that

such filings shall not be required with respect to any bank subsidiary under the jurisdiction of a bank regulatory authority with whom the State Bank Commissioner shall have entered into a cooperative agreement for the provision of such reports pursuant to the provisions of 5 Del.C. §845 or any other provision of Title 5.

2. Provide for the past three calendar years, copies of all Form 10-K's and quarterly reports filed on Form 10-Q (or their state equivalents) (if required) with respect to the bank holding company, together with all proxy statements, tender offer materials, other disclosure documents, etc. relating to the proposed application (if required), or any other acquisition undertaken by applicant.

If an applicant is not required to file any report under the Securities Exchange Act of 1934 (15 U.S.C. §78 et seq. as amended), or an equivalent state filing, the applicant shall file information substantially equivalent to the information which would otherwise be contained in such reports in a form reasonably satisfactory to the Commissioner, including the previous three years' statements of condition and a three year income statement, statements of changes in shareholders' equity, all as prepared in accordance with generally accepted accounting principles.

B. Provide a statement in narrative form of a three (3) year business plan of applicant for the Delaware bank holding company and its bank and non-bank subsidiaries, or the Delaware bank to be acquired. Such plan should include but is not limited to a description of:

1. In detail, any proposed change during the first year of operation in the products or services offered by the Delaware bank or the subsidiary or subsidiaries of the Delaware bank holding company;

2. In detail, any contemplated or proposed change during the first year after the effective date of the acquisition in the executive officers of the Delaware bank or the Delaware bank holding company, with specific reference to the termination, transfer, or reduction of authority or responsibilities of any such executive officers;

3. Using the current table of organization of the Delaware bank or bank subsidiary, describe proposed changes in levels of employment among non-management personnel.

4. Any change in the geographic market to be served by the Delaware bank or the subsidiary of the Delaware bank holding company (with specific reference to the opening, closing or expansion of branches);

5. Additional products or services which the Delaware bank or subsidiary of the Delaware bank holding company will provide after the acquisition;

6. For the next three (3) years, proposed changes in the capitalization of the Delaware bank or the

Delaware bank holding company and any subsidiary thereof.

With respect to each of the above subject areas, include specific references, if any, to any relevant sections of the acquisition agreement, merger agreement with an interim bank, any other agreement or understanding (with any person or party) not incorporated in such acquisition or merger agreements or any exhibits or supplements as to any of such items.

C. State whether the applicant, or any subsidiary thereof, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State after the proposed acquisition. If so, explain why the Application should be approved in accordance with the convenience and needs of the public of this State.

D. If applicant has acquired or has made application to acquire any other Delaware bank holding company or Delaware bank, describe in detail the extent to which the acquisition which is the subject of this Application will affect present competition between the banks or bank subsidiaries of a Delaware bank holding company to be acquired under this Application and the Delaware bank or bank subsidiary of a Delaware bank holding company previously acquired or pending acquisition approval.

E. Describe in detail the activities which applicant proposes for fostering economic development and employment within the State of Delaware. By way of historical background, and as part of such description, include the following information:

1. With respect to the commercial loan activity of the bank subsidiaries of both the applicant and the Delaware bank or bank subsidiary of the bank holding company to be acquired, the total dollar value, and the percentage of total commercial loans outstanding, of the following categories of commercial loans:

- a. Small business loans (SBA)
- b. Other small business loans
- c. Industrial authority development loans
- d. Financing of ESOP's and leveraged buy-

outs

e. Financing directly or indirectly of non-profit, community development projects

f. Loans in other categories designed to stimulate industrial growth and employment

2. Enclose for both the bank subsidiary or subsidiaries of applicant and the Delaware bank or bank subsidiaries of the bank holding company to be acquired copies of the most recent report filed pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. §2801 et seq.

Document Control No.: 20-15/97/12/10

Regulation No.: 5.777.0002  
Effective Date: January 12, 1998

**APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND ADVANTAGE FOR A LIMITED  
PURPOSE TRUST COMPANY PURSUANT TO SUBCHAPTER V OF CHAPTER 7 OF TITLE 5 OF THE  
DELAWARE CODE**

Any application made to the State Bank Commissioner for a Certificate of Public Convenience and Advantage for a Limited Purpose Trust Company, pursuant to Subchapter V of Chapter 7 of Title 5 of the Delaware Code, shall be in the form appended hereto and shall be accompanied by any documents called for by such form, a copy of the Articles of Association of the Proposed Limited Purpose Trust Company, and a non-refundable investigation fee of One Thousand One Hundred Fifty Dollars (\$1,150.00). Procedures for an application to form a limited purpose trust company are specified in regulation 5.701/774.0001.

Document Control No.: 20-15/97/12/04

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3)(c) (16 Del.C. 122(3)(c))

State of Delaware  
Trauma System Rules and Regulations

**I. SUMMARY of the EVIDENCE and INFORMATION SUBMITTED**

The public hearing concerning the proposed Delaware Trauma System Regulations was conducted on August 26, 1997 at 1:30 PM at the Jesse Cooper Building, room 309, Dover. There were eight people present, including Division of Public Health staff. The chairperson of the Delaware Trauma System Committee spoke on the history of the development of the regulations, and the Trauma System Coordinator gave a brief overview of their contents. Public comments in favor of the regulations were heard from representatives of Christiana Care Health Systems and the Delaware Healthcare Association. The exhibits entered into the record included affidavits of publication from the News Journal and Delaware State News, a letter of support from the Delaware Healthcare Association, and clarification from the Registrar on inclusion of the triage scheme with the regulations. The hearing was concluded at 2:15 PM with the record left open for comment until 4:30 PM on August 31, 1997.

**II. SUMMARY of FINDINGS of FACT**

During the advertisement period, no comments concerning these regulations were received. Based on the outcome of the hearing and the favorable comments supporting the regulations delivered there, and with no comments to the contrary, the Hearing Officer recommended that the proposed Delaware State Trauma Regulations be approved as drafted and presented at the hearing on August 26, 1997.

**III. DECISION to ADOPT**

For the foregoing reasons, the Department of Health and Social Services and Division of Public Health concur in the decision to adopt these Trauma System Rules and Regulations. The adoption order was signed on December 2, 1997 by Gregg C. Sylvester, MD, Acting Secretary of the Department.

**IV. TEXT and CITATION of REGULATIONS**

The text of the regulations adopted hereby shall be in the form attached hereto.

**V. EFFECTIVE DATE of ORDER**

The effective date of this Order shall be ten days from the date of the appearance of the final regulations in the Register of Regulations.

**VI. OTHER FINDINGS or CONCLUSIONS**

There were no other findings or conclusions required by the law under which the agency has authority to act.

**VII. DIVISION of PUBLIC HEALTH**

Gregg C. Sylvester, M.D., M.P.H., Director

STATE OF DELAWARE  
TRAUMA SYSTEM RULES and REGULATIONS

## I. PURPOSE

The purpose of these Rules and Regulations is to establish and define the conditions under which the Delaware Statewide Trauma System functions. The goal of this Trauma System is to assure that every person injured in Delaware receives the same high quality care, thus decreasing morbidity and mortality from injury.

## II. AUTHORITY

These Rules and Regulations are promulgated pursuant to the authority of Title 16 Delaware Code, Chapter 97. Emergency Medical Services Systems.

## III. DEFINITIONS

## ACLS -

The Advanced Cardiac Life Support Course of the American Heart Association.

## Attending

A physician with practice privileges delineated by the hospital's medical staff.

## ATLS

The Advanced Trauma Life Support Course of the American College of Surgeons.

## Board certified

A physician certified by an appropriate specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association.

## Bypass

A request by a hospital to an Emergency Medical Service that patient (s) be directed to another hospital's Emergency Department due to a shortage or unavailability of beds, equipment, personnel, or other essential resource.

## Classification of injuries

Minor injuries - Those patients with an Injury Severity Score less than 9.

Moderate injuries - Those patients with an Injury Severity Score between 9 and 15.

Major (severe) injuries - Those patients with an Injury Severity Score greater than 15.

## Community Trauma Center

An acute care hospital that provides assessment, resuscitation, stabilization, and triage of all trauma patients, arranging for timely transfer of those patients requiring the additional resources of a Regional Trauma or Specialty Center and delivering definitive care to those whose needs match the resources of the Community Trauma Center.

## Continuing medical education (CME) credit

Educational hours for physicians approved by the Accreditation Council of Continuing Medical Education or an agency recognized by this council.

## Credentialing process

A hospital's procedure for granting practice privileges to healthcare providers.

## "D"

Desirable requirement for trauma facilities; encouraged but not required for designation.

## Dedicated

A resource used solely for a specific program.

## Definitive care

A level of medical intervention capable of providing comprehensive services for a patient's injuries and associated conditions.

## Demonstrated Commitment

Provision of evidence (visible and written) that demonstrates clearly an institution-wide commitment to trauma care.

## Designation

A process through which a hospital is confirmed by the Division of Public Health to have the appropriate resources to manage patients with injuries of particular degrees of severity, and is granted the authorization to function as a Delaware Trauma Center.

“E”

Essential requirement for trauma facilities.

EMS

Emergency Medical Services. The arrangement of personnel, facilities, equipment, transportation and communication to provide for the effective and coordinated delivery of medical care in emergency situations resulting from accidents, illnesses, or natural disasters.

Hospital Trauma Quality Management Program

The review program within each Trauma Center which monitors such aspects of the Trauma Program as adherence to policies and patient outcome with the goal of assuring that optimal care is continuously provided.

Immediately Available

This implies the physical presence of a resource in a stated location at the time it is needed by the trauma patient.

Inclusive Trauma Care System

A Trauma Care System which incorporates every acute care facility in the defined region into a system in order to provide a continuum of services for all injured persons who require medical care; in such a system, the injured patient's needs are matched to the appropriate hospital resources.

In-house

Physically present in the hospital.

Injury Control

Methodologies designed for the purpose of preventing and eliminating injuries.

Injury Severity Score (ISS)

A retrospective summary score derived by applying a prescribed scoring system and mathematical formula to a listing of a trauma patient's injuries. Use of this scoring system allows objective comparisons of trauma patients based on their injuries.

Interfacility transfer

The transfer of a patient from one hospital to another hospital.

**[Interpretations to Standards**

**Information issued by the Division of Public Health defining acceptable methods for hospitals to demonstrate compliance with the Trauma Center Standards.]**

n/a

A standard which is not applicable to a particular level of trauma facility or participating hospital.

On-call

Committed for a specific time period to be available and respond within an agreed amount of time to provide care for a patient in the hospital.

PALS

The Pediatric Advanced Life Support Course of the American Heart Association.

Participating Hospital

An acute care facility which transfers trauma patients with moderate or severe injuries to Trauma Centers after initial resuscitation. When necessary, this facility may provide care to trauma patients with minor injuries. Participating hospitals contribute data to the Delaware Trauma System Registry and Quality Improvement Program.

Pediatric specialists

Certified pediatric specialists with a commitment to trauma or certified general practitioners with special training, experience, and continuing education relevant to pediatric trauma care.

Pediatric Trauma Centers

Children's hospitals which meet the standards for a particular classification of Trauma Center within Delaware's Pediatric Trauma Standards and the corresponding classification in Delaware's Adult Trauma Standards.

Prevention

Efforts to decrease the numbers and severity of traumatic injuries.

Promptly Available

Implies the physical presence of health professionals in a stated location within a short period of time, which is defined by the Trauma Director, incorporated into the written protocols of the Trauma Service, and continuously monitored by the Quality Improvement Program.

Protocols

Written standards for clinical practice in a variety of situations within the Trauma System.

Regional Level 1 Trauma Center

A regional resource Trauma Center that has the capability of providing leadership and comprehensive, definitive care for every aspect of injury from prevention through rehabilitation.

#### Regional Level 2 Trauma Center

A regional Trauma Center with the capability to provide initial care for all trauma patients. Most patients would continue to be cared for in this Center; there may be some complex cases which would require transfer for the depth of services of a Regional Level 1 or Specialty Center.

#### Response Time

Time interval between notification and arrival of the general surgeon or surgical specialist in the Emergency Department or Operating Room.

#### Transfer agreement

A formal written agreement between hospitals which provides for the acceptance of patients in transfer.

#### Trauma

A term derived from the Greek for "wound", it refers to any bodily injury. Injury is the result of an act that damages, harms, or hurts; unintentional or intentional damage to the body resulting from acute exposure to mechanical, thermal, electrical, or chemical energy or from the absence of such essentials as heat or oxygen.

#### Trauma Center

A specialized hospital distinguished by the immediate availability of specialized surgeons, physician specialists, anesthesiologists, nurses, and resuscitation and life support equipment on a 24-hour basis to care for severely injured patients or those at risk for severe injury.

#### [Trauma Facility

**An acute care hospital which has received and maintains current State designation as a Trauma Center.]**

#### Trauma Registry

A data base to provide information for analysis and evaluation of the quality of patient care, including epidemiological and demographic characteristics of trauma patients. The 'Expanded' data set provides a basis for the hospital's Trauma Quality Program; the 'Minimal' data set collects largely demographic information.

#### Trauma System Quality Management Program

The program which reviews aspects of the Trauma System such as interfacility transfers and triage decisions with the goal of assuring that the various components of the Trauma Care System are functioning optimally.

#### Trauma Team

A team approach is required for the optimal care of patients with multiple-system injuries. The composition of the trauma team and roles of the members are to be defined by the Trauma Director. The Trauma Surgeon Team Leader is responsible for overseeing and coordinating the operation of the Trauma Team to provide optimal patient care throughout hospitalization.

#### Triage

The sorting of patients in terms of priority need for care, so that appropriate treatment, transportation, and destination decisions can be made according to predetermined protocols.

#### Verification

A process in which the trauma care capability and performance of an institution are evaluated by experienced on-site reviewers.

## IV. DELAWARE TRAUMA CENTER DESIGNATION PROCESS

### I. Responsibilities- Division of Public Health

#### A. Preparation for verification visits

1. Provide staff support for the Trauma Center Designation Process.
2. Make verification visit arrangements with the American College of Surgeons (ACS).
3. Develop and disseminate a timeline for the designation process.
4. Hold educational and informational forums about the verification process and hospital role, including mock surveys for hospitals desiring them.

#### B. Contract with American College of Surgeons for verification visits

1. Team composition and requirements
  - a. Familiarity with similar size geographical region and facilities
  - b. No conflicts of interest

c. Regional Trauma Centers Levels 1 and 2:

- 2 Trauma Surgeons      - 1 trauma RN
- 1 Neurosurgeon
- 1 E.M. physician

d. Community Trauma Centers (Level 3):

- 2 Trauma Surgeons
- 1 E. M. physician

e. Participating Hospitals (Level 4):

- Division of Public Health designees

2. Timeframe

a. ACS administrative costs decrease when multiple hospitals within one state are visited during the same time period.

b. It will be the individual hospital's decision as to when it is adequately prepared to begin the verification process. The Division of Public Health will hold periodic designation cycles for hospitals to apply for Trauma Center status.

3. Cost

a. Hospital fees for verification visits will include all ACS and surveyor fees.

4. Application form

a. The ACS requires a detailed application form. This form will be supplied to requesting hospitals by the Division of Public Health and forwarded to the ACS by the Division upon receipt of the completed applications.

5. Note- in any case where the American College of Surgeons does not provide the scope necessary to include a particular hospital in its verification process, the Director of the Division of Public Health may decide to allow that hospital to participate in the Delaware Trauma System under special circumstances. In this case, that hospital is encouraged to utilize the ACS to the extent to which applicable services are available, and the Division will arrange for a comparable verification visit by national trauma experts under individual contract with the Division. Fees and site visit reports of this team will be handled in the same manner as those of the ACS.

C. Coordinate site visits, surveyor accommodations, transportation, preparatory information to hospitals.

## II. Designation

A. The Director of the Division of Public Health will, under State of Delaware authority, establish an impartial Trauma Center Designation Committee by requesting the names of two nominees from each of the following Delaware organizations or chapters:

1. Association of Delaware Hospitals
2. American Neurosurgery Association, Delaware Chapter
3. Delaware Organization of Nurse Executives
4. Delaware Medical Society (request an anesthesiologist or intensivist)
5. American College of Surgeons, Delaware Chapter, Committee on Trauma
6. American College of Emergency Physicians, Delaware Chapter
7. Delaware Emergency Nurse Association and Critical Care Nurse Association
8. Delaware Orthopedic Surgeon Society
9. Representative of pediatric care.

B. The Director will appoint nine committee members who will provide geographic and institutional diversity from the nominations received for initial terms of one (three members), two (three members), or three (three members) years. Terms thereafter will be three years; committee members may be invited to serve up to two subsequent terms providing the Committee's diversity is maintained.

1. Committee members will be chosen by the Director of Public Health to participate in each Designation Committee assignment, with the selections designed to optimize impartiality and avoid conflict of interest related to the current action.

C. The Designation Committee will develop a template outlining the correlation between the ACS verification report and State of Delaware Trauma Center designation in terms of 'Essential' and 'Desirable' criteria. This template will be presented to the Delaware Trauma System Committee for review and recommendation to the Division of Public Health for approval.

D. All Designation Committee proceedings shall be confidential. Information discussed at meetings and the records thereof shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. All meeting attendees will be required to sign confidentiality statements and all written information distributed during the meetings will be collected prior to adjournment. Any documented breach of confidentiality will be referred to the Division of Public Health for appropriate action.

E. The ACS report on verification visits will be received by the Division of Public Health, which will forward the information to the Trauma Center Designation Committee. The Designation Committee will make recommendations to the Division on the category of Trauma Center designation for which each hospital has qualified, based on its review of the ACS site visit report and application of Delaware's correlational template. The Division Director will then designate the state's Trauma Centers based on these recommendations.

1. Categories of designation and timeframes

a. Full designation - 3 years

b. State Provisional designation- 1 year; deficient areas must be corrected and verified by the ACS within this period.

c. Nondesignation

d. Hospitals may be offered a lower designation level than originally applied for if they do not qualify for the higher level. If they accept the lower level designation they may apply again for a verification visit at the higher level at any time that they are ready, or may elect to remain at the designated level.

e. Hospitals not receiving full designation must notify the Division of Public Health within 30 days of status notification of their intent to correct deficiencies or to accept nondesignation. A written plan of correction including timeframes must be submitted if the hospital chooses to pursue designation. All corrections must be completed and verified within one year from the date of status notification. Hospitals will be informed whether or not their plan for correction is acceptable. The Division may require interim reports or on-site progress evaluations as a condition of approval of the written plan of correction.

F. The Delaware Division of Public Health will have a contractual agreement with each designated Trauma Center whereby the Trauma Center agrees to maintain commitment and resources commensurate with the standards of its designation level and to notify the Division in writing of intent to function at any lower level of designation. This contract will also serve as the mechanism by which a hospital receives permission to publicly refer to itself as a Delaware Trauma Center.

### III. Triage Scheme

A. Initial implementation of the Prehospital Triage Scheme will not occur until all Delaware hospitals have had a reasonable opportunity to have consultation visits, if desired, and verification visits from the American College of Surgeons.

B. In order to be considered a participant in Delaware's Prehospital Trauma Triage Scheme, an out-of-state facility must receive Delaware reciprocity as a Trauma Center by demonstrating current Trauma Center designation status and adherence to equivalent trauma standards.

### IV. Redesignation

A. ACS reverification visits will be scheduled by the Division of Public Health for those hospitals wishing to continue their Trauma Center status.

B. Subsequent site visits will focus heavily on quality management and patient care issues.

C. Re-designation categories and timeframes will be the same as those for initial designation. IV. Revocation of Designation, Appeal, and Re-instatement

### [V] ~~IV~~. Revocation of Designation, Appeal, and Re-instatement

A. It will be the responsibility of the Trauma Center Designation Committee to develop written Trauma Center Revocation of Designation, Appeal, and Reinstatement Policies which clearly outline the processes in detail. These policies will be submitted to the Delaware Trauma System Committee for review and recommendation to the Division for approval.

B. The Revocation of Designation process may be initiated by-

1. Documented violation of an essential Trauma Center standard, identified through-

a. A re-verification site visit,

b. an interim Quality Improvement visit,

c. an Evaluation Committee recommendation within the State Trauma System Quality Management program

d. a written complaint.

C. Process of investigation

1. The identifying agent will provide written notification of the violation to the Division of Public Health, including supporting documentation.

2. The Division will select the Designation Committee members assigned to conduct an investigation into the allegation.

a. The involved Trauma Center will be notified in writing with a request for its written response.

- b. The assigned Designation Committee will conduct an appropriate follow-up investigation.
- 3. The Designation Committee will submit its report and recommendation to the Division of Public Health.
  - a. Recommendation may be for any of the following:

- Probation until the deficiency is remedied and accepted by DPH
- Status change to Participating Hospital until the deficiency is remedied and accepted by DPH (revocation of Trauma Center designation)
- Continuation of current Trauma Center designation.

b. If probation or revocation of designation is recommended, the Designation Committee report will include recommended steps necessary for reinstatement. This will include verification of adequate correction by an in-state or out-of-state review team and may include interim reports or on-site progress evaluations.

c. If probation or revocation of designation is not recommended, the Designation Committee may recommend follow-up monitoring or reporting.

- 4. Action by the Division of Public Health with written notification to the hospital.

D. Appeal process

1. The involved Trauma Center will have the right to appeal any decision of the Division of Public Health. Written notification of the intent to appeal must be made to the Division within 30 days of notification of action.

2. The Division of Public Health and assigned Trauma Center Designation Committee will name an impartial panel to hear the hospital's case and make recommendations in accordance with the Designation Committee Appeal Policy.

E. Reinstatement process

1. When a hospital has corrected a problem which resulted in probation or revocation of designation, it will notify the Division of Public Health in writing, requesting reinstatement.

2. Based on the reinstatement steps recommended by the Designation Committee, the Division will arrange a review to verify resolution of the problem.

V. STATE of DELAWARE TRAUMA CENTER STANDARDS

	Regional Trauma Center		Community	Participating
	Level 1	Level 2	Trauma Center	Hospital
I. Demonstrated Commitment to the Trauma Program by hospital Administration and Medical Staff	E	E	E	D

(NOTE- Demonstration of hospital commitment will include-

- 1. Development and adoption of written resolution of support from both the Board of Trustees and the Medical Staff.
- 2. Establishment of written policies and procedures to provide and maintain the services for Trauma patients as outlined in Delaware's Trauma Center Standards.
- 3. Demonstrable evidence of budgetary support of the hospital's Trauma Program such as hospital-funded positions for Trauma Director, Nurse Coordinator, Registrar, and/or Trauma Quality Improvement Program personnel.
- 4. Adherence to State Trauma Registry guidelines for providing hospital Trauma Registry data to the State Trauma Registry for utilization in Trauma System management and Quality Improvement activities.
- 5. And establishment and maintenance of written transfer procedures and agreements with appropriate Trauma Centers, Speciality Centers, and hospitals, providing for movement of both critical and convalescing patients within the Trauma System. Compliance with these procedures is to be monitored by the Quality Improvement process in each institution. It is the responsibility of each receiving hospital to provide timely feedback to transferring hospitals on the status and outcome of all patients received.)

II. Documentation of EMS Involvement	E	E	E	D
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(NOTE- Active involvement in the Emergency Medical Services System will include-

- 1. Achievement and maintenance of Designated Paramedic Medical Command Center status. Additional methods of demonstrating compliance with this standard include-
- 2. Didactic or clinical participation in Emergency Medical Technician- Basic and/or Paramedic initial and/or continuing educational programs.
- 3. Membership on such committees as the Delaware Paramedic Advisory Council, Delaware EMS Advisory Committee, or Delaware Volunteer Firemen's Association by hospital personnel.)

### III. Hospital Organization

A. Trauma Service	E	E	E	n/a
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(NOTE- The Trauma Service is made up of all attending general surgeons who take trauma call. It is established by the Medical Staff and has the responsibility for the coordination of care of injured patients, the training of personnel, and trauma Quality Improvement within the Trauma Center. Privileges for surgeons participating in the Trauma Service are to be determined by the Medical Staff credentialing process. Patients with multiple-system or major injury must be evaluated by the Trauma Service with the surgeon responsible for the overall care of each patient clearly identifiable.

Written protocols and standards of care for the major trauma patient should include definitions of response and turnaround times as well as team participant roles.

In Regional and Community Trauma Centers, requirements for surgeons on the Trauma Service include board certification or eligibility, Advanced Trauma Life Support for Physicians provider certification (current), regular clinical involvement in trauma care, and documentation of annual continuing medical education in trauma care (at least 16 trauma-related Continuing Medical Education hours annually; 24 of these hours every 3 years must be obtained outside the institution).

	Regional Trauma Center Level 1	Level 2	Community Trauma Center	Participating Hospital
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#### 1. Trauma Service Support Personnel

A. Trauma Coordinator	E	E	E	n/a
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(NOTE- The Trauma Coordinator is fundamental to the development, implementation, and evaluation of the institution's Trauma Program. Working with the Trauma Director, the Trauma Coordinator is responsible for the organization of services and systems necessary for a multidisciplinary approach throughout the continuum of trauma care. The Trauma Coordinator role has the following components: clinical, educational, registry/quality improvement/research, administrative, and liaison. Records must be available documenting annual trauma-specific continuing education hours.)

B. Trauma Service Director	E	E	E	n/a
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(NOTE- The Trauma Service Director shall be a board-certified or board-eligible surgeon with demonstrated special competence in trauma care. Through the Quality Improvement process, the director will have responsibility for all trauma patients and administrative authority for the hospital's Trauma Program. The Director is responsible for recommending surgeon appointment to and removal from the Trauma Service, in conjunction with appropriate Medical Staff committees.

Additional qualifications for the Trauma Service Director include regular involvement in the care of injured patients, participation in trauma-related educational activities such as ATLS and continuing education for hospital physicians, nursing staff, and prehospital providers, and involvement in community or national trauma projects or organizations.)

C. Trauma Multidisciplinary Committee	E	E	E	n/a
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(NOTE- This committee should meet regularly for the purpose of peer-review. It should be chaired by the Trauma Director and have representation from all the major services that treat trauma patients, with membership including but not limited to the Trauma Coordinator, neurosurgeon, orthopedic surgeon, emergency medicine physician, and anesthesiologist. The tasks of this committee are to critically review, evaluate, and discuss the quality and appropriateness of care in cases of adverse outcome (complications and deaths, particularly unexpected deaths), monitor complication trends, identify well-managed cases which can be utilized as teaching cases, and designate focused audits.)

#### D. Hospital Departments/Divisions/Sections

1. General Surgery	E	E	E	D
2. Neurologic Surgery	E	E	D	n/a
3. Orthopedic Surgery	E	E	D	n/a
4. Emergency Services	E	E	E	E
5. Anesthesia	E	E	E	n/a

### IV. Clinical Capabilities

#### A. Specialty Availability

##### 1. In-house 24 hours a day:

a. General Surgery	E	E	D	n/a
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(NOTE- The active involvement of the Trauma Surgeon is crucial to optimal care of the injured patient in all phases of management, including resuscitation, identification and prioritization of injuries, therapeutic decisions, and operative procedures. In Regional facilities the 24-hour in-house availability of the attending Trauma Surgeon is the most direct method for providing this involvement. However, alternative methods for providing immediate availability of the attending surgeon are

also acceptable. In hospitals with residency programs, evaluation and treatment may be started by a team of surgeons that will include a PGY4 or more senior surgical resident who is a member of that hospital's residency program. This may allow the attending surgeon to take call from outside the hospital. In this case, local criteria must be established to define conditions requiring the attending Trauma Surgeon's immediate hospital presence. The attending surgeon's participation in major therapeutic decisions, presence in the Emergency Department for major resuscitations, and presence at operative procedures are mandatory. Compliance with these criteria and their appropriateness must be monitored by the hospital's Trauma Quality Improvement Program.

In Trauma Centers without applicable residency programs, local conditions may allow the Trauma Surgeon to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the Trauma Surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the general surgeon will be present in the Emergency Department at the time of arrival of the major trauma patient to supervise resuscitation and major therapeutic decisions, provide operative treatment, and be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.)

b. Neurologic Surgery                    E                    E                    D                    n/a

(NOTE- An attending neurosurgeon must be promptly available and dedicated to the hospital's Trauma Service. The in-house requirement may be fulfilled by an in-house neurosurgeon or surgeon who has special competence, as documented in the credentialing process by the chief of neurosurgery, in the care of patients with neurotrauma and who is capable of initiating measures directed toward stabilization of the patient and determination of diagnosis.)

c. Emergency Medicine                    E                    E                    E                    E

(NOTE- In Regional institutions, requirements may be fulfilled by emergency medicine chief residents capable of assessing emergency situations in trauma patients and providing any indicated treatment. When chief residents are used to fulfill availability requirements, the attending on call will be advised and be promptly available.

In Community Trauma Centers this requirement may be fulfilled by a physician who is credentialed by the hospital to provide emergency medical services.)

d. Anesthesiology                    E                    E                    D                    n/a

(NOTE- Requirements may be fulfilled by anesthesiology chief residents PGY4/CA4 who are capable of assessing emergent conditions of trauma patients and providing any indicated treatment, including initiation of surgical anesthesia. When anesthesiology residents are used to fulfill availability requirements, the staff anesthesiologist on call will be advised and promptly available.

In Trauma Centers without anesthesiology residency programs, requirements may be fulfilled when local conditions assure that the staff anesthesiologist will be in the hospital at the time of the patient's arrival. During the interim period prior to the arrival of the staff anesthesiologist, an in-house Certified Registered Nurse Anesthetist (CRNA) capable of assessing emergent situations in trauma patients and of initiating and providing any indicated treatment will be available. In some hospitals without a CRNA inhouse, local conditions may allow anesthesiologists to be rapidly available on short notice. Under these circumstances, local criteria must be established to allow anesthesiologists to take call from outside the hospital without CRNA availability, but with the clear commitment that anesthesiologists will be immediately available for airway emergencies and operative management. The availability of the anesthesiologist and the absence of delays in airway control or operative anesthesia must be documented by the hospital QI process.)

2. On call and promptly available:

a. Anesthesiology                    n/a                    n/a                    E                    D

(NOTE- May be provided by a CRNA under physician supervision. CRNA's [Anesthesia personnel] involved in caring for trauma patients must have appropriate educational background and participate in trauma-related continuing educational and QI activities. Prompt response must be monitored by the Trauma QI program.)

b. Cardiac Surgery                    E                    D                    n/a                    n/a

c. Cardiology                    E                    E                    D                    n/a

d. General Surgery                    n/a                    n/a                    E                    D

(NOTE- Communication should be such that the general surgeon will be present in the emergency department at the time of arrival of a major trauma patient. Initial management of major trauma patients should follow a standard trauma treatment protocol adopted by the institution.)

e. Hand Surgery                    E                    D                    n/a                    n/a

f. Infectious Disease                    E                    D                    n/a                    n/a

g. Internal Medicine                    E                    E                    E                    n/a

(NOTE- The patient's primary care physician should be notified at an appropriate time.)

h. Microvascular Surgery (replant/flaps)E                    D                    n/a                    n/a

# FINAL REGULATIONS

i. Neurologic Surgery	n/a	n/a	D	n/a
j. Obstetric/Gynecologic Surgery	E	E	D	n/a
k. Ophthalmic Surgery	E	E	D	n/a
l. Oral/Maxillofacial Surgery	E	E	n/a	n/a
m. Orthopedic Surgery	E	E	E	n/a
n. Pediatric Surgery	E	D	D	n/a

(NOTE- A pediatric surgeon is defined as a surgeon who has been granted privileges by the hospital to provide surgical care for the injured child.)

o. Pediatrics	E	E	D	n/a
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(NOTE- The patient's primary care physician should be notified at an appropriate time.)

p. Plastic Surgery	E	E	D	n/a
q. Pulmonary Medicine	E	E	n/a	n/a
r. Radiology	E	E	E	D
s. Thoracic Surgery	E	E	D	n/a

(NOTE- A general Trauma Surgeon is presumed to be qualified and should have privileges to provide thoracic surgical care to patients with thoracic injuries. In facilities where the on-call Trauma Surgeon does not have privileges to provide thoracic surgical care, a board-certified thoracic surgeon should be available.)

t. Urologic Surgery	E	E	D	n/a
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(NOTE- All specialists on call will be notified immediately and be promptly available. This availability will be continuously monitored by the Trauma QI Program.

Requirements for all physicians caring for trauma patients include board certification or eligibility, regular participation in trauma-related Continuing Medical Education and QI activities, and experience in the care of trauma patients through education and/or background. Neurosurgeons and orthopedic surgeons who participate on the Trauma Call Roster must have documentation of at least 16 trauma-related CME's annually, one-half of which every 3 years must be obtained outside the institution.)

## V. Facilities/Resources/Capabilities

### A. Emergency department (ED)

#### 1. Personnel

a.) Designated physician director	E	E	E	D
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b.) Physicians with special competence in care of critically injured, physically present in the ED				
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and assigned a designated role as a member

of the trauma team

E	E	E	D
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(NOTE- In Regional institutions, requirements may be fulfilled by emergency medicine senior residents capable of assessing emergency situations in trauma patients and providing any indicated treatment. When senior residents are used to fulfill availability requirements, the attending on call will be advised and be promptly available. This requires, at a minimum, 24 hour availability of a physician who is credentialed by the hospital to provide emergency medical services and is either Board Certified in Emergency Medicine or currently certified as an ACLS and ATLS provider. All E.D. physicians caring for trauma patients must have documentation of at least 16 trauma-related CME's annually, one-half of which every 3 years must be obtained outside the institution.)

c.) Nursing personnel with special capability in trauma care who provide continual monitoring of the Trauma patient from hospital arrival to in-house disposition

E	E	E	D
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(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for every nurse who cares for critically injured trauma patients. Staffing patterns should be based upon data describing both the Emergency Department and trauma patient populations in terms of numbers and acuity.)

#### 2. Equipment for resuscitation of patients of all ages shall include, but not be limited to:

a.) Airway control and ventilation equipment, including laryngoscopes

and endotracheal tubes of all sizes, bag-mask resuscitator,

pocket masks, and oxygen

E	E	E	E
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b.) Pulse oximetry

E	E	E	D
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c.) End-tidal CO<sub>2</sub> determination

E	E	E	D
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d.) Suction devices

E	E	E	E
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e.) EKG-monitor-defibrillator	E	E	E	E
f.) Apparatus to establish central venous pressure monitoring	E	E	E	D
g.) Standard intravenous fluids and administration devices including large-bore intravenous catheters	E	E	E	E
h.) Sterile surgical sets for				
i.) Airway control/cricothyrotomy	E	E	E	E
ii.) Thoracotomy	E	E	E	D
iii.) Vascular access	E	E	E	E
iv.) Chest decompression	E	E	E	E
i.) Gastric decompression	E	E	E	E
j.) Drugs necessary for emergency care	E	E	E	E
k.) X-ray availability, 24 hours a day	E	E	E	D

(NOTE- There will be written policies and procedures related to monitoring of trauma patients when they are out of the Emergency Department and availability of emergency equipment in areas such as CT or angiography to which critical trauma patients are transported.)

l.) Two-way communication with vehicles of emergency transport system	E	E	E	E
m.) Skeletal traction devices, including capability for cervical traction	E	E	E	D
n.) Arterial catheters	E	E	D	D
o.) Thermal control equipment				
i.) For patient	E	E	E	E
ii.) For blood and fluids	E	E	E	D

3. Helipad consistent with Delaware Air Medical Regulations	E	E	E	D
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## B. Operating Suite

1. Personnel and operating room Operating room adequately staffed in-house and immediately available 24 hours a day	E	E	D	n/a
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(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for nurses who care for critically injured trauma patients. Staffing patterns should be based upon data describing the population in terms of numbers and acuity. Prompt response must be monitored by the Trauma QI program if on-call personnel are utilized in Community Trauma Centers.)

2. Equipment for all ages shall include, but not be limited to:				
a.) Cardiopulmonary bypass capability	E	D	n/a	n/a
b.) Operating microscope	E	D	n/a	n/a
c.) Thermal control equipment				
i.) For patient	E	E	E	n/a
ii.) For blood and fluids	E	E	E	n/a
d.) X-ray capability including c-arm image intensifier available 24 hours a day	E	E	D	n/a
e.) Endoscopes	E	E	D	n/a
f.) Craniotomy instruments	E	E	D	n/a
g.) Equipment appropriate for fixation of long-bone and pelvic fractures	E	E	E	n/a

## C. Postanesthetic recovery room (surgical intensive care unit is acceptable)

1. Registered nurses and other essential personnel 24 hours a day	E	E	E	n/a
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(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for nurses who care for critically injured trauma patients. Staffing patterns should be based upon data describing the patient population in terms of numbers and acuity.)

2. Equipment for all ages shall include, but not be limited to:

a. Capability to continuously monitor temperature, hemodynamics, and gas exchange	E	E	E	n/a
b. Equipment for the continuous monitoring of intracranial pressure	E	E	D	n/a
c. Pulse oximetry equipment	E	E	E	n/a
d. End-tidal CO2 determination	E	E	E	n/a
e. Thermal control	E	E	E	n/a
D. Intensive care units (ICU's) for trauma patients				
1. Personnel				
a.) Designated surgical director of trauma patients	E	E	E	n/a
b.) Physician, with privileges in critical care and approved by the trauma director, on duty in ICU 24 hours a day or promptly available to the patient	E	I E	I E[D]	n/a

(NOTE- In addition to overall responsibility for patient care by the patient's own surgeon, patients in Regional Levels 1 and 2 and Community Trauma Centers must have in-house physician coverage for intensive care at all times. This coverage may be provided by the patient's primary service or by a physician who is credentialed in critical care by the hospital and the director of the ICU. This coverage for emergencies is not intended to replace the primary surgeon in caring for the patient in the ICU; it is to ensure that the patient's immediate needs will be met while the primary surgeon is being contacted.

The active involvement of the Trauma Surgeon is crucial to optimal care of the injured patient in all phases of management, including resuscitation, identification and prioritization of injuries, therapeutic decisions, and operative procedures. In Regional facilities the 24-hour in-house availability of the attending Trauma Surgeon is the most direct method for providing this involvement. However, alternative methods for providing immediate availability of the attending surgeon are also acceptable. In hospitals with residency programs, evaluation and treatment may be started by a team of surgeons that will include a PGY4 or more senior surgical resident who is a member of that hospital's residency program. This may allow the attending surgeon to take call from outside the hospital. In this case, local criteria must be established to define conditions requiring the attending Trauma Surgeon's immediate hospital presence. The attending surgeon's participation in major therapeutic decisions, presence in the Emergency Department for major resuscitations, and presence at operative procedures are mandatory. Compliance with these criteria and their appropriateness must be monitored by the hospital's Trauma Quality Improvement Program.

1. In Trauma Centers without applicable residency programs, local conditions may allow the physician to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the Trauma Surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the general surgeon will be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.

In Community Trauma Centers electing to manage severely injured patients in lieu of transferring them, a method of providing 24 hour physician coverage for ICU patients must be in place and documented through the hospital Trauma Quality Management Program.)

c.) Adequate staffing by nursing personnel with special capability in trauma care	E	E	E	n/a
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(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for every nurse who cares for critically injured trauma patients. Staffing patterns should be based upon data describing the patient population in terms of numbers and acuity.)

2. Equipment for all ages shall include, but not be limited to:

a.) Cardiopulmonary resuscitation cart	E	E	E	n/a
b.) Defibrillator with internal, external paddles	E	E	E	n/a
c.) Electrocardiograph machine	E	E	E	n/a
d.) Sets of instruments for				
i.) Tracheal intubation	E	E	E	n/a
ii.) Tracheostomy	E	E	E	n/a
iii.) Thoracostomy	E	E	E	n/a
iv.) Venous cut-down	E	E	E	n/a
v.) Central venous puncture	E	E	E	n/a

vi.) Arterial cannulation	E	E	E	n/a
vii.) Peritoneal lavage	E	E	E	n/a
e.) Scale	E	E	E	n/a
f.) Volume- and pressure-cycled ventilators	E	E	E	n/a
g.) Vascular and intracranial pressure monitors	E	E	E	n/a
h.) Pulse or venous oximeters	E	E	E	n/a
i.) Thermodilution cardiac output computers	E	E	E	n/a
j.) Temporary transvenous pacemakers	E	E	E	n/a
k.) Infusion devices	E	E	E	n/a
l.) Blood warmers	E	E	E	n/a
m.) Orthopedic traction devices	E	E	E	n/a
o.) Equipment for rapid warming, cooling of pts	E	E	E	n/a
p.) Adjustable chairs	E	E	E	n/a
<b>3. Support Services</b>				
A.) Immediate access to clinical diagnostic services	E	E	E	n/a
(NOTE- Blood gas measurements, hematocrit level, and chest X-ray studies should be available within 30 minutes of request. This capability will be continuously monitored by the QI Program.)				
B.) Social Service assistance for trauma patients meeting Regional triage criteria and their families	E	E	E	n/a
C. Medical-Surgical floors designated to receive trauma patients meeting Regional triage criteria post-ICU	E	E	E	n/a
<b>1. Adequate staffing by nursing personnel with special capability in trauma care</b>				
	E	E	E	n/a
(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for nurses who care for critically injured trauma patients. Staffing patterns should be based upon data describing the patient population in terms of numbers and acuity.)				
<b>2. Equipment for all ages shall include, but not be limited to:</b>				
a.) Airway control and ventilation equipment, including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, pocket masks, and oxygen				
	E	E	E	n/a
b.) Suction devices	E	E	E	n/a
c.) EKG-monitor-defibrillator	E	E	E	n/a
d.) Apparatus to establish central venous pressure monitoring	E	E	E	n/a
e.) Standard intravenous fluids and administration devices	E	E	E	n/a
f.) Cardiopulmonary resuscitation cart	E	E	E	n/a
g.) Gastric decompression	E	E	E	n/a
h.) Drugs necessary for emergency care	E	E	E	n/a
F. Acute hemodialysis capability	E	D	D	n/a
G. Organized burn care	E	E	E	E
1. Physician-directed burn center staffed by nursing personnel trained in burn care and equipped properly for care of the extensively burned patient				
OR				
2. Transfer agreement with recognized burn center				
H. Acute spinal cord/head injury management capability	E	E	E	E
1. In circumstances in which a designated spinal cord injury center exists in the region, early transfer should be initiated in selected patients; transfer agreements should be in effect				
2. In circumstances in which a head injury center exists in the region, early transfer should be initiated in selected				

patients; transfer agreements should be in effect

I. Critical pediatric trauma care capability E E E E

1. Trauma Center with Pediatric Commitment

OR

2. Written transfer agreement with a tertiary pediatric referral center with critical care capabilities

J. Radiological special capabilities

1. In-house radiology technician 24 hrs a day E E n/a

(NOTE- If this requirement is fulfilled in Community Trauma Centers by technicians not in-house 24 hours a day, quality improvement must verify that the procedure is promptly available.)

2. Angiography E E D n/a

3. Sonography E E D n/a

4. Nuclear scanning E D D n/a

5. Computed tomography (CT) E E E n/a

6. In-house CT technician 24 hrs a day E E D n/a

(NOTE- If this requirement is fulfilled by technicians not in-house 24 hours a day, quality improvement must verify that the procedure is promptly available.)

7. Neuroradiology E D D n/a

(NOTE- Defined as a radiologist credentialed by the institution to interpret radiology studies of the central nervous system.

There will be written policies and procedures related to monitoring of trauma patients when they are out of the Emergency Department and availability of emergency equipment in areas such as CT or angiography to which critical trauma patients are transported.)

K. Rehabilitation

1. Rehabilitation service staffed by personnel trained in rehabilitation care and equipped properly for acute care of the critically injured patient E E E n/a

a. Early referral E E E n/a

(NOTE- Consultation with appropriate rehabilitative services should be made early in the patient's hospitalization. Patients with rehabilitative needs should have access to early rehabilitative evaluation and bedside therapy during the acute phase of their care. Optimal time for rehabilitation consult is within 72 hours of admission.)

b. Discharge planning E E E E

(NOTE- There must be identifiable evidence of early and adequate discharge planning including assessment of function to assure that all trauma patients have access to the inpatient or outpatient services they require post-acute care discharge.)

2. Full in-house long-term rehabilitation service E E E E

(NOTE- Access to the full range of rehabilitative services must be provided, including physiatrist or physician director of rehabilitative services, nursing care, physical therapy, occupational therapy, speech/language/hearing services, substance abuse rehabilitative counseling/referral, orthotic/prosthetic services, psychological/social/family support services, and age-appropriate rehabilitative capability.

Records documenting annual continuing education hours must be available for all rehabilitation team members who provide care for trauma patients.

There must be immediate availability of adequate emergency equipment in all rehabilitation areas.)

OR

transfer agreement with a rehabilitation facility for long-term care

(NOTE- Facilities providing in-patient acute rehabilitative care for trauma patients should have current CARF (Committee on Accreditation of Rehabilitation Facilities) certification.)

L. Clinical laboratory service (available 24 hrs. a day)

1. Standard analyses of blood, urine, and other body fluids E E E E

2. Blood typing and cross-matching E E E E

3. Coagulation studies E E E D

4. Comprehensive blood bank or access to a community central blood bank and adequate storage facilities E E E E

5. Blood gases and pH determinations	E	E	E	D
6. Microbiology	E	E	E	D
7. Drug and alcohol screening	E	E	E	D

VI. Quality Improvement

A. Quality improvement program based on ACS

Resources for Optimal Care of the Injured Patient:

1993, Chapter 16 and the State of Delaware Trauma

System Quality Management Plan	E	E	E	E
B. Trauma registry	E	E	E	E
C. Special audit for all trauma deaths	E	E	E	E
D. Morbidity and mortality review	E	E	E	E
E. Trauma conference, multidisciplinary	E	E	E	D
F. Medical nursing audit, utilization, tissue review	E	E	E	E
G. Review of prehospital trauma care	E	E	E	D
H. Published on-call schedule must be maintained for surgeons, neurosurgeons, orthopaedic surgeons, and other major specialists	E	E	E	D
I. Times of and reasons for trauma -related bypass must be documented and reviewed by quality improvement program	E	E	E	n/a
K. Quality improvement personnel dedicated to and specific for the trauma program	E	E	D	D

VII. Outreach Program

Telephone and on-site consultations with physicians of the community and outlying areas

E	E	D
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VIII. Prevention/Public Education

A. Epidemiology research

1. Conduct studies in injury control	E	D	D	n/a
2. Research collaboration w/ other institutions	E	D	D	D
3. Monitor progress of prevention programs	E	D	D	D
4. Consult with qualified researchers on evaluation measures	E	D	D	D

(NOTE- An epidemiologist or biostatistician should be available.)

B. Surveillance

1. Special ED & field collection projects	E	D	n/a	n/a
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(NOTE- This includes the capability of doing special data collection projects as need is identified, such as monitoring bicycle helmet use in the community.)

2. Expanded trauma registry data	E	E	E	D
3. Minimal trauma registry data (abbreviated)	E	E	E	E

C. Prevention

1. Designated prevention coordinator	E	E	D	n/a
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(NOTE: This activity may be part of the Trauma Coordinator's responsibilities.)

2. Outreach activities, program development	E	E	D	n/a
3. Information resource	E	E	D	n/a
4. Collaboration with existing national, regional, and state programs	E	E	E	D

IX. Trauma Research Program

# FINAL REGULATIONS

(NOTE: A trauma research program should be designed to produce new knowledge applicable to the care of injured patients. This research may be conducted in a number of ways, including traditional laboratory and clinical research, reviews of clinical series, and epidemiological or other studies. Regardless of the approach, the study design must include the development and testing of a clearly defined hypothesis. Consistent publication of articles focused on a clinical problem in peer-reviewed journals is the distinguishing feature of an effective research program. A trauma research program should have an organizational structure that fosters and monitors such ongoing productivity. In addition to the publications mentioned above, presentation of results at local, regional, and national society meetings and ongoing studies approved by local human and animal research review boards are expected from productive programs.)

A. Organized program with designated director	E	D	n/a	n/a
B. Regular meeting of research group	E	D	n/a	n/a
C. Evidence of productivity				
1. Proposals reviewed by IRB	E	D	n/a	n/a
2. Presentation at local/regional/national meetings	E	D	n/a	n/a
3. Publications in peer-reviewed journals	E	D	n/a	n/a

## X. Continuing Education

Formal programs in continuing education provided by hospital for:

A. Staff physicians	E	E	D	n/a
B. Nurses	E	E	E	D
C. Allied health personnel	E	E	E	D
D. Community physicians	E	E	D	n/a

XI. Organ Procurement Activity	E	E	E	E
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## XII. Transfer Agreements

A. As transferring facility	D	E	E	E
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(NOTE- Written transfer procedures and agreements with appropriate Trauma Centers, Speciality Centers, and hospitals, providing for timely movement of both critical and convalescing patients within the Trauma System, must be established and maintained. Compliance with these procedures is to be monitored by each institution's Quality Improvement process.)

B. As receiving facility	E	E	D	n/a
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(NOTE- It is the responsibility of each receiving hospital to provide timely feedback to transferring hospitals on the status and outcome of all patients received.)

## PEDIATRIC TRAUMA STANDARDS

	Adult Trauma Center with Pediatric Commitment	Regional Pediatric Trauma Center Level 1	Level 2 Trauma Center	Community Pediatric Center
I. Demonstrated Commitment to Trauma Care				
A. Facility must meet all corresponding Regional Adult Trauma Center Standards	Level 1 or 2	Regional Level 1	Regional Level 2	Community

(NOTE-The Pediatric Trauma Standards identify the categories of resources required in facilities which specialize in pediatric trauma care. Reference must be made to the standards for the corresponding Trauma Center level in the Delaware Adult Trauma Center Standards document to determine the specific elements of these categories and whether each is an Essential or a Desirable standard for each level Pediatric Trauma Center.)

## II. Hospital Organization

A. Hospital				
1. Children's hospital or general hospital with a separate pediatric department	---	E	E	E

OR

General hospital with an organized pediatric department or service	E	---	---	---
--	---	-----	-----	-----

B. Trauma Service

1. Pediatric Trauma Service organized and managed by a pediatric surgeon	---	E	E	E
--	-----	---	---	---

OR

Pediatric Trauma Program administered by a surgeon	E	---	---	---
--	---	-----	-----	-----

(NOTE- The Pediatric Program Director must be board-certified and committed to the care of the injured child, as evidenced by documented experience and annual continuing medical education on pediatric trauma.)

2. Pediatric Trauma Coordinator	---	E	E	E
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OR

Trauma Coordinator	E	---	---	---
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### III. Clinical Capabilities

A. In-house 24 hours a day:

1. Pediatric surgeon	---	E	E	D
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OR

General surgeon	E	---	---	---
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(NOTE- At Regional Pediatric Trauma Centers a pediatric surgeon credentialed in trauma care will be promptly available. This responsible pediatric surgeon will be present in the operating room for all procedures. A general surgical resident at a minimum PGY4 level may initiate resuscitative care until the attending pediatric surgeon arrives.

In Trauma Centers utilizing general surgeons to provide pediatric trauma care, the surgeons so credentialed must have special interest in and commitment to care of the injured child, demonstrated by experience and documented CME.

In Trauma Centers without applicable residency programs, local conditions may allow the Pediatric Trauma Surgeon to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the pediatric surgeon will be present in the Emergency Department at the time of arrival of the major trauma patient to supervise resuscitation and major therapeutic decisions, provide operative treatment, and be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.)

2. Pediatric neurosurgeon	---	E	E	D
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OR

Neurosurgeon	E	---	-	---
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(NOTE- An attending neurosurgeon must be promptly available and dedicated to the hospital's Trauma Service. The in-house requirement may be fulfilled by an in-house neurosurgeon or surgeon who has special competence, as documented in the credentialing process by the chief of neurosurgery, in the care of patients with neurotrauma and who is capable of initiating measures directed toward stabilization of the patient and determination of diagnosis.)

3. Pediatric Emergency physician	---	E	E	E
----------------------------------	-----	---	---	---

OR

Emergency physician	E	---	---	---
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(NOTE- In Regional institutions, requirements may be fulfilled by emergency medicine chief residents capable of assessing emergency situations in trauma patients and providing any indicated treatment. When chief residents are used to fulfill availability requirements, the attending on call will be advised and be promptly available.

In Community Trauma Centers this requirement may be fulfilled by a physician who is credentialed by the hospital to provide emergency medical services.)

4. Pediatric anesthesiologist	---	E	E	D
-------------------------------	-----	---	---	---

OR

Anesthesiologist	E	---	---	---
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(NOTE- Requirements may be fulfilled by anesthesiology chief residents PGY4/CA4 who are capable of assessing emergent conditions of trauma patients and providing any indicated treatment, including initiation of surgical anesthesia. When anesthesiology residents are used to fulfill availability requirements, the staff anesthesiologist on call will be advised and promptly available.

In Trauma Centers without anesthesiology residency programs, requirements may be fulfilled when local conditions assure

that the staff anesthesiologist will be in the hospital at the time of the patient's arrival. During the interim period prior to the arrival of the staff anesthesiologist, an in-house Certified Registered Nurse Anesthetist (CRNA) capable of assessing emergent situations in trauma patients and of initiating and providing any indicated treatment will be available. In some hospitals without a CRNA inhouse, local conditions may allow anesthesiologists to be rapidly available on short notice. Under these circumstances, local criteria must be established to allow anesthesiologists to take call from outside the hospital without CRNA availability, but with the clear commitment that anesthesiologists will be immediately available for airway emergencies and operative management. The availability of the anesthesiologist and the absence of delays in airway control or operative anesthesia must be documented by the hospital QI process.)

			1	1
5. Pediatric intensivist	---	E	E	D
OR				
Surgical Critical Care specialist	E	---	---	---

(1 In Trauma Centers without applicable residency programs, local conditions may allow the physician to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the Trauma Surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the general surgeon will be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.

In Community Trauma Centers electing to manage severely injured patients in lieu of transferring them, a method of providing 24 hour physician coverage for ICU patients must be in place and documented through the hospital Trauma Quality Management Program.)

B. On call and promptly available:

1. Pediatric surgeon	---	---	---	E
OR				
General surgeon	---	---	---	---

(NOTE- Communication should be such that the Pediatric Trauma Surgeon will be present in the emergency department at the time of arrival of a major trauma patient. Initial management of major trauma patients should follow a standard trauma treatment protocol adopted by the institution

2. Pediatric anesthesiologist	---	---	---	E
OR				
Anesthesiologist	---	---	---	---

(NOTE- May be provided by a CRNA under physician supervision. CRNA's involved in caring for trauma patients must have appropriate educational background and participate in trauma-related continuing educational and QI activities. Prompt response must be monitored by the Trauma QI program.)

3. Pediatric orthopedist	---	E	E	E
OR				
Orthopedist	E	---	---	---
4. Pediatric radiologist	---	E	E	E

OR				
Radiologist	E	---	---	---
5. Other pediatric surgical specialists	D	E	E	E
6. Other pediatric medical specialists	D	E	E	E

(NOTE- An on-call schedule designating pediatric surgical and medical specialists must be utilized. Prompt availability of these specialists must be monitored through the Pediatric Trauma QI Program. It is expected that physicians participating on the Pediatric Trauma Call Roster will demonstrate their interest in pediatric trauma care through involvement in Pediatric Trauma QI and educational activities.

In reference to the adult standards for on call physicians, freestanding pediatric facilities may meet the Obstetric/Gynecological Surgery standard through current transfer agreements with an adult Trauma Center as outlined in Section VI. of this document. The requirement for Pediatric Surgery and Pediatrics coverage is Essential for all Pediatric Trauma Centers.)

IV. Facilities/ Resources/ Capabilities

- A. Special equipment necessary for the resuscitation, surgical or nonoperative management, and postoperative or postresuscitative care of infants and children must be immediately available on every hospital

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unit caring for injured children.	E	E	E	E	E
B. Physician and nursing staff who care for pediatric trauma patients throughout their hospitalization must include some pediatric-specific hours in their documented annual trauma-related continuing education.	E	E	E	E	E
(NOTE- Courses such as Pediatric Advanced Life Support (PALS) and Advanced Pediatric Life Support (APLS) are strongly encouraged for physician and nursing staff caring for pediatric trauma patients.)					
C. Emergency Department					
1. Pediatric Emergency Department with appropriate personnel, equipment, facilities ---		E	E		E
OR Pediatric capabilities in an Emergency equipment and staffed by personnel trained to care for pediatric trauma patients Department with adequate pediatric	E	---	---	---	---
2. Nurses who are knowledgeable in the care of pediatric trauma patients	E	E	E	E	E
D. Intensive care unit					
1. Pediatric ICU with pediatric surgical, medical, and nursing personnel and equipment needed to care for the injured child ---		E	E		E
OR ICU with personnel and equipment appropriate for the care of the injured child	E	---	---	---	---
E. Pediatric perioperative services					
1. Operative and recovery facilities, equipment, and personnel specific to meet the trauma care needs of all ages of pediatric patients.	E	E	E	E	E
F. Pediatric medical-surgical floor/unit					
1. Identifiable pediatric floor or unit staffed with personnel knowledgeable in the care of pediatric trauma patients.	E	E	E	E	E
G. Support services					
1. Psychosocial services providing appropriate support and referrals for injured children and their families.	D	E	E		E
2. Rehabilitation and physical medicine services specific to the needs of pediatric trauma patients available for early consult and treatment.	D	E	E		E
3. Comprehensive pediatric diagnostic and laboratory capabilities including micro-sampling and 24-hour CT scan availability	E	E	E		E
V. Pediatric Trauma Quality Improvement					
A. Identifiable Quality Improvement activities specific to the pediatric trauma patient population.	E	E	E		E
B. Documented participation by pediatric trauma physicians in pediatric trauma QI activities.	E	E	E		E
C. Trauma Registry collecting expanded data on pediatric patients, with capability to provide information on the pediatric trauma population, including hospital course and outcome.	E	E	E		E
D. Demonstrated institutional commitment to pediatric trauma research, education, and injury prevention	D	E	D		D

## VI. Transfer Agreements

- A. Appropriate current transfer agreements must be in place for all pediatric trauma specialty care not provided by each institution, including care for burns, head and spinal cord injuries, obstetrics/gynecologic surgery, critical care, and rehabilitation.                    E                    E                    E                    E

## VI. STATE of DELAWARE TRIAGE, TRANSPORT and TRANSFER PROTOCOLS

### PREHOSPITAL TRAUMA TRIAGE SCHEME IMPLEMENTATION GUIDELINES

1. The Triage Scheme is designed to serve as a tool for the prehospital provider to use in a step-by-step manner in order to arrive at appropriate triage decisions for trauma patients. Based on the American College of Surgeons' Committee on Trauma's Resources for Optimal Care of the Injured Patient:1993 and the American College of Emergency Physicians' Guidelines for Trauma Care Systems. it is laid out to follow the logical progression of assessment used when responding to a trauma call. Step 1 takes place as the responder approaches the scene and notes mechanism of injury, followed by the notation of obvious injuries (Step 2) observed as the provider approaches the patient. Step 3 criteria are vital sign parameters.
2. A patient who meets any one of the Step 1, 2 or 3 criteria needs to be triaged to a Regional Level 1 Trauma Center, Regional Level 2 Trauma Center, or Community Trauma Center. These patients are also appropriate candidates for air transport depending on scene location and aircraft availability.
3. All prehospital personnel who are caring for a patient meeting Triage Scheme criteria should alert the receiving hospital of this as early as possible so that the facility can assemble its trauma team prior to the patient's arrival.
4. Any patient with an unmanageable airway is to be transported to the closest hospital for definitive airway management and subsequent trauma triage.
5. All patients with significant head trauma as evidenced by a Glasgow Coma Score of 8 or less, or spinal cord trauma as evidenced by new onset limb paralysis or weakness, should be triaged to a Trauma Center with an available neurosurgeon.
6. The most critical and unstable patients should be triaged to the higher level Trauma Center whenever transport time to two Trauma Centers is nearly the same. This will save the patient the time required for later interfacility transfer if a higher level of care or resources is needed.
7. \* Major burns (STEP 2) are defined as:
  - 3rd degree burns                    > 5% BSA (Body Surface Area) - all ages,
  - 2nd or 3rd degree burns            > 10% BSA - patients < 10 or > 50 years of age,
  - 2nd or 3rd degree burns            > 20% BSA- all ages,
  - 2nd or 3rd degree burns involving face, hands, feet, genitalia, perineum, or major joints - all ages,
  - Significant electrical burns including lightning injury - all ages,
  - Significant chemical burns - all ages,
  - Inhalation injury - all ages, and

Burn injury in patients with significant pre-existing illnesses, such as respiratory or cardiac disease.
8. If a patient fails to meet any of the criteria of Steps 1, 2 or 3, assessment should be made for the criteria listed in Step 4. The presence of one or more of these conditions should raise the index of suspicion for serious injury, and a triage decision should be made in consultation with Medical Control.
9. Patients who meet no criteria of the Triage Scheme may be transported to the closest hospital.

10. If there is any doubt about whether or not a patient needs to be in a Trauma Center, Medical Control should be consulted and consideration given to transporting the patient to a Trauma Center for evaluation.

11. The run sheet, with full documentation of the call, must be left at the hospital for inclusion in the patient's medical record and later use by the hospital's Trauma Registry.

12. In order to be considered a participant in Delaware's Prehospital Trauma Triage Scheme, an out-of-state facility must receive Delaware reciprocity as a Trauma Center by demonstrating current Trauma Center designation status and adherence to equivalent trauma standards.

13. The duPont Hospital for Children is prepared to accept and manage children and adolescents through the age of 18 years. However, any pregnant adolescent should be considered to be an adult and transported to an adult Trauma Center.

#### AIR TRANSPORT GUIDELINES

Utilization of aeromedical services has become a nationally accepted standard for the rapid evacuation and transportation of critically injured patients to the most appropriate medical facility for definitive medical care. In order to make the best decisions about the most appropriate mode of transport for a particular patient, multiple factors must be considered. Clinical factors relate to the patient and are described in the Prehospital Trauma Triage Scheme, Steps 1, 2, and 3. Operational factors relate to the transport process, and include helicopter availability and location measured against ground transport time. Weather, traffic, ground unit availability, and scene accessibility are other operational factors which must be considered on a case by case basis.

Air transport is appropriate for a seriously injured trauma patient (see Prehospital Trauma Triage Scheme, Steps 1, 2, 3) when ground transport time to a Trauma Center will exceed 10 minutes. To avoid excessive time spent on scene awaiting arrival of the aircraft, the helicopter should be dispatched at the time of initial ALS dispatch or immediately upon arrival of the first units on scene. It is in the patient's best interest for the aircraft to be dispatched early rather than to wait for ground unit request when available information suggests a major incident. When appropriate, consideration may be given to rendezvous.

If transport time between two Trauma Centers is relatively equal, critically injured trauma patients should be transported directly to the higher level Trauma Center. Patients with significant head trauma as evidenced by a Glasgow Coma Score of 8 or less, or spinal cord trauma as evidenced by new onset limb paralysis or weakness should be transported directly to a Trauma Center with an available neurosurgeon. Availability of air transport will impact these time and distance decisions and may potentially save the patient the time required for later interfacility transfer as well as keep the helicopter available for scene medevac work.

The most appropriate mode of transportation to be utilized when an interfacility transfer is being arranged is a decision to be made jointly by the receiving and transferring physicians. Again, operational factors as well as clinical factors need to be considered in arriving at the best transport decision in each circumstance.



## HIGH-RISK CRITERIA FOR CONSIDERATION OF EARLY TRANSFER OF INJURED PATIENTS

These criteria are for use by Community Trauma Centers and Participating Trauma System Hospitals in identifying critical patients requiring early transfer to a higher or more specialized level of care. Their intent is to decrease the need for an extensive, time-consuming workup prior to transfer. (These guidelines are not intended to be hospital-specific.) PLANS FOR TRANSPORT SHOULD BE INITIATED IMMEDIATELY UPON RECOGNITION THAT A PATIENT MEETS ANY OF THE CRITERIA LISTED BELOW. PATIENTS WHO MEET EARLY TRANSFER CRITERIA SHOULD BE ENROUTE WITHIN ONE HOUR OF THIS DETERMINATION BEING MADE.

### CENTRAL NERVOUS SYSTEM: HEAD

- Penetrating injury or open fracture (with or without cerebrospinal fluid leak)
- Depressed skull fracture
- Glasgow Coma Scale (GCS) <12 or GCS deterioration
- Lateralizing signs

### CENTRAL NERVOUS SYSTEM: SPINAL CORD

- Spinal column injury or major vertebral injury (limb paresis or paralysis)

### CHEST

- Major chest wall injury (penetrating injuries to torso, flail chest)
- Wide mediastinum or other signs suggesting great vessel injury
- Cardiac injury
- Patients who may require mechanical ventilation

### PELVIS

- Unstable pelvic ring disruption
- Unstable pelvic fracture with shock or other evidence of continuing hemorrhage
- Open pelvic injury

### MAJOR EXTREMITY INJURIES

- Fracture/dislocation with loss of distal pulses
- Open or multiple long-bone fractures
- Extremity ischemia
- Amputation proximal to wrist or ankle

### MULTIPLE-SYSTEM INJURY

- Head injury combined with face, chest, abdominal, or pelvic injury
- Major burns\*, burns with associated injuries
- Injury to more than two organ systems
- Hemodynamic or respiratory instability
- Severe facial fractures or neck injury with potential for airway instability

### SECONDARY DETERIORATION

- Sepsis 2. Major tissue necrosis
- Single or multiple organ system failure (deterioration in central nervous, cardiac, pulmonary, hepatorenal, or coagulation systems)

### COMORBID FACTORS (not stand alone criteria but should increase index of suspicion):

- Age <12 or >55 years                      Pregnancy
- Cardiac or respiratory disease            Insulin-dependent diabetes
- Morbid obesity                                Immunosuppression
- Presence of intoxicants

\* BURN CENTER REFERRAL CRITERIA

1. Major burns which usually require early referral to a Burn Center include the following:
  - 3rd degree burns involving more than 5% Body Surface Area (BSA) in all ages,
  - 2nd or 3rd degree burns involving more than 10% BSA in patients younger than 10 years or older than 50 years of age,
  - 2nd or 3rd degree burns involving more than 20% BSA in all ages,
  - 2nd or 3rd degree burns involving face, hands, feet, genitalia, perineum, or major joints in all ages,
  - Significant electrical burns including lightning injury in all ages,
  - Significant chemical burns in all ages,
  - Inhalation injury in all ages,
  - Burn injury in patients with pre-existing illnesses that could complicate management, prolong recovery, or affect mortality, and
  - Burn injury in patients who will require special social, emotional, or long-term rehabilitative support, including cases involving suspected child abuse and neglect.
2. A burn patient in whom concomitant trauma poses an increased risk of morbidity or mortality may be initially treated in a Trauma Center until stable before transfer to a Burn Center.
3. Children with burns should be transferred to a Burn Center with qualified personnel and proper equipment to care for the pediatric burn patient.

#### INTERFACILITY TRANSFER PROTOCOL

##### RATIONALE:

Optimal outcome for the trauma patient is time-related. It is to the patient's advantage to receive definitive care as promptly as possible. In order to perform appropriate and timely hospital-based triage, candidates for interhospital transfer must be identified quickly and the transfer process carried out promptly.

##### PATIENT IDENTIFICATION:

The physician should utilize the High-Risk Patient Criteria in conjunction with knowledge of available institutional resources to identify patients who would best be served by immediate transfer to a tertiary or specialty care center.

##### INITIATION of TRANSFER:

Formal written transfer agreements and procedures must be established and made readily available to staff prior to the need for their implementation.

As soon as the need for interhospital transfer is identified, the responsible physician should initiate the transfer process by contacting the responsible physician at the receiving facility following established transfer agreements and procedures. Care of the patient while awaiting transfer will be determined by the referring and receiving physicians. It is NOT necessary to complete all diagnostic studies and/or minor procedures (such as suturing) prior to contacting the receiving facility or prior to transfer. In physician to physician communication, patient condition and transfer options, including most appropriate mode of transportation and accompanying personnel shall be discussed. The physicians shall also reach an agreement on timeframe of transfer and treatment/diagnostic measures to be completed at transferring versus receiving facility.

##### DOCUMENTATION:

Full documentation of the patient's course, including initial and subsequent assessment findings, treatment, results of diagnostic studies including copies of xrays whenever possible should be forwarded to the receiving hospital with or prior to the arrival of the patient (fax).

##### QUALITY MANAGEMENT:

All transfers in or out will be reviewed as part of both the in-hospital and System Trauma Quality Management processes.

##### FOLLOW-UP:

It is the responsibility of every receiving hospital to provide timely feedback to the transferring facility on the status and outcome of each patient received

**VII. STATE of DELAWARE TRAUMA SYSTEM QUALITY MANAGEMENT PLAN****I. PHILOSOPHY**

The State of Delaware Trauma System is committed to provision of optimal care for all injured persons. In order to attain this goal, the Division of Public Health coordinates all medical services provided to trauma patients based on national standards for trauma care as set forth by the Joint Commission on Accreditation of Health Care Organizations (JCAHO), the American College of Surgeons Committee on Trauma (ACS/COT)'s Resources for Optimal Care of the Injured Patient: 1993, the American College of Emergency Physicians (ACEP)'s Trauma Care System Guidelines, 1992 and Health Resources and Services Administration's The Model Trauma Care System Plan, 1992. This Performance Improvement Plan seeks to enable this System to meet and exceed these standards, both administratively and clinically, through promotion and achievement of continuous improvement in all aspects of the statewide trauma program's organization and associated activities.

**II. PURPOSE/GOALS**

The State of Delaware Trauma System's Quality Improvement Plan describes the framework for designing, measuring, assessing, and improving the organizational functions related to provision of medical services to injured patients within the State. It promotes performance improvement through education, facilitation of inter- and intra-hospital communication, and systems coordination. The plan integrates all pre-hospital, medical staff, nursing, ancillary services, and operational performance improvement activities through systematic monitoring and evaluation of the appropriateness of patient care, the measurement of outcomes, and the identification of opportunities for improvement.

The goals of the Trauma System's Performance Improvement Plan are "to monitor the process and outcome of patient care, to ensure the quality and timely provision of such care, to improve the knowledge and skills of trauma care providers, and to provide the ... structure and organization to promote quality improvement." within the state (ACS, 1993, p. 78).

**III. OBJECTIVES**

Based on national standards for Facility Quality Improvement set forth in the American College of Surgeon's Resources for Optimal Care of the Injured Patient (1993) and the JCAHO Recommendations for Improving Organizational Performance and for System Quality Improvement as outlined in the American College of Emergency Physician's Trauma Care System Guidelines, 1992, the Trauma System's Quality Improvement Plan describes the framework for use in designing, measuring, assessing, and improving the Delaware Trauma System's organization, functions, and services. This is accomplished by a collaborative approach with the appropriate facilities, services, and disciplines involved, utilizing the following objectives:

- Systematic measurement on a continuing basis to understand and maintain the stability of systems and processes;
- Measurement of patient and systems outcomes to help determine priorities for improving systems and processes;
- Assessment of system competence and performance.

**IV. AUTHORITY**

The Division of Public Health has the ultimate authority and responsibility for assuring the delivery of quality trauma care throughout the state. The care of the trauma patient is monitored and evaluated at both the Facility and System levels. The Division has the authority for system data collection, review, and most importantly the authority to recommend corrective action in all aspects of trauma care throughout the continuum from injury to rehabilitation. The Division will provide guidance as needed to individual trauma facilities in the development and implementation of their Trauma Quality Improvement Programs. Maintenance of patient confidentiality is the joint responsibility of evaluators at the State and Facility levels.

**V. PRE-HOSPITAL EVALUATION****A. OBJECTIVE**

The Division of Public Health shall work with the Fire Prevention Commission to address improvements regarding pre-hospital care of the injured patient. The American College of Emergency Physicians' Trauma Care System Guidelines will provide a basis for pre-hospital trauma care evaluation. There will be an on-going evaluation of all aspects of trauma care from the receipt of the call at central dispatch to the patient's arrival at the medical facility. Evaluation will document quality of care provided and compliance with protocols. Areas in need of improvement will be identified. Major areas of review are as follows:

Access to the system	Response time
Efficacy of field therapy	Scene time
Transport decisions	Transport time

Transport to the appropriate facility  
Under/over triage  
Documentation

#### B. DATA COLLECTION

Delaware will follow national standards for pre-hospital data collection. The Division of Public Health will collaborate with the State Fire Prevention Commission to determine the minimum data sets to be collected by Basic and Advanced Life Support providers. Data used for evaluation of pre-hospital care must be consistent with the design of the Delaware Trauma Registry, as collected by the medical facilities and analyzed by the Division of Public Health.

Data to be reviewed shall consist of, but not be limited to the following:

- Initial response times
- Completion of primary patient assessment
- Appropriate care of life-threatening conditions
- Trip sheet completion and availability at facility
- Scene time within accepted guidelines
- Proper triage/determination of facility type needed by patient
- Transportation to appropriate facility within an acceptable time frame

Quality improvement indicators will be determined by the Trauma System Evaluation Committee based on Delaware pre-hospital protocols and national and Delaware standards of care.

#### C. QUALITY IMPROVEMENT

A completed pre-hospital patient care record must be provided to the medical receiving facility for inclusion in the patient's emergency room or hospital medical record. Facilities and pre-hospital providers are strongly encouraged to establish a mechanism for exchange of information. Additionally, the hospital's Trauma Registrar will include this record's data in the facility's Trauma Registry for outcome evaluation.

A Quality Improvement program model shall be developed by the Division of Public Health or its designee for the use of Basic Life Support and Advanced Life Support agencies. Recommendations for changes in educational curricula, patient care protocols, etc. shall be based on analysis of information obtained through the pre-hospital evaluation process. The Division shall also develop a mechanism for pre-hospital providers to have input into quality assurance issues, including the identification of educational needs and methods of addressing them.

### VI. TRAUMA CENTER EVALUATION

A. All designated trauma facilities will design a performance improvement plan which meets the standards and requirements established by the Division of Public Health. The Division shall utilize as guidelines the American College of Surgeons' Resources for Optimal Care of the Injured Patient: 1993 standards and subsequent revisions (as described in Chapter 6, Section D, page 32, and Chapter 16, pages 77-83). Hospital performance improvement plans will be verified during site survey and quality improvement visits.

#### B. DESIGN

When new processes or systems are developed within an institution, the design will be based on the following:

- Up-to-date sources of information about designing processes and systems including, but not limited to, practice guidelines, clinical pathways, professional standards, and regulatory standards;
- The needs and expectations of internal and external consumers;
- The performance of the processes and systems and their outcomes including, but not limited to, internal and external (benchmarking) comparison data.

#### C. MEASURE

Quality indicators (audit filters) will be based on nationally recognized guidelines set forth by the American College of Surgeons. They are established to evaluate process or outcome of the care or services provided or to determine the level of performance of existing processes and the outcomes resulting from these processes. Data collection and measurement will be systematic, relate to relevant standards of care, and prioritized according to high volume, high risk, or problem-prone areas. In addition, the needs, expectations, and feedback from patients and their families, employees, results of ongoing monitoring

activities (e.g. infection control), safety of the patient care environment, utilization and risk management findings will be included.

Data collection will be designed to:

- Assess new or existing processes;
- Measure the level of performance and stability of important existing processes;
- Set performance improvement priorities;
- Establish benchmarks of performance to identify potential opportunities for improvement;
- Identify patterns and trends that may require focused attention;
- Provide comparative performance data to use for performance improvements; and
  - Evaluate whether changes have improved the processes.

Quality indicators (audit filters) may:

- Measure events or phenomena that are expected to occur at some level of frequency;
- Relate data about either a process or an outcome;
- Relate data about occurrences that are either desirable or undesirable;
- Relate data that guide the Trauma Program in improving norms of performance instead of focusing exclusively on censoring or eliminating individual outliers; and
  - Identify serious events which may trigger an opportunity for improvement and require further data collection.

Focused audits will be used to periodically examine the process of care as recommended by ACS and may include, but will not be limited to, the following:

- Noncompliance with hospital criteria for trauma center designation
- Trauma attending surgeon arrival times for Trauma Codes
- The absence of documentation of required information/patient assessment findings on trauma care records

#### D. ASSESS

After collection the data will be analyzed to determine the following:

- Whether design specifications for new processes were met;
- The level of performance and stability of existing processes;
- Priorities for possible improvement of existing processes;
- Actions and strategies to improve the performance of processes; and
- Whether changes in the processes resulted in improvement.

This will be accomplished through the use of statistical quality control techniques and tools, comparative benchmarking data such as TRISS, review of the Trauma Program's processes and outcomes over time, and other reference material as appropriate. Intensive assessment will be used when measurement indicates that potential performance or system related opportunities for improvement exist, a single serious event occurs, the control limits are met, or when undesirable variation in performance has occurred or is occurring.

The assessment process will be interdisciplinary and interdepartmental depending upon the process or outcome under review.

#### E. IMPROVE

When an opportunity for improvement is identified or when the measurement of an existing process identifies the need to redesign a process, a systematic approach such as recommended by the JCAHO, which currently uses the FOCUS-PDCA Model, will be implemented. This model is the ongoing process used to promote continuous improvement as described below:

##### FIND PROCESS IMPROVEMENT OPPORTUNITY

- Develop an opportunity statement
- Identify the process

##### ORGANIZE A TEAM THAT KNOWS THE PROCESS

- Identify employees who work closest with the process
- Identify internal/external consumers and their expectations

##### CLARIFY CURRENT KNOWLEDGE OF THE PROCESS

- Identify sound areas of the process
- Determine if team members are appropriate to assess the process
- Identify the process flow
- Identify problems/redundancies which can be eliminated to make the flow more efficient

## UNCOVER CAUSES OF PROCESS VARIATION

- Identify variation in the process
- Identify measurable process characteristics
- Identify if the variation has a common or unique cause
- Identify the effect the variation has on other hospital systems

## START THE IMPROVEMENT CYCLE

- Determine what changes can be made to improve the process
- Start a description of the process to be improved

## PLAN THE IMPROVEMENT AND DATA COLLECTION

- Identify what improvements are to be made and in what order
- Assign responsibility for making the change
- Determine when the change will be effective
- Determine what data will be collected to measure changes

## DO THE IMPROVEMENT

- Initiate the change (Pilot study period)
- Collect data

## CHECK THE RESULTS

- Analyze the results of the data collection
- Draw conclusions

## ACT IN PROCESS AND THEORY

- Standardize the change
- Determine ongoing measurement of the process and reevaluation of implemented changes (effectiveness monitored for a minimum of 3 months following corrective action)
- Policy and procedure development/revision
- Education and communication of new process

Following identification and documentation of a specific problem in patient care or system performance by the peer-review process, corrective action is taken through one of the following mechanisms:

- Change of existing policies and procedures that govern or define the standard of care
- Professional education: cases may be selected for discussion at the trauma service conferences; deficits in knowledge can be addressed through education of the whole group of providers or of specific providers
- Counseling: review of a specific case or cases is conducted by the Director of Trauma, chief of the service, or the supervisor, with the individual.
- Credentialing process: information from quality improvement activities may be reported through the institution's QI System for consideration at the time of credentialing, delineation of privileges, or evaluation.

## VII. DELAWARE STATE TRAUMA REGISTRY

### A. PATIENT CRITERIA

In order to generate consistent Statewide data, all patients who meet the following criteria must be included in the hospital Trauma Registry:

Patients with an ICD-9 CM N-code diagnosis between 800.00 and 959.9 plus any one or more of the following:

- 1) admission to the hospital for greater than 2 calendar days, or
- 2) inpatient operative procedure or
- 3) admission to the intensive care unit at any time, or
- 4) transfer to a trauma center or acute care facility, or
- 5) transfer from an acute care facility, or
- 6) death, including Emergency Department deaths and patients who are dead on arrival.

**EXCLUSION:** Patients over 55 years having the solitary diagnosis of closed fracture of neck of femur, ICD-9 CM N 820.0 or 820.2 AND underlying cause of injury defined by E884.2, E885, or E888 (falls on same level, from bed or chair, other falls).

### B. DATASET

- The Trauma Registry software to be used by hospitals will be specified by the Division of Public Health in conjunction with the Evaluation Committee, with input from all data-contributing hospitals. Technical support will be provided to all Delaware acute care facilities by the Division or its designee. Facilities will collect the required data and submit it to the System Trauma Registry Coordinator as soon as possible, but no more than 90 days after the close of each quarter.

- Data collected from contributing acute care facilities will form the State's Trauma System Registry. System Registry data will then be used in the process of formulating System reports, for the purpose of System Quality Improvement, for data linkage, and for research/prevention activities.
- The Trauma Registry data set shall be reviewed annually by the Delaware State Trauma Evaluation Committee and the Division of Public Health for any necessary additions, deletions, or modifications.

**C. HOSPITAL PARTICIPATION**

- All acute care in-patient facilities in Delaware which receive traumatically injured patients will be required to contribute to the State Trauma Registry program by collecting and recording electronic data into the hospital Registry system, following the patient criteria described in Section A. All designated trauma facilities must use the complete Trauma Registry form, which includes patient information and facility-specific quality assurance and financial data elements. Non-designated facilities may choose to use the abbreviated Trauma Registry format.
  - Each contributing facility will designate an individual who will have the authority, responsibility and accountability for directing and maintaining the hospital Trauma Registry and its data submission to the State.
  - Each contributing facility will identify a primary data entry person and allow them adequate time and resources to perform their tasks. (Time commitment is estimated to be 60 minutes for a complete form and an additional 60 minutes for quality improvement activities per patient.) This individual shall be required to participate in a Delaware Trauma Registrars Network, which will facilitate communications among Registrars and provide educational information to improve data quality. All Registrars will be required to attend scheduled Network meetings and workshops.
    - Both the individual contributing facilities and the State will be responsible for data integrity and confidentiality.

**VIII. TRAUMA SYSTEM EVALUATION**

A. Evaluation of the Delaware Trauma System encompasses the entire scope of care provided to injured patients within the State of Delaware from injury through rehabilitation.

**B. DIVISION OF PUBLIC HEALTH RESPONSIBILITIES**

Implement and monitor the State Trauma System Quality Improvement Program.

**C. TRAUMA REGISTRY COORDINATOR RESPONSIBILITIES**

- Review Trauma Registry data submitted for completeness.
- Provide educational support for Trauma Registrars.
- Assure maintenance of all minutes and records related to System continuous improvement activities.
- Function as staff for Evaluation Committee.

**D. DELAWARE STATE TRAUMA SYSTEM EVALUATION COMMITTEE**

1. The Trauma System Evaluation Committee will be a subcommittee of the Trauma System Committee.

2. Membership consists of representatives from each component of the statewide Trauma System.

Standing members should be available for frequent working meetings and have access to the Quality Management Process of the agency which they represent. The Committee and Division may designate ad hoc Quality Management project members as needed.

After three unexcused absences in a calendar year, a member will be automatically terminated from the Committee and the Division will name a replacement.

3. Responsibilities of Evaluation Committee:

The Delaware Trauma System Evaluation Committee is charged with providing recommendations, advice, and assistance to the Division of Public Health in its ongoing evaluation of the Delaware Trauma System based on American College of Emergency Physicians standards and nationally accepted Continuous Quality Improvement guidelines. Specific functions may include the following:

- Assist the Trauma Registry Coordinator in the supervision of the State Trauma Registry.
- Assess trauma care standards, and recommend actions for the development and implementation of statewide policies and procedures that guide and support the provision of trauma care or services.
- Assess resources needed to support and sustain the Delaware State Trauma System.
- Evaluate the coordination and integration of pre-hospital, inter-hospital, intra-hospital, and ancillary services.
- Monitor the incidence of adverse outcomes on a regular basis with comparison to regional and national norms.
- Recommend action for identified problems or opportunities for improvement in patient care services.
- Report Quality Improvement activities to the Division of Public Health on a regular basis.
- Sponsor ongoing education regarding ACS, ACEP, and JCAHO standards and provide a multidisciplinary educational forum for presentation and discussion of interesting, difficult, and/or controversial trauma patient management cases.

- Evaluate effectiveness of actions taken and determine follow-up.
  - Meet a minimum of four times per year, and as determined by the Committee or the Division.
  - Assess other sources of data to combine into a comprehensive database for evaluation of the continuum of trauma care in the State of Delaware.
  - Develop operational guidelines for the Committee's functioning.
  - Perform any other function deemed necessary by the Division of Public Health
4. Reports:
- Report aggregate findings/activities of Evaluation Committee including, but not limited to:
  - The incidence of adverse or positive outcomes with comparison to regional and national norms;
  - Trend analyses of systems components;
  - Recommendations for action when opportunities for improvement are identified;
  - Evaluation of effectiveness of actions taken and methodologies for follow-up.
  - Support trauma prevention, research, and systems activities by publishing or helping others to publish reports
5. Major areas of Trauma System review will include:
- Triage
  - Interhospital transfer
  - Facility performance
  - Impact of system
  - Integrity of Trauma Registry data
  - Prevention trends

#### IX. OVERSIGHT

The Division of Public Health receives at least semi-annual reports of the Trauma System's Evaluation Committee activities. Minutes of each meeting will be forwarded to the Division in a timely manner.

#### X. CONFIDENTIALITY

As used in this section, "records" means the recordings of interviews and all oral or written reports, statements, minutes, memoranda, charts, data, statistics, and other documentation generated by the Evaluation Committee, its subcommittees, and the State Trauma Registry for the stated purpose of trauma system medical review or quality care review and audit.

All quality management proceedings shall be confidential. Records of the State Trauma Evaluation Committee, its subcommittees, the State Trauma Registry, and attendees at meetings held for stated purposes of trauma system medical review or quality care review and audit shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding.

All studies, reports, and minutes will include only the patient trauma registry number with all other identifying information encoded or kept in locked files. Access to qualified researchers may be granted based on state, federal, and municipal statutes, bylaws, rules, regulations, and policies. All meeting attendees will be required to sign confidentiality statements. Any documented breach of confidentiality will be referred to the Division of Public Health for appropriate action.

#### XI. ANNUAL REVIEW

This plan is reviewed at least annually by the Division of Public Health and the Evaluation Committee.

#### REFERENCES

1. American College of Emergency Physicians: Guidelines for Trauma Care Systems. Dallas, Texas, ACEP, 1992.
2. American College of Surgeons Committee on Trauma: Resources for Optimal Care of the Injured Patient:1993. Chicago, Illinois, ACS, 1993.
3. U.S. Department of Health and Human Services: Model Trauma Care System Plan. Rockville, Maryland, DHSS, 1992.

**DEPARTMENT OF HEALTH &  
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 published an emergency order in the September 1997 Register of Regulations, page 214, related to the revision of the regulation contained in DMAP SECTION 420 which increased 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.

FINDING OF FACT

No oral or written comments, materials, or suggestions were received from any individual or the public.

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted as written effective July 1, 1997.

12/11/97

GREGG C. SYLVESTER, M.D.  
ACTING SECRETARY

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 \*

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**DEPARTMENT OF AGRICULTURE****DELAWARE HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10027 (3 Del.C. §10027)

BEFORE THE DELAWARE HARNESS RACING  
COMMISSION

IN RE: PROPOSED RULES AND REGULATIONS

ORDER

Pursuant to 29 Del. C. §10118, the Delaware Harness Racing Commission ("Commission") hereby issues this Order promulgating the proposed amendment to the Commission's Rules. Following notice and request for written submissions, the Commission makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION  
SUBMITTED

1. The Commission posted public notice of the proposed rule revisions in the Register of Regulations and in the News Journal and Delaware State News. The Commission received no written comments from the public concerning the proposed regulations during the month of November, 1997. The Commission did receive comments at an earlier public hearing on August 22, 1997 which remain part of the record. Those comments are contained in the following paragraphs.

2. Mr. Salvatore DiMario, who is the executive director of DSOA, objected to proposed amendment #9 to amend chapter VIII, rule VI.M.14 for whipping violations. Mr. DiMario took exception to the proposed rule which would require mandatory fines and suspensions for all whipping violations.

Mr. DiMario objected to the proposed amendment to chapter VIII, rule III.C.3 to define a blood gas level. Mr. DiMario stated that other states have chosen not to test for blood gas levels since the testing is too unreliable.

3. Ms. Elizabeth Harris stated that she is a horse breeder and member of the First State Horsemen's organization. Ms. Harris opposed to the proposed to Chapter VII, rule VI.M.14 because it provided mandatory penalties for whipping violations. Ms. Harris also opposed the blood gas amendment to chapter VII. C.3 (c) unless the testing was fairly administered.

4. Mr. Russ McKinnon stated that he is a director of the First State Horsemen's organization. Mr. McKinnon agreed with the proposed blood gas amendment but believed there should be a quarantine procedure.

#### FINDINGS OF FACT

5. The public was given notice and an opportunity to provide the Commission with written comments on the proposed amendments to the Commission's rules.

6. The Commission has considered the comments elicited from the public in the final draft of the rules. The Commission received no comments or opposition to the other proposed amendments. The Commission finds that those proposed rules are necessary to comply with the statutory authority of the Commission under 3 Del. C. chapter 100 and for the effective enforcement of that chapter.

7. As to the proposed amendment to amend chapter VII, rule VI.M.14, this amendment would specify the basis for whipping violations and impose discretionary penalties. The Commission finds the proposed rule will clarify the illegal use of a whip by a driver and allow the judges to use discretion in assessing appropriate penalties. The Commission will adopt this rule in its proposed form.

8. As to the proposed amendment to chapter VII, rule VI.M.18, this amendment would provide for discretionary inspections of horses after races for evidence of excessive whipping. The Commission will adopt this rule in its proposed form.

9. As to the proposed amendment to chapter VIII, rule III.C.3 (c), this amendment would add language to the existing definition of "prohibited substance". The proposed amendment specifies the illegal carbon dioxide level for horses racing with and without furosemide. The Commission received comments opposing the use of blood gas testing unless a fair procedure was employed. The Commission finds the proposed rule will provide for enforcement of the blood gas rule with a procedure that is fair to all licensees. The Commission will adopt the rule in its proposed form.

#### CONCLUSIONS

10. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. §10027.

11. The Commission deems these rules as amended

necessary for the effective enforcement of 3 Del. C. chapter 100 and for the full and efficient performance of its duties thereunder.

12. The Commission concludes that the adoption of the proposed rules would be in the best interests of the citizens of the State of Delaware and necessary to insure the integrity and security of the conduct of harness racing in the State of Delaware. The Commission finds all of the proposed rules to be necessary and proper for the purpose of regulating and overseeing the sport of harness racing.

13. The Commission, therefore, adopts these rules as proposed pursuant to 3 Del. C. §10027 and 29 Del. C. §10113. The rules as proposed and now adopted provide as follows:

i) Amend Chapter VII, Rule VI.M.14, to now provide as follows:

"Drivers will be allowed to use whips not to exceed three feet, nine inches in length plus a snapper not to exceed six inches in length. The use of the whip shall be confined to an area above and between the sulky shafts and the outside wheel discs. Drivers shall keep a line in each hand from the start of the race until the head of the stretch finishing the race."

ii) Amend Chapter VII, Rule VI.M.18, to now provide as follows:

"Brutal or excessive or indiscriminate use of a whip or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or to conduct such visual inspections at their discretion."

iii) Amend Chapter VIII, Rule III.C.3(c), to now provide as follows:

"A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

c) substances present in the horse in excess of levels at which such substances could occur naturally, and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L of serum from a horse which has been administered furosemide in compliance with

these rules, provided that a licensee has the right, pursuant to procedures to be established by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels.”

14. These rules replace in their entirety the former version of the Rules of the Delaware State Harness Racing Commission Rules and Regulations and any subsequent amendments.

15. The effective date of this Order shall be ten (10) days from the publication of this Order in the Register of Regulations on January 1, 1998.

IT IS HEREBY ORDERED THIS 12th DAY OF DECEMBER, 1997.

Anthony G. Flynn, Chairman  
 H. Terry Johnson, Commissioner  
 Beth Steele, Commissioner  
 Mary Ann Lanbertson, Commissioner  
 Fred Sears, Commissioner

The following changes follow the 1997 Bylaws Rules and Regulations changes adopted by the United States Trotting Association effective May 1, 1997, and are proposed by the Delaware Harness Racing Commission in accordance with 3 Del. C. section 10027:

M. Conduct of the Race

14. Drivers will be allowed to use whips not to exceed three feet, nine inches in length plus a snapper not to exceed six inches in length.

The use of the whip shall be confined to an area above and between the sulky shafts and the outside wheel discs. Drivers shall keep a line in each hand from the start of the race until the head of the stretch finishing the race.

~~**The mandatory minimum penalty for a whipping violation, including a violation of subsections 18 and 19 of this section, shall be a fine in the amount of \$100.00 and a 3-day suspension from driving for a first offense, and for each subsequent violation the mandatory minimum penalty shall increase by the amount of \$100.00 and 3 additional days of suspension (e.g., \$200.00 and a 6-day suspension for a second offense, \$300.00 and a 9-day suspension for a third offense, etc.).**~~

15. The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.

16. The possession of any mechanical or electrical goading device on the grounds of an association shall constitute a violation.

17. The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.

18. Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there shall [may] be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or to conduct such visual inspections at their discretion.

C. Medication Restrictions

1. Drugs or medications in horses are permissible, provided:

- a) the drug or medication is listed by the Association of Racing Commissioners International’s Drug Testing and Quality Assurance Program; and
- b) the maximum permissible urine or blood concentration of the drug or medication does not exceed the published limit.

2. Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 48-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

3. A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse’s body while it was participating in a race. Prohibited substances include:

- a) drugs or medications for which no acceptable levels have been established;
- b) therapeutic medications in excess of established acceptable levels;
- c) substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, **provided that a licensee has the right, pursuant to procedures to be established by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the**

**above-mentioned levels];** and

d) substances foreign to a horse at levels that cause interference with testing procedures.

4. The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation of license.

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## DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

### DIVISION OF WATER RESOURCES

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

Secretary's Order No. 97-W-0041

**Re: Amendments to the *Regulations Licensing Operators of Wastewater Treatment Facilities***

Date of Issuance: December 8, 1997

Effective Date of Regulatory Amendments: February 1, 1998

#### I. Background

On Wednesday, November 5, 1997, a public hearing was held in the Canteen Conference Room of the DNREC Richardson and Robinson Building at 89 Kings Highway, Dover, Delaware. The public hearing concerned amendments to the *Regulations Licensing Operators of Wastewater Facilities*. The proposed amendments address reporting requirements and requirements to retain an operator's license when not operating and delete Sections 9 and 15 of the regulations. The record shows that these changes were recommended by Delaware operators.

Proper notice of the hearing was provided as required by law, including publication in the Delaware Register of Regulations. Absolutely no members of the public appeared at the public hearing or submitted any written comments concerning this proposed regulation. Consequently, no changes or additions to the proposed

amendments whatsoever were made after the proposal was put out to public notice.

#### II. Findings

1. Proper notice of the hearing was provided as required by law, including publication in the Delaware Register of Regulations.

2. These changes were recommended by Delaware operators.

3. No members of the public appeared at the public hearing or submitted any written comments regarding this proposal.

4. No changes were made to this proposal after it was put out to public notice.

5. The proposed amendments will further the regulatory purpose while incorporating changes suggested by the regulated community.

#### III. Order

In view of the above findings, it is hereby ordered that the proposed amendments to the *Regulations Governing Licensing of Wastewater Treatment Operators* be adopted and promulgated according to the Administrative Procedures Act and, further, that the amendments be effective on the date stated hereinabove.

#### IV. Reasons

Adopting the proposed amendments will further the policies and purposes of 7 Del. C. Chapter 60 in that the Regulations will fulfill the regulatory purposes while incorporating changes suggested by the regulated community.

Christophe A. G. Tulou, Secretary

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STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

REGULATIONS FOR LICENSING  
OPERATORS OF WASTEWATER FACILITIES

Adopted December 28, 1977

Effective January 1, 1978

Revised May 31, 1979

Effective January 1, 1988

Revised December 8, 1997

Effective January 1, 1998

BOARD OF CERTIFICATION  
REGULATIONS

The Department of Natural Resources and Environmental Control, in accordance with 7 Del.C. §6010, has proposed to revise the Regulations for Licensing Operators of Wastewater Facilities. Proposed amendments would change the due date from July 1 to January 31 of each year for registration of wastewater facilities and operators and provide a way to allow wastewater operators to retain licenses while not actively operating as long as they meet the continuing education requirements. Section 9 and 15 have also been deleted.

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**\* Please note that the page numbers listed above do not refer to the Register. The page numbers refer to the original document.**

1.01 It is the purpose of this regulation to protect the public health and to conserve and protect the water resources of the State; to provide for the classification of all public and private (including industrial) wastewater facilities; to require the examination of operators and licensing of their competency to supervise on-site the operation of such facilities; to create a board of certification; and to provide for reciprocal arrangements.

Section 2 - Definitions:

2.01 Person: Means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate commission, board, public or private

institution, utility, cooperative, municipality or any other political subdivision of this State, any interstate body, or any other legal entity.

2.02 Operator: Means the designated individual who at a given time is in direct responsible charge of the operations of a wastewater facility or a major segment of a system or facility.

2.03 Direct Responsible Charge: Means on-site accountability for an on-site performance of active daily operation. Where shift operation is required and/or practiced, "direct responsible charge" means both (1) on-site accountability for and on-site performance of active daily operation, including technical and administrative supervision, and (2) active daily on-site charge of an operating shift, or a major segment of a system or facility.

2.04 Wastewater Facility (Facilities): Means the system of pipes, structures, equipment and processes required to treat any waste and dispose of the effluent.

2.05 Wastewater Treatment Plant: Means the portion of the wastewater facility used in the pretreatment and/or treatment of wastewater, including the treatment, handling and disposal of sludge solids related thereto.

2.06 Secretary: Means the Secretary of the Department of Natural Resources and Environmental Control or his duly authorized designee.

2.07 Department: Means the Department of Natural Resources and Environmental Control.

2.08 Association of Boards of Certification For Operating Personnel In Water and Wastewater Utilities (ABC): Means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of wastewater facilities and certification of operators, facilities reciprocity between State programs, and assists authorities in establishing new certification programs and updating existing ones.

2.09 Board: Means the State Board of Certification.

2.10 Population Equivalent (P.E.): Means the population computed by relating the total daily weight (W lbs.) of Biochemical Oxygen Demand (BOD) to the daily per capita BOD of 0.17 lb. as shown below:

$$P.E. = \frac{W}{0.17}$$

Section 3 - State Board of Certification:

3.01 A State Board of Certification shall be appointed by the Secretary to advise and assist the Secretary in the administration of the certification program. The Board will consist of three (3) members: One (1) member who is currently certified as a wastewater operator or who is eligible to be licensed under this regulation; one (1) member representing the Department who shall be responsible for maintaining records; and one (1) member-at-large. Board members will serve three (3) year terms which will be staggered so that the term of not more than one (1) member will expire in any single year.

3.02 The State Board of Certification, with the consent of the Secretary, shall establish such procedures and guidelines as may be necessary for the administration of this regulation, and shall include at least the following provisions:

- (a) procedures for examination of candidates, and renewal of licenses;
- (b) procedures for the suspension and revocation of licenses;
- (c) guidelines for evaluating equivalency of training and examinations conducted by recognized agencies and institutions;
- (d) guidelines for evaluating equivalency of other certification and/or licensing programs for the purpose of according reciprocal treatment;
- (e) procedures for establishing regularly scheduled meetings.

3.03 When taking action pursuant to this regulation, the Board may consider generally applicable criteria and guidelines developed by the Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities (ABC).

#### Section 4 - License Requirement:

4.01 Any wastewater facility (except those specifically exempted by the Department) whether publicly or privately owned, used or intended for use by the public or private persons shall be under the supervision of an operator(s) whose competency is licensed by the Secretary in a classification corresponding to or higher than the classification of the facility to be supervised.

4.02 This section reserved for future use.

4.03 On or before January 1, 1989, any wastewater facility (except those specifically exempted by the Department) whether publicly or privately owned, used or intended for use by the public or private persons shall at all times have available an operator(s) capable of

operating and performing direct responsible charge responsibilities.

4.04 On or before ~~July~~ January 31 each year any owner of a wastewater facility whether publicly or privately owned, used or intended for use by the public or private persons shall register with the Department and list the type of facility, the average daily flow and the name(s) of the operator(s) in direct responsible charge. Any personnel changes involving the operator(s) in responsible charge shall be reported to the Department within one (1) month after the change.

4.05 On-site sewage disposal systems with a design daily flow less than 2,500 gallons are exempt from the provisions of this regulation. Other wastewater facilities may be granted exemption by the Department under Section 5.02 after due compliance with the requirements of Section 4.04 of this regulation.

4.06 All persons must be operating at a wastewater facility in Delaware in order to be issued a Delaware wastewater treatment plant operator's license.

#### Section 5 - Classification of Wastewater Facilities:

5.01 The Department shall classify wastewater facilities which discharge into publicly owned wastewater systems, or to receiving bodies of water, or on land surface or subsurface. The classification shall take due regard of the skill, knowledge, and experience required of an operator; and shall be in accordance with the criteria hereby established.

5.02 Classification of Wastewater Treatment Plants: Waste water treatment plants shall be classified in one of four classes. These classifications shall be made in accordance with the point system established in Table I, and the range of points for each class of facility as shown below:

Class I	-	11 - 30 points
Class II	-	31 - 55 points
Class III-		56 - 75 points
Class IV	-	76 points or greater

Treatment plants other than those with on-site sewage disposal systems scoring fifteen (15) points, or less, shall be exempt from the Requirements of Section 4.01 of this regulation, and the owner shall be so notified by the Department. Treatment plants with on-site sewage disposal systems only, scoring ten (10) points, or less, shall be exempt from the requirements of Section 4.01 of this regulation, and the owner shall be so notified by

# FINAL REGULATIONS

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the Department.

TABLE I  
POINT SYSTEM CLASSIFICATION OF WASTEWATER  
TREATMENT PLANTS

Assign points for every item that applies:

ITEM	POINTS	REMARKS
Size		
Maximum population equivalent (P.E.) served, peak (lbs. BOD) day, per 10,000 P.E. or part	1	20 Points Maximum
Design daily flow or peak month's daily flow, whichever is larger, per MGD or part	1	20 Points Maximum
Effluent Discharge		
Receiving stream (sensitivity)	2-6	Slight 2; Moderate 4; Extreme 6
Discharge into treatment system	1	
Land Disposal - evaporation	2	
Land Disposal - Spray Irrigation		
Overload Flow, Rapid Infiltration	4	
Subsurface disposal	4	
Variation in Raw Wastes	0-6	Slight 0; Moderate 3; Extreme 6
Pretreatment		
Oil & Grease Trap	3	
Screening, comminution	3	
Grit removal	3	
Plant pumping of main flow	3	
Equalization Tank with aeration	3	
Primary Treatment		
Settling Basin, Tanks, or Lagoons	5	
Primary clarifiers	5	

Combined sedimentation/digestion	5
Chemical addition (except chlor., enz.)	4
Oil & Water Separator	5
Secondary Treatment	
Rotating Biological Contactors w/sec. clarifiers	10
Trickling filter w/sec. clarifiers	10
Activated sludge w/sec. clarifiers (including ext. aeration and oxidation ditches)	15
Stabilization ponds without aeration	5
Aerated lagoon or tank	8
Chemical addition	4
Advanced Waste Treatment	
Polishing ponds	2
Chemical/physical - without secondary (inc. DAF & Filters)	15
Chemical/physical - following secondary (inc. DAF & Filters)	10
Biological or chemical/biological	12
Ion exchange	10
Reverse Osmosis, electrodialysis	15
Chemical recovery, carbon regeneration	4
Oil & Water Separator	5
Solids Handling	
Aerated Sludge Holding Tank	3
Thickening	5
Anaerobic digestion	10
Aerobic digestion	6
Evaporative sludge drying	2
Mechanical dewatering	8
Solids reduction (incineration, wet oxidation)	12
Composting by plant personnel	5
Land Disposal by Plant Personnel	8
Disinfection	
Disinfection i.e., lime stabilization, etc.	5
Chlorination or comparable	5
Ultraviolet Disinfection	3

Ozone Disinfection	5
Dechlorination (Chemical)	5
Dechlorination (Aeration)	3

#### Laboratory Control by Plant Personnel

Complexity	1-10	Slight 1; Moderate 5; Extreme 10
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5.03 Any wastewater facility may be classified in a group other than indicated by the general criteria after determination by the Secretary that the incorporation of special features of design or characteristics, conditions of flow or use of the receiving waters or combination of such conditions or circumstances are not fully covered in the general criteria. The owner of the facility shall be given due notice of the tentative determinations and his comments, if any, shall be considered before making the final determination.

5.04 Classification of any wastewater facility may be changed at the discretion of the Secretary by reason of changes in any condition or circumstances on which the original classification was predicated. Due notice of any such change shall be given to the owner of the treatment plant.

#### Section 6 - Operator Qualifications and Classifications:

6.01 Operators shall be examined by the Board as to education, experience, and knowledge as related to the classification of facility for which examined. Applicants shall be required further to give evidence of good character, dependability, interest in work, and other pertinent characteristics in relation to responsible operations. Applicants must pass the required written examination except when waived by the Board in which case an oral examination by the Board will be required.

6.02 In evaluating qualifications of operators, the Board will be guided by the following:

A. Experience requiring some technical knowledge of the work and whether or not direct responsible charge (DRC) of work was included. In large plants where responsibility is divided, operators of important divisions may be credited with having responsible charge.

B. Experience, to be acceptable, must be the result of satisfactory accomplishment of work. Evaluation may be based on reports of the employers, state and local water pollution control agencies having appropriate responsibilities for supervising systems and plants.

C. Partial credit may be given for operating experience in maintenance, laboratories, or other work of water and/or wastewater systems and allied trades such as plumbing.

D. Where applicable, education may be substituted for a portion of experience requirements as specified below:

(i) Approved college level education may be substituted on a year for year basis for operating or direct responsible charge experience.

(ii) Specialized operator training courses, correspondence courses, seminars, workshops, etc., may be substituted for experience on a case by case basis; and the equivalency will be determined by the board.

(iii) Where education or training is substituted for experience, it shall not exceed an amount which would reduce the requirement of actual experience to less than one year for any classification or less than two years actual experience for Classes II, III and IV. One year of experience is equivalent to a minimum of 1500 hours per year of on-site operating experience at a wastewater facility.

(iv) Education applied to experience requirement cannot also be applied to education requirement.

E. Where applicable, experience may be substituted for educational requirements as specified below:

(i) One year of operating experience may be considered as equivalent to two years of grade school or one year of high school without limitation of time.

(ii) One year of direct responsible charge experience or one year experience in an important phase of operation, other than direct charge, may be considered as equivalent to one year of college level education.

(iii) Experience applied to educational requirement may not also be applied to the experience requirement.

F. Substitutions for formal education may be made as follows:

(i) Specialized operator training courses, correspondence courses, seminars, workshops, etc., may be substituted for formal education on a case by case basis; and the equivalency will be determined by the Board.

(ii) An acceptable high school equivalency certificate may be used to substitute for graduation from high school.

#### 6.03 Wastewater Treatment Plant Operators:

Four classes of operators are hereby established. Their qualifications are intended to relate as nearly

as possible to the corresponding classifications for wastewater treatment plants.

Class IV:

1. A college degree or completion of four (4) years in a standard curriculum in engineering or allied subjects or equivalent, plus
2. At least four (4) years of acceptable operating experience of treatment plants in Class III or higher, two years of which must have been in a position of major responsibility (DRC).

Class III:

1. Completion of high school or equivalent, and two (2) years of approved college level education in engineering or allied subjects or equivalent, plus
2. Four (4) years of acceptable operating experience of treatment plants of Class II or higher, two years of which must have been in a position of major responsibility (DRC).

Class II:

1. Completion of high school or equivalent, plus
2. Three years of acceptable operating experience of treatment plants of Class I or higher.

Class I:

1. Completion of high school or equivalent, plus
2. One year of acceptable operating experience of a treatment plant.

6.04 Speciality License:

Where an industrial or commercial wastewater treatment facility is of a highly unusual character requiring skills and techniques other than those indicated by the general criteria, the Board may, with the consent of the Secretary, provide a speciality license to an operator which shall be valid for operating the specific facility for which it was issued. The requirements for a specialist license shall be determined by the Board on a case-by-case basis.

Applicants shall pass the required written examinations except when waived by the Board in which case an oral exam by the Board will be required.

Section 7 - Examination:

7.01 The Board or its authorized designee shall prepare written examinations to be used in determining

knowledge, ability and judgment of the operators.

7.02 Examinations shall be held at places and times set by the Board, with a suitable method of advance announcement made by the Board. Examinations shall be conducted at least semi-annually.

7.03 Except in such cases as the Board may decide otherwise, all examinations shall be written. In cases where no written examinations are required, the reasons shall be stated. All examinations will be graded by the Board, or by others designated by the Board, and the applicant notified of the outcome. Papers will not be returned to the applicant, but means will be provided to review the results with a member of the Board or Division of Water Resources on request by the applicant.

7.04 Separate examinations may be prepared to cover basic differences in the duties and responsibilities of operations, types of facilities, variations in waste water quality, conditions of receiving waters and other pertinent matters.

7.05 Any person who is applying for a particular class of wastewater treatment plant operator's license and who has failed the written examinations for that particular class on three (3) consecutive occasions shall satisfactorily complete an approved educational examination review course prior to again being considered to take that particular class of written examination.

Section 8 - Licensing:

8.01 Issuance of a License:

A. On satisfactory fulfillment of the requirements provided herein and based on the recommendation of the Board, the Secretary may issue a suitable license to the applicant designating his competency. The license will indicate the class of wastewater treatment facility for which the operator is qualified to operate.

B. A license may be issued, without examination, in a comparable classification to any person who holds a current valid certificate and/or license in any state, territory or possession of the United States or any country, if in the judgment of the Board the requirements for the licensing of an operator under which the person's certification and/or license was issued do not conflict with the provisions of this regulation and are of a standard not lower than that specified by this regulation and providing further that reciprocal privileges are granted to licensed operators of this State.

C. A license shall be renewable every two years unless revoked for cause, replaced by one of a higher

grade, or invalidated under subsection D or E below.

D. Beginning on January 1, 1990, the applicant for a license renewal shall submit with the renewal application proof that the applicant has in the preceding two years attended and/or satisfactorily completed a minimum of twenty (20) classroom, seminar or workshop hours relating to wastewater facility operations and/or maintenance that are sponsored by recognized government, educational, and/or industrial groups, including equipment manufacturers.

E. Beginning on January 1, 1990, the applicant for a license renewal who is no longer employed at a wastewater treatment plant shall have met the requirements of subsection D above. The license of an operator who has terminated employment at a wastewater treatment plant and who does not meet the requirements of subsection D above at the time of license renewal shall be valid for no more than two (2) years. After expiration of those two (2) years, the license shall automatically be invalidated. An operator whose license is invalidated may be issued a new license of like classification provided appropriate proof of competency is presented to the Board. Successful completion of a written examination shall be required if the license has been invalidated for two (2) or more years.

~~E. The license of operators who terminate their employment at a wastewater treatment plant will be valid for no more than two (2) years. After two (2) years, the license will automatically be invalidated. An operator whose license is invalidated may be issued a new license of like classification provided appropriate proof of competency is presented to the Board. Successful completion of a written examination shall be required if the license has been invalidated for two or more years.~~

F. A license shall be valid only so long as the holder uses reasonable care, judgment and application of his knowledge in the performance of his duties. No license will be valid if obtained through fraud, deceit, or the submission of inaccurate data on qualifications.

#### G. Operator-In-Training License:

An operator who desires to become licensed in Class I, or in a higher grade and does not meet the experience or educational requirements may, with the approval of the Board of Certification, receive an interim Operator-In-Training (OIT) license pending fulfillment of these requirements providing the appropriate examination has been successfully passed. A holder of an OIT license may, with the recommendation of the Board and with the consent of the Secretary, be allowed to operate a facility

on a temporary basis until the requirements are met up to a maximum period of two years.

#### H. Emergency License:

An emergency license of proper classification may be issued after an oral examination by the Board, to an individual certified by the owner to be in responsible charge when it is demonstrated to the satisfaction of the Secretary that the owner has unexpectedly lost a licensed operator and/or is unable to hire a licensed operator in spite of good faith efforts. Such license may be issued with special conditions or requirements deemed necessary to protect the public health and the water resources of the State. An emergency license shall be valid only for that plant or system for a period of one (1) year and may be renewed for a maximum of one (1) additional year when extreme extenuating circumstances are shown and concurred with by the Board.

#### 8.02 Suspension and Revocation of License:

The Secretary may suspend or revoke the license of an operator, after considering the recommendation of the Board of Certification, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly. The Board shall act in accordance with procedures established under Section 3.02(b) of this regulation and shall hold a hearing before making its recommendations.

#### 8.03 Additional Persons Licensed:

The Secretary may determine at his discretion (due to size of plant, shift operation or other influencing factors), that more than one operator shall be required to be in responsible charge in a given facility and, therefore, more than one operator shall be licensed.

#### 8.04 Additional facilities:

A. Application may be made to the Secretary to operate more than one facility and must include justification and capabilities.

B. Any person considered in responsible charge of more than one facility may be required to be licensed in a classification higher than the classification of those plants in the operator's charge. The degree of operator classification may be further increased depending upon

the total number of facilities under the responsible charge of the operator. The Board will recommend with the consent of the Secretary the degree of classification in accordance with these factors.

## Section 9 - Fees:

9.01 The fee schedule for wastewater operator applications, examinations and licenses shall be established by the General Assembly.

## ~~Section 9 - Fees:~~

~~9.01 The fee schedule set forth below shall take effect from the effective date of this regulation:~~

- ~~A. Application for License:
  - ~~(i) Classes I, II, III, IV, OIT, Speciality and Temporary License \$25.00~~
  - ~~(ii) Emergency License \$250.00~~~~
- ~~B. Examination (written and/or oral) Fee \$75.00~~
- ~~C. Re-examination at same level \$75.00~~
- ~~D. Renewal of License:
  - ~~(i) Classes I, II, III, IV, OIT and Speciality License for two (2) years or less \$25.00~~
  - ~~(ii) Emergency License for one (1) year or less \$250.00~~~~
- ~~E. Surcharge on late renewal of license \$10.00~~

~~9.02 The fee schedule may be revised by the Secretary at any time after consulting with the Board and following a public hearing.~~

## Section 10 - Prohibited Acts:

10.01 It shall be unlawful:

A. for any wastewater facility (except those exempted under provisions of this regulation) to be operated unless the operator(s) in direct responsible charge is duly licensed under the provisions of this regulation; and

B. for any person to perform the duties of an operator without being duly licensed under the provisions of this regulation.

## Section 11 - Penalties:

11.01 Any person who knowingly and willfully violates any provision of this regulation shall be subject to enforcement and penalties under 7 Del. C., Subsection 6005.

## Section 12 - Reciprocity:

12.01 On or after the effective date of this regulation, certification and/or licensing of operators by any State

which, as determined by the recommendation of the Board with the consent of the Secretary, accepts certifications made or certification requirements deemed satisfactory pursuant to the provisions of this regulation, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this regulation, if in the judgment of the Board with the consent of the Secretary, the certification requirements of such State are substantially equivalent to the requirements of this regulation or any rules promulgated thereunder.

12.02 In making determination pursuant to subsection 12.01 of this Section, the Secretary shall consult with the Board of Certification and may consider any generally applicable criteria and guidelines developed by the Association of Boards of Certification for Operating Personnel in Water and Waste Water Utilities (ABC).

## Section 13 - Repealer:

13.01 The provisions of this regulation are intended to supersede existing regulations of this State insofar as they relate to the matters included in this regulation.

## Section 14 - Severability:

14.01 If any part of this regulation, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances and the remainder of this regulation shall not be affected thereby and shall be deemed valid and effective.

## ~~Section 15 - Effective Date:~~

~~15.01 The effective date of this regulation is January 1, 1988.~~

## Section 15 - Department Contact Point:

15.01 All contacts of these regulations shall be through:

Division of Water Resources  
Department of Natural Resources  
and Environmental Control  
State of Delaware  
89 Kings Highway  
Dover, DE 19901  
Telephone: 302-739-5731

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3)(c) (16 Del.C. §122(3)(c))

These regulations were drafted as a result of legislation passed by the Delaware General Assembly in 1994. The regulations create an Advisory Council to assist the Secretary of Delaware Health and Social Services in licensing and regulating operators of public water supply systems.

The regulations provide that operators of all public water systems, except seasonal suppliers, must have a licensed operator. The regulations create a base license which covers small water systems which do not treat their water or only use hypochlorination for disinfection. If a water system has any treatments beyond these then the operator must get a separate endorsement on his/her license which specifies they have passed the required test for that treatment process.

Licenses will be renewed annually at a fee of \$50. There is a provision to grandparent operators who have been at a water system for more than five years. The grandparent license will be transferable. Continuing education requirements are mandated for all operators.

Public Hearings were held on June 9, 1997, in Milford, Delaware, and on June 11, 1997, in New Castle, Delaware. The announcements regarding both hearings were advertised in both the News Journal and the Delaware State News at least 30 days prior to the hearings. During this 30 day period the public was given the opportunity to make written comments or make arrangements to make oral comments during the hearings. The purpose of these hearings was to provide an opportunity for the public to ask questions, make comments and afford their participation in this process. There was full support for the regulations. There were no objections. These regulations were adopted by Carment Nazario, Secretary, Delaware Health and Social Services, on September 2, 1997.

**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**

**REGULATIONS FOR THE LICENSING  
AND REGISTRATION OF OPERATORS  
OF PUBLIC WATER SUPPLY SYSTEMS**

**SECTION 1 - PURPOSE**

1.100 It is the purpose of this regulation to protect the public health and to provide for the development and protection of the potable water supply systems of this State; to provide for the classification of public water systems; to require the licensing of operators of these systems; to provide procedures for such licensing and registration; to create an Advisory Council for Certification; to provide for reciprocal arrangements; and to prescribe penalties for violation of this regulation.

**SECTION 2 - DEFINITIONS**

2.101 Advisory Council: Advisory Council for Certification of Public Water System Operators, as established by this regulation.

2.102 Base Level License: A water treatment and/or distribution license in which the following information is covered: general water system information; disinfection by hypochlorination; and distribution operation and maintenance for water supply systems having a flow of less than five hundred (500) gpm at twenty (20) psi.

2.103 Circuit Rider: A certified water operator who operates and/or is the direct-responsible-charge (DRC) for more than one (1) public water system.

2.104 Combined Treatment/Distribution System: Any water supply system which is composed of a water treatment facility as defined in 2.117 together with a water distribution system as defined in 2.113.

2.105 Continuing Education Unit (CEU): A measure of professional, educational training, where one (1) CEU is equal to ten (10) hours of classroom and/or laboratory training.

2.106 Department: Delaware Health and Social Services.

2.107 Direct-Responsible-Charge (DRC): Certified water system operator(s) assigned accountability for performance of active, on-site operational duties.

2.108 Division: Division of Public Health.

2.109 Educational Contact Hour: The amount of time spent at a water operators or water distribution operators training course, after initial certification, not including travel time or lodging time. For purposes of these Regulations, the initial base certification course does not qualify as educational contact hours and one (1) hour of time spent in a training course is equal to one (1) educational contact hour.

2.110 Endorsement: Any water treatment operation as listed in Section 5.201 which is over and above the base

level license as defined in Section 2.102.

2.111 Operator: A licensed person who works in a water treatment facility and/or a water distribution system who may be a DRC or may work under a DRC.

2.112 Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, state commission, Advisory Council, public or private institution, utility, cooperative, municipality or any other political subdivision of this State, or any other legal entity.

2.113 Public Water System: A water supply system for the provision to the public of piped water for human consumption either directly from the user's free flowing outlet or indirectly by the water being used to manufacture ice, foods and beverages or that supplies water for potable or domestic purposes for consumption in more than three dwelling units, or furnishes water for potable or domestic purposes to employees, tenants, members, guests or the public at large in commercial offices, industrial areas, multiple dwellings or semi-public buildings, including, but without limitation, rooming and boarding houses, motels, tourist cabins, mobile home parks, restaurants, camps of all types, day and boarding schools, clubhouses, hospitals and other institutions, or offers any water for sale for potable or domestic purposes. For the purposes of this definition, consecutive water supplies as defined in the State of Delaware Regulations Governing Public Drinking Water Systems are excluded.

2.114 Secretary, Delaware Health and Social Services: The Administrator of the Department of Health and Social Services of the State of Delaware.

2.115 Water Distribution System: That portion of the water supply system in which water is stored and conveyed from a water treatment plant, groundwater well, or other supply point to the free-flowing outlet of the ultimate consumer.

2.116 Water Supplier: Any person who owns, operates, or manages a public water system.

2.117 Water Supply System: Includes the work and auxiliaries for collection, treatment, storage, and distribution of water from the source of supply to the free-flowing outlet of the ultimate consumer.

2.118 Water Treatment: Any process which is meant to alter the physical, chemical or bacteriological quality of the water.

2.119 Water Treatment Facility: That portion of the water supply system which is meant to alter the physical, chemical, or bacteriological quality of the water being treated.

### SECTION 3 - ADVISORY COUNCIL FOR CERTIFICATION OF PUBLIC WATER SYSTEM OPERATORS

3.100 An Advisory Council for Certification of Public Water System Operators shall be appointed by the Secretary, Delaware Health and Social Services to advise and assist the

Secretary in the administration of this regulation. The Advisory Council shall hold at least quarterly meetings each calendar year and such special meetings as it deems necessary.

3.200 Membership:

3.201 The Advisory Council will consist of a minimum of nine (9) members and with the following representation:

A. one (1) member representing the Division of Public Health who shall serve as Advisory Council Secretary/Treasurer, responsible for maintaining all appropriate records and conducting the daily business of the Advisory Council.

B. three (3) members representing the general public

C. two (2) representatives from local government agencies with managerial responsibility for water treatment and/or water distribution in a public water system with the following representation:

(1) one (1) member representing a local government agency having a population greater than or equal to 10,001 and;

(2) one (1) member representing a local government agency having a population less than or equal to 10,000

D. one (1) member representing business or industry

E. one (1) member representing a public water utility.

F. one (1) member holding a valid water operator's license, or who is eligible to be licensed under this regulation.

3.202 Advisory Council members will serve a five (5) year term with the right to resign at their request or until such time as a reappointment or a replacement appointment is made.

A. Initially one (1) member will be appointed for a term of one (1) year, one (1) for a term of two (2) years, two (2) for a term of three (3) years, two (2) for a term of four (4) years and two (2) for a term of five (5) years.

B. The Division representative will serve an unlimited term at the discretion of the Secretary.

3.203 Advisory Council appointees shall represent all counties of the State, with at least one (1) member each from New Castle, Kent and Sussex Counties.

3.204 The Secretary may remove any member of the Advisory Council for misconduct, incapacity, or neglect of duty, and shall be the sole judge of the sufficiency of the case for removal.

3.205 The Secretary shall fill any vacancy. Such an interim appointment shall be for the duration of the term.

3.300 Responsibility and Authority:

3.301 The Advisory Council, with the consent of the Secretary, shall establish such procedures and guidelines as may be necessary for the administration of this regulation. These procedures and guidelines shall include but not be limited to the following:

- A. procedures for examination of candidates and the granting of licenses;
- B. procedures for the renewal of licenses;
- C. procedures for the suspension, revocation and failure to renew licenses;
- D. guidelines for evaluating equivalency of training and examinations conducted by recognized agencies and institutions;
- E. guidelines for evaluating equivalency of other licensing and certification programs for the purpose of according reciprocal treatment.
- F. procedures for the collection and disbursement of fees.

3.302 The Advisory Council shall possess the necessary authority as delegated by the Secretary to carry out all activities required for the proper administration of this regulation. Such authority includes:

- A. the development of rules and regulations, to be adopted by the Secretary, concerning the licensing of operators of public water systems;
- B. establishing the method of examination for each license applicant, including preparation, administration, and grading of examinations;
- C. the recommendation to the Secretary regarding the issuance and renewal of licenses;
- D. the recommendation of disciplinary sanctions to the Secretary on operators who violate Section 10 of this regulation.

#### SECTION 4 - LICENSE REQUIREMENTS FOR PUBLIC SUPPLY WATER SYSTEMS

##### 4.100 Water Supply Treatment Facilities

Two years following the effective date of this regulation, any public water supply system treatment facility must be under the direct-responsible-charge of a person possessing a valid base level water operator's license, defined in Section 2.102 of these regulations, and all applicable endorsements, if any, for the treatment facility to be operated.

##### 4.200 Water Supply Treatment Facility Operators

Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible-charge (DRC) and/or operate any public water supply system treatment facility unless said person possesses a valid base level water operator's license and applicable endorsements, if any, for the treatment facility to be operated.

##### 4.300 Water Supply Distribution Systems

Two years following the effective date of this regulation, any public water distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and, at a minimum,

a distribution endorsement.

##### 4.400 Water Supply Distribution System Operators

Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible charge (DRC) and/or operate any public water supply distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), unless said person possesses a valid base level water operator's license and, at a minimum, a distribution endorsement.

##### 4.500 Combined Treatment/Distribution Supply Systems

4.501 The license requirements stipulated in 4.100 and 4.300 apply separately and equally to both the water supply treatment facility operator and the water supply distribution facility operator of a combined treatment/distribution supply system.

4.502 Any water supply treatment facility which is part of a combined public water treatment/distribution system must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and all applicable endorsements, as defined by the Division, if any, for the treatment facility to be operated.

4.503 Any water supply distribution system which is part of a combined public water treatment/distribution system and is capable of producing greater than five hundred (500) gpm at twenty (20) psi must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and, at a minimum, a distribution endorsement.

4.504 The requirement of a distribution endorsement as stated in Section 4.503 may be waived if the owner can demonstrate to the Division that all distribution system operation and maintenance is contracted out to another licensed operator.

##### 4.600 Notification to Division of Public Health

Within twenty-six (26) months of the effective date of this regulation, any owner of a public water supply system treatment facility, distribution system, or combined treatment/distribution system must provide to the Division a list of all persons in direct-responsible-charge and all operators who have been duly licensed under these regulations. Further, the owner must notify the Division in writing of any additions, deletions, or other change in the number of licensed direct-responsible-charges or operators within thirty (30) days of such change.

##### 4.700 Temporary Variance

4.701 A temporary variance from the license requirements provided in Sections 4.100, 4.300 and 4.500 of this regulation may be granted by the Secretary, upon recommendation by the Advisory Council, to the owner of a public water system treatment facility, distribution system, or combined treatment/distribution system, when it is demonstrated to the satisfaction of the Advisory Council that

the owner has unexpectedly lost a licensed operator and/or is unable to hire a licensed operator in spite of good faith efforts. Such temporary variance may be issued with any special conditions or requirements deemed necessary to assure the protection of the public health.

4.702 Notification of the unexpected loss of a licensed operator must be sent to the Advisory Council by the owner within thirty (30) days pursuant to 4.600 of this regulation. Application for a temporary variance must be made to the Advisory Council on forms provided by the Advisory Council no later than thirty (30) days following such initial notification. After thorough review of the application and any other information required by the Advisory Council as being pertinent to the issuance of a temporary variance, the Advisory Council shall make a recommendation to the Secretary. The Secretary notify the applicant in writing of his/her decision to approve or deny the temporary variance.

4.703 A temporary variance shall be valid only for that facility or system for which issued, and for a period of time as specified by the Secretary, but which shall not exceed six (6) months.

#### 4.704 Extension of Temporary Variance

When it is demonstrated to the satisfaction of the Secretary that the owner holding a temporary variance has continued to act in good faith in attempting to hire a licensed operator but is unable to do so, one (1) extension of the original variance may be granted at the discretion of the Secretary, upon recommendation by the Advisory Council, for a period of time not to exceed six (6) months. Requests for an extension of a temporary variance must be made to the Advisory Council in writing no later than one (1) month prior to the expiration date of the original variance.

### SECTION 5 - CLASSIFICATION OF PUBLIC WATER SYSTEMS

5.100 The Division of Public Health shall classify all public water systems in accordance with the criteria hereby established.

#### 5.200 Water Supply Facilities

5.201 Public water system supply facilities shall be classified according to the treatment process(es) it operates. General treatment processes shall be grouped into categories hereby called endorsements. Within each endorsement shall be specific unit processes, hereby called endorsement sub-categories, see appendix A for a list of these sub-categories. The Division will specify which endorsements and endorsement sub-categories a public water system needs based upon the most recent sanitary survey conducted by the Division. The list of endorsements are as follows:

- A. Disinfection
- B. Chemical Feed
- C. Filtration

- D. Surface Water Operations
- E. Other Specified Treatment
- F. Distribution

5.202 The Advisory Council shall amend Appendix A as is necessitated by the creation of new treatment technologies.

5.203 In the event of an emergency, such as source water contamination, in which a treatment process is required to protect the public's immediate health and which the DRC and/or operator is currently not licensed for, an emergency endorsement may be added to the DRC's and/or operator's license provided that prior approval, by the Division, is granted. This emergency endorsement shall be issued for a period not to exceed one (1) year, without the express written consent of the Secretary.

### SECTION 6 - LICENSE CLASSIFICATION AND OPERATOR QUALIFICATIONS

#### 6.100 License Classification

6.101 One (1) regular water supply operator license class is hereby established:

Base Level Water Supply Operator with all applicable endorsements as stated in Section 5.201.

6.102 Three (3) specialty class licenses are also established:

- A. Water Supply Operator-in-Training (OIT)
- B. Circuit Rider
- C. Grandfather Clause

#### 6.200 Operator Qualifications

##### 6.201 Base Level Water Supply Operator

- A. High School Diploma or equivalent and one (1) year of acceptable operating experience, or;
- B. Three (3) years of acceptable operating experience, and;
- C. Successful completion of the base level written examination;

##### 6.202 Water Treatment Operator-In-Training (OIT)

An operator who lacks either the education or experience requirements for a base level license may, with the approval of the Secretary, upon recommendation by the Advisory Council, and after successful completion of the base level written examination, receive an interim Operator-in-Training (OIT) license, for a maximum of three (3) years, pending fulfillment of the regular license requirements.

##### 6.203 Circuit Rider

To be classified as a circuit rider, an operator must be able to meet the following criteria:

- A. Must be certified for all endorsements required for the water systems for which he/she is in direct-responsible-charge and/or operates.
- B. Spend a recommended number of three (3) visits each week at each water system which he/she is in

direct-responsible-charge. This number may be adjusted by the Advisory Council based upon a yearly review.

1. The number of visits spent each week at each water system must be documented on forms, provided by the Division, and submitted upon request.

C. The distances between each water system shall be such that, in the event of an emergency, the circuit rider will be able to reach the water system within two (2) hours of first being notified of the emergency.

6.204 Grandfather Clause: A valid, base level license and any applicable endorsements shall be issued by the Secretary, upon recommendation by the Advisory Council, to the individual(s) certified by the governing body or owner of a public water system to have been in responsible charge and/or operated a water facility on the effective date of this regulation, under the following criteria:

the individual(s) can provide documentation to the Advisory Council attesting to the fact they have been in a position of Direct-Responsible-Charge and/or operated a water facility for at least five (5) years prior to the adoption date of these Regulations.

6.205 A license and endorsement(s) granted under Section 6.204 of these Regulations shall be transferable to another water system provided that the endorsement(s) necessary to operate the new water system are the same as the endorsement(s) for the water system in which the grandfathered license was originally issued.

## SECTION 7 - LICENSING PROCEDURES

### 7.100 Examinations

7.101 The Advisory Council or its authorized designee shall prepare, administer and grade written examinations required for each category and classification of license. A minimum score of seventy percent (70 %) shall be required to pass the examination. Examinations are confidential and remain the property of the Advisory Council. Due to unusual and extenuating circumstances, the Advisory Council may waive the requirements for the written examination, in which case an oral recorded examination shall be conducted and retained by the Advisory Council.

### 7.102 Schedule

Examinations shall be held at places and times designated by the Advisory Council, and shall be held at least semiannually. Advance public announcement shall be made by the Advisory Council at least two (2) months prior to the scheduled examination date.

### 7.103 Applications

Candidates wishing to take any license examination must submit an application to the Advisory Council at least thirty (30) days prior to the announced date of the examination on forms provided by the Advisory Council. No application form shall require a picture of the applicant,

require information relating to citizenship, place of birth, or length of State residency, nor shall it require personal references

### 7.104 Application Review and Notification

The Advisory Council shall review all applications submitted and determine the eligibility of each candidate to sit for the particular examination applied for. Each candidate approved for examination shall be notified in writing by the Advisory Council of the time and place of the next examination for which the candidate is eligible. Such notification shall be given at least two (2) weeks prior to the examination date.

### 7.105 Fraudulent Applications

Where the Council has found to its satisfaction that an application has been intentionally fraudulent, or that false information has been intentionally supplied, it shall report its finding to the Attorney General for further action.

### 7.106 Eligibility

Approved applications for examination shall remain valid for one (1) year. Any approved candidate who fails to appear for an examination during the one (1) year period following the first notification of eligibility must submit a new application for examination to the Advisory Council.

### 7.107 Appeal of Rejected Applications

Where the application of a person has been refused or rejected and such applicant feels that the Council has acted without justification, has imposed higher or different standards for him or her than for other applicants, or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Secretary.

### 7.108 Right to Appeal the Examination

Any applicant who questions the grading of any segment of the examination has the right to appeal before the Advisory Council.

### 7.109 Re-Examination

Any candidate who fails to pass an examination may apply for re-examination upon subsequent scheduled examination dates.

### 7.200 Issuance of License

On satisfactory fulfillment of the requirements provided in this regulation, the candidate shall be issued a suitable license by the Secretary, upon recommendation by the Advisory Council. The license shall indicate all endorsements for which the operator is qualified and the date of issuance.

### 7.300 Renewal of License

7.301 Licenses shall be renewed every two (2) years unless suspended, revoked for cause, or invalidated under 7.400. The deadline renewal date shall be the month and day of the original license issuance. Application for renewal must be submitted to the Advisory Council on forms provided by the Advisory Council at least sixty (60) days prior to the deadline renewal date.

7.302 In addition to Section 7.301, all operators,

including grandfathered operators, must receive an additional amount of training, as approved by the Advisory Council, every two (2) years in order to renew their licenses, as shown below.

A. Twelve (12) educational contact hours and one and one half (1.5) CEUs every two (2) years, for systems whose distribution system is capable of producing a flow of greater than 500 gpm at 20 psi.

B. Twelve (12) educational contact hours every two (2) years, for systems whose distribution system is not capable of producing a flow of greater than 500 gpm at 20 psi.

7.303 Any license which has not been renewed in accordance with 7.301 and 7.302 shall be automatically invalidated. Such expired license may be revalidated without examination upon payment of the appropriate fee within one (1) year from the expiration date. Licenses not reinstated within one (1) year shall submit a new application to the Advisory Council and may be required to sit for the appropriate written examination.

7.400 Denial of Renewal, Suspension, and Revocation of Licenses

The Secretary may suspend or revoke the license of an operator, after considering the recommendations of the Advisory Council, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly. Said recommendations to the Secretary by the Advisory Council shall be made upon the Advisory Council conducting a hearing in accordance with provisions established under these regulations.

7.500 Fees

7.501 The fee schedule as authorized by 16 Delaware Code Section 122(3)(c) and set forth below shall take effect on the effective date of this regulation.

A. Application for Initial Annual License ..... \$50.00

B. Application for Renewal of Annual License... \$50.00

7.502 All application fees are payable upon application. All fees are non-refundable.

7.600 Reciprocity

A license of comparable classification may be issued without examination to any person who holds a certificate or license in any state, territory, or possession of the United States or any country, if in the judgment of the Secretary, the requirements under which the certification or license was issued do not conflict with the provisions of this regulation or any rules promulgated hereunder, and are of a standard not lower than that specified by this regulation.

## SECTION 8 - PREEMPTION

8.100 The provisions of these regulations preempt existing regulations of this State insofar as they relate to or conflict with the provisions of this regulation.

## SECTION 9 - SEVERABILITY

9.100 Each Section of this regulation and every part of each Section is an independent Section and part of a Section, and the holding of any Section or part thereof to be unconstitutional, void, or invalid for any cause does not affect the validity or constitutionality of any other Section or part thereof which shall continue valid and effective.

## SECTION 10 - DISCIPLINARY PROCEDURES

10.100 Grounds for Discipline

The following conditions and actions of an applicant or licensed operator may result in disciplinary action as set forth in 10.300 of this Section if after following the Disciplinary Procedures as stated in Section 10.200, the Council finds that an applicant or licensed operator:

A. Has employed or knowingly cooperated in fraud or material deception in order to certified; or

B. Has engaged in illegal, incompetent or negligent conduct in the provision of water system operation; or

C. Has as an operator or otherwise, in the practice of his or her profession, knowingly engaged in an act of consumer fraud or deception, or engaged in the restraint of competition, or participated in price-fixing activities; or

D. Has violated a lawful provision of this Section or any lawful rule or regulation established here under.

10.200 Disciplinary Procedures

10.201 Notice of Violation: Whenever the Secretary, or his/her appointed representative, has reason to believe that a violation of any of these Regulations has occurred or is occurring, the Secretary shall notify the alleged violator. Such notice shall be in writing, may be sent by Certified Mail, or hand delivered, shall cite the Regulation or Regulations that are allegedly being violated, and shall state the facts which form the basis for believing that the violation has occurred or is occurring.

10.202 Investigation: Whenever the Secretary issues a Notice of Violation, an investigation shall be conducted to determine if the alleged violations have occurred or are occurring. The Advisory Council shall act as the investigator and upon review of all the facts concerning the alleged violation, will recommend disciplinary sanction(s), as stated in Section 10.300, to the Secretary.

10.203 Hearing Request: Any operator who has received a Notice of Violation, has been investigated, and faces possible disciplinary sanction(s), in the form of placement on probationary status, imposition of a fine,

suspension or revocation of license may submit a request for a hearing to the Secretary to contest the findings of the investigation and any disciplinary sanctions which may have resulted from the investigation.

#### 10.300 Disciplinary Sanctions

Persons regulated under this Section who have been determined to be in violation of this Section shall be subject to the following disciplinary actions:

- A. Issuance of a letter of reprimand
- B. Censure
- C. Placement on probationary status
- D. Imposition of a fine not to exceed \$1,000 for each offense

- E. Suspension of License
- F. Revocation of License

### SECTION 11 - PENALTY CLAUSE

11.100 Any person who neglects or fails to comply with this regulation shall be subject to penalty as provided in 16 Delaware Code 107.

### APPENDIX A

Listed below are the general endorsement categories. Under each general category is a list of the endorsement sub-categories (unit processes) associated with each general category.

#### A. Disinfection

2. Hypochlorination (Calcium or Sodium), powder or liquid
  2. Gas Chlorination
  3. Ozonation
  4. Bromination
  5. Iodine
  6. Chloramines
  7. Chlorine Dioxide
  8. Ultraviolet Light

#### B. Chemical Feed

1. Lime - Soda Ash Addition
2. pH Adjustment
3. Inhibitor - bimetallic phosphate, hexametaphosphate, orthophosphate, polyphosphate
4. Sequestering
5. Permanganate
6. Peroxide
7. Fluoridation

#### C. Filtration

1. Activated Carbon, powder or granulated

2. Sand - Pressure, Rapid, Slow
3. Reverse Osmosis
4. Greensand
5. Activated Alumina
6. Ion Exchange
7. Cartridge
8. Diatomaceous Earth
9. Ultrafiltration
10. Microfiltration

#### D. Surface Water Operations

1. Algae Control
2. Coagulation
3. Flocculation
4. Rapid Mix
5. Sedimentation
6. Sludge Treatment

#### E. Other Specified Treatment

1. Aeration - Cascade, Diffused, Packed Tower, Slat Tray or Spray
2. Dechlorination - using reducing agents, sodium bisulfate, sodium sulfide, or sulfur dioxide
3. Distillation
4. Bone Char
5. Electrodialysis

#### F. Distribution

1. Flow less than 500 gpm at 20 psi
2. Flow greater than 500 gpm at 20 psi

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## INDUSTRIAL ACCIDENT BOARD

Statutory Authority: 19 Delaware Code,  
Section 2121 (19 Del.C. §2121)

### ORDER

WHEREAS, it is expedient to revise certain rules now in effect under 19 Del.C. §2121 and 29 Del.C. Chapter 101, in part, because of changes in 19 Del.C. Chapter 23 and practice before the Board, for the purpose of securing the just, speedy, and inexpensive determination of every petition;

WHEREAS, the Board has considered certain proposed rules and changes after due notice and public comment;

WHEREAS, the Board received as written, public comment the October 15, 1997 memo from Karen

Peterson, Director, Division of Industrial Affairs, and the November 18, 1997 letter to Chairman Hastings from Nancy Chrissinger, Esquire, Workers' Compensation Section Chair;

WHEREAS, a draft of changes resulting from a joint effort by the Department of Labor and members of the Workers' Compensation Section of the Bar is presented to the Board this date as verbal comments; and

WHEREAS, the Board was advised by Assistant State Solicitor that certain nonsubstantive changes or amendments, such as changing "Board" to "Department" to bring the rules into compliance with the new statute to become effective December 23, 1997, do not require publication pursuant to 29 Del.C. §10113. The Board must make that preliminary finding before considering unpublished changes that are proposed.

### **I. Summary of Evidence and Information:**

Rule 1 requires a change to be in compliance with the new statute.

Rule 2 requires a change to be in compliance with the new statute. It was suggested the language indicating that notice be provided as published in the Register be included in the Department/Bar proposal.

Rule 3 was published in the Register and requires changes to be in compliance with the new statute. The decisions will be signed by Board members and authenticated by the Department.

Rules 4 and 5 require changes to be in compliance with the new statute.

Rule 6 was published in the Register.

Rule 8 requires changes to be in compliance with the statute. The date of the former amendment should be deleted.

Rule 9 was considered and deferred to a later date after due notice to consider substantive changes raised that may affect the rights of individuals not clearly on notice by the change printed in the Register of Regulations.

Rule 10 and 11 requires changes to be in compliance with the statute.

Rule 12 must be amended to define "good cause" and "extraordinary circumstance" as required by the recent statutory changes. The proposal published in the Register was modified in the Department/Bar Proposal.

Rule 13 requires changes to be in compliance with the statute. The last amendment date should be deleted.

Rules 17, 18, 19, and 20 requires changes to be in compliance with the statute.

Current Rule 21 should be deleted as it is addressed under the statute.

New Rule 21, formerly Rule 22, includes changes required to be in compliance with the statute.

Rule 22, formerly Rule 23, requires renumbering and a clerical correction.

Rule 23, formerly Rule 24, requires renumbering and contains changes required to be in compliance with the statute. The proposed term "affidavits" should be changed to "forms".

Rule 24, formerly Rule 25 in the Register, requires renumbering and contains changes to be in compliance with the statute.

Rule 25, formerly Rule 26, contains changes required to be in compliance with the statute. It was published in the Register of Regulations as Rule 25 and contains changes proposed by the Department/Bar to expedite hardship cases.

Rule 26 is a new rule printed in the Register of Regulations as proposed Rule 28 is changed to delete incorrect terminology and reference to Board Rule 9.

Rule 27 is a new rule printed in the Register of Regulations that codifies the current practice of providing proposed orders in certain cases. The list is not intended to be exclusive and orders should be permitted in other matters.

Rule 28 is a new rule that is a non-substantive addition to clarify the method of calculative time.

Rule 29 is a new rule that is non-substantive and requires a pre-legal conference. Timing of subpoenas is addressed.

### **II. Findings of Fact:**

1) Nonsubstantive or other changes permitted under 29 Del.C. §10113 can be made without further notice in part to conform to 19 Del.C. Chapter 23 effective December 23, 1997.

2) It is premature to change the pre-trial procedure under Rule 9 until proper publication because changes are substantive and require further publication and opportunity for comment.

3) Certain changes are necessary as a matter of administrative efficiency to achieve the goal of expedient claim resolution such as identifying the IAB number on correspondence and making certain claims by petition rather than amendment in a pending matter.

4) "Good cause" and "Extraordinary Circumstances" should be defined as required in Rule 12 and the joint proposal from the Bar and Department provides clear examples that can be used by the Department and Board in considering any request to effectuate the purpose of the recent changes in expeditiously handling the caseload.

5) It is important that time constraints are clearly defined.

6) Legal hearings on motion day may be reduced by a mandatory pre-hearing conference. The use of forms of orders improves Board efficiency.

**III. Action:**

Now, THEREFORE, upon consideration of the Premises and Public Comment, the Board, by unanimous vote of the members present, hereby adopts the following Amendments and Rules:

These changes shall be effective on January 15, 1998 after publication in the Delaware Register of Regulations.

SO ORDERED this 10th day of December, 1997.

**BOARD MEMBERS:**

/s/ Jane E. Mitchell      /s/ Karen Wright  
 /s/ Jerome M. Donohue /s/ R. Howard Seward  
 /s/ Irving S. Levitt      /s/ Richard L. Stone  
 /s/ Jesse I. Hastings, Chair

**IV: Text of Rules:****RULE NO. 1**

Address of the Board: Office Hours

~~[(A) All communications to the Board, the Board's staff or the Board's legal counsel shall be addressed to "Industrial Accident Board, State of Delaware," at the office address of the Board or such other address as the Board shall otherwise make known.~~

~~-(B) The office of the Board will be open from 8:00 a.m. until 4:30 p.m. each week day, except Saturdays, legal holidays, and unless otherwise provided by statute of Executive Order.]~~

[All communications to the Board shall be addressed to "Industrial Accident Board, State of Delaware" at 4425 North Market Street, Wilmington, DE 19802. The office is open daily from 8:00 a.m. to 4:30 p.m., except Saturdays, Sundays, and Legal Holidays.]

**RULE NO. 2**

Sessions

~~(A) Regular meetings of the Board for the transaction of its business will be held during the normal work week at its office in Wilmington at such times as may be set upon notice by the Board.~~

~~[Regular meetings of the Board for the transaction of its business will be held during the normal work week at its office in Wilmington at such times as may be set upon notice by the Board.]~~

[Hearings on petitions will be held during the normal work week at such locations and at such times as may be set upon notice by the Department of Labor.]

(B) Special sessions of the Board for the transaction of business may be held at any time and place in the State of Delaware as may be scheduled by the Board [with notice as provided by law].

~~[(C) Two members of the Board shall constitute a quorum for the transaction of business, and a decision or award by a quorum shall be valid.~~

~~[(D) Procedural matters arising prior or subsequent to a hearing may be decided by one member of the Board.]~~

**RULE NO. 3**

The Administrator of the Office of Workers' Compensation:  
 Filing of Papers

(A) The Secretary Administrator of the Office of Workers' Compensation shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Board, including the transcripts of the testimony and exhibits with all papers and requests filed in proceedings, the minutes of all action taken by the Board, and of its findings, determinations, reports, opinions, orders, rules, regulations, and approved forms.

(B) All orders and other actions of the Board shall be ~~[authenticated or]~~ signed by the [Administrator of the Office of Worker's Compensation] Secretary ~~[or such other person as may be authorized by the Board]~~ Board member issuing the order and authenticated by the Administrator of the Office of Workers' Compensation.

(C) All pleadings or papers required to be filed with the Board shall be filed in the ~~[office of the Board]~~ [Department of Labor's offices] at Wilmington or other location designated by the Department for that purpose, within the time limit, if any, fixed by law or Board Rule for such filing; and similarly all requests for official information, copies of official records or opportunity to inspect public records shall be made to the ~~Secretary of the Board~~ Administrator of the Office of Workers' Compensation. After the Petition to Determine Compensation Due is filed, all communication shall contain the assigned case file number.

(D) Communications addressed to the Board and all petitions and other pleadings, all reports, exhibits, depositions, transcripts, orders, and other papers or documents, received or filed in the office kept by the Secretary Administrator of the Office of Workers' Compensation shall be stamped showing the date of the receipt of filing thereof.

RULE NO. 4

Notice of Denial of Liability

(A) An insurance carrier or self-insurer shall, within 15 days after receipt of knowledge of a work-related injury, advise the Department and the claimant in writing of the following:

(1) The date the notice of the claimant's alleged industrial accident was received by the insurance carrier or self-insured employer; ~~plus and~~

(2) If the claim is accepted by the insurance carrier or self-insured employer; or

(3) If the claim is denied by the insurance carrier or self-insured employer giving the reason for the denial; or

(4) State that the insurance carrier or self-insured employer presently cannot accept or deny the claim, giving the reasons therefor; and stating approximately when the determination will be made.

(B) All medical expenses shall be paid by the carrier within 30 days after bills for said expenses are sent to the carrier for payment, unless the carrier notifies the claimant or his[her] attorney in writing that said expenses are contested or that further verification is required.

(C) Should Claimant allege to the Board that the insurance carrier or self-insured has failed in their its responsibilities under Sections (A) and (B), the ~~Board~~ **Department** will schedule a hearing. The claimant and the insurance carrier or self-insured employer will present their respective positions. After the hearing, if warranted, the Board will assess a fine of not less than \$100.00 nor more than \$1,000.00.

RULE NO. 5

Forms Provided by the Department

(A) In all cases where forms are provided by the ~~Board~~ **Department**, all papers filed with the Board shall be on such forms, and all applicable questions shall be answered.

~~[(B) A clear and better statement of any cause of action or defense, or further and better particulars of any matter stated or required, may be ordered at the discretion of the Board.]~~

~~[(C) (B)]~~ Petitions shall be signed by a non-corporate party or an attorney who is a member of the Bar of the Supreme Court of Delaware.

~~[(D) (C)]~~ An application to terminate a claimant's benefits shall be by petition.

RULE NO. 6

Formal Pleadings Not Required

(A) No formal pleading or formal statement of claim or formal answer shall be required of any party to any action before the Board, but each person making written request for a hearing shall file with the ~~Secretary of the Board~~ ~~Administrator of the Office of Workers' Compensation~~ **Department**, on forms to be furnished by the ~~Board~~ **Department**, a statement giving substantially the information requested on said forms.

(B) If, during the progress of any hearing, it shall appear to the Board that persons other than those named or referred to in the claim petition are, or may be entitled to **receive** or liable to pay compensation, the Board may inquire into and ascertain the rights and liabilities of such parties at an adjourned hearing of said case upon due notice to all such parties in interest. After the rights of all such parties are determined, the Board may amend the title of the cause in such a manner as may be right and proper.

RULE No. 7

All agreements for any scheduled loss or loss of function must be accompanied by appropriate doctor's reports.

RULE NO. 8

Motions Concerning Legal Issues

(A) Except for motions contemplated by Rule No. 10 and 11, where a motion is filed ~~by the Board with the Department~~ which makes a legal argument, a supporting brief containing citations shall be filed with such motion. A motion may not be filed without proof that a copy of said motion has been served upon the non-moving party.

(B) An answering brief shall be filed with the ~~Board~~ **Department** by the non-moving party within 15 days of receipt of the supporting brief. An answering brief may not be filed without proof that a copy of said answering brief has been served upon the moving party.

(C) A reply brief may be filed with the ~~Board~~ **Department** by the moving party in the discretion of the moving party, but in no event will a reply brief be accepted by the Department after 7 days from the receipt by the moving party of the non-moving party's answering brief. A reply brief may not be filed without proof that a copy of said reply brief has been served upon the non-moving party.

(D) After the briefs have been filed with the ~~Board~~ **Department**, an oral argument may be scheduled ~~by the Department~~ in the Board's discretion.

(E) Motions of a procedural nature need not be accompanied by supporting briefs. No order involving a procedural matter requested by the moving party shall be issued by the Board against the non-moving party until the

non-moving party has been given an opportunity to be heard on the issue.

(F) Anytime after the employer's First Report of Injury has been filed with the [Board Department], the [Board's Department's] scheduling officer may be notified either by oral, telephonic, or written communication of the request by a party or party's legal counsel for a legal hearing. The [Board's Department's] scheduling officer will have the discretion of requiring a written argument from the parties or the parties' legal counsel on the legal issue. Should one or both of the parties fail to accept the scheduling officer's decision, the parties must reduce their respective positions to written memorandums. The memorandums will be submitted to the [Board Department] by the parties on a date chosen by the scheduling officer. The Board will review the memorandums and issue a written decision.

(G) Parties may submit a proposed stipulation order for cooperation with reasonable vocational rehabilitation to the Board for approval without a legal hearing.

RULE NO. 9  
FORMULATION OF ISSUES - PRETRIAL  
PROCEDURE  
Amended October 25, 1991

(A) In any action, the Board may in its discretion direct the attorneys' for the parties or the claimants, if unrepresented, to appear before it for a conference to consider:

- (1) The simplification of the issues(s);
- (2) The necessity or desirability of amendments to the papers filed or for additional papers to be filed;
- (3) The possibility of obtaining stipulations; admission of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) Such matters as may aid in the disposition or expedition of the action.

(B) The Board may make an order which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or on their behalf as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel. Such order when entered controls the subsequent course of the action unless modified to prevent manifest injustice.

(C) The Board shall designate a Board staff member as the pretrial officer to arrange for and preside over pretrial hearings. The pretrial officer will have discretionary power to see that the pretrials are conducted

in an effective manner.

(D) The attorney for the petitioner, or the petitioner, will be assigned a pretrial hearing date by the Board. The Board assumes petitioners are prepared to go forward with their petitions on the date of filing except in cases involving a Statute of Limitations problem. At the time of the noticed pretrial the attorneys for the parties or the claimant, if unrepresented, must be prepared with the following information:

(1) Names and addresses of prospective medical and lay witnesses will be supplied.

(2) The pretrial memorandum shall contain the names of all witnesses known to each party at the time of the pretrial conference and expected to be called at the time of the hearing. Witnesses can be added following the pretrial with written notice to the opposing party and the pretrial officer no later than thirty (30) days before the hearing day.

(3) Complete statement of what the petitioner seeks and alleges. When a claimant seeks an order for payment of medical expenses, either by petition or when raised as an issue in the pretrial conference on employer's petition, copies of the bills shall be included with the petition, or provided to the carrier or counsel at least 30 days before the hearing. The requirement can be waived by a Pretrial Officer.

(4) Complete statement of defenses to be used by the opposing party.

(5) If the petitioner seeks an award under 19 Del. C. §2326, the petitioner must provide to the opposing party at the pretrial the medical reports upon which the petition is based.

(6) A clear statement of why a petitioner seeks to terminate a claimant's Workers' Compensation benefits must be provided at the pretrial.

(7) A party wishing to use a movie, video or still pictures must advise the opposing party thirty (30) days prior to the hearing.

(8) In the absence of unusual circumstances, the pretrial memorandum shall be exchanged by mail in accordance with the procedures established by the Board's secretary and submitted to the opposing party and the Board no later than three (3) working days prior to the scheduled pretrial.

(E) Either party may modify a pre-trial memorandum until 30 days prior to a hearing. Thereafter, modification of a pretrial memorandum can only be done by permission of the pretrial officer or the Board.

(F) Subject to the pretrial officer's discretion, a hearing date for a petition may be scheduled at the pretrial even if one or both parties fail to attend the pretrial. Only the pretrial officer can grant a continuance of a pretrial hearing.

(G) Responsibility does attach to the requesting party

to arrange to have medical witness(es) present for the Board's scheduled hearing date. Such arrangements must be coordinated with and approved by the Board's Scheduling Officer. Unless specifically asked for, no Board subpoena will be issued to expert witnesses since parties make arrangements for expert appearance.

(H) The pretrial officers, at their discretion, may schedule an additional pretrial hearing upon request of either party or the Board.

~~[(I) The pre-trial conference shall be held on a date not later than 30 days after the date of filing of the petition at issue. In the event that the pre-trial memorandum has not yet been filed with the Board, the Board shall issue an order compelling the submission of the pre-trial memorandum by a date certain, not to exceed 30 days.]~~

RULE NO. 10

Depositions Upon Oral Examination

(A) After a petition has been filed with the **[Board Department]**, any party to a proceeding before the Board may apply to the Board for an Order to provide for obtaining evidence by oral deposition within the State of Delaware for use in hearing[s] before the Board. The application shall be made by motion, presented upon notice, showing good cause for obtaining such evidence by oral deposition or use in such proceeding. The procedure for obtaining such evidence shall conform to the Rules of Civil Procedure of the Superior Court of the State of Delaware insofar as may be practicable.

(B) The term "good cause", within the meaning of this rule shall mean cases where unusual circumstances exist, such as when a witness is about to leave the State or who will otherwise be unavailable to testify at the time of the hearing, or when a witness is too ill to appear and testify in person. The taking of depositions will not be ordered as a matter of course.

(C) After notice and argument, the Board shall rule on each such motion unless, prior to motion or argument, the parties stipulate in writing to the taking of the deposition, in which case the oral deposition may be taken, without the Board sanction, before any person, at any notice, and in any manner and when so taken may be used like other depositions.

(D) The deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.

(E) The party placing a deposition into evidence during a Board hearing, must supply the Board with three copies of that deposition at the time of the hearing.

(F) Medical witness fees pursuant to 19 Del.C. §2322(e) shall include the costs of depositions taken pursuant to this rule. Costs shall also include the taking

of videotape deposition.

(G) All videotape depositions must be accompanied by a written transcript.

RULE NO. 11

Discovery and Production of Documents and Things for Inspection, Copying, or Photographing

(A) After a petition has been filed ~~[with the Board]~~, any party may serve on any other party a request to produce and permit the party making the request, or someone acting in his behalf, to inspect and copy or photograph, any designated documents which constitute or contain evidence relating to any matter which is relevant to the subject matter involved in the pending hearing and not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served.

(B) The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(C) The party upon whom the request is served shall serve a written response within 15 day after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order from the Board compelling discovery with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. The Board shall rule upon any such motion after notice and argument.

(D) The Board authorized the following medical authorization form for Workers' Compensation Cases:  
 "I, \_\_\_\_\_, do hereby authorize any doctor or hospital or other health-care provider to supply any and all medical records and reports to the bearer of the original or a copy of this petition regarding any medical condition provided all requests for this information are in writing."

Legal counsel for the insurance carrier or self-insured employers will go through the claimant's legal counsel to obtain any medical information concerning the claimant. Legal counsel for one party may speak to the opposing party's medical witness(es) with the oral or written consent of the opposing party's legal counsel.

Medical authorization must be signed and returned or objected to, in writing, within 15 working days of its

receipt.

RULE NO. 12

[Request for ] Continuance[s]

[(A) Continuance

(1) Before Hearing:

a) Prior to 10 days before hearing:

Requests for continuances may be granted in the discretion of the Industrial Accident Board Scheduling Officer upon good cause being shown by the party requesting the continuance. Good cause shall be found when and only when 1) a medical or other material witness shall be unavailable on the date for which the hearing has been scheduled and the taking of said witness' deposition is not feasible; 2) an attorney for a party shall be unavailable due to an unintended conflicting court appearance; 3) illness of a party, a party's attorney, or of a medical or other material witness; 4) an unexpected absence from the State of a party, a party's attorney, or of a medical or other material witness. Said requests shall be in writing and shall set forth the facts upon which the request is based. Requests for continuances shall not be routinely granted.

b) Within 10 days before hearing:

Requests for continuances shall be granted in the discretion of a member of the Industrial Accident Board upon good cause being shown by the party requesting the continuance. In addition to the reasons set forth in (1) a), good cause is shown if circumstances, including but not limited to the adequacy of notice, prevent a party from having a full and fair opportunity to be heard. Except as provided below, every request for a continuance upon the grounds of the absence of or unavailability of a medical or other material witness shall be filed in writing with notice to the opposing party and shall be accompanied by an affidavit on behalf of the party applying therefore, setting forth the facts which s/he expects to prove by such witness, the efforts made to procure his the attendance, and the date when the absence or unavailability of the witness became known. If it be stipulated by the opposite party, that the witness if called would testify as set forth in the affidavit, the Board member in his/her discretion, may refuse the request, and under such circumstances, the affidavit may be offered in evidence at the hearing. Requests for continuances based upon unexpected emergency services to be performed by a prospective medical witness need not be made in writing when such unexpected emergency service is brought to the attention of the party requesting the continuance within 3 days of the hearing date. Said request must

nevertheless be ruled upon by a Board member. The same requirement exists for any other emergency situation arising within 3 days of the hearing date. Notice must always be given to the opposite party. In all such cases, within 1 week after the Board receives notice of the request, the party requesting the continuance shall file with the Board an affidavit setting forth the facts upon which the oral request was based.

2) During Hearing:

Continuances requested after the commencement of the hearing shall not be granted except in cases of emergency, or to prevent a miscarriage of justice.]

[(A) A request for a continuance shall be in writing and shall be addressed to the Department of Labor Pre-Trial Scheduling Officer. A request for a continuance may be granted upon showing of the appropriate cause under the statute. 19 Del.C. §2348. The Scheduling Officer shall rule upon the request within three (3) business days of the receipt of the written request unless the request is made within three (3) business days of the hearing in which case the matter shall be ruled upon on the day of the request. Said ruling may be issued verbally to the parties as long as a written decision is issued within three (3) business days of the ruling. The written decision shall set forth the reason(s) for the grant or denial of the request.

Should a party object to the Department's decision, it may by motion, seek Board review and the Board shall hear the matter de novo. Upon such motion, the Department of Labor shall then set the matter for a legal hearing before the Board on the next Board Motion day or as expeditiously as possible.

Once a Hearing on the Merits has begun, only the Board may grant a continuance should it become necessary to continue the case in order to prevent a miscarriage of justice.

(B) For the purposes of determining whether a requesting party has made the required showing of "good cause" or "extraordinary circumstances" under the statute, the Department and the Board shall use the following definitions of those terms:

(1) "Good Cause" shall include:

(a) the unavailability of a previously scheduled medical or other material witness;

(b) the unavailability of an attorney for a party due to an unintended conflicting court appearance;

(c) the illness of a party, a party's attorney, or a material witness (including, if appropriate, illness which affects the ability of necessary person to participate in the deposition of a

medical or other material witness);

(d) an unexpected justifiable absence from the State of a party, a party's attorney or material witness;

(e) a justifiable substitution of counsel for one party (this shall not include a transfer of files within a law firm);

(f) the unavailability of a medical witness whose deposition cannot be scheduled despite due and prompt diligence on the part of the requesting party;

(g) inadequate notice from the Department and/or the Board which would justifiably prevent a party from having a full and fair opportunity to be heard; and

(h) any other unforeseen circumstance beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.

The Department and/or the Board's decision must set forth the facts in sufficient detail to support its decision.

(2) "Extraordinary Circumstances" shall include:

(a) the sudden unavailability of a previously scheduled medical or other material witness;

(b) an emergency mandatory court appearance which precludes the appearance of a party's attorney at the hearing;

(c) a serious personal or medical emergency on the part of a party or a party's attorney; and

(d) any other unforeseen circumstance beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.

The Department's and/or Board's decision must set forth the facts in sufficient detail to support its decision.]

RULE NO. 13

OPENING STATEMENTS AND SUMMATIONS

(A) The attorney for the petitioner may make an opening address. The attorney for the respondent may make an opening address either before any testimony is taken on behalf of the petitioner or at the close of petitioner's testimony and before any testimony is offered on behalf of the respondent.

(B) Regarding summations, the petitioner shall be permitted to open and close and the respondent shall be permitted to respond.

RULE NO. 14

EVIDENCE

All witnesses shall be sworn in all proceedings before the Board.

(B) The rules of evidence applicable to the Superior Court of the State of Delaware shall be followed insofar as practicable; however, that evidence will be considered by the Board which, in its opinion, possesses any probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Board may, in its discretion, disregard any customary rules of evidence and legal procedures so long as such a disregard does not amount to an abuse of its discretion.

RULE NO. 15

LEADING QUESTIONS

Leading questions of expert witnesses are permissible by either party to a controversy.

RULE NO. 16

Attorneys, Questions and Facts

(A) The [Board Department] shall forthwith be notified of representation by an attorney for an employer or an employee or any matter pending before the Board. An attorney may withdraw his appearance without obtaining the Board's permission where such withdrawal will leave a member of the Delaware Bar appearing as attorney of record for the party. Otherwise, no appearance shall be withdrawn except on order of the Board. Requests by attorneys to withdraw shall be in writing and state the last known address of their client.

(B) When employees, employers, or their insurance carriers or self-insurers are represented by an attorney in hearings before the Board, only the attorney can examine or cross-examine witnesses at the hearing. Further, the attorney must be a member of the Bar of the State of Delaware and duly licensed to practice in the Courts of this State. Otherwise, there must be an associate counsel with the above qualifications.

RULE NO. 17

Exhibits

(A) Exhibits submitted at Industrial Accident Board hearings are to be kept by the [Board Department] during passage of time of appeal. When time for appeal has passed, the exhibits may be returned to their proper owner or destroyed. ~~[This does not include medical reports which have been submitted into evidence which shall remain as part of the case record.]~~

## RULE 18

## Copies of Evidence Available to Applicants

(A) Typewritten copies of evidence taken in any case before the Board shall not be furnished to the parties, but persons entitled thereto may purchase same from the reporter who has recorded such evidence.

(B) In cases of appeal to the Superior Court, a typewritten copy of the evidence shall be furnished as provided by statute.

## RULE NO. 19

## Filing of Agreement After Awards

(A) In case of an award by the Board which is not appealed or if appeal is sustained by the Court of last appeal, the insurance carrier or self-insurer shall make payments pursuant to and in compliance with the provisions of said award. An award of the Board shall be considered as self-executing. Nevertheless, for administrative purposes, an agreement reflecting the provisions of an award of the Board shall be entered into between the parties and filed with the **[Board Department]**. A final receipt shall be filed with the **[Board Department]** when the agreement is paid in full.

(B) In absence of the final receipt mentioned in paragraph (A) above, payments of compensation shall not be ended except on an award made according to the provisions of 19 Del.C. §2347, as amended. A final receipt signed by the injured employee will be accepted by the Board as *prima facie* evidence that the disability of such injured employee has ceased.

## RULE NO. 20

## Time for Draft for First Payment of Compensation

(A) An insurance carrier for the employer or the self-insurer shall enter into an agreement and make the first payment of compensation within fifteen (15) days after a compensable injury unless liability is denied, in which case Rule No. 4 shall apply. Said agreement must be filed with and approved by the **[Board Department]**.

(B) When an award has been made by the Board, the first payment of compensation shall be drawn to the claimant's order but not later than seven (7) days after the appeal period has run, irrespective of whether an agreement has at that time been entered into between the parties pursuant to rule No. 19(A).

(C) When an award has been made by the Board, and an appeal has been taken therefrom by the employer or its insurance carrier, no compensation shall be paid during the pendency of the appeal. If the final disposition of the case is adverse to the employer or its insurance carrier, first payment of compensation shall be drawn to the

claimant's order not later than seven (7) days after the Board's award becomes final and binding, irrespective of whether an agreement has at that time been entered into between the parties pursuant to Rule No. 19(A).

(D) Unless otherwise agreed, the proceeds of all settlements of cases pending before the Board, except in **[communication commutation]** cases, shall be paid within 30 days after a letter correctly memorializing the settlement is sent to either party by the other.

~~[RULE NO. 21~~~~WRITTEN DECISIONS~~

~~All decisions issued by the Board shall be in writing. The Board shall state its conclusions of facts and rulings of law in each decision. A copy of each decision will be mailed to all interested parties.]~~

RULE NO. ~~[22 21]~~

## Further Hearing, Reopening or Rehearing

(A) Applications for (1) further hearing in a proceeding after the closing of testimony and before final submission on oral argument or brief, or for (2) reopening a proceeding after final submission and before decision, or for (3) rehearing or reargument after decision, must be made by petition, duly verified, within ten (10) days after the date of such closing of testimony, final submission or decision, as the case may be. Such petition shall state specifically the grounds relied upon, and shall be filed with the **[Board Department]** and a copy served by the petitioner upon each adverse party, or his or her attorney, who appeared at the hearing, or oral argument, if any, or on brief.

A copy of each decision will be mailed by certified mail, return receipt requested to all interested parties. The ten days will commence upon receipt of the certified mail decision. A properly submitted application for rehearing or reargument within ten (10) days of a parties' receipt of a Board decision will toll the Statute of Limitations under 19 Del.C. §2349. The time under §2349 will begin anew when the published decision of the rehearing or reargument is received by the parties.

(B) If the application be for further hearing before final submission, or for reopening the proceeding to take further evidence after submission and before decision, the nature and purpose of the evidence to be adduced must be briefly stated, and it must appear not to be merely cumulative.

(C) If the application be for rehearing or reargument after decision, the matter claimed to have been erroneously decided must be specified and the alleged errors stated. If thereby any order of the Board is sought to be vacated, repealed, enlarged, or modified, the matter

so relied upon must be full set forth in the petition.

(D) The non-moving party shall file an answer within ten (10) days and serve a copy upon each adverse party, or his attorney, who appears at the hearing, or oral argument, if any, or on the brief.

RULE NO. [23 22]  
Commutation of Compensation

(A) Commutation of compensation pursuant to 19 Del.C. §2358 is to be favorably considered by the Board where there are sound and convincing reasons substantiated by dependable evidence ~~[that and]~~ such commutation will be in the best interests of the injured employee or the dependents of a deceased employee.

(B) The Board may lay down guidelines and impose such conditions as it may deem advisable for the disbursement of all funds commuted.

RULE NO. [24 23]  
Attorney's Fees

~~[(A) If the claimant is entitled to an attorney's fee as part of the award under 19 Del.C. Section 2127(a), the attorney may not seek any additional compensation from his client for services before the Board in connection with the claim involved; but if the claimant is ineligible for an attorney's fee as part of an award because, for example, the case is settled without formal hearing or because the claimant received no award as a result of the hearing or because the hearing was held on a claimant's petition for commutation, then the provisions of Section 2127 find no application. In such case the attorney may look to his client for compensation in accord with any agreement he may have had with the client just as an attorney may do in other forms of litigation.~~

~~(B) If compensation benefits are paid beyond the date of the approval of an agreement by the Board or beyond the date of an award, attorney's fees may also continue beyond such date until the legal maximum is reached, assuming the Board approves of said fee.]~~

[(C) (A)] The claimant's attorney shall file with the Board and serve upon the other party at the time of hearing a completed Affidavit Regarding Attorney's Fees, said ~~[affidavits forms]~~ being provided by the [Board Department]. Said affidavit shall be reviewed by the Board so as to assist it in awarding a reasonable attorney's fee in those cases where an attorney's fee may be awarded to the claimant. Objections, if any, to the contents thereof will be heard by the Board during the summation of the employer's or its carrier's attorney.

RULE NO. [25 24]

Reimbursement from ~~[Industrial Accident Board Second Injury and Contingency Fund the Workers' Compensation Fund]~~

[(A)] No petition of an employer or its insurance carrier for reimbursement from the ~~Industrial Accident Board Second Injury and Contingency Fund~~ Workers' Compensation Fund as provided in 19 Del.C. §2327 will be accepted by the [Board Department] unless the employer or its insurance carrier first notified by certified mail the Deputy Attorney General assigned to the ~~Industrial Accident Board~~ defend said fund, of its intention to seek reimbursement from said Fund, and supply the [Board Department] with proof of compliance when its petition is filed. Any application for reimbursement from said Fund shall be by petition with supporting medical documentation attached.

BOARD RULE NO. [26 25]  
Expedited Hearings]

~~[(A) A claimant who meets the criteria set forth below may request that the Board consider his/her petition on an expedited basis.~~

~~(B) In order to be eligible for an expedited hearing, the claimant must meet all of the following criteria:~~

~~(1) (S)he is not currently working and has no other sources of income.~~

~~(2) (S)he has been certified by a physician as totally disabled from engaging in any form of work activity.~~

~~(3) (S)he has filed the petition no later than 30 days after the period of total disability began or 30 days after the employer issued a denial of the claim for recurrence.~~

~~(4) (S)he has notified the employer and/or carrier of the claimed disability within 15 days of the date the same is alleged to have begun.~~

~~(C) A petition for an expedited hearing shall be filed with the following documents attached:~~

~~(1) A medical authorization fully executed by the claimant and appropriately witnessed.~~

~~(2) A copy of all disability certificates issued by a physician relating to the current period of disability alleged.~~

~~(3) A statement signed by the claimant and, if represented, his/her attorney certifying that a copy of all medical records of the claimant in the possession of the claimant and his/her attorney shall be produced to the employer's counsel with 5 days of notification of representation.~~

~~(4) A statement signed by the claimant listing all medical providers by whom (s)he has been treated~~

## FINAL REGULATIONS

~~in the 10 years preceding the filing of the petition at issue:~~

~~(5) An affidavit, duly executed by the claimant and subject to the penalties of perjury, that (s)he meets the criteria of (B) of this rule.~~

~~(6) A certification by counsel that (s)he has examined the claim and, in his/her opinion, the claim meets the criteria for an expedited hearing, and further, that the claimant is prepared at this time to pursue his/her claim.~~

~~(7) An original pretrial memorandum, on the Board's standard form, completed with respect to the claimant's case.~~

~~(8) A copy of a cover letter to the carrier and/or carrier's counsel forwarding a courtesy copy of the petition and supporting documents or a written statement signed by the claimant and his/her counsel detailing the reasons prohibiting the forwarding of a courtesy copy of the petition.~~

~~(D) A petition requesting expedited relief shall clearly so state. All such petitions shall be reviewed for completeness by the pretrial officer. A petition failing to meet any of the criteria of (B) and (C) above, shall not be accepted for purposes of an expedited hearing. It shall, rather, be considered in the due course of Board scheduling.~~

~~(E) A petition meeting the criteria of the Subsections (B) and (C) above shall be sent to the carrier and/or self-insured employer either via fax and regular mail (if the carrier has previously been provided with a courtesy copy of the petition) or by certified mail, return receipt requested within 5 days of the filing of the petition, unless counsel has already entered an appearance on behalf of the carrier/employer.~~

~~(F) A petition meeting the criteria of (B) and (C) above shall be set for a pretrial conference not later than 10 days after its filing with the Board. Counsel of Record for the parties shall participate in the pretrial conference absent approval from the pretrial officer. Such approval shall be given only upon certification by Counsel of Record that the person participating in the conference shall be fully familiar with the claim and shall have the authority to schedule the hearing, coordinate witnesses and narrow the issues to be heard.~~

~~(G) A petition meeting the criteria of (B) and (C) above shall be scheduled for a hearing no later than 90 days from the date of the filing of the petition.~~

~~(H) The Board shall reserve 2 hearing times per month for the purposes of hearing cases meeting the criteria of (B) and (C) above.~~

~~(I) A party wishing to challenge the sufficiency of a petition for an expedited hearing shall do so at the~~

~~time of the pretrial conference. Within 3 days thereafter, the party shall submit a written statement as to the basis for the challenge, including documentation of any medical records or facts upon which it relies. The ruling as to the sufficiency of the petition for an expedited hearing shall be made in the first instance by the pretrial officer.~~

~~(J) Any party may seek reconsideration of the pretrial officer's determination as to the sufficiency of the petition for an expedited hearing. Such application for reconsideration shall be made to the Board at the first regularly scheduled motion day following the pretrial conference.]~~

(A) If a claimant who is receiving no wages or benefits desires to have his/her petition heard at the earliest possible time, or is out of work without income or substantial income, he/she may file with the petition, or thereafter, a Request for Expedited Hearing, which shall state the grounds for the Request and shall be accompanied by the following:

(1) A copy of the [Board Department] standard Pre-Trial Memorandum, filled out as completely as possible with regard to the Claimant's case.

(2) A copy of a medical report, hospital record, or similar documentation, which fairly describes the nature of claimant's injury and disability and the cause thereof; if such documentation is unavailable, or incomplete, claimant shall submit a supplementary statement describing, to the best of his[her] knowledge and understanding, the nature of his[her] injury and disability and the cause thereof.

(3) A statement identifying: (a) the name and address of employer's insurer, if known; and (b) the name of the person, if known, who denied the claim[ant] and his[her] office address and telephone number.

(B) Upon filing of a Request for Expedited Hearing, it shall be reviewed for completeness by a Pre-Trial Officer [of the Board]. Unless substantially lacking in compliance with the requirements of (A), a copy of the Request and supporting papers shall promptly be sent [certified mail] return receipt requested, to the employer and its insurance carrier, if known, together with a copy of this Rule (or a resume of its requirements) and a notice as to the name and telephone number of the [Board's] Pre-Trial Officer handling the case.

If the filed Request does not fully comply with the requirements of (A), the Pre-Trial Officer may direct the claimant to submit further information or documentation before the Request will be sent to employer or its insurer, or the officer may direct Claimant to submit the additional material directly to employer, its insurer, and the [Board Department].

(C) Within five (5) business days after receipt of a

Request for Expedited Hearing, employer or its insurer shall notify the designated Pre-Trial Officer by telephone, or by writing delivered within the allowed time, the following:

(1) Whether the Request is opposed and, if so, the reasons therefor. If additional time for this decision is requested, the Pre-Trial Officer may, for good cause, allow up to five (5) additional days, and shall notify claimant if this is done.

(2) The name and address of the lawyer who will represent it.

(3) The name and address of each physician or other expert being engaged to examine or test claimant and the dates of appointments. If additional time for scheduling appointments is requested, the Pre-Trial Officer may, for good cause, allow up to ten (10) additional days for submission of this information, and shall notify claimant if this is done.

(4) Whether a formal pre-trial conference is requested.

(D) If a formal pre-trial conference is requested, it shall be scheduled as promptly as practicable by the Pre-Trial Officer. Otherwise, the Pre-Trial Memorandum shall be completed, served on claimant, and filed with the [Board Department] within ten (10) business days after the deadline for the response under (C) (1).

(E) As soon as it is determined (by consent or by ruling) that a case will have an Expedited Hearing, the Pre-Trial Officer shall confer with the parties to set a date and time for hearing. Should it appear to the Pre-Trial Officer that undue delay is threatened, due to difficulty in securing pertinent records or a timely appointment for examination or other cause, the Pre-Trial Officer may endeavor to resolve the cause for delay by direct communication with any person responsible, and both parties shall cooperate in supporting efforts to secure an early hearing date. As soon as the Pre-Trial Officer is satisfied that all responsible efforts to secure an early date have been completed, the officer shall schedule a hearing and notify both parties.

~~[(F) If the Request for Expedited Hearing is opposed, or if a proposed hearing date is opposed, or if a postponement is sought, or if there is any other procedural dispute, the pretrial officer shall schedule a conference at the earliest practicable time before a Member of the Board, who shall hear the parties and determine the issues presented, including the establishment of appropriate terms and conditions and a hearing date. Rulings may be issued orally or in writing; if so directed, counsel for one of the parties shall prepare the form or order.]~~

RULE NO. [28 26  
[Additional Issues]

(A) Whenever a petition is pending before the [Industrial Accident] Board, either party may ~~[file an additional petition assert an additional issue]~~ or ~~[file an additional petition assert an additional issue]~~ in the manner prescribed below:

(B) The following issues shall be added to a then-pending petition through a letter request, timely filed with the Department and sent to opposing counsel in the same manner as service is made upon the [Board Department]:

- (1) A request for the payment of medical expenses.
- (2) A request for reimbursement of travel expenses.

~~[(3) A request for partial disability benefits under section 2325 if the pending petition involves a petition for a period of total disability benefits or a request for a review of the compensation agreement.]~~

A request for partial disability benefits if the then-pending petition is claimant's petition for an ongoing period of total disability benefits or the employer's request for the review of an open agreement as to compensation.]

~~[(B) The following issues may be added to a pending matter upon the filing of a formal petition:~~

- ~~(1) A petition for Review of Compensation Agreement.~~
- ~~(2) A petition for permanent partial impairment benefits.~~
- ~~(3) A petition for recurrence of total disability.~~
- ~~(4) A petition for disfigurement benefits.~~

~~[(C) A determination regarding the consolidation or severance of two petitions or issues for hearing before the Board shall be made, in the first instance, by the pretrial officer. In so determining, the pretrial officer shall consider the following:~~

- ~~(1) Whether a party may sufficiently respond to a newly raised issue within the time constraints of the Board Rule 9 regarding the listing of witnesses and 19 Del. C. section 2127(b) regarding settlement.~~
- ~~(2) Whether the party who must respond to the new petition and/or issue objects to its consolidation with the pending petition.~~
- ~~(3) Whether medical testimony has been committed to the record.~~
- ~~(4) Whether the introduction of the new issue will so alter the amount or nature of the evidence to be presented that the hearing cannot be completed within the time originally estimated by the parties.]~~

[(C) A party wishing to assert one or more of the following issues must file a formal etition and serve the same in accordance with the statute:

- (1) A request to review an open compensation

agreement.

(2) A claim for permanent impairment benefits.

(3) A claim for a recurrence of temporary, total and/or partial disability.

(4) A petition for disfigurement benefits.

(D) A subsequently filed petition may be consolidated with a then-pending matter only upon:

(1) The agreement of the parties; or

(2) A motion by the party seeking to consolidate the petitions approved by the Board after due notice to opposing counsel and the opportunity for counsel to be heard.]

conference call shall take place no later than the third calendar day following the receipt of the request by the Department of Labor.

(B) Upon the receipt of a written request, with proper notice to opposing counsel, that the Department issue a subpoena, the Department shall act upon the request within three (3) calendar days of the date the request is received by the Department of Labor.]

RULE NO. 27  
[Form of Orders]

(A) Any party seeking relief from the Industrial Accident Board on any of the matters listed below shall present the Board with a proposed form of order, suitable for immediate signatures by the Board member(s) hearing the request for relief. This rule shall apply to:

(1) Motion to Compel production of documents.

(2) Motion to Compel claimant to execute a medical or other authorization (including a copy of the proposed authorization).

(3) Motions to Dismiss for failure to prosecute.

(4) Uncontested petitions to terminate temporary, total or temporary, partial disability benefits.

(5) Uncontested petitions for approval of commutation of benefits.

(6) Application to take the deposition of a witness unavailable for trial.

(7) Application for reconsideration of a Pre-Trial Officer's decision.

**[RULE NO. 28**  
**Time**

(A) The Department of Labor and the Industrial Accident Board shall follow the provisions of Superior Court Civil Rule 6 unless otherwise specified in the statute, 19 Del.C. §2301 *et. seq.* or the Administrative Procedures Act, 29 Del.C. 10001 *et. seq.*

**RULE NO. 29**  
**Legal Hearings/Motion Day**

(A) Upon the receipt of a written request, with proper notice to opposing counsel, for a legal hearing or other pre-hearing motion before the Board, the Department shall hold a conference amongst the parties for the purposes of scheduling the same. The

**DEPARTMENT OF HEALTH &  
SOCIAL SERVICES**

**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 1109 (16 Del.C. 1109)

**ORDER OF RULE ADOPTION**

Statutory Authority: 16 Delaware Code, Section 1109  
(16 Del.C. 1109)

Before Delaware Health and social Services Regarding  
Rules for Assisted Living.

Pursuant to 16 Delaware Code, Section 1109, Delaware  
Health and Social Services hereby issues this order  
promulgating reules for Assisted Living Agencies.  
Following notice and public hearings held on October 28  
and October 30, on the proposed Rules, the Department  
makes the following findings and conclusion:

Summary of Evidence and Information

Proposed regulations describing licensing requirements  
and procedures, and general and special requirements of  
agencies desiring to establish, conduct or maintain an  
Assisted Living Agency in this State were porposed by  
Delaware Health and Social Services. An announcement  
of public hearings was made in the Delaware Register of  
Regulations, Volume 1, Issue 4, on Wednesday, October1,  
1997. Public Hearings were held on October 28, 1997 at  
the Herman Holloway Campus, Springer Building, New  
Castle, Delaware and on October 30, 1997 at the Jesse  
Cooper Building, Dover, Delaware. The report of hearing  
officer was received by the Acting Secretary. Comments  
were also received from the State Legislative and Citizens  
Investigative Panel on Nursing Home Reform.

Findings of Fact

The proposed regulations were properly advertised as  
required by Delaware Code. The public was afforded an  
opportunity to ask questions and make oral and written  
comment. The regulations were generally supported by  
the public comment, with a number of suggestions for  
clarifications. In response to public comment, a number  
of definitions (including Assisted Living) were added to  
Section 63:1; cross referencing was added so that portions  
of the rules accurately direct the reader to other portions  
of the rules; language suggested by the Board of Nursing  
was amended into Section 63.9; access to records by the

Office of the Ombudsman was clarified in Section 63.3; an  
amendment was added to clarify that survey results are to  
be available to consumers; areas to be addressed in a service  
agreement were adjusted and othe similar clarifications were  
made.

Conclusions

The proposed rules were promulgated by the  
Department in accord with its statutory duties and authority  
as set forth in 16 Delaware Code, Section 1109.

The Department has received and considered public  
comment.

The proposed rules were amended as necessary in  
response to public comment in order to more clearly  
describe the licensing requirements and procedures for  
Assisted Living Facilities.

These rules are hereby adopted with an effective date  
of January 10, 1998.

Gregg C. Sylvester, MD, MPH  
Acting Secretary  
Delaware Health and Human Services

DELAWARE REGULATION  
FOR LIVING AGENCIES

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\* Please note that the page numbers listed in the above index do not refer to pages in the Register. The page numbers refer to the original document.

STATE OF DELAWARE REGULATIONS FOR  
ASSISTED LIVING AGENCIES

Title 16 - Health and Safety

Part II, Chapter 11 Sanatoria, Rest Homes, Nursing Homes, Boarding Homes and Related Institutions.

“Sanatorium, rest home, nursing home, boarding home and related institutions,” within the meaning of this chapter, mean any institution, building or agency in which accommodation is maintained, furnished or offered for any fee, gift, compensation or reward for the care of more than 1 aged, infirm, chronically ill, adult psychiatrically disabled or convalescent person. The word “person” shall not include mother, father, sister, brother, niece, nephew, mother-in-law, father-in-law, sister-in-law or brother-in-law of any individual operating a facility under this chapter.

REGULATIONS

SECTION 63.0 PURPOSE

Assisted Living is a major component of a comprehensive community-based residential long term care continuum that provides the necessary level of services to a dependent elderly or ~~{disabled adult}~~ **[persons with disabilities]** in the appropriate environment. The services are provided based on a social philosophy of care and must include oversight, food, shelter, and the provision or coordination of a range of services that promote the quality of life of the individual. The social philosophy of care promotes the consumer’s independence, privacy, dignity and is provided in a homelike environment. These regulations shall be construed to be consistent with this section.

SECTION 63.1 GLOSSARY OF TERMS

**[63.101 Assisted Living - Assisted living is a residential arrangement for fee for dependent elderly and adults with disabilities which provides assistance with activities of daily living and other services that promote the consumers quality of life.]**

**[63.102 Activities of Daily Living - the tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include ambulating, transferring, grooming, bathing, dressing, eating, and toileting.]**

**[63.103 Assistive Technology - Any item, piece of equipment or product system whether acquired commercially off the shelf, modified, or customized that is used to increase or improve functional capabilities of adults with disabilities.]**

~~[63.101]~~

**[63.104]** Bounded choice - limits placed **[by the assisted living agency]** on a consumer’s choices as a result of limited consumer capacity, societal norms, and/or available resources. These boundaries include the prevention of imminent danger or harm to self and/or others, and the maintenance of respect for the dignity of others.

~~[63.102]~~

**[63.105]** Consumer - a person receiving services in the assisted living agency.

**[63.106 Durable Medical Equipment - equipment capable of withstanding repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of an illness or injury and is needed to maintain the consumer in the home, i.e. wheelchairs, hospital beds, oxygen tanks.]**

~~[63.103]~~

**[63.107]** Homelike - an environment having the qualities of a home, including privacy, comfortable surroundings supported by the use of residential building materials and furnishings, and the opportunity to modify one’s living area to suit one’s individual preferences. A homelike environment provides consumers with an opportunity for self-expression and encourages interaction with community, family and friends.

~~[63.104]~~

**[63.108]** Incapable of making decisions - inability of a consumer, based on a service assessment, to understand his/her own needs for supportive, personal or nursing services; to choose what, if any, services one wants to receive to meet those needs; and to understand the outcome likely to result from that choice. The term refers to the decision and not the content or result of the decision.

~~[63.105]~~

**[63.109]** Individual Living Unit - a self-contained dwelling unit which has bathing facilities, living and sleeping space **[as provided in these regulations]**. ~~[Sharing by two consumers of an individual living unit shall be permitted solely upon the request and mutual consent of both consumers.]~~

~~[63.106]~~

**[63.110]** Managed risk agreement - the process of balancing consumer choice and independence with the health and safety of the consumer ~~and other persons in the assisted living program.~~ If a consumer's preference or decision places the consumer ~~for others~~ at risk or is likely to lead to adverse consequences, such risks and consequences are discussed with the consumer, and his/her representative if appropriate, the outcome of which becomes a part of the service agreement. **[In no event shall the managed risk agreement place other consumers at risk]**

**[63.111 Qualified Interpreter - an interpreter who is able to interpret effectively accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.]**

~~[63.107]~~

**[63.112]** Representative - a person acting on behalf of the consumer under Delaware law.

~~[63.108]~~

**[63.113]** Shared responsibility - the concept that consumers, their representatives if any, and providers of assisted living services share responsibility for planning and decision making affecting the consumer in an assisted living program. To participate fully in shared responsibility, consumers shall be provided with clear and understandable information about the possible consequences of their decision-making.

~~[63.109]~~

**[63.114]** Service Agreement - a written document for each consumer which describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, how often services will be provided and the expected outcome.

~~[63.110]~~

**[63.115]** Service Assessment - a written document for each consumer developed by the provider which is used to identify what services a consumer needs. This assessment shall be utilized by the provider to determine if services needed by the consumer can be met by the provider.

SECTION 63.2 LICENSING REQUIREMENTS AND PROCEDURES

63.201 License Requirement

No person **[or entity shall hold itself out as being an Assisted Living Agency unless such person or entity has been duly licensed under these regulations.]** ~~[shall~~

~~establish, conduct or maintain in this State any assisted living agency for the care of human beings without first obtaining a license from the Department of Health and Social Services.]~~

A. Issuance of Licenses

(1) Annual License. An annual license (12 months) may be renewed yearly if the holder is in full compliance with the provisions of this chapter and the rules and regulations of the Department of Health and Social Services.

(2) Provisional License. A provisional license shall be granted for a term of ninety (90) days only, and shall be granted only to an agency which, although not in full compliance, is nevertheless demonstrating evidence of improvement.

(3) Restricted License. A restricted license shall be granted for a term of ninety (90) days when the agency is not in compliance with the provisions of this chapter, and does not demonstrate evidence of improvement. The holder of a restricted license may not admit consumers to the agency to which the restricted license applies during the period of restriction, but the agency may remain in operation until such license is revoked, expires, becomes annual or provisional.

Restricted licenses may be issued by the Office of Health Facilities Licensing and Certification without advance notice if the Secretary or his/her designee determines that any deficiency immediately and seriously jeopardizes the health or safety of any consumer. The holder of the license may appeal the issuance of the restricted license to the Secretary or his/her designee, however, the restricted license will remain in effect during the pendency of the appeal.

B. Suspension or Revocation of Licenses

The Secretary of the Department of Health and Social Services or his/her designee may suspend or revoke a license issued under this chapter on any of the following grounds:

(1) Violation of any of the provisions of this chapter or the rules and regulations issued pursuant thereto.

(2) Permitting, aiding, or abetting the commission of any illegal act in the agency.

(3) Conduct or practices detrimental to the welfare of the consumer.

Before any license issued under this chapter is suspended or revoked, thirty (30) days notice shall be given in writing to the holder of the license, during which he/she may appeal for a hearing before the Secretary of the Department of Health and Social Services or his/her designee.

C. Renewal of License after Suspension or Revocation

If and when the conditions upon which the suspension or revocation of a license are based have been

corrected and after a proper inspection has been made, a new license may be granted.

#### 63.202 Separate Licenses

A. Separate licenses are required for agencies maintained in separate locations, even though operated under the same management.

B. A separate license is not required for separate buildings maintained by the same management on the same grounds.

C. A license is not transferable from person to person or from one location to another.

D. The Department of Health and Social Services may grant a waiver of Section 63.202A upon written request of the assisted living provider if the separate locations are located within a reasonably close physical area or development address provided the licensee can demonstrate the ability to meet the requirements set forth in the regulations.

#### 63.203 Inspections

Every assisted living agency for which a license has been issued under this chapter shall be periodically inspected by a representative of the Division of Public Health.

#### 63.204 Application Process

A. All persons or entities applying for a license shall request a licensure application from the Division of Public Health, Office of Health Facilities Licensing and Certification.

B. Applicants shall also submit to the Division of Public Health, Office of Health Facilities Licensing and Certification the following information:

1. the names, addresses and types of facility owned or managed by the applicant;
2. identity of:
  - (a) each officer and director of the corporation if the entity is organized as a corporation;
  - (b) each general partner or managing member if the entity is organized as an unincorporated entity;
  - (c) the governing body if the entity is government-operated;
  - (d) proof of not-for-profit status if claiming tax-exempt status; and
  - (e) any officers/directors, partners, or managing members, or members of a governing body who have a financial interest of 5 percent or more in a licensee's operation or related businesses.
3. disclosure of any officer, director, partner, employee, managing member, or member of the governing

body with a felony criminal record; and

4. name of the individual responsible for the management of the assisted living agency.

63.205 The Department of Health and Social Services may adopt, amend, or repeal regulations governing the operation of the agencies defined in Section 1101 of this title and shall establish reasonable standards of equipment, capacity, sanitation, and any other conditions which might influence the health or welfare of the consumers of such agencies.

#### SECTION 63.3 GENERAL REQUIREMENTS

63.301 All records maintained by the assisted living agency shall at all times be open to inspection by the authorized representatives of the Division of Public Health, Office of Health Facilities Licensing and Certification [**and Division of Services for Aging and Adults with Physical Disabilities, Long Term Care Ombudsman.**]

63.302 No policies shall be adopted by the assisted living agency which are in conflict with these regulations.

63.303 The assisted living agency shall establish written policies regarding the rights and responsibilities of consumers, and these policies and procedures shall be made available to authorized representatives of the Division of Public Health.

63.304 [**For cognitively impaired consumers,**] the assisted living agency shall develop policies and procedures to: ~~[prevent cognitively impaired consumers from wandering away from safe areas.]~~

- A. prevent cognitively impaired consumers from wandering away from safe areas; and**
- B. provide for the safe storage of medications.]**

63.305 Each assisted living agency shall provide with the admission agreement to all consumers a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the consumer during the period of occupancy.

63.306 Each agency shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.

63.307 The assisted living agency shall arrange for emergency transportation and care.

63.308 Upon the agency's reasonable belief that the

medical needs of a consumer exceed the needs addressed in the service agreement, the agency shall promptly discuss and document with the consumer his need for medical assessment and shall document the outcome of that discussion.

**[63.309 Reports of the results of the most recent licensure survey and plan of correction shall be readily available for review by the consumer.]**

#### SECTION 63.4 CONSUMER APPLICATION AND CONTRACTS

63.401 All information provided by the assisted living agency shall be accurate, precise, easily understood and readable by a consumer, and in compliance with all applicable laws.

63.402 The assisted living agency shall have a written application process and provide clear reasons in writing if an applicant is rejected.

63.403 The assisted living agency shall recommend review of the contract by an attorney or other representative chosen by the consumer.

63.404 The assisted living agency's contract shall:

A. be easily understood and readable by a consumer or his/her representative if the consumer is incapable of making decisions;

B. be signed by the consumer or his/her representative if the consumer is incapable of making decisions, **[and any other party signing the contract;]**

C. conform to all relevant state and local laws and requirements;

D. cover the following topics:

1. clear and specific occupancy criteria and procedures (admission, transfer, and discharge);

2. rate structure and payment provisions that are clear on:

a. covered and non-covered services;

b. service packages and fee for services;

c. regular and extra fees;

d. fees and payment arrangements for any third-party providers;

e. the provision of at least 60 days notice of any rate increases or fee changes;

f. the minimum notification a consumer or his/her representative if the consumer is incapable of making decisions must furnish when he/she plans to move out of the setting for reasons other than health emergencies (notification requirements may not exceed sixty (60) days);

g. the provisions regarding payment during

unavoidable or optional absences (e.g., hospitalization, recuperation in a nursing home, or a vacation);

h. the provision of fair and reasonable billing, payment, and credit policies; and

i. the procedure if consumer can no longer pay for services.

3. division of responsibility between the assisted living agency and the consumer or his/her representative if the consumer is incapable of making decisions (e.g., arranging for or overseeing medical care, purchases of essential or desired supplies, emergencies, monitoring of health, handling of finances);

4. consumer's rights **[set forth in Section 63.7]** and

5. explanation of grievance/complaint procedure and appeals process **[as set forth in Section 63.714]**, including information on outside agencies to which appeals may be made.

E. include that the assisted living agency shall not provide services to consumers whose admission is prohibited under 63.505.

63.405 No contract shall be signed before a full assessment of the consumer has been completed and a service agreement, with costs, has been developed. If a deposit is required prior to move-in, the deposit shall be fully refundable if the parties cannot agree on the services and fees upon completion of the assessment.

#### SECTION 63.5 SERVICE ASSESSMENT

63.501 A consumer seeking entrance shall have an initial service assessment completed by appropriately qualified individuals no more than thirty (30) days prior to admission which shall be reviewed and revised, if appropriate, within fourteen (14) days of admission, and as frequently as needed thereafter. If the consumer requires specialized medical, therapeutic, or nursing services, that component of the assessment must be performed by personnel qualified in that specialty area. Regular assessments shall indicate whether the needs of the consumer are or can be met or arranged for by the assisted living agency.

63.502 The service assessment shall include a medical evaluation completed by a physician within thirty (30) days prior to admission.

63.503 The service assessment tool shall be developed by the assisted living agency and shall include an evaluation of the physical and psychosocial needs of the consumer.

63.504 This assessment shall be completed by the assisted

living agency in conjunction with the consumer or his/her representative if the consumer is incapable of making decisions.

63.505 The assisted living agency shall not admit any consumer who needs services which cannot be provided or arranged for by the assisted living agency. The assisted living agency shall not provide services to consumers who:

1. need 24 hour nursing services whose medical conditions are unstable to the point that they require frequent observation, assessment and intervention by a licensed professional nurse, including unscheduled nursing services, unless the attending physician certifies that despite the presence of this factor, the consumer's needs may be safely met by a service agreement developed by the assisted living agency, the attending physician, a registered nurse, the consumer or his/her representative if the consumer is incapable of making decisions, and other appropriate health care professionals as determined by the consumer's needs;

2. are bedridden for 14 consecutive days unless a physician certifies that despite the presence of this factor, the consumer's needs may be safely met by a service agreement developed by the assisted living agency, the attending physician, a registered nurse, the consumer or his/her representative if the consumer is incapable of making decisions, and other appropriate health care professionals as determined by the consumer's needs;

3. need transfer assistance by more than one person and a mechanical device unless special staffing arrangements have been made to ensure safe care and evacuation;

4. have conditions that exceed program capabilities (to be enumerated on the contract by the assisted living agency); or

5. present a danger to self or others or engage in illegal drug use.

63.506 Assisted living agencies are not intended for persons who require nursing home services that are beyond the capabilities of the assisted living agency. Under certain conditions services may be provided as per 63.505.

#### SECTION 63.6 SERVICE AGREEMENTS

63.601 A service agreement based on the needs identified in the service assessment shall be developed prior to entrance. The service agreement shall include the scope, frequency, and duration of services and monitoring. The consumer, or his/her representative if the consumer is incapable of making decisions, shall review the agreement, and determine which services he/she will utilize. The consumer or his/her representative if the consumer is incapable of making decisions and other persons with

obligations under the service agreement shall sign the agreement [**and shall receive a copy of the signed agreement**]. All persons who sign the agreement will be able to fully comprehend and perform their obligations under the agreement.

63.602 [**At the minimum,**] The service agreement must [~~cover the following topics at a minimum~~] [**address the need for the following**]:

- A. personal services;
- B. nursing services;
- C. food services;
- D. environmental services including housekeeping, laundry, safety, trash removal;
- E. social/emotional services including those related to cognitive deficits;
- F. financial management services;
- G. transportation services;
- H. individual living unit furnishings; and
- I. notification of family when there is a change in the health status of the consumer.

**[J. Assistive technology and durable medical equipment;**

**K. rehabilitation services;**

**L. qualified interpreters for people who are deaf and hard of hearing; and**

**M. reasonable accommodations for persons with disabilities.]**

63.603 The service agreement shall be developed and followed for each consumer consistent with that person's unique physical and psychosocial needs with recognition of his/her capabilities and preferences. Each consumer or his/her representative if the consumer is incapable of making decisions shall be entitled to actively participate in the development of the service agreement.

63.604 The service agreement shall be reviewed [**by the provider and the consumer**] upon observation of the provider that the needs of the consumer have changed, or upon the request of the consumer or his/her representative if the consumer is incapable of making decisions, but no less frequently than annually.

63.605 The assisted living agency shall be responsible and accountable for providing the services delineated in the service agreement.

63.606 The service agreement shall be based on the concepts of shared responsibility and consumer choice, including bounded choice.

63.607 Consumers admitted pursuant to 63.505 shall be prohibited from executing managed risk agreements.

63.608 Choices may be included in the managed risk agreement section of the service agreement if:

- A. The risks are tolerable to all parties participating in the development of the service agreement;
- B. Mutually agreeable action is negotiated;
- C. The consumer making the choices or his/her representative is capable of making decisions and understanding the consequences; and

~~**[D. The consumer making the choice has the resources (personal or financial) to deal with the consequences.]**~~

63.609 Consistent with the philosophy of bounded choice, choice shall be limited to the extent necessary to prevent harm in cases where the choice may result in severe or immediate negative consequences to the consumer or others. Severe or immediate negative consequences shall include but not be limited to serious property damage and significant physical or psychological harm to the consumer making the choice, another consumer, a staff member or a visitor.

63.610 If a managed risk agreement is made a part of the service agreement, it shall:

- A. clearly describe the problem, issue or service that is the subject of the managed risk agreement;
- B. describe the choices available to the consumer as well as the risks and benefits associated with each choice, the assisted living agency's recommendations or desired outcome, and the consumer's desired preference or the preference that the consumer's representative believes would be the consumer's desired preference if the consumer is incapable of making decisions;
- C. indicate the agreed upon option;
- D. describe the agreed upon responsibilities of the assisted living agency, the consumer and any third party providers;
- E. become a part of the service agreement, be signed separately by the consumer or his/her representative if the consumer is incapable of making decisions, the assisted living agency, and any third party with obligations under the managed risk agreement that the third party is able to fully comprehend and perform; and
- F. include a time frame for review.

63.611 The assisted living agency shall make no attempt to use the managed risk portion of the service agreement to abridge a consumer's rights or to avoid liability for harm caused to a consumer by the negligence of the assisted living agency and any such abridgment or disclaimer shall be void.

## SECTION 63.7 CONSUMER'S RIGHTS

63.701 Assisted living agencies are required by Title 16 Del.C., Chapter 11, Subchapter II to comply with the provisions of the Rights of Patients covered therein.

Not all of the rights contained in Subchapter II are enumerated in these regulations because not all of the rights are equally relevant for consumers of assisted living services. However, consumers of assisted living services are entitled to all of the rights set forth in Subchapter II, regardless whether they are specifically regulated herein.

63.702 Each consumer shall be treated with consideration, respect and full recognition of their dignity and individuality.

63.703 Each consumer shall receive care, treatment and services which are adequate and appropriate to their needs. **[Each consumer shall have the right to an attending physician of their choice.]**

63.704 Each consumer or his/her representative if the consumer is incapable of making decisions, prior to or upon admission, and during their stay, shall receive a written statement of the services provided by the assisted living agency including those required to be offered on an "as-needed" basis.

A. They shall also receive a statement of related charges, including any charges for services not covered under Medicare, Medicaid or the assisted living agency's basic per diem rate.

B. Upon receiving such statement, the consumer or his/her representative if the consumer is incapable of making decisions, shall sign a written receipt which shall be retained by the assisted living agency.

63.705 Each consumer or his/her representative if the consumer is incapable of making decisions shall be entitled to participate in the planning of all of their services including their medical treatment.

63.706 Each consumer's medical care program shall be conducted discreetly and in accordance with the consumer's need for privacy.

A. Other than the representatives of consumers who are incapable of making decisions, persons not directly involved in the provision of care shall not be present during medical examinations, treatment and case discussion, unless requested by the consumer or his/her representative if the consumer is incapable of making decisions.

B. Personal and medical records shall be treated confidentially; shall not be made public without the

consent of the consumer or his/her representative if the consumer is incapable of making decisions or a court order and shall not be released to any person inside or outside the assisted living agency who has no demonstrable need for such records. Authorized representatives of the Department of Health and Social Services with oversight review or inspection responsibilities shall have full access to all personal and medical records.

63.707 Each consumer shall receive from the staff of the assisted living agency a [**timely,**] courteous and reasonable response to their requests.

63.708 The assisted living agency shall disclose to each consumer or his/her representative if the consumer is incapable of making decisions the identity of each entity with which it contracts for consumer care services and any ownership interest in any health care facility that it recommends to the consumer.

63.709 Each consumer may associate privately with people and groups of his/her own choice at any reasonable hour.

63.710 Each consumer may send and receive mail promptly and unopened.

63.711 Each consumer shall have 24 hour access to a telephone where he/she may speak privately.

63.712 Each consumer has the right to manage his/her own financial affairs.

A. If, by written request, the assisted living agency manages the consumer's financial affairs, it shall have available for inspection a monthly accounting and shall furnish a quarterly statement upon request to the consumer or a designated representative.

B. The consumer shall have unrestricted access to such accounts at reasonable hours.

63.713 Each consumer has the right of privacy in his/her room, including a door that locks, consistent with the safety needs of the consumer.

63.714 Each consumer has the right, personally, or through others, to present grievances/complaints to the agency's staff or director, to the Division of Services for Aging and Adults with Physical Disabilities, the Ombudsman or to others including the Division of Public Health, Office of Health Facilities Licensing and Certification.

A. The assisted living agency and its staff shall not impose any reprisal, restraint, interference, coercion or discrimination of the consumer as a result of such

grievance/complaint or suggestion.

B. The assisted living agency shall report immediately and in writing any alleged violation of any of the provisions of Section 63.7 of these Rules and Regulations to the Ombudsman.

C. The Ombudsman shall consult with the complainant to determine if he/she wishes to pursue an investigation. If the complainant wishes to pursue the matter, the Ombudsman shall work closely with the complainant and the assisted living agency to resolve the

D. On completion of the investigation, the Ombudsman shall report the findings to the complainant and with the complainant's consent to the assisted living agency wherein the complaint originated.

E. If the grievance/complaint is not resolved [**to the satisfaction of the consumer**] at the end of the investigation by the Ombudsman, the grievance/complaint findings shall be forwarded to the Division of Public Health, Office of Health Facilities Licensing and Certification for appropriate action after obtaining the consent of the complainant.

F. Nothing in this regulation abrogates any person's duties under the Patient Abuse Law, 16 Del. C §1131 et seq.

63.715 The assisted living agency shall investigate and address all grievances/complaints, verbal or written, made by consumers or their representatives and must document both the existence of the grievance/complaint and the resolution of the grievance/complaint. Records of all such investigations shall be maintained by the assisted living agency for five years for review.

63.716 The assisted living agency shall develop a formal internal grievance/complaint process which protects consumers from reprisal from employees.

63.717 This written grievance/complaint process shall be provided to consumers upon admission to the assisted living agency.

63.718 A consumer shall not be required to perform services for the assisted living agency.

63.719 Each consumer shall have the right to retain and use their personal clothing and possessions where reasonable and shall be entitled to security in their storage and use.

63.720 No consumer shall be transferred or discharged from an assisted living agency except for the following:

A. For medical reasons;

B. For the consumer's own welfare or the welfare of the other consumers;

C. For non-payment of justified charges; or

D. For failure to negotiate a service agreement or managed risk agreement where applicable.

63.721 If good cause for transfer or discharge exists, the consumer shall be given thirty (30) days advance notice of the proposed action and the reasons for the action and may request an impartial hearing. In emergency situations, such notice need not be given.

63.722 If a hearing is requested under Section 63.721, it shall be held within twenty (20) days of the request. The hearing shall be conducted by the Division of Public Health in accordance with Subchapter III of Del.C, Ch. 101 Administrative Procedure's Act. The Deputy Attorney General for the Division of Public Health may attend as legal officer in these hearings.

63.723 If the hearing determines in favor of the consumer, the assisted living agency shall be instructed to comply. If the assisted living agency refuses to comply, this refusal may be grounds for revocation of the license.

63.724 The consumer's rights shall be posted conspicuously in a public place in each assisted living agency.

63.725 Copies of the consumer's rights shall be furnished to the consumer or his/her representative if the consumer is incapable of making decisions, upon admission and ~~[promptly following any modification made by the assisted living agency.]~~

63.726 Receipts for the consumer's rights statements signed by the above parties shall be retained in the assisted living agency's files.

#### SECTION 63.8 QUALITY ASSURANCE

63.801 The assisted living agency shall develop and implement a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures consumer satisfaction.

63.802 On at least a semi-annual basis, the assisted living agency shall survey each consumer or his/her representative if the consumer is incapable of making decisions regarding their satisfaction with services provided.

A. The assisted living agency shall retain all surveys which shall be reviewed during inspections.

B. The assisted living agency shall maintain documentation which addresses what actions were taken as a result of the surveys.

63.803 The grievance/complaint process shall be incorporated into the quality assurance program.

#### SECTION 63.9 STAFFING

63.901 A staff of persons sufficient in number and adequately trained, certified or licensed to meet the requirements of the consumers shall be employed **[and comply with 24 Del.C., Chapter 19 and other applicable state law and corresponding Rules and Regulations.]**

63.902 The assisted living agency shall develop a staffing plan sufficient in number to meet the needs of the consumers based on the service agreements in effect at any given time.

63.903 The assisted living agency shall maintain staffing records which document what personnel were on duty as well as specific hours worked for each day.

63.904 The assisted living agency shall provide appropriate training to staff **[in compliance with 24 Del.C., Chapter 19 and other applicable state law and corresponding rules and regulations]** to meet the needs of the consumer. The content **[of both individual training and] [attendance of]** staff training programs **[and attendance]** shall be documented.

63.905 The assisted living agency shall provide orientation training to all new staff.

63.906 All personnel records, including employment applications, shall be maintained consistent with the assisted living agency policies and applicable state laws.

63.907 Each assisted living agency that is licensed shall have a director who is responsible for the operation of the program.

63.908 The assisted living agency shall provide either onsite or on call supervision 24 hours per day.

63.909 The assisted living agency must be available 24 hours per day to respond if called by the consumer for assistance.

#### SECTION 63.10 ENVIRONMENT

63.10.1 All accommodations shall comply with applicable federal, state and local ~~[building codes]~~ **[laws]** including:

A. Rehabilitation Act of 1973, Section 504;

B. Fair Housing Amendments Act of 1988; and

C. Americans with Disabilities Act of 1990.

63.10.2 Kitchens shall be available to consumers either in their individual living unit or in an area readily accessible to each consumer.

63.10.3 Individual living units without kitchens shall have an appropriately designed central kitchen readily accessible to the consumer. The assisted living agency shall establish policies and procedures to ensure that this kitchen is used and maintained in such a way as to provide for the following:

- A. a clean and sanitary environment;
- B. safe storage of food; and
- C. a means to enable hand washing and sanitizing of dishes, utensils and food preparation equipment.

63.10.4 **[Bathing facilities shall be available to consumers either in their individual living unit or in an area readily accessible to each consumer.]**

~~[63.10.4]~~

**[63.10.5]** Assisted living agencies that prepare meals to consumers shall meet the State of Delaware Regulations Governing Public Eating Places.

~~[63.10.5]~~

**[63.10.6]** The assisted living agency shall provide a homelike environment in all common areas.

**[63.10.7 Sharing of a bedroom shall be limited to two consumers, upon their mutual consent.]**

#### SECTION 63.11 FIRE SAFETY AND EVACUATION PLANS

63.11.1 Fire safety in assisted living agencies shall comply with the adopted Rules and Regulations of the State Fire Prevention Commission. All applications for license or renewal of license must include with the application a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of non-compliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for revocation of the license.

63.11.2 The assisted living agency shall develop an evacuation plan for each consumer in the event of an emergency.

63.11.3 The assisted living agency shall be responsible to have adequate staff to meet the evacuation plan needs of each consumer at any given time.

#### SECTION 63.12 RECORDS

63.12.1 The assisted living agency shall be responsible for maintaining appropriate records for each consumer. These records shall document the implementation of the service agreement for each consumer. Clinical records for consumers shall conform to professional standards for medical records.

63.12.2 Records shall be available at all times to legally authorized persons; otherwise such records shall be held confidential. The consent of the consumer or his/her representative if the consumer is incapable of making decisions shall be obtained before any personal information is released from his/her records as authorized by these regulations or Delaware law.

63.12.3 The assisted living agency **[consumer]** records shall be retained for a minimum of five (5) years before being destroyed **[following discharge]**.

## DEPARTMENT OF EDUCATION

STATUTORY AUTHORITY: 14 DELAWARE CODE  
SECTION 122(d), (14 DEL.C. 122(d))

BEFORE THE DEPARTMENT OF EDUCATION OF  
THE STATE OF DELAWARE

### REGULATORY IMPLEMENTING ORDER HIGH SCHOOL DIPLOMAS AND RECORD OF PERFORMANCE REGULATIONS

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Handbook for K-12 Education has five regulations related to high school diplomas and the Record of Performance. They are found in Section IV.K., Diploma and Record of Performance Procedures, K.1., Diploma, K.2., Diploma Procedures, K.3., Record of Performance, K.4., Replacement of High School Diploma, and K.5., Certification of High School Diploma. Another regulation titled "Commencement" is in Section I.J.4., and also refers to diploma information. These regulations generally contain procedural information and often repeat the same information stated in different ways. The amendments place these regulation in a single section and include only those three issues that are regulatory. There is one change, December 31 rather than September 30 will be the cut off date for completing all work required to receive a June diploma. The new section will be referred to as Diploma and Record of Performance Regulations and will be found in Section IV.K.1., 2. and 3., in the Handbook for K-12 Education. Notice of the proposed amendments was published in the News Journal and the Delaware State News on November 17, 1997 in the form

hereto attached as Exhibit A. The notice invited written comments and none were received.

## II. FINDINGS OF FACT

The Secretary finds that the regulations should be amended as recommended to identify specifically the regulatory parts of these sections and to reduce redundancy.

## III. DECISION TO AMEND REGULATION(S)

For the forgoing reasons, the Secretary concludes that the proposed amendments are necessary to clarify and focus the intent of the regulations. Therefore, pursuant to 14 Del. C., the amendments attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the amendments hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the amendments adopted hereby shall be in the form attached hereto as Exhibit B, and said amendments shall be cited in Section IV.K.1., 2., and 3 in the Handbook for K-12 Education.

## V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122 in open session at the State Board's regularly scheduled meeting on December 18, 1997. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 18th day of December, 1997.

Dr. Iris T. Metts, Secretary of Education

Consented to this 18th day of December, 1997

### STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

### AS AMENDED

#### IV.K. High School Diploma and Record of Performance

1. A state sanctioned diploma will be granted to pupils who meet the state and local school district requirements for graduation. It is the responsibility of local school districts to establish guidelines for granting

the Record of Performance in lieu of a diploma.

2. Diplomas from one school year can not be issued after December 31 of the next school year.

3. Duplicate diplomas will not be issued, but legitimate requests for validation of graduation will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department of Education in Dover. The letter of certification must contain the name of the applicant, the name of the school, the date of graduation, and the diploma registry number and must be notarized.

### FROM THE HANDBOOK FOR K-12 EDUCATION

#### H.4: COMMENCEMENT

~~A bona fide diploma will be granted to pupils who meet state and local school district requirements. The Record of Performance may be used to recognize the accomplishments of certain other pupils. It is the responsibility of the local school district to establish guidelines for the granting of the Record of Performance and for determining which students participate in commencement exercises.~~

#### IV. K. DIPLOMA AND RECORD OF PERFORMANCE PROCEDURES

##### 1. DIPLOMA

~~A local school district issues a high school diploma under the auspices of the State Board of Education. The diploma indicates that the recipient has satisfactorily fulfilled the minimal program requirements established by the State Board of Education and the local board of education in respect to the units of credit required for graduation.~~

##### 2. DIPLOMA PROCEDURES

~~a. Established procedures for the certification of seniors and the ordering of diplomas for graduates are forwarded during the December prior to commencement to each high school principal by the Department of Public Instruction Education.~~

~~b. The requirements for graduation from a Delaware high school are specified in the section of this Handbook entitled Credit Requirements.~~

~~c. Diplomas for one school year cannot be issued after September of the next school year. A student completing graduation requirements during the fall of the next school year will receive a diploma from the school year in which he or she completes the requirements.~~

~~d. Although duplicate diplomas will not be issued, legitimate requests for validation of graduation will be satisfied through a letter of certification.~~

e. Requests for diploma information from graduates of Delaware high schools should be directed to the Department of Public Instruction high school attending at the time of graduation. If the school does not have the records, call the Department of Education.

### 3. RECORD OF PERFORMANCE

a. There are a limited number of pupils who are unable to meet the general educational requirements necessary for the granting of a diploma.

b. The Record of Performance may be used to recognize the efforts and accomplishments of these pupils.

c. School districts using the Record of Performance should establish guidelines for its use including which pupils are to participate in commencement.

d. The availability of the Record of Performance should serve to remind us that each high school has the responsibility to do the following:

(1) develop programs adapted to individual differences;

(2) recognize the total concern of the school is to provide for a comprehensive and flexible program of individualized learning; and

(3) place pupils in regular programs when they can progress beyond the special education program.

### 4. REPLACEMENT OF HIGH SCHOOL DIPLOMA

In the event that a graduate of a Delaware public high school should require the replacement of a diploma, the following procedure should be followed:

a. contact the principal or appropriate school official of the high school from which the person graduated;

b. the appropriate school official within the high school will verify the date of graduation and the diploma registry number;

c. the appropriate school official of the high school will contact the company producing the diploma to determine the cost of replacement; and

d. the person will provide the amount necessary for the replacement of the diploma to be sent with the verifying information.

### 5. CERTIFICATION OF HIGH SCHOOL DIPLOMA

Should a graduate of a Delaware high school require verification of graduation, these procedures are to be followed:

a. The principal or appropriate high school official would provide a letter of verification that includes the following:

- Name of applicant
- Date of graduation
- Name of school
- Diploma registry number

b. The personal letter should then be notarized and sent to the person concerned.

e. In the event that the person requesting a verification is not able to obtain the appropriate information from their high school due to a closing or reorganization, the person may contact the Department of Public Instruction Education for appropriate verification.

## DEPARTMENT OF EDUCATION

STATUTORY AUTHORITY: 14 DELAWARE CODE  
SECTION 122(d), (14 DEL.C. 122(d))

BEFORE THE DEPARTMENT OF EDUCATION OF  
THE STATE OF DELAWARE

### REGULATORY IMPLEMENTING ORDER EDUCATION OF HOMELESS CHILDREN AND YOUTH

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulations for the Education of Homeless Children and Youth, Section L.10, a-j on pages A-43 to A-46 in the Handbook for K-12 Education are for the most part being readopted as they are presently written. The exceptions are, changing the lead paragraph to more concisely state the relationship of the State Department of Education regulations to the Federal legislation, removing subsection e.(1)(b) because of its inaccuracy, and changing the Department of Public Instruction to the Department of Education in subsection I.L.10.j. The regulations define who homeless children and youth are and what their rights and responsibilities are as well as the responsibilities of local school districts concerning their education including transportation and immunization and, when necessary, the rapid transfer of records. The amended regulations would remain in the same section, L.10,a-j, of the Handbook for K-12 Education. Notice of the proposed amendment was published in the News Journal and the Delaware State News on November 17, 1997 in the form hereto attached as Exhibit A. The notice invited written comments and none were received.

#### II. FINDINGS OF FACT

The Secretary finds that the existing regulation should be amended as recommended to clarify the introductory paragraph, to eliminate an inaccurate subsection, and to correct the Department's name. Federal legislation requires the state to have such a regulation in place.

#### III. DECISION TO AMEND THE REGULATIONS

For the foregoing reasons, the Secretary concludes that the proposed amendments are necessary to improve and clarify

the language of the regulations. Therefore, pursuant to 14 Del. C., the amendments attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the amendments hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the amendments adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited as Regulations for the Education of Homeless Children and Youth, I.L.10.a-j, in the Handbook for K-12 Education.

#### V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122 in open session at the State Board's regularly scheduled meeting on December 18, 1997. The effective date of this Order shall be ten days from the date this order is published in Delaware Register of Regulations.

IT IS SO ORDERED this 18th day of December, 1997.

Dr. Iris T. Metts, Secretary of Education

Consented to this 18th day of December

#### STATE BOARD OF EDUCATION

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#### ~~I.L.10. POLICY PERTAINING TO PROCEDURES REGULATIONS FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH~~

~~The State Board of Education is concerned about the problem of homelessness and wishes to assure that children and youth who are homeless have access to a free, appropriate, public education which would be provided to students who are residents of the State, consistent with State school attendance laws. Further, Congress passed Consistent with the provisions of the Stewart B. McKinney Homeless Assistance Act, 42 USC 11301, in 1987, and the State Board supports that Act. For these reasons, the Secretary with the consent of the State Board of Education adopts the following regulations on assistance to homeless children and youth:~~

- a. The term "homeless" or "homeless individual"

shall include:

(1) an individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) an individual who has a primary nighttime residence that is:

(a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(b) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

but does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

b. A homeless individual shall be eligible for assistance if the individual complies with state or federal income eligibility requirements applicable to assistance to the homeless.

c. All local school districts, in cooperation with each other, shall assure that each child of a homeless individual and each homeless youth have access to a free, appropriate, public education which would be provided to the children of a resident of the State, consistent with school attendance laws.

d. After consultation with the parent or guardian of a homeless child, the homeless youth, and/or the applicable social worker, the local school district in which a homeless child or youth resides, as defined in section a. of this policy, ("the new school district"), shall determine whether the homeless child or youth shall:

(1) be enrolled in the appropriate school in the attendance area of the school district in which the homeless child or youth resides; or

(2) be provided a free appropriate public education program with services comparable to services offered to other students in the district, in the shelter or other temporary living accommodation; or

(3) continue his/her education in the home school serving the attendance area of residence in the district of origin for the remainder of the school year.

Such a determination shall be made consistent with the homeless child's or youth's best interests, and, where necessary, shall be made in consultation with and with the cooperation of, the homeless child's or youth's district of origin.

e. School bus transportation shall be provided consistent with those services offered other students in the State. To that end, school districts shall provide transportation:

(1) where it is determined that the homeless child or youth will attend school in the new school district;

(a) through regularly scheduled school transportation, to the appropriate school serving the attendance area of the new school district in which the homeless child or youth resides~~[-; or]~~

~~(b) as necessary to provide comparable services for a program of education in the shelter or other temporary living accommodation; or~~

(2) where it is determined that the homeless child or youth will remain in the home school serving the attendance area of residence in the district of origin:

(a) through regularly scheduled school transportation, from the nearest bus stop, to the student's temporary residence, in the attendance area of the district of origin, to the home school.

f. School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth. To that end, school districts shall:

(1) assist homeless children and youth in meeting the immunization requirements;

(2) assist homeless children and youth in matters concerning guardianship;

(3) assist homeless children and youth in obtaining birth records as needed; and

(4) keep documentation of efforts made by the district in this regard in each student's file.

g. School districts shall ensure that the school records of each homeless child or youth shall:

(1) be maintained so that such records are available within ten (10) school days to the new school district;

(2) when there is a request for such records, be transferred in a speedy fashion, employing the use of couriers, if necessary;

(3) when such records cannot be provided with sufficient speed to ensure continuity of programming, be supplemented by telephonic communication regarding the appropriate placement of and programming for the homeless child or youth.

To this end, all shelters and other regularly established temporary living accommodations shall be provided, by the school district in which they are located, signature forms for the release of such information by the district of origin. Couriers should be used to expedite the delivery of such forms to the district of origin.

All such exchanges of records shall be done in a manner which is consistent with the Procedures for the Collection, Maintenance and Disclosure of Student Data.

h. Each homeless child shall be provided services comparable to services offered to other students in the school selected according to the provisions of section d., including educational services for which the child meets the eligibility criteria, such as compensatory educational programs for the disadvantaged, and educational programs for the disadvantaged, and educational programs for the handicapped and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; and school meals programs.

i. Dispute resolution shall be through the applicable local boards of education, appealable to the State Board of Education pursuant to 14 Del. C. §1058.

j. One person shall be designated by each school district to coordinate services to homeless children and youth, and each district shall report the name of that person to the Department of ~~Public Instruction~~ Education, Office of Coordinator of Education of the Homeless, at the beginning of each fiscal year.

(State Board Approved September 1989; Revised March 1993)

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## DEPARTMENT OF EDUCATION

STATUTORY AUTHORITY: 14 DELAWARE CODE  
SECTION 122(d), (14 DEL.C. 122(d))

BEFORE THE DEPARTMENT OF EDUCATION OF  
THE STATE OF DELAWARE

### REGULATORY IMPLEMENTING ORDER DRIVER EDUCATION

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulations for Driver Education programs are found in three places in the Handbook for K-12 Education, They are I.G.2., Driver Education Policy, I.G.3., State Board Policy on Driver Education, and IV.A.2.h., Driver Education. There is also another regulation on Adult Driver Education approved by the State Board in November 1971, revised in August 1988, and again in June 1996, but not placed in any particular document. The amendments consolidate these Driver Education regulations and make five changes and/or additions to the existing regulations. The additions are a section for special education students and one for adult education. The changes include; making the grading system pass/fail and permitting local school districts to decide if they want to grant credit for driver education and if they want to count the credit, if awarded, toward graduation. These three changes would

begin with the 1998-1999 school year. The amended regulations are titled Driver Education and become section IV.A.3.h.(1) through (8). Notice of the proposed amendments was published in the News Journal and the Delaware State News on November 17, 1997 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisement. Comments and recommendations received from the schools and the local superintendents (see attached letter from Superintendent Skeen) have caused the Department to change the amended regulations by eliminating item #6 of the amended regulations which would have prohibited districts from releasing students from classes in English language arts, mathematics, social studies, or science in order to fulfill their 7 required hours of actual observation in-the-car, their 7 required hours of in-the-car-behind-the-wheel experience, and/or time on the driving simulators.

## II. FINDINGS OF FACT

The Secretary finds that the amendments are necessary in order to consolidate the existing regulations. The amendments are also necessary to add the sections for special education students and for Adult Driver Education programs. The need for local district autonomy is addressed through the section that allows districts to decide if credit should be granted for driver education programs and if granted, should it count toward graduation.

## III. DECISION TO AMEND THE REGULATIONS

For the foregoing reasons, the Secretary concludes that the proposed amendments are necessary to consolidate the present regulations into one section and to add and to change sections to reflect the current needs of the system. Therefore, pursuant to 14 Del. C., Section 122, the amendments attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the amendments hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the amendments adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited as section I.G.2.(h) in the Handbook for K-12 Education.

## V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122 in open session at the State Board's regularly scheduled meeting on December 18, 1997. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 18th day of December, 1997.  
Dr. Iris T. Metts, Secretary of Education

Consented to this 18th day of December, 1997

## STATE BOARD OF EDUCATION

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Dr. Claibourne D. Smith

## FROM HANDBOOK FOR K-12 EDUCATION

### ~~I.G.2: DRIVER EDUCATION POLICY~~

~~a. The current philosophy of the State Department of Public Instruction stipulates that it is important that the day-to-day supervision of educational programs in the State be conducted at the local school building level. The supervisory function of State Department of Public Instruction personnel should be that of giving general leadership to curriculum procedures and instructional programs. This, we believe, must be done by working with the secondary school principal through the office of the chief school officer. Direct classroom observation and supervision of instructional personnel should be done only with the knowledge of the secondary school principal.~~

~~Historically and traditionally in Delaware, because the driver education program has been a state-oriented program, there has been a tendency for local school principals to assume that State supervision is the necessary, desirable and complete supervision of that program.~~

~~It is the purpose of this memorandum to indicate that local secondary school building principals should now include driver education courses within the regular schedule of their supervisory activities. Driver education should receive no more and particularly no less attention than do other programs of instruction within the school curriculum.~~

~~The relative position of the State Supervisor of Driver Education and Safety will be that of any other content supervisor in that he will now be free to provide the necessary specialized aid and advice to secondary school principals in the area of driver education as well as programs of general school safety. The State Supervisor of Driver Education and Safety will begin immediately to make more contacts with driver education instructors. This memorandum is not to be construed as denying the State Supervisor of the sense that he is a specialist in this particular teaching area, but rather to orient these contacts in order that they might take place in the total context of the local supervisory program.~~

Driver education teachers have been expected to carry on as local staff members. This is to continue. Driver education teachers are subject to the same assignments and general duties and responsibilities as any teacher in the school district, but it is recommended that such assignments should not interfere with their responsibility for serving 125 driver education students.

Driver education teachers are being instructed to "report in" to the local principal and establish a first line of communication and rapport there as opposed to the traditional attachment to the State Department of Public Instruction.

b. In order to be eligible for approval by the State Board of Education the course must be an integral part of the school curriculum and must appear in the regular school schedule. Furthermore, the following minimum time standards for the driver education course must be met by all participating schools:

(1) The driver education course shall include a minimum of forty-four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in-the-car behind-the-wheel laboratory instruction and seven (7) hours of observation. The class hours are not to be less than forty-five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction shall be no less than one thousand three hundred fifty (1,350) minutes and behind-the-wheel laboratory instruction no less than three hundred fifteen (315) minutes.

(2) Driving simulators may be substituted for the required hours of behind-the-wheel laboratory instruction but only up to three (3) hours of the time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind-the-wheel laboratory instruction.

(3) Off-the-street driving ranges or multiple car driving ranges that are off the street may be substituted for actual behind-the-wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind-the-wheel laboratory instruction time.

(4) Driving simulation and off-the-street driving range time shall not be taken from or cause a reduction of classroom instruction time.

(5) Driving simulation and off-the-street driving range time shall not be substituted for more than one-half (1/2) of the total required six (6) hours of actual behind-the-wheel laboratory instruction and only at the ratios defined in the above items. This shall include individually or in any combination.

c. Please note also that driver education automobiles are to be used for no other purposes than teaching; no school errands, student trips or personal business. Only driver education teachers may commute directly between home and school assignments related to driver education

with the driver education car. However, when a teacher is assigned full time to a particular district where secure parking is available, the chief school officer may require that the automobile be parked on school property at the close of the teaching day.

d. In summation, we wish that the relationship between the State Department of Public Instruction and the instructional program in driver education should be on the same basis as the relationship between the State Department and any other content field in the local school.

(State Board Approved August 1971, Revised August 1988)

#### I.G.3. STATE BOARD RESOLUTION ON DRIVER EDUCATION

The State Board of Education adopted the following resolution in June 1971. In August 1988 the resolution was changed to revise the student teacher ratio from 1 to 140 to 1 to 125.

WHEREAS, the student-teacher ratio established by law for driver education teachers is one teacher for each 125 students or one-fifth of a teacher for each 25 pupils; and

WHEREAS, by law the right to prescribe rules and regulations for the conduct and management of the schools is conferred upon local boards of education; and

WHEREAS, by law local boards of education operate within rules and regulations prescribed by the State Board of Education;

NOW, THEREFORE, BE IT RESOLVED, that it is State Board of Education policy that local districts insure through effective planning that the above stated student-teacher ratio is scheduled for and completed by each driver education teacher; that interruptions to scheduled classes be minimized; that driver education teachers be scheduled for a full assignment in driver education; that maximum use be made of summer programs authorized in 14 Del. C. §1321(e)(8); and that driver training be made available in summer programs for Delaware residents who attend school out of state, for school dropouts, for those exceptional cases approved by the State Board of Education who could not be scheduled in the regular year, and for those who are in excess of the unit allotment.

#### IV.A.3.h. Driver Education

(1) The Delaware Code established the following regulation in respect to driver education:

"...No person shall be issued a temporary instruction permit who has not reached his/her 18th birthday and who is not currently enrolled in or who has not successfully completed a course in Driver Education in a public or private high school in the State of Delaware, such course having been approved by the State Board of

Education and meeting the standards for such courses described by the Board.”

(2) In view of the preceding law and due to the fact that teacher allocations for driver education are based on the number of tenth grade students, it is recommended that the following serve as a guideline in granting credit:

(a) One-fourth credit shall be granted for driver education when it is taught as a separate course and when interruptions to the regular educational program do not go beyond study halls.

(b) The one-fourth credit received for driver education shall be included as part of the credits required for graduation.

#### ADULT DRIVER EDUCATION

Due to the rapid growth of driver education and its expansion to all public, private and parochial schools of Delaware and the ever increasing demand for adult driver education programs, it has become necessary for the State Department of Education to provide adult driver education program guidelines in order to maintain recognized standards of high performance.

The State Department of Education strongly urges that driver education courses for adults and out-of-school youth be made available in each community under the direct control of the local board of education:

Therefore, the following guidelines are designed to permit and encourage each school district or combination of school districts to provide adult and after-school hours driver education courses:

##### I. Administration

1. The local school district shall be responsible for all publicity and recruitment of students, physical facilities and administration and supervision of the course in meeting the State Department of Education driver education standards:

2. All courses must meet the minimum standards as set forth by the State Department of Education and shall consist of at least 30 class hours of classroom instruction; at least 7 class hours of actual driving experience and 7 class hours of observation time in the automobile:

3. Records shall be kept on all pupils and a final report is to be submitted to the Education Associate of Driver Education and Safety immediately upon conclusion of the course. Student final report forms and certificates will be provided by the State Department of Education upon written request.

4. A standard registration form is to be completed and kept on file for each student enrolled and each student

under 21 years of age must have parental approval before the start of the course:

5. All students will be administered the standardized written and performance final examinations as required by the State Department of Education:

6. All students are to be approved by the school nurse to determine compliance to the basic mental and physical requirements of Motor Vehicle Laws:

7. The adult “student” does not need a temporary instruction of “learner’s” permit if the State Department of Education approved driver education course is taught which includes specifically a dual controlled car and a State Department of Education certified State Department of Education certified instructor occupying the seat beside the driver:

8. The school administration may assess and collect fees from those students enrolled in the driver education course in order that the course is self-supporting only in the amount beyond the funds provided by the local school district for any other adult or after-school hours course. The driver education teacher is not to collect fees or handle the monies in any manner. The school administration is to provide this service and pay the driver education teachers’ salary and car expenses from the local funds and assessed fees:

##### H. The Driver Education Teachers

1. The driver education teacher shall be certified to teach driver education by the Certification Office, Assessments and Accountability Branch, State Department of Education:

2. The teacher shall occupy the seat beside the student driver at all times during the in-car instruction:

3. The teacher shall conduct the course in the same manner as the regular high school course:

##### III. The Driver Education Program

1. The automobile shall be equipped with the proper dual clutch and/or brake depending on type of transmission in the vehicle:

2. The automobile shall display on its roof or rear bumper a sign designating it as a driver education vehicle whenever a student is behind the wheel. (The sign is to be the same as those now approved for use by the State Department of Education):

3: ~~The automobile used in the regular high school program may be used in the adult or after school hours program.~~

4: ~~Recommended class meeting time length for any one day:2 hours (exclusive of driving time).~~

5: ~~Further assistance in organization or planning may be obtained by contacting the Education Associate of Driver Education, Safety and Physical Education.~~

ADOPTED BY THE STATE BOARD OF EDUCATION  
NOVEMBER 18, 1971. (R8/8/88) (R6/96) (R9/97)

#### Driver Education

(1) Delaware residents are entitled to free driver education one time only. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.

(2) The Individualized Education Program Team, in consultation with the Driver Education teacher, can make modifications to the Driver Education program for special education students through the students' Individual Education Program (I.E.P.).

(3) Delaware residents attending school out of state as sophomores, students in excess of the September 30<sup>th</sup> unit allotment, students attending private and parochial academies in state with sophomore enrollments of less than twenty-five, home schooled students and any student approved by the Secretary as an exceptional case are entitled to attend summer driver education without charge. Districts must notify all nonpublic and public high schools in their district by April 1<sup>st</sup> annually as to the location of the nearest summer driver education program. Summer Driver Education must be offered between June 1 - August 31 and each request for free-tuition must be approved by the Secretary of Education through the Office of the Education Associate for Driver Education, Safety and Physical Education.

(4) Adult Driver Education programs, when offered, must follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. The costs per student for adult driver education will be determined by the Department of Education.

(5) The driver education course must include a minimum of forty-four (44) class hours of instruction

consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in-the-car behind-the-wheel laboratory instruction and seven (7) hours of actual observation in-the-car. The class hours must not be less than forty-five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind-the-wheel laboratory instruction no less than three hundred fifteen (315) minutes.

(a) Driving simulators may be substituted for the required hours of behind-the-wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind-the-wheel laboratory instruction.

(b) Off-the-street driving ranges or multiple driving ranges that are of the street may be substituted for actual behind-the-wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind-the-wheel laboratory instruction time.

(c) Driving simulation and off-the-street driving range time must not be taken from or cause a reduction of classroom instruction time.

(d) Driving simulation and off-the-street driving range time must not be substituted for more than one-half (1/2) of the total required seven (7) hours of actual behind-the-wheel laboratory instruction and only at the ratios defined in the above items. This must include individually or in any combination.

~~**[(6) Beginning with the 1998-1999 school year, students may not be released from classes in English language arts, mathematics, social studies or science in order to fulfill their 7 required hours of actual observation in-the-car and their 7 required hours of in-the-car-behind-the-wheel experience. This also applies to release from class for time on the driving simulators.]**~~

~~[(7) (6)]~~ The Driver Education teachers must use the "Teachers' Guide for Driver Education" developed by the Department of Education for classroom instruction and behind-the-wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

~~[(8) (7)]~~ Beginning with the 1998-99 school year, grades for the Driver Education Program shall be either pass or fail. Districts may grant one-fourth credit for successful completion of the minimum hours in both the classroom and the behind-the-wheel laboratory experience. The one fourth credit for driver education may be included as part of the credits counted toward graduation.

(a) Pass/Fail grades for publication in the Department of Education "Report of Educational Statistics" must be received by the Department of Education no later than June 30<sup>th</sup> for Regular Driver Education Programs and August 31<sup>st</sup> for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven year period.

~~[(9)(8) **Automobiles [procured through State funding for driver education must be used solely for instruction of students duly enrolled in driver education.** During the school day, automobiles purchased by a district or leased from Fleet Services or leased directly from a dealership using state funds allocated for Driver Education must be used solely for the instruction of students enrolled in Driver Education.]~~

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## GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Assoc. Judge of the Superior Court	The Honorable John E. Babiarz, Jr.	11/25/09
Assoc. Justice of the Supreme Court	The Honorable Joseph T. Walsh	11/21/09
Board of Cosmetology & Barbering	Mr. Preston L. Dyer	11/21/00
Commissioner of the Delaware River and Bay Authority	Mr. Edward J. Bennett	11/13/02
Council on Correction	Dr. Joseph E. Johnson, Jr.	11/10/00
Council on Volunteer Services	Ms. Ann C. Altemus	11/21/99
	Ms. Bonnie S. Dempsey	11/21/99
	Dr. Edward Goate	11/21/99
	Mr. David Hill	11/21/99
	Mr. Brian M. McGlinchey	11/21/99
	Mr. Lawrence E. Miller	11/21/99
	Mr. Robert D. Ullrich	11/21/99
Mr. Joseph V. Williams, Jr.	11/21/99	
Delaware Advisory Council on Career Education	Mr. John Land	Pleasure of the Governor
Delaware Center for Educational Technology Board	Mr. Paul Harjung	Pleasure of the Governor
Delaware State Boundary Commission	Ms. Bettina Riveros	Pleasure of the Governor
Family Court Task Force	Mr. Wayne Brown	Pleasure of the Governor
	Ms. Kathryn Way	Pleasure of the Governor
Judge of the Court of Common Pleas	The Honorable Jay Paul James	12/01/09
Vice Chancellor of the Court of Chancery	The Honorable Jack B. Jacobs	11/13/09

**DELAWARE RIVER BASIN  
COMMISSION**

Amendments to Administrative Manual -  
Rules of Practice and Procedure

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Final rule.

**SUMMARY:** At its November 19, 1997 business meeting, the Delaware River Basin Commission amended its Administrative Manual - Rules of Practice and Procedure for clarification and conformance with existing Commission interpretations and practices.

**EFFECTIVE DATE:** November 19, 1997.

**ADDRESSES:** Copies of the Commission's Administrative Manual - Rules of Practice and Procedure are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500 ext. 203.

**SUPPLEMENTARY INFORMATION:** On October 22, 1997 the Commission held a public hearing on proposed amendments to its Rules of Practice and Procedure as noticed in the Pennsylvania Bulletin issues of September 13, 1997 and October 18, 1997. In response to comments received on that proposal, the Commission made several modification to its initial proposal, providing further clarification, correcting typographical errors and revising language concerning assessment of Hearing costs.

1. The Administrative Manual - Rules of Practice and Procedure is hereby amended as follows:

a. INTRODUCTION is revised to read as follows:

DELAWARE RIVER BASIN COMMISSION  
RULES OF PRACTICE AND PROCEDURE  
INTRODUCTION

The Delaware River Basin Compact requires the Commission to formulate and adopt a Comprehensive Plan and Water Resources Program. In addition, the Compact provides in Section 3.8 that no project having a substantial effect on the water resources of the Basin shall be undertaken unless it shall have been first submitted to and approved by the Commission. The Commission is required to approve a

project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan. Section 3.8 further provides that the Commission shall provide by regulation for the procedure of submission, review and consideration of projects and for its determinations pursuant to Section 3.8.

The Comprehensive Plan consists of all public and those private projects and facilities which the Commission has directed be included therein. It also includes those documents and policies which the Commission has determined should be included within the Comprehensive Plan as being needed to insure optimum planning, development, conservation, use, management and control of the water resources of the Delaware Basin to meet present and future needs. The Comprehensive Plan is subject to periodic review and revision as provided in Sections 3.2 and 13.1 of the Compact.

The Water Resources Program is based upon the Comprehensive Plan. It is required to be updated annually and to include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the Commission may determine, balanced by existing and proposed projects required to satisfy such needs. The Commission's review and modification of the Water Resources Program is conducted pursuant to the provisions of Articles 3.2 and 13.2 of the Compact.

The Commission's Rules of Practice and Procedure govern the adoption and revision of the Comprehensive Plan, the Water Resources Program, the exercise of the Commission's authority pursuant to the provisions of Article 3.8 and other actions of the Commission mandated or authorized by the Compact.

These Rules of Practice and Procedure extend to the following areas of Commission responsibility and regulation:

- Article 1 - Comprehensive Plan.
- Article 2 - Water Resources Program.
- Article 3 - Project Review Under Section 3.8 of the Compact
- Article 4 - (Reserved).
- Article 5 - Appeals or Objections to Decisions of the Executive Director in Water Quality Cases.
- Article 6 - Administrative and Other Hearings.
- Article 7 - Penalties and Settlements in Lieu of Penalties.
- Article 8 - Public Access to the Commission's Records and Information.
- Article 9 - General Provisions.

These rules are subject to Commission revision and

modification from time to time as the Commission may determine. The Commission reserves the right to waive any Rule of Practice and Procedure it determines should not be applicable in connection with any matter requiring Commission action. All actions by the Commission, however, shall comply fully with the applicable provisions of the Compact.

b. ARTICLE 1 - COMPREHENSIVE PLAN is revised to read as follows:

ARTICLE 1  
COMPREHENSIVE PLAN

Section 2.1.1 Scope. This article shall govern the submission, consideration, and inclusion of projects into the Comprehensive Plan.

2.1.2 Concept of the Plan. The Comprehensive Plan shall be adopted, revised and modified as provided in Sections 3.2 and 13.1 of the Compact. It is the Commission's responsibility to adopt the Comprehensive Plan, after consultation with water users and interested public bodies, for the immediate and long-range development and uses of the water resources of the Basin. The Plan shall include the public and private projects and facilities which the Commission determines are required for the optimum planning, development, conservation, utilization, management and control of the water resources of the Basin to meet present and future needs. In addition to the included projects and facilities, the Comprehensive Plan consists of the statements of policies, and programs that the Commission determines are necessary to govern the proper development and use of the River Basin. The documents within the Comprehensive Plan expressing the Commission's policies and programs for the future, including the means for carrying them out, may be set forth through narrative text, maps, charts, schedules, budgets and other appropriate means.

Specific projects and facilities and statements of policy and programs may be incorporated, deleted or modified from time to time to reflect changing conditions, research results and new technology. The degree of detail described in particular projects may vary depending upon the status of their development.

2.1.3 Other Agencies. Projects of the federal agencies affecting the water resources of the Basin, subject to the limitations in Section 1.4 of the Compact, shall be governed by Section 11.1 of the Compact. Projects of the signatory states, their political subdivisions and public corporations affecting the water resources of the Basin, shall be governed by the provisions of Section 11.2 of the Compact.

Section 2.1.4 Project Applications and Proposed Revisions and Changes. Applications for inclusion of new public projects and the deletion or alteration of previously included public projects may be submitted by signatory parties and agencies or political subdivisions thereof. Owners or sponsors of privately owned projects may submit applications for the inclusion of new private projects and the deletion or alteration of previously included private projects in which the applicant has an interest. The Commission may also receive and consider proposals for changes and additions to the Comprehensive Plan which may be submitted by any agency of the signatory parties, or any interested person, organization, or group. Any application or proposal shall be submitted in such form as may be required by the Executive Director to facilitate consideration by the Commission.

Applications for projects shall include at least the following information:

- (1) Purpose or purposes, including quantitative measures of physical benefit anticipated from the proposal;
- (2) The location, physical features and total area required;
- (3) Forecast of the cost or effect on the utilization of water resources;
- (4) Relation to other parts of the existing Comprehensive Plan;
- (5) A discussion of conformance with Commission policies included in the Comprehensive Plan; and
- (6) A discussion of the alternatives considered.

2.1.5 Review of Applications. Following staff study, examination, and review of each project application, the Commission shall hold a public hearing upon notice thereon as provided in paragraph 14.4(b) of the Compact and may take such action on a project application as it finds to be appropriate.

2.1.6 Proposed Revisions and Changes. Proposals for changes and additions to the Comprehensive Plan submitted by any agency of the signatory parties or any interested person, organization or group shall identify the specific revision or change recommended. In order to permit adequate Commission consideration of any proposal, the Executive Director may require such additional information as may be needed. Review or consideration of such proposals shall be based upon the recommendation of the Executive Director and the further direction of the Commission.

2.1.7 Further Action. The Commission will review the Comprehensive Plan in its entirety at least once every six years from the date of the initial adoption of the Comprehensive Plan (March 28, 1962). Such review may include consideration of proposals submitted by the signatory parties, agencies or political subdivision thereof or other interested parties. The amendments, additions, and deletions

adopted by the Commission will be compiled and the Plan as so revised shall be made available for public inspection.

#### 2.1.8 Public Projects Under Article 11 of the Compact.

(a) After a project of any federal, state or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and these regulations. Any project which is changed substantially from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director who will determine whether the change is deemed substantial within the meaning of these regulations.

(b) Any public project not having a substantial effect on the water resources of the Basin, as defined in Article 3 of these regulations, may proceed without reference to Article 11 of the Compact.

2.1.9 Custody and Availability. The Comprehensive Plan shall be and remain in the custody of the Executive Director. The Plan, including all maps, charts, description and supporting data shall be and remain a public record open to examination during the regular business hours of the Commission, under such safeguards as the Executive Director may determine to be necessary to preserve and protect the Plan against loss, damage or destruction. Copies of the Comprehensive Plan or any part or parts thereof shall be made available by the Executive Director for public sale at a price covering the cost of production and distribution.

c. ARTICLE 3 - PROJECT REVIEW UNDER SECTION 3.8 OF THE COMPACT is revised to read as follows:

ARTICLE 3  
PROJECT REVIEW UNDER SECTION 3.8 OF THE  
COMPACT

Section 2.3.1 Scope. This article shall govern the submission and review of projects under Section 3.8 of the Delaware River Basin Compact.

2.3.2 Concept of 3.8. Section 3.8 is intended to protect and preserve the integrity of the Comprehensive Plan. This section of the Compact provides:

“No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have

been first submitted to and approved by the Commission, subject to the provisions of Sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such Plan. The Commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction.”

2.3.3 Administrative Agreements. The Executive Director is authorized and directed to enter into cooperative Administrative Agreements with federal and state regulatory agencies concerned with the review of projects under federal or state law as follows:

- (a) To facilitate the submission and review of applications and the determinations required under Section 3.8 of the Compact;
- (b) To avoid unnecessary duplication of staff functions and hearings required by law; and
- (c) For such other and different purposes as he may deem feasible and advantageous for the administration of the Compact or any other law.

2.3.4 Submission of Project Required. Any project which may have a substantial effect on the water resources of the Basin, except as provided in paragraph (d) of this section, shall be submitted to the Commission for a determination as to whether the project impairs or conflicts with the Comprehensive Plan, as follows:

- (a) Where the project is subject to review by a state or federal agency which has entered into an Administrative Agreement with the Commission, such project will be referred to the Commission in accordance with the terms of the Administrative Agreement, and appropriate instructions will be prepared and issued by the Executive Director for guidance of project sponsors and applicants.
- (b) Where no other state or federal agency has jurisdiction to review and approve a project, or no Administrative Agreement is in force, the project sponsor shall apply directly to the Commission.
- (c) Any project proposal, which may have a substantial effect on the water resources of the Basin, may be received and reviewed by the staff informally in conference with the project sponsor during the preliminary planning phase to assist the sponsor to develop the project in accordance with the Commission’s requirements.
- (d) Whenever a project sponsored by one of the

signatory parties, or by any agency, political subdivision or public corporation thereof, has been included in the Water Resources Program in the "A List" classification, the project, to the extent of such inclusion and as described in the Program, shall be deemed approved for the purposes of Section 3.8 of the Compact.

- (e) Whenever a project is subject to review and approval by the Commission under this section, there shall be no substantial construction activity thereon, including related preparation of land, unless and until the project has been approved by the Commission; provided, however, that this prohibition shall not apply to the drilling of wells for purposes of obtaining geohydrologic data, nor to in-plant control and pretreatment facilities for pollution abatement.

#### 2.3.5 Classification of Projects for Review under Section 3.8 of the Compact.

(a) Except as the Executive Director may specially direct by notice to the project owner or sponsor, or as a state or federal agency may refer under paragraph (c) of this section, a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

(1) The construction of new impoundments or the enlargement or removal of existing impoundments, for whatever purpose, when the storage capacity is less than 100 million gallons;

(2) A withdrawal from ground water for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

(3) A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

(4) The construction of new domestic sewage treatment facilities or alteration or addition to existing domestic sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems;

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;

(6) A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles;

(7) Deepening, widening, cleaning or dredging existing stream beds or relocating any channel, and the placement of fill or construction of dikes, on streams within the Basin except the Delaware River and tidal portions of tributaries thereto, and streams draining more than one state;

(8) Periodic maintenance dredging;

(9) Encroachments on streams within the Basin caused by:

a. floating docks and anchorages and buoys and navigational aids;

b. temporary construction such as causeways, cofferdams and falsework required to facilitate construction on permanent structures;

(10) Bridges and highways unless they would pass in or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan;

(11) Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources;

(12) Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources;

(13) Liquid petroleum products pipelines and appurtenances designed to operate under pressures of more than 150 psi, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan, or in, on, under or across any stream within the Basin; unless such lines would involve significant disturbance of ground cover affecting water resources;

(14) Landfill projects, unless no state-level review and permit system is in effect; broad regional consequences are anticipated; or the standards or criteria used in state level review are not adequate to protect the water of the Basin for the purposes prescribed in the Comprehensive Plan;

(15) Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25

acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action (1) where neither a state nor a federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or (2) when a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;

(16) The diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons;

(17) The diversion or transfer of water into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 100,000 gallons except when the imported water is wastewater;

(18) The diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons; and

(19) Temporary or short term projects determined to have non-substantial impact on the water resources of the Basin by the Executive Director.

(b) All other projects which have or may have a substantial effect on the water resources of the Basin shall be submitted to the Commission in accordance with these regulations for determination as to whether the project impairs or conflicts with the Comprehensive Plan. Among these are projects involving the following (except as provided in paragraph (a) of this section):

(1) Impoundment of water;

(2) Withdrawal of ground water;

(3) Withdrawal of water from impoundment or streams;

(4) Diversion of water into or out of the Basin;

(5) Deepening or widening of existing stream beds, channels, anchorages, harbors or turning basins, or the construction of new or enlarged channels, anchorages, harbors or turning basins, or the dredging of the bed of any stream or lake and disposal of the dredged spoil, when the nature or location of the project would affect the quantity or quality of ground or surface waters, or fish and wildlife habitat;

(6) Discharge of pollutants into surface or ground waters of the Basin;

(7) Facilities designed to intercept and transport sewage to a common point of discharge; and pipelines and electric power and communication lines;

(8) Facilities for the direct discharge to surface or ground waters of industrial wastewater;

(9) Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries;

(10) Change in land cover on major ground water infiltration areas;

(11) Hydroelectric power projects, including pumped storage projects;

(12) Projects or facilities of federal, state and local agencies such as highways, buildings and other public works and improvements, affecting the water and related land resources of the Basin;

(13) Draining, filling or otherwise altering marshes or wetlands;

(14) Regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act;

(15) Landfills and solid waste disposal facilities affecting the water resources of the Basin;

(16) State and local standards of flood plain regulation;

(17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period; and

(18) Any other project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

(c) Whenever a state or federal agency determines that a project falling within an excluded classification (as defined in paragraph (a) of this section) may have a substantial effect on the water resources of the Basin, such project may be referred by the state or federal agency to the Commission for action under these Rules.

(d) Except as otherwise provided by Section 2.3.8 the sponsor shall submit an application for review and approval of a project included under paragraph (b) above through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executive Director, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party.

2.3.5.1 Water Supply Projects - Conservation Requirements. Maximum feasible efficiency in the use of water is required on the part of water users throughout the Basin. Effective September 1, 1981 applications under Section 3.8 of the Compact for new water withdrawals subject to review by the Commission shall include and describe water-conserving

practices and technology designed to minimize the use of water by municipal, industrial and agricultural users, as provided in this section.

(a) Applications for approval of new withdrawal from surface or ground water sources submitted by a municipality, public authority or private water works corporation whose total average withdrawals exceed one million gallons per day shall include or be in reference to a program prepared by the applicant consisting of the following elements:

(1) Periodic monitoring of water distribution and use, and establishment of a systematic leak detection and control program;

(2) Use of the best practicable water-conserving devices and procedures by all classes of users in new construction or installations, and provision of information to all classes of existing users concerning the availability of water-conserving devices and procedures; and

(3) A contingency plan including use priorities and emergency conservation measures to be instituted in the event of a drought or other water shortage condition. Contingency plans of public authorities or private water works corporations shall be prepared in cooperation with, and made available to, all municipalities in the area affected by the contingency plan, and shall be coordinated with any applicable statewide water shortage contingency plans.

(b) Programs prepared pursuant to subsection (a) of this section shall be subject to any applicable limitations of public utility regulations of the signatory party in which the project is located.

(c) Applications for approval of new industrial or commercial water withdrawals from surface or ground water sources in excess of an average of one million gallons per day shall contain (1) a report of the water-conserving procedures and technology considered by the applicant, and the extent to which they will be applied in the development of the project; and (2) a contingency plan including emergency conservation measures to be instituted in the event of a drought or other water shortage. The report and contingency plan shall estimate the impact of the water conservation measures upon consumptive and non-consumptive water use by the applicant.

(d) Applications for approval of new agricultural irrigation water withdrawals from surface or ground water sources in excess of one million gallons per day shall include a statement of the operating procedure or equipment to be used by the applicant to achieve the most efficient method of application of water and to avoid waste.

(e) Reports, programs and contingency plans required under this section shall be submitted by the applicant as part of the permit application to the state agency having jurisdiction over the project, or directly to the Commission in those cases where the project is not subject to the jurisdiction of a state agency. State agencies having jurisdiction over a project that is subject to the provisions of this section shall

determine the adequacy and completeness of the applicant's compliance with these requirements and shall advise the Commission of their findings and conclusions.

2.3.6 Sequence of Approval. A project will be considered by the Commission under Section 3.8 of the Compact either before or after any other state or federal review, in accordance with the provisions of the Administrative Agreement applicable to such project.

2.3.7 Form of Referral by State or Federal Agency. Upon approval by any state or federal agency of any project reviewable by the Commission under these regulations, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under Section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

(a) The Commission will rely on the appropriate agency in each state to review and regulate the potability of all public water supplies. Applications before the Commission should address the impact of the withdrawal, use and disposal of water on the water resources of the Basin.

(b) The Commission will rely on signatory party reviews as much as possible and generally the Commission will not review the performance standards of individual components of treatment processes but will require compliance with all policies in the Comprehensive Plan including all applicable Water Quality Standards.

2.3.8 Form of Submission of Projects not Requiring Prior Approval by State or Federal Agencies. Where a project does not require approval by any other state or federal agency, or where such approval is required but an Administrative Agreement is not in force, the project shall be submitted directly to the Commission for review and determination of compatibility with the Comprehensive Plan, in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the Compact. These shall include without limitation thereto:

(a) Exhibits to Accompany Application. The application shall be accompanied by the following exhibits: (1) abstract of proceedings authorizing project, where applicable; (2) general map showing specific location and dimension of a structural project, or specific language of a standard or policy in the case of a non-structural proposal; (3) section of the United States Geological Survey topographic map showing the territory and watershed affected; (4) maps, drawings, specifications and profiles of any proposed structures, or a description of the specific effects of a non-structural project; (5) written report of the applicant's engineer showing the proposed plan of operation of a structural project; (6) map of any lands to be acquired or occupied; (7) estimate of the cost of completing the proposed project, and sufficient data to

indicate a workable financial plan under which the project will be carried out; and (8) analyses and conclusions of regional water supply and wastewater investigations.

(b) Letter of Transmittal. The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures, the names and addresses to which communications may be directed to the applicant, and the names and addresses of the applicant's engineer and counsel, if any.

(c) Unless otherwise ordered by the Commission, two copies of the application and accompanying papers shall be filed. If any application is contested, the Commission may require additional copies of the application and all accompanying papers to be furnished by the applicant. In such cases, certified copies or photographic prints or reproductions may be used.

#### 2.3.9 Informal Conferences and Emergencies.

(a) Whenever the Executive Director shall deem necessary, or upon request of the applicant, an informal conference may be scheduled to explain, supplement or review an application.

(b) In the event of an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit a review, hearing and determination in the regular course of these regulations, the Executive Director with the approval of the chairman of the Commission may issue an emergency certificate authorizing an applicant to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review, hearing and determination by the Commission as otherwise required in these regulations.

#### 2.3.10 Limitation of Approval.

(a) Approval by the Commission under these regulations shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.

(b) Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated. Any renewed activity following that date will require submission of a new application.

d. ARTICLE 4 - ENVIRONMENTAL IMPACT STATEMENTS is deleted.

ARTICLE 4 is hereby reserved for future use.

ARTICLE 4

(Reserved.)

e. ARTICLE 5 - REVIEW IN WATER QUALITY CASES is revised to read as follows:

#### ARTICLE 5

#### APPEALS OR OBJECTIONS TO DECISIONS OF THE EXECUTIVE DIRECTOR IN WATER QUALITY CASES

Section 2.5.1 Scope. This article shall apply to the review, hearing and decision of objections and issues arising as a result of administrative actions and decisions taken or rendered by the Executive Director under the Basin Regulations. Any hearings shall be conducted pursuant to the provisions of Article 6.

2.5.2 Notice and Request for Hearing. The Executive Director shall serve notice of an action or decision by him under the Basin Regulations by personal service or certified mail, return receipt requested. The affected discharger shall be entitled (and the notice of action or decision shall so state) to show cause at a Commission hearing why such action or decision should not take effect. A request for such a hearing shall be filed with the Secretary of the Commission not more than 30 days after service of the Executive Director's determination. Failure to file such a request within the time limit shall be deemed to be an acceptance of the Executive Director's determination and a waiver of any further hearing.

2.5.3 Form of Request. A request for a hearing may be informal but shall indicate the name of the individual and the address to which an acknowledgment may be directed. It may be stated in such detail as the objector may elect. The request shall be deemed filed only upon receipt by the Commission.

Whenever the Executive Director determines that the request for a hearing is insufficient to identify the nature and scope of the objection, or that one or more issues may be resolved, reduced or identified by such action, he may require the objector to prepare and submit to the Commission, within such reasonable time (not less than 30 days) as he may specify, a technical report of the facts relating to the objection prior to the scheduling of the hearing. The report shall be required by notice in writing served upon the objector by certified mail, return receipt requested, addressed to the person or entity filing the request for hearing at the place indicated in the request.

#### 2.5.4 Form and Contents of Report.

(a) Generally. A request for a report under this article may require such information and the answers to such questions as may be reasonably pertinent to the subject of the action or determination under consideration.

(b) Waste Loading. In cases involving objections to an allocation of the assimilative capacity of a stream, wasteload allocation for a point source, or load allocation for a new point

source, the report shall be signed and verified by a technically qualified person having personal knowledge of the facts stated therein, and shall include such of the following items as the Executive Director may require:

(1) A specification with particularity of the ground or grounds for the objection; and failure to specify a ground for objection prior to the hearing shall foreclose the objector from thereafter asserting such a ground at the hearing;

(2) A description of industrial processing and waste treatment operational characteristics and outfall configuration in such detail as to permit an evaluation of the character, kind and quantity of the discharges, both treated and untreated, including the physical, chemical and biological properties of any liquid, gaseous, solid, radioactive, or other substance composing the discharge in whole or in part;

(3) The thermal characteristics of the discharges and the level of heat in flow;

(4) Information in sufficient detail to permit evaluation in depth of any in-plant control or recovery process for which credit is claimed;

(5) The chemical and toxicological characteristics including the processes and/or indirect discharges which may be the source of the chemicals or toxicity;

(6) An analysis of all the parameters that may have an effect on the strength of the waste or impinge upon the water quality criteria set forth in the Basin Regulations, including a determination of the rate of biochemical oxygen demand and the projection of a first-stage carbonaceous oxygen demand;

(7) Measurements of the waste as closely as possible to the processes where the wastes are produced, with the sample composited either continually or at frequent intervals (one-half hour or, where permitted by the Executive Director, one hour periods), so as to represent adequately the strength and volume of waste that is discharged; and

(8) Such other and additional specific technical data as the Executive Director may reasonably consider necessary and useful for the proper determination of a wasteload allocation.

#### 2.5.5 Protection of Trade Secrets; Confidential Information.

No person shall be required in such report to divulge trade secrets or secret processes. All information disclosed to any Commissioner, agent or employee of the Commission in any report required by these Rules shall be confidential for the purposes of Section 1905 of Title 18 of the United States Code which provides:

“Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made

by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association; or permits any income return or copy thereof to be seen or examined by any persons except as provided by law; shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, C.645, 62 Stat. 791.”

2.5.6 Failure to Furnish Report. The Executive Director may, upon five days' notice to the objector dismiss the request for a hearing as to any objector who fails to file a complete report within such time as shall be prescribed in the Director's notice.

2.5.7 Informal Conference. Whenever the Executive Director deems it appropriate, he may cause an informal conference to be scheduled between an objector and such member of the Commission staff as he may designate. The purpose of such a conference shall be to resolve or narrow the ground or grounds of the objections.

2.5.8 Consolidation of Hearings. Following such informal conferences as may be held, to the extent that the same or similar grounds for objections are raised by one or more objectors, the Executive Director may in his discretion and with the consent of the objectors, cause a consolidated hearing to be scheduled at which two or more objectors asserting that ground may be heard.

f. ARTICLE 6 - CONDUCT OF HEARINGS is revised to read as follows:

### ARTICLE 6

#### ADMINISTRATIVE AND OTHER HEARINGS

##### Section 2.6.1 Hearings Generally.

(a) Scope of Article. This article shall apply to contested cases required to be held under Articles 3 and 5 of these regulations, to the conduct of other administrative hearings involving contested cases and to proceedings which Commission regulation or the Commission directs be conducted pursuant to this article.

(b) Definition of Contested Case. “Contested case” means a proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are involved. Such a proceeding may involve personnel matters, project applications and docket decisions but shall not extend to the review of any proposed or adopted

rule or regulation of the Commission.

(c) Requests for Hearings. Any person seeking a hearing to review the action or decision of the Commission or the Executive Director may request a hearing pursuant to the provisions of this article provided such a request is received by the Commission within thirty (30) days of the action or decision which is the subject of the requested hearing. Requests shall be submitted in writing to the Secretary of the Commission and shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing and a summary statement setting forth the basis for objecting to or seeking review of the action or decision. Any request filed more than thirty days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless the Commission by unanimous vote otherwise directs. Receipt of requests for hearings, pursuant to this article, whether timely filed or not, shall be submitted by the Secretary to the Commissioners for their information.

(d) Optional Joint Hearings. Whenever designated by a department, agency or instrumentality of a signatory party, and within any limitations prescribed by the designation, a Hearing Officer designated pursuant to this article may also serve as a Hearing Officer, examiner or agent pursuant to such additional designation and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a Hearing Officer shall cause to be filed with the department, agency or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the Hearing Officer nor the Delaware River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a signatory party (other than the Delaware River Basin Compact).

(e) Schedule. The Executive Director shall cause the schedule for each hearing to be listed in advance upon a 'hearing docket' which shall be posted in public view at the office of the Commission.

(f) Notice of Hearing. Notice of any hearing to be conducted pursuant to this article shall comply with the provisions of Section 14.4(b) of the Compact relating to public notice unless otherwise directed by the Commission.

#### Section 2.6.2 Authorization to Conduct Hearings.

(a) Written Requests for Hearings. Upon receipt of a written request for a hearing pursuant to this article, the Executive Director shall review the record available with regard to the action or decision for which a hearing is requested. Thereafter, the Executive Director shall present the request for a hearing to the Commission for its consideration. The Commission shall grant a request for a

hearing pursuant to this article if it determines that an adequate record with regard to the action or decision is not available, the contested case involves a determination by the Executive Director or staff which requires further action by the Commission or that the Commission has found that an administrative hearing is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the Compact or other applicable law or court rule.

(b) Commission Directed Hearings. This article shall be applicable to any proceeding which Commission regulation or the Commission directs be conducted in accordance with the provisions hereof.

#### 2.6.3 Hearing Officer.

(a) Generally. Hearings shall be conducted by one or more members of the Commission, by the Executive Director, or by such other Hearing Officer as the Chairman may designate, except as provided in paragraph (b) below.

(b) Wasteload Allocation Cases. In cases involving the allocation of the assimilative capacity of stream:

(1) The Executive Director shall appoint a hearing board of at least two persons. One of them shall be nominated by the water pollution control agency of the state in which the discharge originates, and he shall be chairman. The board shall have and exercise the powers and duties of a Hearing Officer;

(2) A quorum of the board for purposes of the hearing shall consist of two members; and

(3) Questions of practice or procedure during the hearing shall be determined by the chairman.

#### 2.6.4 Hearing Procedure.

(a) Participation in the Hearing. In any hearing, the person requesting the hearing shall be deemed an interested party and shall be entitled to participate fully in the hearing procedure. In addition, any person whose legal rights may be affected by the decision rendered in a contested case shall be deemed an interested party. Interested parties shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. In addition to interested parties, any persons having information concerning a contested case or desiring to present comments concerning the subject matter of the Hearing for inclusion in the record may submit a written statement to the Commission. Any interested party may request the right to examine or cross-examine any person who submits a written statement. In the absence of a request for examination of such person, all written statements submitted shall be included within the record and such statements may be relied upon to the extent determined by the Hearing Officer or the Commission.

(b) Powers of the Hearing Officer. The Hearing Officer shall:

(1) Rule upon offers of proof and the admissibility of evidence, regulate the course of the hearings, hold conferences for the settlement or simplification of procedures or issues, and shall schedule submission of documents, briefs and the time for the hearing.

(2) Cause each witness to be sworn or to make affirmation.

(3) Limit the number of times any witness may testify, limit repetitious examination or cross-examination of witnesses or the extent to which corroborative or cumulative testimony shall be accepted.

(4) Exclude irrelevant, immaterial or unduly repetitious evidence, but the interested parties shall not be bound by technical rules of evidence and all relevant evidence of reasonably probative value may be received.

(5) Require briefs and oral arguments to the extent determined necessary which shall be included as part of the record unless otherwise ordered by the Hearing Officer.

#### 2.6.5 Staff and Other Expert Testimony.

(a) Presentation on Behalf of the Commission. The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(b) Expert Witnesses. An interested party may submit in writing to the Hearing Officer the report and proposed testimony of an expert witness. No expert report or proposed testimony, however, shall be included in the record if the expert is not available for examination unless the report and proposed testimony shall have been provided to the Commission and all interested parties prior to the hearing and the Commission and interested parties have waived the right of cross-examination.

(c) The Executive Director may designate for inclusion in the record those records of the Commission which the Executive Director deems relevant to a decision in a contested case or to provide an understanding of applicable Commission policies, regulations or other requirements relating to the issues in the contested case. The designation of such Commission documents shall be provided to all interested parties prior to the hearing.

2.6.6 Record of Proceedings. A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the applicant, objector, or any other person who is a party to these proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The applicant, objector, or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed upon by

the stenographer and the person desiring the transcript.

#### 2.6.7 Assessment of Costs; Appeals.

(a) Whenever a hearing is conducted under this article, the costs thereof, as herein defined, shall be assessed by the Hearing Officer to the party requesting the hearing unless apportioned between the interested parties where cost sharing is deemed fair and equitable by the Hearing Officer. For the purposes of this section costs include all incremental costs incurred by the Commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of a hearing room and other related expenses.

(b) Upon scheduling of a matter for hearing, the Secretary shall furnish to the applicant and/or interested parties a reasonable estimate of the costs to be incurred under this section. The applicant and/or interested parties may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

(c) An appeal of the assessment of costs may be submitted in writing to the Commission within ten (10) days of the assessment. A copy of the appeal shall be filed with the Secretary and served on all interested parties. The filing of said appeal shall not stay the Hearing.

#### 2.6.8 Findings, Report and Commission Review.

(a) The Hearing Officer shall prepare a report of his findings and recommendations. In the case of an objection to a waste load allocation, the Hearing Officer shall make specific findings of a recommended allocation which may increase, reduce or confirm the Executive Director's determination. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. The applicant and any objector may file objections to the report within 20 days after the service upon him of a copy of the report. A brief shall be filed together with any objections. The report of the Hearing Officer together with objections and briefs shall be promptly submitted to the Commission. The Commission may require or permit oral argument upon such submission prior to its decision.

(b) The Executive Director, in addition to any submission to the Hearing Officer, may also submit to the Commission staff comments upon, or a response to, the Hearing Officer's findings and report and, where appropriate, a draft docket or other recommended Commission action. Interested parties shall be served with a copy of such submission and may have not less than ten (10) days to respond before action by the Commission.

#### 2.6.9 Action by the Commission.

(a) The Commission will act upon the findings and recommendations of the Hearing Officer pursuant to law.

(b) Commission Counsel shall assist the Commission with its review of the hearing record and the preparation of a Commission decision to the extent directed to do so by the Chairman.

(c) The determination of the Commission will be in writing and shall be filed together with any transcript of the hearing, report of the Hearing Officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing. All such records, papers and documents may be examined by any person at the office of the Commission, and shall not be removed therefrom except temporarily upon the written order of the Secretary after the filing of a receipt therefor in form prescribed by the Secretary. Copies of any such records and papers may be made in the office of the Commission by any person, subject to such reasonable safeguards for the protection of the records as the Executive Director may require.

2.6.10 Appeals from Final Commission Action; Time for Appeals.

Any party participating in a hearing conducted pursuant to the provisions of this article may appeal any final Commission action. To be timely, such an appeal must be filed with an appropriate federal court, as provided in Article 15.1(p) of the Commission’s Compact, within forty-five (45) days of final Commission action.

g. RESOLUTION NO. 80-11: SUSPENSION OF RULES RELATING TO ENVIRONMENTAL REVIEWS is deleted.

2. This resolution shall become effective immediately.

Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman  
Secretary  
November 21, 1997

**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Sections 210, 209 (26 Del.C. 210, 209)

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE )  
IMPLEMENTATION )  
OF THE UNIVERSAL )  
SERVICE PROVISIONS ) PSC REGULATION  
OF THE ) DOCKET NO. 48  
TELECOMMUNICATIONS ACT)

OF 1996 (OPENED AUGUST 12, 1997) )

ORDER NO. 4679

This 16th day of December, 1997, the Commission finds, directs, and orders the following:

A. INTRODUCTION and BACKGROUND

1. In the Telecommunications Act of 1996 (the “Act”),<sup>1</sup> 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 FCC, 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). To provide support for such services, Congress directed the creation of federal universal service mechanisms. 47 U.S.C. § 254(b)(5), (d).

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 the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report & Order, FCC 97-157 (rel. May 8, 1997). Both the USF Order and the Act itself impose on the state commissions various obligations related to the implementation of the federal universal service support programs and funding mechanisms. Those duties include: (1) designating those telecommunications common carriers who will be eligible to receive federal universal service support; (2) determining whether a state or FCC constructed cost methodology will be used for calculating federal support for high cost areas; and (3) determining the level of state participation in revised federal Lifeline and Link Up programs for low-income telephone subscribers.<sup>2</sup>

3. In PSC Order No. 4571 (Aug. 12, 1997), the Commission opened this docket for the purpose of determining what actions would be necessary and advisable to fulfill these obligations. The Commission directed Staff to file reports concerning the appropriate courses to be pursued, after informally soliciting comments from interested persons. Thereafter, the Commission Staff submitted its reports and recommendation on: (1) the choice of a state or federal cost methodology for calculating high cost support; (2) the level of this State’s participation in the revised Lifeline and Link Up programs; and (3) the criteria for designating eligible telecommunications carriers (“ETCs”).

4. By PSC Order No. 4639 (Nov. 4, 1997), the Commission directed that public notice be given announcing its proposed actions concerning ETC eligibility criteria and Life Line and Link Up participation. The notice solicited formal comments from interested persons.

5. By this Order, the Commission adopts interim guidelines to provide direction when the Commission is called upon to designate eligible telecommunications carriers under 47 U.S.C. § 214(e) and 47 C.F.R. §§ 54.201-54.207. By a companion Order, the Commission will provide guidelines to govern ETCs' participation in the revised Lifeline and Link Up programs in this State.

6. Four entities filed comments in response to the November public notice: AT&T Communications of Delaware, Inc. ("AT&T"); Bell Atlantic-Delaware, Inc. ("BA-Del"); Conectiv Communications, Inc. ("CCI"); and Sprint Communications Company, L.P. ("Sprint"). AT&T confined its comments to the Lifeline and Link Up programs. BA-Del proposed that the Commission designate the entire state as the service area for all ETCs. BA-Del suggested that there was no need to create any smaller service areas because it appeared that few areas in Delaware would qualify for federal high cost support and the start-up costs for new entrants to serve the entire state would not be so high so as to deter entry. As an alternative, BA-Del suggested that if areas smaller than the entire state were to be designated, the areas should be of reasonable size and represent a reasonable demographic cross-section of customers. Otherwise, BA-Del argued, small service areas would simply encourage new entrants to enter Delaware only to target lucrative customers while only incidentally serving nearby Lifeline customers. Moreover, BA-Del cautioned that allowing new entrants to choose smaller service areas while compelling BA-Del to serve the whole state would not be consistent with the goal of competitive neutrality. Finally, BA-Del suggested that the designation guidelines not include any obligations which require ETCs to offer discounted services to schools and libraries or require ETCs to provide notice of Lifeline offerings in their subscriber directories. On the ETC question, Conectiv urged the Commission to refrain from expanding the criteria for designation beyond that expressed in 47 U.S.C. § 214(e). Moreover, Conectiv offered that carriers seeking ETC designation should not be allowed to designate their own service areas. In Conectiv's view, such self-definition could possibly lead to carriers tacitly creating exclusive serving areas that would marginalize basic services by setting a minimal serving network with little incentive to pursue new technology. Third, Conectiv emphasized that the carriers eligible for designation cannot be confined to carriers certificated by the Commission since wireless carriers, if they meet the facilities criteria of § 214, are also eligible

for ETC designation. Fourth, Conectiv asked the Commission to make clear that the proposed requirement for publication of charges and services will be a one-time obligation which need not be repeated at the time the rates and terms for supported services may be changed. At the same time, Conectiv suggested that the Commission either expand an ETC's obligation to describe the Lifeline low-income services to publications beyond its subscriber directory or abandon the requirement to provide such notice in directories. Sprint suggested that the Commission adopt an efficient procedure for carriers to seek ETC designation at any time and allow a new entrant seeking ETC designation to propose its service area for the Commission's consideration. In Sprint's view, service areas should be kept small enough to encourage new entrants to seek ETC status.

7. The Commission took up the matter of criteria for designation of eligible telecommunications carriers at its meeting on December 16, 1997.

## B. FINDINGS and OPINION

### Eligible Telecommunications Carriers

8. Under the USF, as of January 1, 1998, only "eligible telecommunications carriers" will be eligible to receive support from the federal universal support mechanisms. In light of that impending deadline, the Commission now adopts the principles announced in PSC Order No. 4639, with a few modifications. The Commission emphasizes that, in so doing, it is acting on an interim and transitional basis and will continue to explore issues surrounding the designation of ETCs and, in particular, appropriate service areas. The purpose of this Order, and its directions, is to give carriers, both incumbent and new entrants, guidance in applying for ETC designation and to allow designated ETCs to promptly begin receiving available federal support.

9. An ETC must offer designated supported services throughout its entire service area. The supported services are: single party service; voice grade access to the public switched network; a certain amount of free local usage; dual tone multi-frequency signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; Lifeline and Link Up services; and toll limitation for customers eligible for Lifeline support. 47 C.F.R. §§ 54.101, 54.405, 54.411(a).

10. Section 214(e)(1) prescribes the qualifications for a common carrier to be designated as an ETC and the FCC has determined that neither the states nor the FCC is authorized to adopt criteria for ETCs beyond those set forth in that statutory section. USF ¶ 135. Accordingly, a common carrier seeking designation as an ETC in this State shall file an application with the Commission which demonstrates that it will offer the designated supported

services by the means described in § 214(e)(1)(A) and 47 C.F.R. § 54.201(d)-(i). The applicant shall also demonstrate that it will comply with the requirements imposed by this Commission for advertising the availability of supported services. Third, if the carrier seeks a permissible waiver of any of the obligations imposed on ETCs, or seeks a permissible extension of time to provide one or more supported services, the carrier shall include such a request, with supporting documentation, with its application. Contemporaneous with the application, the applicant shall also file its Lifeline and Link Up tariffs for review by the Commission.

#### Service Areas

11. This Commission has the duty to determine service areas in which ETC's must offer supported services. As with other provisions in the 1996 Telecommunications Act, section 214(e) has a competitive bent. Thus, in areas not served by rural telephone companies, a state commission must, upon request and consistent with public interest, designate more than one common carrier as an ETC for a service area. 47 U.S.C. § 214(e)(2).<sup>3</sup> Given this competitive framework, the FCC has strongly urged that state commissions carefully consider their definition of service areas and exercise their designation authority in a manner that both promotes the pro-competitive goals of the 1996 Act and furthers its universal service principles. USF ¶¶ 184-85. The difficulty faced by the Commission is that in the nascent stage of local exchange competition, it is difficult for the Commission to now define, with any degree of confidence, service areas which will promote competitive entry while still preserving the obligation to serve that is central to the ETC designation. At the same time, given the impending onset of federal funding, the Commission cannot simply defer those decisions for prolonged proceedings.

12. BA-Del has indicated that it, as of now, seeks designation as an ETC for a service area encompassing the entire state. See PSC Docket 97-028T. As the incumbent, BA-Del already offers service from Selbyville to Claymont. The Commission believes it is reasonable to accede to BA-Del's request. By an Order in that docket, the Commission will grant BA-Del's request to be designated as an ETC to offer supported services throughout the entire State.<sup>4</sup>

13. The Commission will not at this time designate the entire State as the service area for other carriers who might seek ETC designation. In addition, the Commission will not attempt to define other service areas to apply to other ETCs. Rather, as an interim or transitional measure, a carrier seeking to become an ETC shall include in its application a proposed description of the ETC service area for consideration by the Commission. The applicant shall include reasons and supporting material to demonstrate

why such service area is appropriate. In proposing its service area, a carrier should speak to the goals of promoting a competitive market, furthering universal service principles, ensuring that ETC designations are competitively neutral, and maintaining consistency with applicable federal universal support cost methodologies and mechanisms.

14. As an interim procedure, the Commission may allow comments on such proposed service areas by other ETCs, interested carriers, and other interested persons. Such opportunity is not to allow other carriers to frustrate or delay a carrier's designation as an ETC. Rather, it is to allow the Commission, in this interim period, to be more fully informed as it attempts to define appropriate service areas. The Commission expects that such comments will be solicited and submitted on an expedited basis.<sup>5</sup>

#### Advertisement

15. Section 214(e)(1)(B) requires ETCs to advertise the availability of supported services and the charges therefor using media of general distribution. As part of its duty to designate ETCs, this Commission may prescribe the scope of such advertisements. USF ¶ 148. The Commission adopts the basic proposal for advertisement set forth in PSC Order No. 4639, which requires ETCs to publish an advertisement in the two newspapers of general circulation within this State.<sup>6</sup> The advertisement should indicate the carrier's designation as an ETC, describe its obligation to offer supported services, and describe the supported services (with charges). Given that Lifeline support for low-income customers has not been previously provided in this State, but will now be available, the advertisement should also include a general description of both the Lifeline and Link Up programs, with a concise description to eligible subscribers. In addition, the advertisement shall include information describing how persons can obtain more information or request the supported services. An ETC is at liberty to tailor the language of its advertisement but such advertisement should be concise and clear to consumers. The ETC shall have the advertisement published in a portion of the newspapers reasonably likely to be noticed by consumers. It shall not be published in a legal or classified section. The advertisement shall be published soon after designation and thereafter each year near the anniversary of the carriers' ETC designation.

16. An ETC which provides directories to its customers will already provide notice of the availability of its services, including presumably the supported services. However, as noted before, Delaware residents will soon be eligible for Lifeline support. For purposes of providing notice of the Lifeline program, an ETC's directory may be deemed one element of the general media. Thus, under section 214(e)(1)(B), the Commission directs each ETC, during the interim period, to include in the white

page or customer guide portion of the directories distributed by it, a description of the Lifeline, Link Up, and toll limitation supported services. Subject to constraints arising from composition and publication deadlines, such information should be included in the next publication of the ETC's directory after the date of this Order,

17. The Commission does not wish to discourage other efforts by ETCs to make known the availability of supported services, including Lifeline. Consistent with the statutory directive that basic services should be available at affordable prices within this State, 26 Del. C. § 702(1), the Commission urges ETCs to consider bill inserts to present customers and notices to agencies serving eligible Lifeline and Link Up customers describing the new universal service support programs.

**NOW, THEREFORE, IT IS ORDERED:**

1. That a common carrier designated as an eligible telecommunications carrier by the Commission shall offer the services that are supported by federal universal support mechanisms throughout the service area for which the eligible telecommunications designation has been received.

2. That the following shall govern applications to the Commission by common carriers seeking designation as an eligible telecommunications carrier under 47 U.S.C. § 214(e)(2). The following procedures shall apply until such are modified, or waived, by further Order of the Commission.

3. That a common carrier seeking designation as an eligible telecommunications carrier shall file with the Commission an application which demonstrates:

a) that the carrier will provide the supported services as described in 47 C.F.R. § 54.101(a) throughout the Commission-designated service area;

b) that the carrier will provide such services in a manner described in 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(d)-(i); and

c) that the carrier will provide Lifeline and Link Up support that will comply with all federal and state requirements.

4. That a common carrier seeking designation as an eligible telecommunications carrier shall include in the application described above any requests for either a permissible waiver of any of the obligations imposed on an ETC or for an extension of time to provide supported services. The carrier shall include with any such request reasons and documentation to support the waiver or extension.

5. That a common carrier seeking designation as an eligible telecommunications carrier shall in its application propose, for the Commission's consideration, a description of an appropriate service area where it intends to offer

supported services. Such proposal shall include reasons why the proposed service area is appropriate. As described in this Order, interested persons or entities may be afforded the opportunity to comment on the proposed service area.

6. That, for the reasons set forth in this Order, the service area for Bell Atlantic-Delaware, Inc., shall be the entire state of Delaware.

7. That a common carrier seeking designation as an eligible telecommunications carrier shall file contemporaneously with its application tariffs for the Lifeline and Link Up support that it will offer.

8. That a common carrier designated by the Commission as an eligible telecommunications carrier shall, within ten (10) days of such designation, publish an advertisement in The News Journal and the Delaware State News newspapers describing the availability of supported services and the charges therefor. The advertisement shall contain the information described in this Order and shall be published in the manner directed by this Order. The eligible telecommunications carriers shall provide affidavits of publication to the Secretary of the Commission within twenty (20) days after publication. An eligible telecommunications carrier shall thereafter make such advertisement annually near the anniversary of its designation.

9. That an eligible telecommunications carrier shall include in the white pages or customer guide portion of any directory distributed or used by the carrier information concerning the availability of Lifeline and Link Up services from the carrier. Subject to constraints arising from composition and publication deadlines, the eligible telecommunications carrier shall include such information in the next directory published after the date of this Order.

10. That the Secretary of the Commission shall forward a copy of this Order to the Registrar of Regulations for publication in the Delaware Register of Regulations.

11. That this Order shall become effective on this date to allow common carriers to be promptly designated as essential telecommunications carriers and receive federal universal service support on January 1, 1998.

12. 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:**

Robert J. McMahan, Chairman  
 Joshua M. Twilley, Vice-Chairman  
 Donald J. Puglisi, Commissioner  
 John R. McClelland, Commissioner

ATTEST:

Linda A. Mills, Secretary

**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code,  
Sections 210, 209 (26 Del.C. 210, 209)

IN THE MATTER OF )  
THE IMPLEMENTATION )  
OF THE UNIVERSAL )  
SERVICE PROVISIONS ) PSC REGULATION  
OF THE ) DOCKET NO. 48  
TELECOMMUNICATIONS )  
ACT OF 1996 )  
(OPENED AUGUST 12, 1997)

**ORDER NO. 4684**

This 16th day of December, 1997, the Commission finds, directs, and orders the following:

**A. INTRODUCTION and BACKGROUND**

1. Since the 1980's, the Federal Communications Commission ("FCC") has administered the federal Lifeline and Link Up programs to assist low-income telephone consumers. Lifeline reduces the qualifying consumers' monthly local service charges, with the local exchange carrier reimbursed from a combination of federal funds and state matching support. The Link Up program provides support to reduce qualifying consumers' initial connection charges by up to one-half. Since 1993, the Commission has authorized Bell Atlantic-Delaware, Inc. ("BA-Del") to participate in the Link Up program. However, the Commission has, in the past, declined to have this State participate in the Lifeline program, citing Delaware's high level of household telephone subscription and historic low dial tone rates, while expressing doubts whether the Commission is the appropriate body to make the sort of social policy and funding determinations which Lifeline participation would entail.

1. In its recent Universal Service Order ("USF Order"), the FCC changed the structure of the Lifeline and Link Up programs, effective January 1, 1998. In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report & Order, Part VIII, FCC 97-157 (rel. May 8, 1997). Under the impending Lifeline modifications, all eligible telecommunications carriers (47 U.S.C. § 214(e)) will offer to qualifying low-income subscribers federal Lifeline support for specified local services in an amount at least as great as the federal baseline support amount of \$3.50. The baseline amount will be available for all eligible subscribers in all states, without the need for any state matching participation. The baseline amount will be available either in the form of a waiver of the federal End User Common Line Charge or a comparable reduction in the tariffed residential rate for

supported services. In addition, under the new Lifeline program, if the state approves an additional reduction of \$1.75 in the amount paid by eligible customers for supported services, the federal support mechanism will make such amount available to the carrier providing such service to that consumer. For this additional amount, a state need not generate any matching state funds. Finally, states can go further and obtain more federal support for basic local services provided to low-income customers if the state provides state matching funds. In such cases, federal support is available in an amount equal to one-half of the state matching support, up to a total maximum of \$7.00 in federal support. All federal support will be paid from a federal pool funded by all interstate carriers. 47 C.F.R. § 54.403(a), (b).

3. Under the USF Order, the nature of the support available under the Link Up programs will not change. 47 C.F.R. § 54.411(a). However, the Link Up reimbursements will now also come from the federal pool funded by contributions from all interstate carriers. Lastly, the new USF Order imposes new obligations and restrictions on eligible telecommunications carriers including: (1) requiring the offer of free toll limitation services to eligible customers; (2) barring disconnection of an eligible customer's supported services because of past due toll charges; and (3) precluding the imposition of service deposits if the eligible subscriber elects toll blocking. 47 C.F.R. § 54.401(a)(3), (b), (c).

4. Under the modified programs, if the state does not provide any matching funds, Lifeline and Link Up will be available to customers who participate in one of the following programs: (1) Medicaid; (2) food stamps; (3) Supplemental Security Income; (4) federal public housing assistance; or (5) Low-Income Energy Assistance. 47 C.F.R. § 54.409(b), 54.415(b).

5. The Commission opened this docket, in part, to explore to what extent Delaware should participate in the revised low-income programs, given that some Lifeline support will be offered to subscribers in all states. After receiving input from interested persons, Staff filed its report with recommendations as directed by PSC Order No. 4571 (Aug. 12, 1997). In it, Staff recommended that the Commission authorize the \$1.75 further reduction and thus allow eligible subscribers to see a \$5.25 reduction in the amount paid for supported services. Because eligible telecommunications carriers would receive the \$5.25 amount from federal funds, without the need for any state funds, Staff suggested that there was little reason not to authorize a reduction of the subscriber's bills by the additional amount. At the same time, Staff suggested that, in the absence of any clear statutory authority, the Commission should decline to go further and create a state universal service fund to raise state matching funds in order to receive even more federal support.

6. By PSC Order No. 4639 (Nov. 4, 1997), the Commission directed that public notice be given announcing its proposed actions concerning both Lifeline and Link Up participation and the designation of eligible telecommunications carriers. While AT&T Communications Of Delaware, Inc. ("AT&T"); BA-Del; Conectiv Communications, Inc. ("CCI"); and Sprint Communications Company, L.P., filed comments in response to the November notice, only AT&T's comments focused on Lifeline participation. AT&T urged the Commission to take full advantage of the new Lifeline program by creating a supplemental Lifeline Support Fund as part of a larger state universal service fund. Under AT&T's suggestion, the new state fund would, via assessments against all intrastate carriers' gross end-users' revenues, raise matching state support and thus allow the maximum federal support (\$7.00) to be available for eligible low-income Delaware customers.<sup>7</sup> With this state matching support, an eligible customer's bill for supported services would be reduced by at least \$10.50.

7. The Commission deliberated about the extent of Delaware's participation in the revised Lifeline and Link Up programs at its meeting on December 16, 1997. The Commission now decides to allow designated eligible telecommunications carriers to provide to eligible subscribers Lifeline support for the supported basic local services in the amount of \$5.25. The Commission thus consents to a reduction in the intrastate charges to such eligible subscribers in the amount of \$1.75. Such reduction will be in addition to the already prescribed reduction of \$3.50 available in the form of a waiver of the End User Common Line Charge or an offset of an equivalent amount. Eligible customers will be determined under the federal default criteria applicable in states that do not provide matching funds.

#### B. FINDINGS and OPINION

8. The General Assembly has charged this Commission with the obligation to encourage the growth of competitive markets for telecommunications services and to allow those competitive markets to set the prices, terms, and conditions for services. 26 Del. C. § 702(4). However, the legislature has also mandated that in this State basic telecommunications services shall be universally available at affordable prices. 26 Del. C. § 702(1). As noted above, in the past, the Commission has declined to participate in the federal Lifeline program in light of the high telephone subscriber penetration and the low, regulated rates for residential dial tone provided by the single provider, Bell Atlantic-Delaware, Inc. However, efforts now move forward, on both the state and federal levels, to encourage competition in the provision of local exchange services. In light of this changing environment, the Commission believes it is appropriate to utilize the

funds offered under the revised Lifeline and Link Up programs to continue to provide affordable prices to low-income subscribers. Moreover, given the lack of any need to raise state matching funds in order to receive the \$5.25 federal support, Delaware has little reason to choose not to participate.<sup>8</sup>

9. The Commission declines the suggestion offered by AT&T that the Commission now develop a supplemental Lifeline Support mechanism, funded by assessments on intrastate revenues, in order to raise state matching funds to allow the receipt of even more federal Lifeline support. As a practical matter, with the onset of the revised Lifeline and Link Up programs on January 1, 1998, there is insufficient time for the Commission to construct such a state fund. The Commission is not inclined to delay the receipt of some federal support while it examines some of the issues surrounding the creation of a state universal service fund. Second, Congress has suggested that if a state fund is created, every telecommunications carrier that provides intrastate service should contribute on an equitable and non-discriminatory basis. 47 U.S.C. § 254(f). Given that the Commission currently has no jurisdiction over cellular carriers, additional statutory authorization might be necessary to ensure that all carriers will contribute to a state fund. Third, Lifeline and Link Up assistance to low-income subscribers is only part of the universal service portfolio identified in the USF Order. The need to provide support to schools and libraries or to subscribers in some few high-cost areas might also lay claim to some support from a state universal service fund. The Commission believes that it should defer consideration of the creation of a state universal service fund until it can more fully appreciate the magnitude of such a fund and the legal and policy issues surrounding its creation. Finally, the Commission also believes it is prudent to allow a period to judge the effectiveness of the new federal universal service programs before deciding to launch a complementary state universal service fund.

10. By this Order, the Commission directs designated eligible telecommunications carriers ("ETCs") to file tariffs to implement the level of Lifeline and Link Up participation endorsed here. Such tariffs shall comply with all federal criteria and the federal rules surrounding the new Lifeline and Link Up programs. The Commission expects that such tariffs will, in most instances, comply with the federal default criteria applicable to states that do not provide state matching funds. If an ETC seeks a waiver or deviation from the federal standards, the carrier should ensure that such waiver or deviation will not jeopardize the reception of federal Lifeline and Link Up support. The Commission will review the tariffs to ensure compliance with state law. However, where rules or regulations promulgated by this Commission conflict with

the federal Lifeline and Link Up rules, the state rules, in the case of services provided to eligible subscribers, will be deemed preempted to the extent of actual conflict.

11. Only ETCs may receive federal universal support for offering Lifeline and Link Up. However, the supported services under Lifeline may be purchased for resale by other carriers, so long as such services are provided to customers eligible for Lifeline. USF at ¶ 370. The Commission will defer decision on any issue surrounding the resale of supported services until particular difficulties can be identified.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. That the Commission hereby approves a reduction of \$1.75 in local service billings to be paid by eligible Lifeline customers (as identified in 47 C.F.R. § 54.409(b)) for eligible Lifeline services (as defined in 47 C.F.R. § 54.401(a)). Such amount shall be in addition to any reduction based upon the \$3.50 federal baseline amount provided under 47 C.F.R. § 54.403(a). The above reduction of \$1.75 shall continue only so long as such amount is supported by federal universal service funds.

2. That eligible telecommunications carriers, as designated by the Commission under 47 U.S.C. § 214(e)(2), may receive federal Lifeline support in the amount of the \$3.50 federal baseline amount plus the additional \$1.75 reflected in the reduction of intrastate end-user charges. The support shall be applied in the manner described in 47 C.F.R. § 54.403(b).

3. The Commission hereby approves designated eligible telecommunications carriers receiving support under the federal Link Up program. Such support shall be used to provide the discounts (as described in 47 C.F.R. § 54.411) to eligible customers (as identified in 47 C.F.R. § 54.415 (b)).

4. That eligible telecommunications carriers shall comply with all federal rules governing the Lifeline and Link Up programs, including those related to the provision of free toll limitation services, the prohibition against disconnection of supported services due to outstanding toll charges, and the restriction on service deposits for customers who elect toll blocking. To the extent that a federal rule governing Lifeline or Link Up conflicts with a rule or order of this Commission, the state order or rule shall be preempted to the extent of the conflict in the case of the Lifeline or Link Up customer.

5. That a common carrier seeking the waiver of, or an extension of time to comply with, any obligation imposed under the Lifeline and Link Up programs shall make such request with its application to be designated an eligible telecommunications carrier and with its Lifeline and Link Up tariff filing.

6. That a common carrier seeking designation as an

eligible telecommunications carrier shall file appropriate tariffs consistent with the federal Lifeline and Link Up programs and paragraphs (1)-(4) above. Such tariffs shall be filed at the time the carrier files its application for designation as an eligible telecommunications carrier.

7. That eligible telecommunications carriers which offer Lifeline or Link Up may provide for verification of the customer's eligibility in the manner described in 47 C.F.R. § 54.409(b). If a carrier seeks to provide for eligibility verification in a differing manner, the carrier shall ensure that such verification method is consistent with all federal requirements under the Lifeline and Link Up programs and shall describe such verification method in its Lifeline and Link Up tariff filings made with the Commission.

8. That retail services supported by Lifeline and Link Up may be purchased for resale pursuant to 47 U.S.C. §§ 251(b)(1) and 251(c)(4), but such services may not be resold to end users not eligible for Lifeline and Link Up support under 47 C.F.R. §§ 54.409(b) and 54.415(b).

9. That a designated eligible telecommunications carrier shall file the information required by 47 C.F.R. § 54.401(d) with the appropriate federal entity. The information shall demonstrate that the carrier's Lifeline plan complies with the federal criteria and state the number of qualifying low-income consumers and the amount of state support. The eligible telecommunications carrier shall submit a copy of such information to the Commission.

10. That the Secretary of the Commission shall forward a copy of this Order to the Registrar of Regulations for publication in the Delaware Register of Regulations.

11. That this Order shall become effective on this date to allow eligible telecommunications carriers to receive federal support under the Lifeline and Link Up programs beginning January 1, 1998.

12. 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:**

Robert J. McMahon, Chairman  
Joshua M. Twilley, Vice- Chairman  
Donald J. Puglisi, Commissioner  
John R. McClelland, Commissioner

**ATTEST:**

Linda A. Mills, Secretary

<sup>1</sup> Public Law No. 104-104, 110 Stat. 56, codified at various places in 47 U.S.C.

<sup>2</sup>The USF also enlisted the states to authorize discounted

intrastate telecommunications services to schools and libraries, with such discounts to be supported by federal universal service funds. The Commission has taken up the schools and libraries' discount in Regulation Docket No. 47.

<sup>3</sup>There are no rural telephone companies in this State.

<sup>4</sup>This designation is without prejudice to BA-Del later requesting the Commission to consider designating a differing service area or the Commission, after notice, designating some other service area for BA-Del.

<sup>5</sup>The Commission delegates to Staff, in the first instance, the determinations when such comments will be beneficial and, if so, the manner of providing notice and for submission of comments.

<sup>6</sup>The Commission reserves the right to impose additional, or differing, advertising obligations at later times. In particular, if the Commission approves smaller service areas, it might choose other fora, such as more local newspapers, for the publication of the advertisement.

<sup>7</sup>CCI urged the Commission to create an expedited procedure for eligible carriers to seek a waiver from the new Lifeline rule which bars disconnection of supported services for non-payment of toll charges.

<sup>8</sup>As noted previously, under the revised Lifeline, eligible subscribers would receive a waiver of the End User Common Line Charge (or an equivalent amount) if this Commission did nothing. Moreover, the additional \$1.75 reduction permitted now will be reimbursed to the providing carrier from federal funds collected on the basis of interstate revenues. In this situation, the Commission does not believe that Lifeline participation threatens any commitment by the Commission to have cost-based rates for basic services.

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

Statutory Authority: 7 Delaware Code,  
Section 903 (e)(2)(a)(3) (7 **Del.C.** 903(e)(2)(a)(3))

**REGISTER NOTICE****Brief Synopsis of the Subject, Substance and Issues**

The stock of Atlantic sturgeon is so depressed that the species is being considered as threatened or endangered under the federal Endangered Species Act. At a recent meeting of the Atlantic States Marine Fisheries Commission, the Atlantic Sturgeon Fishery Management Board requested that Delaware adopt a moratorium on the harvest of Atlantic sturgeon.

The Atlantic Sturgeon Fisheries Management Plan, adopted by the Atlantic States Marine Fisheries Commission in 1990, requires Atlantic Coastal States to implement one of three options: 1) A minimum total length of at least seven feet and institute a monitoring program; 2) A moratorium on all harvest; or 3) submit alternative measures to the Atlantic States Marine Fisheries Commission's Atlantic Sturgeon Plan Review Team for determination of conservation equivalency. Delaware adopted the minimum total length of seven feet in 1991. This currently allows the landing of Atlantic sturgeon over seven feet. Delaware is the only Atlantic Coastal state that does not have a moratorium on the harvest or possession of Atlantic sturgeon. The management board recommends Delaware adopt the moratorium to keep the Atlantic sturgeon off the endangered species list and prevent any sturgeon from being landed.

The Division of Fish and Wildlife, Department of Natural Resources and Environmental Control proposes to promulgate an amendment to Shellfish Regulation No. 12 that will replace the minimum size limit on Atlantic sturgeon with a prohibition on the possession, landing or harvesting of any Atlantic Sturgeon in Delaware.

**Possible Terms of the Agency Action**

It would be unlawful to land, harvest or possess Atlantic Sturgeon in Delaware.

**Statutory Basis on Legal Authority to Act**

Subsection 903 (e)(2)(a)(3), 7 Del. C

**Other legislation that may be impacted**

None

**Notice of Public Comment**

Additional information may be obtained from the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE, 19901, (302) 739-3441. Comments on this proposed amendment may be submitted to the Fisheries Section until 4:30 p.m. on February 13, 1998. A public hearing is scheduled in the DNREC auditorium, 89 Kings Highway, Dover, DE at 7:30 p.m. on Tuesday February 10, 1997. The public is invited to attend and comment.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
DELAWARE BOARD OF ELECTRICAL EXAMINERS**

Statutory Authority: 24 Delaware Code,  
Section 1406(a) (24 **Del.C.** 1406(a))

**ELECTRICAL CONTRACTORS  
DELAWARE BOARD OF ELECTRICAL  
EXAMINERS RULES & REGULATIONS**

A public hearing will be held on February 4, 1998 at the Office of Professional Regulation, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware. Anyone desiring a copy of the proposed rules and regulations may obtain same from the Delaware Electrical Board of Examiners, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be submitted to the Board office at the above address on or before February 4, 1998. Those individuals wishing to make oral comments at the public hearing are requested to notify the Board office at (302) 739-4522, extension 205 - Louise A. Holt.

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**DEPARTMENT OF SERVICES  
FOR CHILDREN, YOUTH  
AND THEIR FAMILIES****OFFICE OF CHILD CARE LICENSING**

Statutory Authority: 11 Delaware Code  
Section 8563(e) (11 **Del.C.** §8563(e))

The Department's has developed proposed regulations pursuant to 19 Del.C, Chapter 7, Section 708, which authorizes the Department to conduct Child Abuse Registry checks on certain child care and health care personnel. The purpose of these regulations is the protection for the "vulnerable" population in child care

and health care facilities.

Interested parties are invited to present their views at the public hearing which is scheduled as follows:

January 22, 1998 - Beginning at 9:00 A.M., Delaware Youth and Family Center, Room 199, 1825 Faulkland Road, Wilmington, Delaware 19805.

Copies of the proposed regulations will be available at the hearing and may be obtained at the Office of Child Care Licensing, Barley Mill Plaza, Building 18, 4417 Lancaster Pike, Wilmington, Delaware 19805.

The public comment period is December 20, 1997 through February 20, 1998. You are invited to share your oral comments at the public hearing. Your written comments may be submitted to me as follows:

Beth Kramer, Criminal History Supervisor  
Office of Child Care Licensing  
1825 Faulkland Road  
Wilmington, Delaware 19805

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

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

Statutory Authority: 11 Delaware Code,  
Section 8564(e) (11 **Del.C.** §8564(e))

#### NOTICE OF PUBLIC HEARING

The Division of Services for Aging and Adults with Physical Disabilities of the Department of Health and Social Services, will hold public hearings to discuss proposed Regulations for the Adult Abuse Registry. These proposed regulations describe employer inquiry requirements and procedures, and administrative hearing rights of individuals against whom a finding of abuse has been preliminary substantiated.

These public hearings will be held on January 21, 1998 at 10:00 A.M. in the Buck Library, Buena Vista Conference Center, 661 South Dupont Highway, New Castle, DE 19720, and at 10:00 A.M. January 22, 1998 in the Training Room, 18 North Walnut Street, Milford State Service Center Complex, Milford, DE 19963.

Copies of the proposed regulations are available for review by calling the following locations:

Division of Services for Aging and Adults with Physical Disabilities  
1901 N. Dupont Highway  
New Castle, DE 19720  
(302) 577-4791

Division of Services for Aging and Adults with Physical Disabilities  
256 Chapman Road, Suite 200  
Newark, DE 19702  
(302) 453-3820

Division of Services for Aging and Adults with Physical Disabilities  
Milford State Service Center  
18 North Walnut Street  
Milford, DE 19963  
(302) 422-1386

Anyone wishing to present their oral comments at one of these hearings should contact Debbie Moore at (302) 577-4791 by January 16, 1998. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by February 2, 1998 to:

Jeffrey Beaman, Hearing Officer  
Division of Public Health  
PO Box 637  
Dover, DE 19903

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## DEPARTMENT OF ADMINISTRATIVE SERVICES

### DIVISION OF PROFESSIONAL REGULATION

#### BOARD OF VETERINARY MEDICINE

Statutory Authority: 24 Delaware Code,  
Section 3306(a)(1) (24 **Del.C.** 3306(a)(1))

The Delaware Board of Veterinary Medicine proposes to revise its rules and regulations in accordance with 24 Del.C. 3306. The proposed rules and regulations pertain to:

- (1) Regulation I - Filing Date for Examinations
- (2) Regulation II - Qualification for Licensure by Examination as a Veterinarian
- (3) Regulation III - Character of Examination - National Board Examination and Clinical Competency Test
- (4) Regulation IV - Continuing Education

A public hearing will be held on Tuesday, January 20, 1998 at 1:00 p.m. in the Cannon Building, Conference Room B, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed rules and regulations may obtain same from the Board Office, Division of Professional Regulation, Cannon Building, Suite 203, P.O. Box 1401, Dover, Delaware 19903. Written comments should be submitted to the Board Office at the above address on or before January 20, 1998.

Those individuals wishing to make oral comments at the public hearing are requested to notify the Board Office at (302) 739-4522, ext. 203.

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**DEPARTMENT OF NATURAL  
RESOURCES & ENVIRONMENTAL  
CONTROL**

**DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Sections 2701, 1902 (7 Del.C. §1902, 2701)

**REGISTER NOTICE**

Title of the Regulations: HORSESHOE CRAB  
REGULATIONS

Brief Synopsis of the Subject and Issue

The Department of Natural Resources and Environmental Control is authorized to establish and administer a program for the conservation and management of horseshoe crabs to include the promulgation of regulations to: designate areas for harvest; to protect sensitive habitat and public safety; define equipment and methods of harvest; designate seasons for collecting; and establish reporting requirements for all those individuals authorized to take horseshoe crabs.

The Department of Natural Resources and Environmental Control proposes to enact regulations to: control the times and areas where horseshoe crabs may be harvested; limit the number of horseshoe crabs that may be dredged in one day; define the equipment that may be used to store and/or transport horseshoe crabs and require monthly reporting of the harvest of horseshoe crabs. The Department's goal is to allow a sufficient harvest of horseshoe crabs to sustain the local need for bait in the eel and conch pot fisheries without adversely affecting migratory shore birds or the supply of horseshoe crabs available to the pharmaceutical industry.

Possible Terms of the Agency Action

The Department of Natural Resources and Environmental Control may reject or approve regulations to control the harvest of horseshoe crabs.

Statutory Basis or Legal Authority to Act

§ 2701, 7 Del. C. and § 1902, 7 Del. C.

Notice of Public Comment

Individuals may present their opinions and evidence and /or request information by writing or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, Delaware 19901 prior to 4:30 PM on January 30, 1998. A public hearing on these proposals will be held in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware at 7:30 PM on Monday, January 26, 1998.

For further information please contact Charles A. Lesser/  
302-739-3441

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**DEPARTMENT OF STATE**

**OFFICE OF THE STATE BANKING COMMISSIONER**

Statutory Authority: 5 Delaware Code,  
Section 121(b) (5 Del.C. 121(b))

**NOTICE OF THE STATE BANK COMMISSIONER'S  
PROPOSAL TO ADOPT NEW REGULATIONS**

Summary:

The State Bank Commissioner proposes to adopt new Regulation Nos. 5.2111(b).0005, 5.2210(e).0005, 5.2318.0001, 5.2906(e).0003 and 5.2111/2210/2906.0006. Proposed new regulation 5.2111(b).0005 ("Report of Delaware Loan Volume") requires licensed mortgage loan brokers to report their Delaware loan volume twice a year. Proposed new regulation 5.2210(e).0005 ("Report of Delaware Loan Volume") requires licensed lenders to report their Delaware loan volume twice a year. Proposed new regulation 5.2318.0001 ("Report of Delaware Sale of Checks, Drafts and Money Orders Volume") requires licensed sellers of checks and money orders and money transmitters to report the volume of their Delaware business twice a year. Proposed new regulation 5.2906(e).0003 ("Report of Delaware Loan volume -- Motor Vehicle Installment Contracts") requires licensed motor vehicle sales finance companies to report their

Delaware loan volume twice a year. Proposed new regulations 5.2111(b).0005, 5.2210(e).0005, 5.2318.0001, and 5.2906(e).0003 will assist the Office of the State Bank Commissioner in scheduling examinations of licensees based on the volume of their Delaware business. Proposed new regulation 5.2111/2210/2906.0006 ("Report of Delaware Assets") requires licensed mortgage loan brokers, lenders and motor vehicle sales finance companies to report their Delaware assets as of December 31 of each year for purposes of determining the amount of their supervisory assessments in accordance with Section 127(b) of Title 5 of the Delaware Code. Proposed new Regulation Nos. 5.2111(b).0005, 5.2210(e).0005, 5.2318.0001, 5.2906(e).0003 and 5.2111/2210/2906.0006 would be adopted by the State Bank Commissioner on or after February 4, 1998. 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 new regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Lookerman 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 February 4, 1998.

**Public Hearing:**

A public hearing on the proposed new regulations will be held in the Second Floor Cabinet Room in the Townsend Building, 401 Federal Street, Dover, Delaware 19901, on Wednesday, February 4, 1998 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.

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**DEPARTMENT OF EDUCATION**

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

**STATE BOARD OF EDUCATION MEETING JANUARY 15, 1998**

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES**

**DIVISION OF PROFESSIONAL REGULATION  
DELAWARE BOARD OF EXAMINERS IN  
OPTOMETRY**

Statutory Authority: 24 Delaware Code,  
Section 2104 (24 Del.C. 2104)

**NOTICE - PUBLIC HEARING**

The Delaware Board of Examiners in Optometry proposes to revise its rules and regulations in accordance with 24 Del. C., section 2104.

A public hearing will be held on Thursday, January 22, 1998 at 6:30 p.m. in the Cannon Building, Conference Room A, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed rules and regulations may obtain same from the Board Office, Division of Professional Regulation, Cannon Building, Suite 203, P.O. Box 1401, Dover, Delaware 19903. Written comments should be submitted to the Board Office at the above address on or before January 22, 1998. Those individuals wishing to make oral comments at the public hearing are requested to notify the Board Office at (302)739-4522, ext. 203.

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**DEPARTMENT OF FINANCE**

**DIVISION OF REVENUE**

**DELAWARE STATE LOTTERY OFFICE**

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

Comments may be submitted in writing to the Lottery Office on or before 4:00 p.m. on January 31, 1998. The proposed regulations will be considered by the Lottery at a public hearing on January 29, 1998 at the Lottery Office, second floor conference room. The Lottery Office is located at 1575 McKee road, Suite 102, Dover DE 19901 and the phone number is (302) 739-5291.