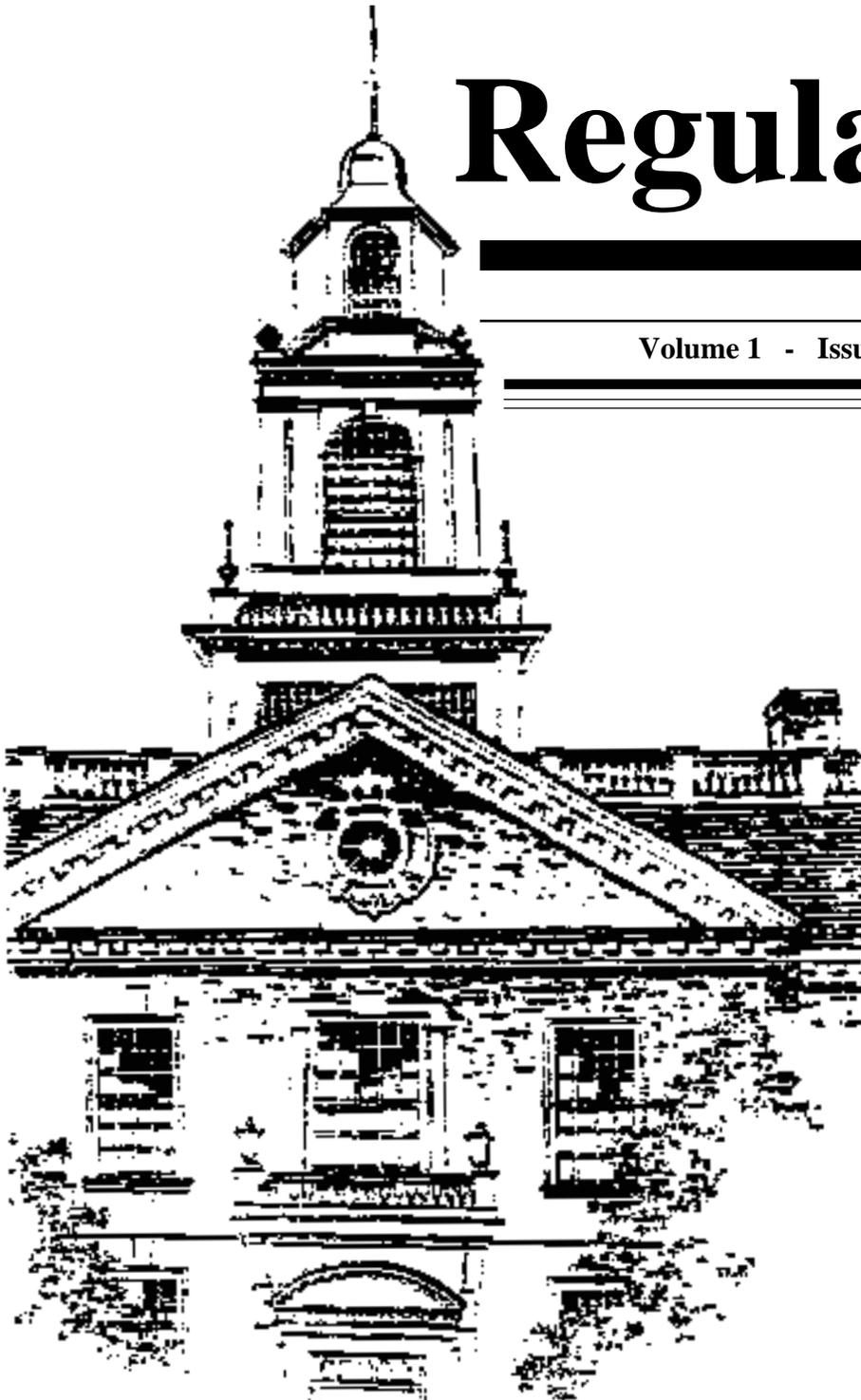

Delaware Register of Regulations



Issue Date: July 1, 1997

Volume 1 - Issue 1

Pages 1 - 81

PREMIERE ISSUE

Regulations:
Proposed
Final
Governor
Executive Orders
Appointments
Attorney General
Opinions



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 June 15, 1997.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

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

A yearly subscription to the Delaware Register of Regulations costs \$80.00 per year for 12 issues. Single copies are available at a cost of \$7.00 per issues, 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations. 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 opportunity for public comment is 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 of all written materials, testimony and evidence, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

Any person that is aggrieved by or 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.

A MESSAGE FROM THE DIRECTOR OF THE DIVISION OF RESEARCH

The debut of the Delaware Register of Regulations would not have been possible without the dedication and commitment of Jeffrey W. Hague, Registrar of Regulations. He has labored steadily since his hiring in January to make this publication a reality. He has been ably assisted by Alex Mull, a Legislative Fellow from the University of Delaware College of Urban Affairs and Public Policy and our division's Administrative Officer, Marlynn H. Hedgecock, who assembled the initial research for the Register. This publication also reflects an outstanding team effort involving the staff of the Division of Research all of whom have assisted with a wide variety of tasks.

Special thanks are also in order to a number of people who have offered their advice, assistance and support including: Secretary of State Edward J. Freely; C. Ann Myers

of the Office of the Secretary of State; State Archivist Howard P. Lowell and James R. Frazier of Delaware Public Archives; Ann M. McLaughlin and Kevin B. Wright of the Office of the Controller General; Tony Collins and a number of his colleagues in the Office of Information Services; Michael J. Rich and Malcolm S. Cobin of the Department of Justice; State Librarian Tom W. Sloan and his staff; Skipper Purnell, Chairman of the Action Agenda Implementation Committee and Philip J. Cherry of the Department of Natural Resources and Environmental Control.

We are also especially indebted to Robert J. Colborn, Administrator of Maryland's Division of State Documents, and Jane D. Chaffin, Virginia's Deputy Registrar of Regulations and their exceptional staffs for their invaluable assistance.

With sincere appreciation,
William S. Montgomery

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

William S. Montgomery, Director, Division of Research; **McDonald T. Coker**, Deputy Director; **Kathleen K. Amalfitano**, Secretary; **Walter G. Feindt**, Legislative Attorney; **Jeffrey W. Hague**, Registrar of Regulations; **Marlynn H. Hedgecock**, Administrative Officer; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Graphics Specialist; **Deborah A. Porter**, Administrative Secretary; **Virginia L. Potts**, Bill Service Clerk; **Thom Shiels**, Legislative Attorney; **Marguerite P. Smith**, Public Information Clerk; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **William G. Weller**, Print Room Supervisor; **Rochelle Yerkes**, Senior Secretary.

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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

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.

PUBLIC SERVICE COMMISSION

Statutory Authority: Title 26, Sections 210, 209
of the Delaware Code
(26 **Del.C.** §§ 210, 209)

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

[LINK TO PSC HOME PAGE](#)

IN THE MATTER OF THE |
INVESTIGATION AND | PSC REGULATION
ADOPTION OF RULES TO | DOCKET NO. 12
GOVERN PAY PHONE |
SERVICES WITHIN THE |
STATE OF DELAWARE |

NOTICE OF INVESTIGATION
AND FORMULATION OF RULES
CONCERNING PAY PHONE SERVICES

TO: ALL TELECOMMUNICATIONS CARRIERS,
PAY PHONE SERVICE PROVIDERS, PAY PHONE LO-
CATION OWNERS, AND OTHER INTERESTED PER-
SONS

In the Telecommunications Act of 1996, Congress directed the Federal Communications Commission ("FCC") to promulgate regulations to ensure fair compensation for pay phone service providers ("PSPs") and to ensure competitive parity between independent PSPs and pay phone services provided by Bell operating companies ("BOC"). 47 U.S.C. § 276. In two Orders (FCC 96-388 and FCC 96-439), the FCC has directed a two-phase restructuring and deregulation of pay phone services.

In the first phase, which will end October 7, 1997, a local exchange carrier, such as Bell Atlantic-Delaware, Inc. ("BA-Del"), must tariff, for purchase by other PSPs, the basic service elements and unbundled features which the local exchange carrier provides to its own pay phone services or others. The PSC is presently considering such tariff filings by BA-Del in PSC Dockets Nos. 97-001T, 97-005T, and 97-013T. During the initial period, the states may continue to regulate the local call rate but must review and remove from its regulations applicable to pay phones any rules that impose market entry or exit requirements. After October 7, 1997, rates for local calls from pay phones will no longer be subject to regulatory oversight and rates for local calls will be set up by the competitive market. In addition, by September 20, 1998, states must also develop mechanisms to administer and fund a plan, consistent with the FCC's guidelines, relating to the placement of "public interest" pay phones in locations where pay phones are needed but might not otherwise exist.

PROPOSED REGULATIONS

In 1985, the Delaware Public Service Commission ("PSC"), by Order No. 2662 in Regulation Docket No. 12, promulgated "Rules and Regulations Governing Service by Customer Owned Coin-Operated Telephones" ("COCOT Rules"). Those COCOT rules are set out as Attachment 1. In light of the enactment of 47 U.S.C. § 276 and the entry of the FCC's implementing orders, the PSC has decided to investigate the repeal or revision of the COCOT Rules and the possible adoption of new rules to govern pay phone services within Delaware. The PSC has authority to revise and adopt such rules pursuant to 26 Del. C. §§ 210, 209. The PSC has tentatively adopted a two-track approach for its investigation and rule-making:

TRACK I

In Track I, the PSC will consider issues relating to the removal of exit and entry barriers, the implementation of market-based local calling rates, and the content of regulations needed to protect consumers in a competitive pay phone marketplace. The tentative deadline for the completion of this phase is October 7, 1997.

TRACK II

In Track II, the PSC will consider issues related to the design of a state plan to implement, administer, and fund public interest pay phones. The tentative deadline for the completion of such phase is September, 1998.

The PSC solicits comments, suggestions, compilations of data, briefs, or other written materials concerning: (1) what revisions must, or should, be made to the present COCOT Rules to conform to 47 U.S.C. § 276 and the FCC's Orders; (2) what additional rules or regulations should be promulgated to effectuate § 276 and the FCC's Orders; and (3) what type of regulations should be adopted to protect the public in a competitive pay phone market? Without limiting the content of submissions, the PSC specifically solicits comments on the following issues:

TRACK I

(1) What provisions in the present COCOT Rules constitute exit or entry barriers, or are otherwise inconsistent with § 276 and the FCC's Orders and regulations?

(2) Should the PSC continue to deem pay phone service providers as regulated "public utilities"?

(3) What type of mechanism should the PSC adopt to identify "market failures" which might call for continued local call rate regulation? and

(4) What type of price and service disclosure should the PSC require for pay phones in a competitive pay phones market?

TRACK II

(1) What methodology should the PSC adopt to identify locations requiring public interest pay phones?

(2) What entity should make determinations about the specific location of public interest pay phones?

(3) What entity should be responsible for the placement of public interest pay phones? and

(4) What funding mechanism can, and should, the PSC adopt to pay for such public interest pay phones?

Ten (10) copies of all materials submitted shall be filed, by the due dates set out below, at the PSC's office located at 1560 South DuPont Highway, Dover, Delaware 19901. Materials related to Track I shall be filed on or before August 6, 1997. Materials related to Track II shall be filed on or before September 30, 1997. Any person submitting materials, or any other person who wishes to participate in further proceedings in this docket, shall, by separate document, so indicate and provide a name, mailing address, voice and facsimile numbers, and e-mail address.

After the submission of initial comments, the PSC Staff will, if needed, propose amendments or modifications to the COCOT Rules or new rules to govern pay phone services within this State. The PSC may solicit further comments at that time or conduct public hearings on Staff's proposed rules.

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

Any individual with disabilities who wishes to participate in these proceedings should contact the PSC to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The PSC's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the PSC's Public Information Officer by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by e-mail at mcarl@state.de.us.

Attachment 1

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

Effective Date: October 1, 1985

Rule 1

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

Rule 2

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

Rule 3

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

(a) Be operated under a validly issued Certificate of Public Convenience and Necessity from the Delaware Public Service Commission, which must be issued prior to beginning business (see attached application form).

(b) Provide access to local, intrastate toll and interstate toll services, and permit calls using credit cards, collect calls, calls billed to a third number, operator-handled emergency calls, calls to all applicable emergency numbers, and calls to toll free "800" and "950" numbers without charge and without the use of a coin.

(c) Have a coin mechanism capable of accepting nickels, dimes, and quarters, and automatically return unused coins with no charge for uncompleted calls.

(d) Allow the completion of both local and long distance calls with not less than a three (3) minute time limit for a local call.

(e) Be installed and maintained in accordance with generally accepted telecommunications industry standards, applicable local codes, as well as the National Electric Code and the National Electric Safety Code. The Diamond State Telephone Company shall supply a one-party standard mea-

sured service business line per COCOT instrument, terminating at the point defined by its tariff for business access lines. When requested, the telephone company will provide inside wire and a modular jack at prevailing rates.

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

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

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

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

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

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

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

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

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

Rule 4

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

PROPOSED REGULATIONS

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

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

2. Make, Model, and Identification Number of the Customer owned Instrument.

3. Location of Proposed Installation (e.g., Northern wall of B&G Bar and Grill, Corner of North and South Streets, any town, Delaware (zip).

4. Applicant's Business Telephone Number.

5. Telephone Number of the Certificated Instrument.

6. A description of the manner in which the Applicant will assure service and/or equipment maintenance. Including name, address, and telephone number of firm, if appropriate.

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

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

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

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

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

Name of Applicant

By: _____

Date of Application: _____

9. Verification

STATE OF _____ |
COUNTY OF _____ |

Signed and sworn to (or affirmed) before me on _____
by _____
(name of applicant)

Signature of Notary

SEAL

Name of Notary (Printed or Typed)

(My Commission Expires: _____)

10. *Effective Date of Certificate

By: Robert J. Kennedy, III
Executive Director

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

This certificate shall be valid for a period of twelve (12) months from the effective date. Thereafter, it shall be renewed annually by request in writing, confirming the continued validity of the information of the original certificate. Such renewals may be granted in writing by the Executive Director of the Commission.

LINK TO PSC HOME PAGE

PUBLIC SERVICE COMMISSION

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

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE PROMULGATION OF RULES REGARDING THE DISCOUNTS FOR INTRASTATE TELECOMMUNICATIONS AND INFORMATION SERVICES PROVIDED TO SCHOOLS AND LIBRARIES (OPENED JUNE 17, 1997) | PSC REGULATION DOCKET NO. 47

NOTICE OF PROPOSED RULE MAKING CONCERNING INTRASTATE DISCOUNTS FOR SCHOOLS AND LIBRARIES

TO: ALL SCHOOLS, LIBRARIES, TELECOMMUNICATIONS CARRIERS, AND OTHER INTERESTED PARTIES

In the Telecommunications Act of 1996, Congress mandated that telecommunications carriers provide certain services to elementary schools, secondary schools, and libraries at discounted rates lower than those charged to other persons. 47 U.S.C. § 254(h)(1)(B). Under § 254(h)(1)(B), the Federal Communications Commission ("FCC") determines these discounts for interstate services and the states shall set the discount for intrastate services. On May 8, 1997, the FCC issued its Report and Order (FCC 97-157) which established the discount for interstate services and established a federal funding mechanism to reimburse carriers for the discounts. The discounts available to eligible schools and libraries range from twenty percent (20%) to ninety percent (90%) and are deducted from prices set by a competitive bidding process. The discounts may be applied to internal connections, Internet access, and all commercially available telecommunications services. Under the FCC's Order, federal support will be provided for both interstate and intrastate services, so long as the State has adopted a discount rate for intrastate services as great

as those adopted for interstate services. Eligibility for the discounts will be determined by a federal administrator on a first-come, first-served submission process, set to begin probably in July, 1997.

Pursuant to 29 Del. C. § 10115, the Delaware Public Service Commission ("PSC") gives notice that it proposes to adopt rules and regulations which will, for the period through December 31, 1998, determine the discounts available for Delaware schools and libraries for intrastate services. By its proposed rules, the PSC intends to adopt as the discount levels for intrastate services the federal discount matrix set out below, as well as the accompanying competitive bidding process (set out in the FCC's Order). The proposed discounts are:

Table with 3 columns: HOW DISADVANTAGED?, DISCOUNT MATRIX, DISCOUNT LEVEL. Rows include categories like '< 1', '1-19', '20-34', '35-49', '50-74', '75-100' and corresponding discount percentages for New Castle County, Kent County, and Sussex County.

The text of the proposed rules is attached. The PSC believes it has authority to determine such discounts under 47 U.S.C. § 254(h)(1)(B) and 26 Del. C. § 703(3), (4). The PSC relies on the findings made in the May 8th FCC Order and the preceding recommendations of the Joint State-Federal Board (12 FCC Rcd. 87 (1996)) as support for its proposed rules. Adoption of the proposed rules will allow schools and libraries in Delaware to apply for federal universal service support for both interstate and intrastate services for the 1997-98 school year. Under the proposed rules, the intrastate discount would be applicable only for purposes of the receipt of the federal support for intrastate services and will not be supported by a State funding mechanism.

The PSC solicits comments, suggestions, compilations of data, or other written materials on the proposed rules which adopt the federal discount matrix. Specifically, the PSC solicits materials on the following questions:

- (a) Do any provisions of State law bar adoption of the federal discount matrix and the competitive bidding process for intrastate services provided to schools and libraries?

(b) What is the appropriate discount for intrastate services during the period through December 31, 1998 and, in particular, should the PSC adopt discounts deeper or slighter than the federal matrix? and

(c) What should be the appropriate level of intrastate discounts after December 31, 1998, and how should such discounts be funded?

Ten (10) copies of any materials shall be filed with the PSC at its offices at 1560 South DuPont Highway, Dover, Delaware 19901. Materials shall be filed on or before July 31, 1997, and should include a cover document listing the name of the submitter, a mailing address, voice and facsimile service numbers, and an e-mail address. Persons who wish to participate in any further proceedings, whether or not such person is submitting materials, shall so inform the PSC, by the above date, in a written document.

The PSC will hold a public hearing at the PSC's Dover office on the proposed rules on Friday, August 1, 1997, commencing at 10:00 AM. Materials may also be submitted then.

Copies of the rules proposed by the PSC and any materials filed will be available for inspection and copying at the PSC's Dover office during normal business hours. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in these proceedings, or to review these proposed rules, should contact the PSC to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The PSC's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the PSC's Public Information Officer by either Text Telephone ("TT") or by regular telephone at (302) 739-4333. The officer can also be reached by e-mail at mcarl@state.de.us.

INTERIM RULES FOR THE DETERMINATION OF
INTRASTATE DISCOUNTS FOR SERVICES PRO-
VIDED TO ELEMENTARY AND SECONDARY
SCHOOLS AND LIBRARIES FOR PURPOSES OF THE
RECEIPT OF FEDERAL UNIVERSAL SERVICE
SUPPORT

Section 1: General

- 1.1 Basis and purpose
- 1.2 Duration
- 1.3 Intended use of federal universal service support
- 1.4 Terms and definitions

Section 2: Eligible Institutions and Supported Services

- 2.1 Eligibility
- 2.2 Supported services
- 2.3 Other supported special services
- 2.4 Requests for service

Section 3: Intrastate Discounts

- 3.1 Discounts

Section 4: Duties of Eligible Institutions and Service Providers

- 4.1 Ordering and bidding for services
- 4.2 Resale
- 4.3 Support
- 4.4 Record keeping

Section 5: Services provided by non-telecommunications carriers.

- 5.1 Support for non-telecommunications carriers

Section 1: General

- 1.1 Basis and purpose.

(a) Under the provisions of 47 U.S.C. § 254(h)(1)(B), all telecommunications carriers serving a geographic area must, upon receipt of a bona fide request for services falling within the definition of universal service, provide such services to elementary schools, secondary schools, and libraries at rates less than the amounts charged for similar services to other parties. The discount provided for such services is recovered by the carrier either offsetting such amount against the carrier's obligation to contribute to a universal service support mechanism or recovering reimbursement from a universal service support mechanism. By the same provision, the states are charged with determining the amount of such discount for intrastate services. These rules set the discounts for intrastate services provided by telecommunications carriers to eligible schools and libraries within Delaware.

(b) These rules are adopted for the purpose of allowing telecommunications carriers to receive federal universal service support for both interstate and intrastate services provided to eligible schools and libraries. See 47 C.F.R. § 54.505(e)(1).¹ These rules do not provide for, nor do they create, a state universal service support funding mechanism. The amount of support available for services provided to eligible schools and libraries is to be determined by the rules adopted by the Federal Communications Commission to implement the *federal* universal service support mechanism.

1.2 Duration.

These rules shall govern the intrastate discounts for services provided by telecommunications carriers to eligible schools and libraries for the period from the effective date of these rules until December 31, 1998. The Commission may hereafter alter, amend, or repeal these rules and may extend the expiration date for these rules.

1.3 Intended use of federal universal service support.

A carrier that receives federal universal service support for intrastate services shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the federal support is intended.

1.4 Terms and definitions.

(a) An "Elementary school" is a non-profit institutional day or residential school that provides elementary education, as determined by state law.

(b) "Information service" is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(c) "Internet access" includes the following elements:

(1) the transmission of information as common carriage;

(2) the transmission of information as part of a gateway to an information service, when that transmission does not involve the generation or alteration of the content of information, but may include data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access information services, and that do not affect the presentation of such information to users; and

(3) electronic mail services (e-mail).

(d) "Internal Connections" includes items such as routers, hubs, network file servers, and wireless local area networks and their installation and basic maintenance needed to switch and route messages within a school or library. A given service is eligible for support as a component of the institution's internal connections only if it is necessary to transport information to individual classrooms.

(e) "Intrastate telecommunication" is a communication or transmission from within Delaware to a location within Delaware. "Intrastate transmission" is the same as intrastate telecommunication.

(f) A "library" includes:

(1) a public library;

(2) a public elementary school or secondary school library;

(3) an academic library;

(4) a research library which, for the purposes of this definition, means a library that:

(A) makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(B) is not an integral part of an institution of higher education; and

(5) a private library, but only if the Public Service Commission, with the advice of the State Librarian, determines that the library should be considered a library for the purposes of this definition.

(g) A "library consortium" is any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of these rules, references to library will also refer to library consortium.

(h) "Lowest corresponding price" is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services.

(i) "National school lunch program" is a program administered by the U.S. Department of Agriculture that provides free or reduced price lunches to economically disadvantaged children.

(j) The "pre-discount price" means the price the service provider agrees to accept as total payment for its telecommunications or information services. Such amount is the sum of the amount the service provider expects to receive

from the eligible school or library and the amount it expects to receive as reimbursement from the federal universal service support mechanisms because of the discounts provided herein.

(k) A “secondary school” is a non-profit institutional day or residential school that provides secondary education, as determined by state law. A secondary school does not offer education beyond grade 12.

(l) “Telecommunications” is the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

(m) A “telecommunications carrier” is any provider of telecommunications services except that such term does not include aggregators of telecommunications services as defined by 47 U.S.C. § 226. This definition includes cellular mobile radio service (CMRS) providers, interexchange carriers (IXCs) and, to the extent they are acting as telecommunications carriers, companies that provide both telecommunications and information services. Private mobile radio service (PMRS) providers are telecommunications carriers to the extent they provide domestic or international telecommunications for a fee directly to the public.

(n) “Telecommunications service” is the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Section 2: Eligible Institutions and Supported Services

2.1 Eligibility

(a) Telecommunications carriers shall be eligible for federal universal service support under these rules for providing supported intrastate services to eligible schools, libraries, and consortia including those entities.

(b) Schools.

(1) Only schools meeting the statutory definitions of “elementary school,” as defined in 20 U.S.C. § 8801(14), or “secondary school,” as defined in 20 U.S.C. § 8801(25), and not excluded hereafter, shall be eligible for discounts on telecommunications and other supported services and facilities under these rules.

(2) Schools operating as for-profit businesses shall not be eligible for discounts under these rules.

(3) Schools with endowments exceeding \$50,000,000 shall not be eligible for discounts under these rules.

(c) Libraries

(1) Only libraries eligible for assistance from the Division of Libraries [a State library administrative agency] under the Library Services and Technology Act (Pub. L. No. 104-208) and not excluded hereafter shall be eligible for discounts under these rules.

(2) A library’s eligibility for universal service funding shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under these rules.

(3) Libraries operating as for-profit businesses shall not be eligible for discounts under these rules.

(d) Consortia.

(1) For purposes of seeking competitive bids for telecommunications services pursuant to the provisions of 47 C.F.R. § 54.504, schools and libraries eligible for support under these rules may form consortia with other eligible schools and libraries, with health care providers eligible under 47 U.S.C. § 254(h)(1)(A), and with public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, when ordering telecommunications and other supported services under the federal universal support mechanism. With one exception, eligible schools and libraries participating in consortia with ineligible private sector members shall not be eligible for discounts for intrastate services under these rules. A consortium may include ineligible private sector entities if the pre-discount prices of any services that such consortium receives from the local exchange carrier are generally tariffed rates.

(2) For consortia, discounts under these rules shall apply only to the portion of eligible telecommunications and other supported services used by the eligible schools and libraries.

(3) Appropriate state agencies may receive discounts on the purchase of telecommunications and information services that they make on behalf of, and for, the direct use of eligible schools and libraries.

(4) Service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries - on their own or as part of a consortium. Such records shall be available for public inspection.

2.2 Supported services.

For the purposes of this rules, supported services provided by telecommunications carriers include all commercially available telecommunications services.

2.3 Other supported special services.

For the purposes of these rules, other supported special services provided by telecommunications carriers include Internet access and installation and maintenance of internal connections.

2.4 Requests for Service.

(a) All eligible schools, libraries, and consortia composed of such entities shall participate in a competitive bidding process, pursuant to the requirements established in 47 C.F.R. § 54.504. Such competitive bidding process shall be undertaken in compliance with any applicable provisions of state law pertaining to procurement of services..

(b) Schools, libraries, and eligible consortia wishing to receive discounts for eligible services under the federal support mechanism for intrastate services shall submit requests for services and facilities in compliance with the requirements set forth in 47 C.F.R. §§ 54.504, 54.507(d), & 54.509(a).

(c) Schools, libraries, eligible consortia, and service providers may present to the Public Service Commission complaints regarding intrastate rates if they reasonably believe that the lowest corresponding price is unfairly high or low.

(1) Schools, libraries, and consortia may request lower rates if the rate offered by the provider does not represent the lowest corresponding price.

(2) Service providers may request higher rates if they can show that the lowest corresponding price is not compensatory, because the relevant school, library, or consortium is not similarly situated to and subscribing to a similar set of services to the customer paying the lowest corresponding price.

Section 3: Intrastate Discounts

3.1 Discounts.

(a) Discounts for eligible schools and libraries shall be set as a percentage discount from the pre-discount price.

(b) The discounts available to eligible schools and libraries shall range from twenty percent (20%) to ninety percent (90%) of the pre-discount price for all eligible services provided by eligible providers. The discounts available to a particular school, library, or consortium of only such entities shall be determined by indicators of poverty and high cost.

(1) For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. School districts applying for eligible services on behalf of their individual schools may calculate the district-wide percentage of eligible students using a weighted average. For example, a school district would divide the total number of students in the district eligible for the national school lunch program by the total number of students in the district to compute the district-wide percentage of eligible students. Alternatively, the district could apply on behalf of individual schools and use the respective percentage discounts for which the individual schools are eligible.

(2) For libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located. If the library is not in a school district then its level of poverty shall be based on an average of the percentage of students eligible for the national school lunch program in each of the school districts that children living in the library's location attend. Library systems applying for discounted services or facilities on behalf of their individual branches shall calculate the system-wide percentage of eligible families using an unweighted average based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program in the public school district in which they are located for each of their branches or facilities.

(3) Schools and libraries are classified as "urban" or "rural" based on location in an urban or rural area, according to the following designations.²

(i) Schools and libraries located in New Castle County and Kent County are designated as urban.

(ii) Schools and libraries located in Sussex County are designated as rural.

PROPOSED REGULATIONS

(c) The following matrix sets forth a discount rate to be applied to eligible intrastate services and facilities purchased by eligible schools, school districts, libraries, or library consortia based on the institution's level of poverty and location.

SCHOOLS & LIBRARIES	DISCOUNT LEVEL	
	urban discount	rural discount
HOW DISADVANTAGED? % of students eligible for national school lunch program		
< 1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90

(d) Consortia applying for discounted services or facilities on behalf of their members shall calculate the portion of the total bill eligible for a discount using a weighted average based on the share of the pre-discount price for which each eligible school or library agrees to be financially liable. Each eligible school, school district, library, or library consortia will be credited with the discount to which it is entitled.

Section 4: Duties and Rights of Eligible Institutions and Service Providers

4.1 Ordering and bidding for services

(a) In selecting a provider of eligible services and facilities, schools, libraries, and eligible consortia shall carefully consider all bids submitted and may, to the extent permitted by state law, consider relevant factors other than the pre-discount prices submitted by providers.

(b) Providers of eligible services and facilities shall not charge schools, school districts, libraries, eligible consortia, and state agencies a price above the lowest corresponding price for supported services and facilities, unless the Public Service Commission finds that the lowest corresponding price for intrastate services is not compensatory.

(c) Schools and libraries bound by existing contracts for service shall not be required to breach those contracts in order to qualify for discounts under these rules during the period for which they are bound. This exemption from competitive bidding requirements, however, shall not apply to voluntary extensions of existing contracts.

4.2 Resale

(a) Eligible services provided at a discount under these rules shall not be sold, resold, or transferred in consideration of money or any other thing of value.

(b) The above prohibition on resale shall not bar schools, school districts, libraries, and library consortia from charging either computer lab fees or fees for classes in how to navigate over the Internet. There is no prohibition on the resale of services that are not purchased pursuant to the discounts provided in these rules.

4.3 Support

A telecommunications carrier providing services eligible for support under these rules shall receive an offset or reimbursement for the amount eligible for support from the federal universal service support mechanism in such amount as may be prescribed under the provisions of 47 C.F.R. §§ 54.507 to 54.515.

4.4 Record keeping

Schools and libraries shall maintain for their purchases, at discounted rates, of telecommunications and other supported services and facilities the kind of procurement records that they maintain for other purchases. Schools and libraries shall produce such records at the request of any auditor appointed by the Department of Public Instruction, the federal universal service administrator, or any state or federal agency with jurisdiction. Schools and libraries shall be subject to random compliance audits to evaluate what services they are purchasing and how such services are being used.

Section 5: Services Provided by Non-telecommunications Carriers

5.1 Support for non-telecommunications carriers

(a) Non-telecommunications carriers, not subject to the jurisdiction of the Public Service Commission, may also be eligible to receive federal universal service support for providing eligible covered services for eligible schools, libraries, and consortia, including those entities.

(b) Non-telecommunications carriers shall be eligible for federal universal service support for providing Internet access and installation and maintenance of internal connections.

(c) The terms, conditions, and amount of such support shall be determined pursuant to the provisions of 47 U.S.C. § 254(h)(2)(A) and 47 C.F. R. §§ 54.505 to 54.511.

¹ For purposes of these rules, citations to provisions in the Code of Federal Regulations shall be to amendments and additions made by the Report and Order (FCC 97-157) in Federal-State Board on Universal Service, CC Dckt. No. 96-45 (rel. May 8, 1997) (- Fed. Reg. -).

² The classifications are based on the criteria set forth in 47 C.F.R. § 54.505(b)(3). If, under that criteria, the classification of a county or an area within a county changes, the discounts should be based on the reclassification.

DELAWARE BOARD OF NURSING

Statutory Authority: Title 24, Section 1906(1)
of the Delaware Code
(24 Del.C. 1906(1))

**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**

The Delaware Board of Nursing in accordance with 24 Del.C. 1906(1) has proposed to revise certain sections of Article VIII of the Rules and Regulations related to the Law regulating the Practice of Nursing in the State of Delaware that address the practice of nursing as an Advanced Practice Nurse in the State of Delaware.

The proposed changes are summarized as follows:

Amend Section 9: Application for Licensure to Practice as an Advanced Practice Nurse to recognize that a faculty member teaching in a nursing education program is not required to be licensed as an Advanced Practice Nurse, but a faculty member teaching in a graduate level clinical course may apply for licensure as an Advanced Practice Nurse and utilize graduate level clinical teaching hours to fulfill the practice requirement.

Amend Section 10: Temporary Permit for Advanced Practice Nurse Licensure to extend eligibility for a temporary permit to an applicant awaiting review by the certifying agency for acceptance to take the certifying examination.

Amend Section 11: Maintenance of Licensure Status: Reinstatement to decrease the practice hour requirement to 1500 hours in the past 5 years or 600 hours in the past 2 years.

A public hearing was held on Wednesday, June 11, 1997 at 1:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the revised section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, Cannon Building, Suite 203, P.O. Box 1401, Dover, Delaware, 19903. Persons desiring to submit written comments on the revised rules and regulations may forward those comments to the above address.

The final date to receive written comments was at the public hearing.

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

SECTION 1: AUTHORITY

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

SECTION 2: PURPOSE

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

SECTION 3: SCOPE

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

SECTION 4: DEFINITIONS

4.1 Advanced Practice Nurse

As defined in 24 Del. C., §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

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

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

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

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

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

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

4.1:4 NURSE PRACTITIONER (N.P.)

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

4.2 Audit

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

4.3 Board

The Delaware Board of Nursing

4.4 Collaborative Agreement

Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

4.5 Guidelines/ Protocols

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

4.6 National Certification

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

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

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

4.7 Post Basic Program

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

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

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

4.8 Scope of Specialized Practice

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

4.9 Supervision

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

SECTION 5: GRANDFATHERING PERIOD

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

SECTION 6: STANDARDS FOR THE ADVANCED PRACTICE NURSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1 Eliciting detailed health history(s)

7.2 Defining nursing problem(s)

7.3 Performing physical examination(s)

7.4 Collecting and performing laboratory tests

7.5 Interpreting laboratory data

7.6 Initiating requests for essential laboratory procedures

7.7 Initiating requests for essential x-rays

7.8 Screening patients to identify abnormal problems

7.9 Initiating referrals to appropriate resources and services as necessary

7.10 Initiating or modifying treatment and medications within established guidelines

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

7.12 Providing health education through teaching and counseling

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

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

SECTION 8: CRITERIA FOR APPROVAL OF CERTIFICATION AGENCIES

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

8.2 The national certifying body:

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

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

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

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

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

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

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

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

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

8.2:5.5 Examinations are evaluated for psychometric performance;

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

8.2:5.7 Examination security is maintained through established procedures.

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

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

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

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

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

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

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

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

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

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

9.4 A Registered Nurse meeting the practice requirement as listed in Section 11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

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

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

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

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

SECTION 10: TEMPORARY PERMIT FOR ADVANCED PRACTICE NURSE LICENSURE

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

- A. The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or
- B. The individual applying holds a current license in Delaware, and
- C. The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

D. The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of a least 1000 hours of clinical nursing practice within the past 24 months.

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

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

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

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

C. The individual submits proof of admission into the approved certifying agency's ~~exam examination~~ or is a ~~graduate of a Master's program in a clinical nursing specialty, is practicing as a clinical nurse specialist accruing~~ seeking a temporary permit to practice under supervision at accrue the practice hours required to sit for the certifying examination or has accrued the hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 10.1 D; or,

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

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

10.3 A temporary permit may be issued:

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

10.4 A temporary permit will be withdrawn:

- A. Upon failure to pass the first certifying examination
 - 1. The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:
 - a. current employer reference,
 - b. supervision available,
 - c. job description,

d. letter outlining any extenuating circumstances,

e. any other information the Board of Nursing deems necessary.

B. In the absence of a collaborative agreement.

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

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

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

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

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

SECTION 11: MAINTENANCE OF LICENSURE STATUS: REINSTATEMENT

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

11.2 The Advanced Practice Nurse must have practiced practice a minimum of ~~2500~~ 1500 hours in ~~a the past five years period, acquiring or~~ no less than 300 600 hours of practice in the past two per years in the area of specialization in which recognition licensure has been granted.

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

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

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

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

11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and ~~2500~~ 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 11.4 followed.

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

SECTION 12 AUDIT OF LICENSEES

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

A. Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

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

C. An unsatisfactory audit shall result in Board action.

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

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

SECTION 13 EXCEPTIONS TO THE REQUIREMENTS TO PRACTICE

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

DEPARTMENT OF LABOR

Statutory Authority: Title 19, Section
202(a)(1) of the Delaware Code
(19 Del.C. 202(a)(1))

**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**

* * * DRAFT * * *

APPRENTICESHIP PROGRAMS
REGULATIONS AND STANDARDS
OF DELAWARE DEPARTMENT OF LABOR
DIVISION OF EMPLOYMENT AND TRAINING
OFFICE OF APPRENTICESHIP AND TRAINING

INDEX
(To be completed)

PURPOSE AND SCOPE

(A) Section 204, Chapter 2, Title 19, Delaware Code authorizes and directs the Department of Labor to formulate regulations to promote the furtherance of labor standards necessary to safeguard the welfare of Apprentices and to extend the applications of such standards by requiring their inclusion in apprenticeship contracts.

(B) The purpose of this chapter is to set forth labor standards to safeguard the welfare of Apprentices and to extend the application of such standards by prescribing policies and procedures concerning the registration of acceptable Apprenticeship Programs with the Delaware Department of Labor.

(C) These labor standards and procedures cover the Registration and Cancellation of Apprenticeship Agreements and of Apprenticeship Programs; and matters relating thereto.

DECLARATION OF POLICY

It is declared to be the policy of this State to:

(A) encourage the development of an apprenticeship and training system through the voluntary cooperation of management and workers and interested State agencies and in cooperation with other states and the federal government;

(B) provide for the establishment and furtherance of Standards of Apprenticeship and Training to safeguard the welfare of Apprentices and trainees;

(C) aid in providing maximum opportunities for unemployed and employed persons to improve and modernize their work skills; and

(D) contribute to a healthy economy by aiding in the development and maintenance of a skilled labor force sufficient in numbers and quality to meet the expanding needs of industry and to attract new industry.

SEC. 106.2 DEFINITIONS

As used in this part:

(A) "ADMINISTRATOR" refers to the Administrator of the Office of Apprenticeship and Training Section for the State Department of Labor.

(B) "AGREEMENT" refers to a written agreement between an Apprentice and either his/her employer or an Apprenticeship Committee acting as agent for the Employer which contains the terms and conditions of the employment and training of the Apprentice.

(C) "APPRENTICE" refers to a person at least sixteen years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of Journeypersons. This person must have entered into a written Apprenticeship Agreement with a registered apprenticeship Sponsor. The training must be supplemented with properly coordinated studies of related technical instruction.

(D) "APPRENTICESHIP STANDARDS" refers to the document which embodies the procedure for the selection and the training of apprentices, setting forth the terms of the training, including wages, hours, conditions of employment, training on the job, and related instruction. The duties and responsibilities of the Sponsor, including administrative procedures, ~~are~~ set forth in their company's policies.

(E) "CANCELLATION" refers to the deregistration of a Program or the Termination of an Agreement.

(F) "COMMITTEE" refers to those persons designated by the Sponsor to act on its behalf in the administration of the Apprenticeship Program. A Committee may be "joint" i.e., it is composed of an equal number of representatives of the employer(s) and of the employee(s) represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate or administer a Program and enter into Agreements with Apprentices. A Committee may be "unilateral" or "non-joint" and shall mean a Program Sponsor in which a bona fide collective bargaining agent is not a participant.

(G) "COUNCIL" refers to the State's ***Governor's*** Advisory Council On Apprenticeship and Training.

PROPOSED REGULATIONS

(H) "DELAWARE RESIDENT CONTRACTOR" includes any general contractor, prime contractor, construction manager, subcontractor or other type of construction contractor who regularly maintains a place of business in Delaware. Regularly maintaining a place of business in Delaware does not include site trailers, temporary structures associated with one contract or set of related contracts, nor the holding, nor the maintaining of a post office box within this State. The specific intention of this definition is to maintain consistency with Title 30, Delaware Code, "Resident Contractor".

(I) "DIRECTOR" refers to the Director of the Division of Employment and Training.

(J) "DIVISION" refers to the Division of Employment and Training, Department of Labor, state of Delaware.

(K) "EMPLOYER" refers to any person or organization employing an Apprentice, whether or not such person or organization is a party to an Apprenticeship Agreement.

(L) "JOURNEYPERSON" refers to a worker who is fully qualified as a skilled worker in a given craft or trade.

(M) "ON-SITE VISIT" refers to a visit from a representative of the State of Delaware, Department of Labor, Division of Employment and Training to the office and/or the actual field job-site of the Sponsor, for the purposes of inspecting and/or monitoring the progress and training of the Registered Apprentice. This monitoring may include but is not limited to interviewing the Apprentice and the auditing of pertinent documents relative to the maintenance and enforcement of the terms of the Apprenticeship Agreement.

(N) "PROGRAM" refers to an executed apprenticeship plan which contains all terms and conditions for the qualifications, recruitment, selection, employment and training of Apprentices, including such matters as the requirements for a written Apprenticeship Agreement.

(P)(~~Θ~~) "REGISTRANT OR SPONSOR" refers to any Employer/Business person, association, committee or organization in whose name or title the Program is (or is to be) registered or approved regardless of whether ~~or not~~ such entity is an Employer.

(Q) "REGISTRATION" refers to the acceptance and recording of an Apprenticeship Program by the Delaware Department of Labor, Office of Apprenticeship & Training, as meeting the basic standards and requirements of the Division for approval of such Program. Approval is evidenced by a Certificate or other written ~~indicia~~ documentation. Registration also refers to the acceptance and recording of Apprenticeship Agreements thereof, by the Delaware Department of Labor, Office of Apprenticeship & Training as evidence of the participation of the Apprentice in a particular Registered apprenticeship Program.

(R) "RELATED INSTRUCTION" refers to a formal and systematic form of instruction designed to provide the Apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

(S) "SECRETARY" refers to the Secretary of Labor.

(T) "STATE" refers to the state of Delaware

(U) "SUPERVISORY INSPECTION" shall mean the same as "ON SITE VISIT".

SEC. 106.3 ELIGIBILITY AND PROCEDURE FOR STATE REGISTRATION

(A) No Program or Agreement shall be eligible for State Registration unless it is in conformity with the requirements of this chapter, and the training is in an apprenticeable occupation having the characteristics set forth in SEC. 106.4 herein.

(B) Apprentices must be individually registered under a Registered Program with the State of Delaware, Department of Labor, Division of Employment and Training. Such Registration shall be effected by filing copies of each Agreement with the State. Agencies listed with states other than the State of Delaware shall not be construed as being registered for State of Delaware Apprenticeship Program Registration purposes.

(C) The State must be properly notified through the ~~proper office~~ Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training of cancellation, suspension or termination of any Agreements, (with cause for same) and of apprenticeship completions. The State will attempt, where applicable, to verify the cause of apprenticeship termination.

(D) Approved Programs shall be accorded Registration, evidenced by a Certificate of Registration. The Certificate of Registration for an approved Program will be made in the name of the Program Sponsor and must be renewed every four (4) years.

(E) Any modification(s) or change(s) to registered standards shall be promptly submitted to the State through the appropriate office no later than thirty (30) days and, if approved, shall be recorded and acknowledged as an amendment to such standards.

(F) The request for registration and all documents and data required by this chapter shall be submitted in triplicate. Individual Agreements shall be submitted to the State Apprenticeship and Training Office for Registration no later than thirty (30) calendar days after the trainee has started work in the registered Program. Agreements submitted after said time shall be considered a violation of the rules and regulations and will not be honored.

(G) Under a Program proposed for Registration by an Employer or Employer's Association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any way in the operation of the Program, and such participation is exercised, written acknowledgment of a union agreement or "no objection" to the Registration is required. Where no such participation is evidenced and practiced, the Employer shall simultaneously furnish to the union a copy of its Program application. In addition, upon receipt of the application for the Program, the State shall

promptly send by certified mail to such local union another copy of the Program application and together with a notice that union comments will be accepted for thirty (30) days after the date of the agency transmittal.

(H) Where the employees to be trained have no collective bargaining agent, a program plan may be proposed for Registration by an Employer or groups of Employers.

(I) A Sponsor may register Programs. A Program may be Registered in one or more occupations simultaneously or individually with the provision that the Program Sponsor shall, within sixty (60) days of Registration, be actively training Apprentices on the job, and related study must begin within twelve (12) months for in each occupation for which Registration is granted. At no time shall an individual Apprentice be employed in more than one (1) occupation, nor signed to more than one (1) Apprenticeship Agreement at any given time.

(J) Each occupation for which a Program Sponsor holds Registration shall be subject to Cancellation if no active training of Apprentices on the job has occurred within a consecutive one hundred eighty (180) day period or if no Related Instruction has begun within a twelve (12) month period from the date of Registration or in any twelve (12) month period during the duration of that Agreement.

(K) Each Sponsor of a Program shall submit to an on-site inspection or supervisory visit and shall make all documents pertaining to the Registered Program available to appropriate representatives of the Apprenticeship and Training Office or designated service personnel upon request.

(L) Each Sponsor shall be so routinely examined, at least annually, but not more than every six (6) months, unless a specific violation is suspected or a specific document is being investigated.

(M) The Sponsor shall notify the State Registration Agency of termination or lay-off from employment of a Registered Apprentice or of the completion of the terms of the Apprenticeship Agreement within thirty (30) calendar days of such occurrence.

(N) The Sponsor shall notify the State of failure to obtain and register the Apprentice in an approved course of Related Instruction as stated and detailed on the Apprenticeship Agreement within (30) calendar days of such occurrence.

(O) It shall be the responsibility of the Sponsor to monitor the progress and attendance of the Apprentice in all phases of training such as, but not limited to, on-the-job and/or Related Training.

SEC.106.4 CRITERIA FOR APPRENTICE ABLE OCCUPATIONS

An APPRENTICEABLE occupation is a skilled trade which possesses all of the following characteristics:

(A) It is customarily learned in a practical way through training and work on the job.

(B) It is clearly identified and commonly recognized throughout the industry, or recognized with a positive view towards changing technology or approved by the Delaware Department of Labor, ***Office of*** Apprenticeship & Training.

(C) It involves manual, technical or mechanical skills and knowledge which require a minimum of two thousand (2,000) hours of on-the-job training, not including the time spent in Related Instruction.

(D) It customarily requires Related Instruction to supplement the on-the-job training.

(E) It involves the development of skills sufficiently broad enough to be applicable in similar occupations throughout the industry, rather than a restricted application to the products or services of any one company.

SEC. 106.5 STANDARDS OF APPRENTICESHIP

The following standards are prescribed for a Program.

(A) The Program must include an organized, written plan delineating the terms and conditions of employment. The training and supervision of one or more Apprentices in an apprenticeable occupation must become the responsibility of the Sponsor who has undertaken to carry out the Apprentice's training program.

(B) The standards must contain provisions concerning the following:

(1) The employment and training of the Apprentice in a skilled occupation;

(2) an equal opportunity pledge stating the recruitment, selection, employment and training of Apprentices during their apprenticeships shall be without discrimination based on: race, color, religion, national origin or sex. When applicable, an affirmative action plan in accordance with the State's requirements for federal purposes must be instituted;

(3) the existence of a term of apprenticeship, not less than one year or two thousand (2,000) hours consistent with training requirements as established by industry practice;

(4) an outline of the work processes in which the Apprentice will receive supervised work experience and on-the-job training, and the allocation of the approximate time to be spent in each major process;

(5) provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of one hundred forty-four (144) hours for each year of apprenticeship is required. Such instruction may be given in a classroom, through trade, industrial or approved correspondence courses of equivalent value or in other forms approved by the State Department of Labor Office of Apprenticeship & Training

PROPOSED REGULATIONS

(6) a progressively increasing schedule of wage rates to be paid the Apprentice, consistent with the skill acquired which shall be expressed in percentages of the established Journeyman's hourly wage;

(7) Minimum Wage Progression for 1 through 7 year Apprentice Program as follows:

- 1) 1 to 7 year programs
- 2) starting pay must be at least minimum wage
- 3) final period must be at least 85%

1 YEAR [OR] 2,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 85%

2 YEAR [OR] 4,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 51%
- 3rd 1,000 hours: 63%
- 4th 1,000 hours: 85%

3 YEAR [OR] 6,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 48%
- 3rd 1,000 hours: 57%
- 4th 1,000 hours: 65%
- 5th 1,000 hours: 74%
- 6th 1,000 hours: 85%

4 YEAR [OR] 8,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 46%
- 3rd 1,000 hours: 53%
- 4th 1,000 hours: 59%
- 5th 1,000 hours: 65%
- 6th 1,000 hours: 71%
- 7TH 1,000 hours: 78%
- 8th 1,000 hours: 85%

5 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 45%
- 3rd 1,000 hours: 50%
- 4th 1,000 hours: 55%
- 5th 1,000 hours: 60%
- 6th 1,000 hours: 65%
- 7TH 1,000 hours: 70%
- 8th 1,000 hours: 74%
- 9th 1,000 hours: 79%
- 10th 1,000 hours: 85%

6 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 44%
- 3rd 1,000 hours: 48%
- 4th 1,000 hours: 52%
- 5th 1,000 hours: 56%
- 6th 1,000 hours: 60%
- 7TH 1,000 hours: 64%
- 8th 1,000 hours: 68%
- 9th 1,000 hours: 72%
- 10th 1,000 hours: 76%
- 11th 1,000 hours: 81%
- 12th 1,000 hours: 85%

7 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 43%
- 3rd 1,000 hours: 47%
- 4th 1,000 hours: 50%
- 5th 1,000 hours: 54%
- 6th 1,000 hours: 57%
- 7TH 1,000 hours: 61%
- 8th 1,000 hours: 64%
- 9th 1,000 hours: 68%
- 10th 1,000 hours: 71%
- 11th 1,000 hours: 74%
- 12th 1,000 hours: 78%
- 13th 1,000 hours: 81%
- 14th 1,000 hours: 85%

(8) that the entry Apprentice wage rate shall not be less than the minimum prescribed by State statute or by the Fair Labor Standards Act, where applicable;

(9) That the established Journeyman's hourly rate applicable among all participating Employers be stated in dollars and cents. No Apprentice shall receive an hourly rate less than the percentage for the period in which he/she is serving applied to the established Journeyman's rate unless the Sponsor has documented the reason for same in the individual Apprentice's progress report and has explained the reason for said action to the Apprentice *** and Registration Agency***. In no case other than sickness or injury on the part of the Apprentice, shall a Sponsor hold back an Apprentice's progression more than one period or wage increment without the written consent of the Administrator;

(10) That the established Journeyman's rate provided for by the Standards be reviewed and/or adjusted annually. Sponsors of Programs shall be required to give proof that all employees used in determining ratios of Apprentices

to Journeypersons shall be receiving wages at least in the amount set for Journeypersons in their individual program standards, or are qualified to perform as Journey persons; *** and must be paid at least the minimum journeyperson rate***;

(11) that the minimum hourly Apprentice wage rate paid during the last period of apprenticeship not be less than eighty-five (85) percent of the established Journey person wage rate. Wages covered by a collective bargaining agreement takes precedent over this section. However, wages may not be below the State's required minimum progression.

(C) The Program must include a periodic review and evaluation of the Apprentice's progress in job performance and related instruction, and the maintenance of appropriate progress records.

(D) The ratio of Apprentices to Journeypersons should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements. The ratio of Apprentices to Journeypersons shall be one Apprentice to each five (5) Journeypersons employed by the prospective Sponsor. More restrictive ratios will be granted upon request. More liberal ratios may be granted only after the requesting Sponsor has demonstrated that the number of Apprentices to be trained shall be in relation to:

- (1) the needs of the plant and/or trade in the community with consideration for growth and expansion;
- (2) the facilities and personnel available for training are adequate; and
- (3) a reasonable opportunity that employment of skilled workers on completion exists.

The following ratios will be recognized as standard for the trades of:

	Apprentice	up to	Journey person
Carpenter	1		5
Plumber/Pipefitter	1		5
Sheet Metal Worker	1		4
Insulation Worker	1		4
Electrician	1		3

If a "collective bargaining agreement" exists and stipulates a ratio of Apprentices to Journey persons, it shall prevail. Provided the Bargaining Ratio is not lower than the State standard.

(E) At least forty (40) percent of all Apprentices registered must complete training. Apprentices who voluntarily terminate their apprenticeships or employment shall not be counted in reference to this section. Programs with fewer than five (5) Apprentices shall not be required to comply with this part.

(F) A probationary period shall be in relation to the full apprenticeship term with full credit toward completion of apprenticeship.

(G) Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required.

(H) The required minimum qualifications for persons entering an Apprentice Program as defined in Section 106.2(C) must be met.

(I) Apprentices must sign an Agreement. The Agreement shall directly, or by reference, incorporate the standards of the Program as part of the Agreement.

(J) Advance standing or credit up to ~~one quarter~~ 25% OJT hours of the particular trade term in question for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step may be granted. The granting of a greater amount of credit shall be set at the discretion of the Administrator based on supportive documentation submitted by the Sponsor. In no case shall more than one half of the particular trade term in question be granted unless the time in question has been spent in an approved State or Federally Registered Program.

(K) Transfer of Employer's training obligation through the sponsoring Committee if one exists and as warranted, to another Employer with consent of the Apprentice and the Committee or Program Sponsors, with full credit to the Apprentice for satisfactory time and training earned, may be afforded with written notice to, and the approval of, the Registration Agency.

(L) These Standards shall contain a statement of assurance of qualified training personnel.

(M) There will be recognition for successful completion of apprenticeship evidenced by an appropriate certificate. However, School District Officials may bring to the Administrator's attention, individual cases that may have experienced extenuating circumstances. With the Administrator's approval, such individuals may be granted exemption from this attendance policy.

(N) These Standards shall contain proper identification of the Registration Agency, being the Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training.

(O) There will be a provision for the Registration, Cancellation and Deregistration of the Program, and a requirement for the prompt submission of any modification or amendment thereto.

(P) There will be provisions for Registration of Agreements, modifications and amendments, notice to the Division of persons who have successfully completed Programs, and notice of Cancellations, suspensions and terminations of Agreements and causes therefore.

(Q) There will be a provision giving authority for the termination of an Agreement during the probationary period by either party without stated cause.

(R) There will be provisions for not less than five (5) days notice to Apprentices of any proposed adverse action and cause therefore with stated opportunity to Apprentices during such period for corrective action. ~~unless other acceptable procedures are provided for in a collective bargaining agreement.~~

(S) There will be provisions for a grievance procedure, and the name and address of the appropriate authority under the program to receive, process and make disposition of complaints.

(T) There will be provisions for recording and maintaining all records concerning apprenticeships as may be required by the State or Federal law.

(U) There will be provisions for a participating Employer's Agreement.

(V) There will be funding formula providing for the equitable participation of each participating Employer in funding of a group Program where applicable.

(W) All Apprenticeship Standards must contain articles necessary to comply with federal laws, regulations and rules pertaining to apprenticeship.

(X) Programs and Standards of Employers and unions in other than the building and construction industry which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of this part by any recognized State apprenticeship agency shall be accorded Registration of approval reciprocity by the Delaware Department of Labor if such reciprocity is requested by the sponsoring entity. However, reciprocity will not be granted in the Building and Construction industry based on John Modica's letter to Harry F. Plummer, dated April 19, 1996 based on Title 29 CFR 29 section 12(b).

SEC. 106.6 APPRENTICESHIP AGREEMENT

The Apprenticeship Agreement shall contain:

(A) the names and signatures of the contracting parties (Apprentice and the program Sponsor or Employer), and the signature of a parent or guardian if the Apprentice is a minor;

(B) the date of birth of the Apprentice;

(C) the name and address of the program Sponsor and the Registrant;

(D) the Apprentice's social security number;

(E) a statement of the trade or craft which the Apprentice is to be taught, and the beginning date and term (duration) of apprenticeship;

(F) the number of hours to be spent by the Apprentice in work on the job;

(G) the number of hours to be spent in Related and Supplemental Instruction is recommended to be not less than one hundred forty-four (144) hours per year;

(H) provisions relating to a specific period of probation during which the Apprenticeship Agreement may be terminated by either party to the Agreement upon written notice to the Registrant;

(I) provisions that, after the probationary period, the Agreement may be suspended, canceled or terminated for ~~good~~ cause, with due notice to the Apprentice and a reasonable opportunity for corrective action, and with written notice to the Apprentice and the Registrant of the final action taken;

(J) a reference incorporating, as part of the Agreement, the standards of the Apprenticeship Program as it exists on the date of the Agreement or as it may be amended during the period of the Agreement;

(K) a statement that the Apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training without discrimination based on race, age, color, religion, national origin or sex;

(L) a statement that, if an Employer is unable to fulfill his obligation under his Agreement, the Agreement may, with consent of the Apprentice and Committee, if one exists, be transferred to another Employer under a Registered Program with written notice of the transfer to the Registrant, and with full credit to the Apprentice for satisfactory time and training earned;

(M) the name and address of the appropriate authority, if any, designated under the program to receive, process and make disposition of controversies or differences which cannot be adjusted locally or resolved in accordance with the established trade procedure or applicable collective bargaining provisions;

(N) a statement setting forth a schedule of work processes in the trade or industry in which the Apprentice is to be trained and the approximate time to be spent at each process;

(O) a statement of the graduated scale of wages to be paid the Apprentice and whether or not the required school time shall be compensated;

(P) a statement that in the event the Registration of the Program has been Canceled or revoked, the Apprentice will be notified within fifteen (15) days of the event.

SEC. 106.7 DEREGISTRATION BY STATE

(A) Deregistration proceedings ~~shall~~ may be undertaken when the Program is not conducted, operated or administered in accordance with the Registration standards and the requirements of this chapter;

(B) Where it appears the Program is not being operated in accordance with the Registered standards or with the requirements of the chapter, the Administrator shall so notify the Program Registrant in writing;

(C) The notice shall be sent by registered or certified mail, return receipt requested, and shall state the deficiency(s) or violation(s);

(D) It is declared to be the policy of this State to:

(1) deny the privilege of operation of a Program to persons who, by their conduct and record, have demonstrated their indifference to the aforementioned policies; and

(2) discourage repetition of violations of rules and regulations governing the operation of Registered Apprenticeship Programs by individuals, Sponsors, or Committees against the prescribed policies of the State, and its political subdivisions, and to impose increased and added deprivation of the privilege to operate Programs against those who have been found in violation of these rules and regulations;

(3) deregister a Program either upon the voluntary action of the Registrant by a request for cancellation of the Registration, or upon notice by the State to the Registrant stating cause, and instituting formal deregistration proceedings in accordance with the provisions of this chapter;

(4) at the request of Sponsor, permit the Administrator to cancel the Registration of a Program by a written acknowledgment of such request stating, but not limited to, the following:

(a) the Registration is canceled at Sponsor's request and giving the effective date of such cancellation.

(b) that, within fifteen (15) working days of the date of the acknowledgment, the Registrant must notify all Apprentices of such Cancellation and the effective date that such Cancellation automatically deprives the Apprentice of his/her individual Registration.

(D) Any Sponsor who violates major provisions of the rules repeatedly, as determined by the Administrator of Apprenticeship and Training (three ~~or more~~ violations in any given twelve month period), shall be sent a notice which shall contain the violations and will inform the Sponsor that the Program will be placed in a probationary status for the next six (6) month period. Any new major violations in this period shall constitute cause for deregistration. In such a case, the Administrator shall notify the chairman of the Apprenticeship and Training Council, who shall convene the Council. The Sponsor in question will be notified of said meeting and may present whatever facts, witnesses, etc., that the Sponsor deems appropriate. After said hearing, the Council shall make a recommendation based on the facts presented to the Secretary, as to whether the Program should be deregistered. The Secretary's decision shall be final and binding on the matter.

(E) Sponsors with fewer than three (3) violations shall be sent a notice by registered or certified mail, return receipt requested, stating the deficiencies found and the remedy required and shall state that the Program will be deregistered

for cause unless corrective action is taken within thirty (30) days. Upon request by Registrant, the thirty (30) day period may be extended for up to an additional thirty (30) day period.

(F) If the required action is not taken within the allotted time, the Administrator shall send a notice to the Registrant by registered or certified mail, return receipt requested, stating the following:

(1) this notice is sent pursuant to this subsection;

(2) that certain deficiencies were called to the Registrant's attention and remedial action requested;

(3) based upon the stated cause and failure of remedy, the Program will be deregistered, unless within fifteen (15) working days of receipt of this notice, the Registrant requests a hearing;

(4) If a hearing is not requested by the Registrant, the Program will automatically be deregistered.

(G) Every order of deregistration shall contain a provision that the Registrant and State shall, within fifteen (15) working days of the effective date of the order, notify all registered Apprentices of the deregistration of the Program, the effective date, and that such action automatically deprives the Apprentice of his/her individual Registration.

(H) Regulations concerning Apprentices "attendance and tardiness" policy for related instruction.

(1) A registered Apprentice who misses seven (7) classes while enrolled in a related studies program at any of the vocational schools in the three (3) counties of the State of Delaware will be dropped from school. This will result in their Apprenticeship Agreement being terminated by their Sponsor and/or State Registration Agency.

(2) An absence will result when an Apprentice either arrives late or leaves early three (3) times.

(3) Courses of fewer sessions will be prorated. Instructors will inform Apprentices of allowable absences.

(4) If you are a Registered Apprentice who is enrolled through a trade union, trade society or any other organization that stipulates attendance rules more stringent than the above, then you are required to follow those regulations.

(5) Related Instruction that is delivered through a state approved "in-house program", correspondence courses or other systems of equivalent value will require the Apprentice to produce a document detailing satisfactory participation and completion.

SEC.106.8 COMPLAINTS

(A) Any controversy or difference arising under an Agreement which cannot be resolved locally, or which is not covered by a collective bargaining agreement, may be submitted by an Apprentice or his/her authorized representative

to the State Registration Agency for review. Matters covered by a collective bargaining agreement, however, shall be submitted and processed in accordance with the procedures therein provided.

(B) The complaint shall be in writing, signed by the complainant, and submitted by the Apprentice or his/her authorized representative within sixty (60) days of receipt of local decision. The complaint shall set forth the specific problem, including all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.

SEC.106.9 HEARINGS

(A) Within ten (10) working days of a request for a hearing, the Administrator or his/her ~~designee assignee~~, shall give reasonable notice of such hearing by registered mail, return receipt requested, to the Registrant. Such notice shall include:

- (1) the time and place of the hearing;
- (2) a statement of the provisions of the chapter pursuant to which the hearing is to be held;
- (3) a statement of the cause for which the Program was deregistered and the purpose of the hearing.

(B) The chairman of the Council on Apprenticeship and Training or his/her designee shall conduct the hearing which shall be informal in nature. Each party shall have the right to counsel, and the opportunity to present his/her case fully, including cross-examination of witnesses as appropriate.

(C) The Administrator shall make every effort to resolve the complaint and shall render an opinion within ninety (90) days after receipt of the complaint, based upon the record ~~before him~~ and an investigation, if necessary. The Administrator shall notify, in writing, all parties of his decision. If any party is dissatisfied with or feels that they have been treated unfairly by said decision, they may request a hearing by the Apprenticeship and Training Council. Those provisions of the hearing process that are applicable shall be followed and said Council shall make a determination on the basis of the records and the proposed findings of the Administrator. This determination shall be subject to review and approval by the Secretary, whose decision shall be final.

SEC. 106.10 REINSTATEMENT OF PROGRAM REGISTRATION

A Program deregistered pursuant to this chapter may be reinstated upon presentation of adequate evidence that the Program is operating in accordance with this chapter. Such evidence shall be presented to the Apprenticeship and Training Council, which shall make a recommendation based on said evidence, past records and any other data deemed appro-

priate. After such presentation, the Council shall make a recommendation to the Secretary as to whether the Program should be reinstated. The Secretary's decision shall be final and binding.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

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

**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

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: Title 16, Section 6603 of
the Delaware Code
(16 Del.C. 6603)

**PLEASE NOTE THAT THE FOLLOWING
REGULATORY CHANGES WERE
INITIATED PRIOR TO THE EFFECTIVE
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THE FOLLOWING IS PRESENTED FOR
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DELAWARE STATE FIRE PREVENTION COMMISSION PROPOSED AMBULANCE SERVICE REGULATIONS

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- E. SAED Requirements
- F. Infection Control

XI. COMPLIANCE

- A. Grievances
- B. Penalties

- C. Cease and Desist Orders
- D. Revocation or Suspension
- E. Review of Order
- F. Appeals

APPENDIX "A". EQUIPMENT STANDARDS

APPENDIX "B". BLS AMBULANCE SERVICE PERMIT APPLICATION FORM

I. PURPOSE

The purpose of this regulation is to ensure a consistent and coordinated high quality level of ambulance service throughout the state, focusing on timeliness, quality of care and coordination of efforts.

II. APPLICATION

This regulation shall apply to any person, firm, corporation or association either as owner, agent or otherwise providing both pre-hospital and interhospital ambulance service meeting the definitions of both "BLS Ambulance Service" and "Non-Emergency Ambulance Service" within the State of Delaware. The following are exempted from this regulation:

- a. Entities engaged in providing ALS ambulance service.
- b. Privately owned vehicles not ordinarily used in the business of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless.
- c. A vehicle rendering service as an ambulance in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required.
- d. Ambulances based outside the State rendering service in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required.
- e. Ambulances owned and operated by an agency of the United States Government.
- f. Ambulances based outside the State engaged strictly in interstate transportation.
- g. A vehicle which is designed or modified and equipped for rescue operations to release persons from entrapment and which is not routinely used for emergency medical care or transport of patients.

III. DEFINITIONS

ADVANCED LIFE SUPPORT (ALS) - The advanced level of pre-hospital and inter hospital emergency care that includes basic life support functions including cardiopulmonary resuscitation, plus cardiac monitoring, cardiac defibril-

lation, telemetered electrocardiography, administration of anti arrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive medical devices, trauma care and other authorized techniques and procedures.

ADVERTISING - Information communicated to the public, or to an individual concerned by any oral, written, or graphic means including, but not limited to, handbills, newspapers, television, billboards, radio, and telephone directories.

AMBULANCE - Any publicly or privately owned vehicle, as certified by the State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and intended to be used for and is maintained or operated for the transportation upon the streets and highways of this state for persons who are sick, injured, wounded or otherwise incapacitated or helpless.

AMBULANCE ATTENDANT - A person trained in emergency medical care procedures and currently certified by the Delaware State Fire Prevention Commission in accordance with standards prescribed by the Commission. Such course shall be classified as basic life support and shall be the minimum acceptable level of training for certified emergency medical personnel.

AMBULANCE SERVICE DISTRICT - A geographical area with boundaries which are typically (but not always) aligned to fire service districts within the state as identified and certified by the State Fire Prevention Commission.

BASIC LIFE SUPPORT (BLS) - The level of capability which provides noninvasive emergency patient care designed to optimize the patient's chances of surviving an emergency situation.

BLS AMBULANCE SERVICE - Ambulance service which provides BLS level intervention both through the level of personnel and training provided.

BLS AMBULANCE SERVICE CONTRACT - A written contract between either a Primary or Secondary Ambulance Service Provider and an individual, organization, company, site location or complex or other entity for BLS ambulance service.

BOARD - Means the State Board of Medical Practice.

COMMISSION - The State Fire Prevention Commission or a duly authorized representative thereof.

DELAWARE STATE FIRE SCHOOL - An agency of the State Fire Prevention Commission which is designated as its duly authorized representative to administer the provisions of the Ambulance Service Regulations.

EMERGENCY - A combination of circumstances resulting in a need for immediate pre-hospital emergency medical care.

EMERGENCY MEDICAL DISPATCH SYSTEM - Means a Board approved protocol system used by an approved dispatch center to dispatch aid to medical emergencies which must include:

1. Systematized caller interrogation questions
2. Systematized pre-arrival instruction; and
3. Protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

EMERGENCY MEDICAL TECHNICIAN (EMT) - A person trained, and currently certified by the State Fire Prevention Commission in emergency medical care procedures through a course which meets the objectives of the National Standard Curriculum.

EMERGENCY MISSION - The BLS and ALS response to the needs of an individual for immediate medical care in order to prevent loss of life or aggravation or physiological or psychological illness or injury.

HOSPITAL - An institution having an organized medical staff which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services or rehabilitation services for the care or rehabilitation of injured, disabled, pregnant, diseased, sick or mentally ill persons. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties, but not facilities caring exclusively for the mentally ill.

MEDICAL COMMAND FACILITY - The distinct unit within a hospital which meets the operational, staffing and equipment requirements established by the Secretary, Delaware Health and Social Services for providing medical control to the providers of advanced life support services. Any hospital that operates an emergency medical facility and desires to be designated as a medical command facility shall maintain and staff such facility on its premises and at its own expense with exception of base station communication devices which shall be an authorized shared expense pursuant to the provisions of Title 16, Chapter 98.

MEDICAL CONTROL - shall mean directions and advice normally provided from a centrally designated medical facility operating under medical supervision, supplying professional support through radio or telephonic communication for on-site and in-transit basic and advanced life support services given by field and satellite facility personnel.

MEDICAL CONTROL PHYSICIAN - Any physician board-certified or board-prepared in emergency medicine, or a physician certified on advanced trauma life support (ATLS) and advanced cardiac life support (ACLS) who is credentialed by the hospital within which a medical command facility is located, and who is authorized by the medical command facility to give medical commands via radio or other telecommunication devices to a paramedic. When a medical control physician establishes contact with a paramedic and provides medical control instructions that exceed or otherwise modify the standing orders of the statewide standard treatment protocol, the paramedic shall, solely for the purpose of compliance with the Medical Practices Act, be considered to be operating under the license of said medical control physician.

MOBILIZATION TIME - The total time from station alert to the time an ambulance is "in service."

NON-EMERGENCY AMBULANCE SERVICE - Ambulance service which provides routine transport of persons who are sick, convalescent, incapacitated and nonambulatory but do not ordinarily require emergency medical treatment while in transit.

PATIENT - An individual who is sick, injured, wounded or otherwise incapacitated or helpless and who needs immediate medical attention.

PRE-HOSPITAL CARE - Any emergency medical service, including advanced life support, rendered by an emergency medical unit before and during transportation to a hospital or other facility.

PRIMARY AMBULANCE SERVICE - BLS Ambulance Service provided by the Primary Ambulance Service Provider certified by the State Fire Prevention Commission within a specific ambulance service district.

PRIMARY AMBULANCE SERVICE PROVIDER - An organization or company which has been designated as having primary responsibility for providing BLS ambulance service within a specific ambulance service district.

PROVIDER - A person who, as an individual or member of a corporation or organization, whether profit-making or non-profit, on a regular basis gives or offers for sale any supplies, equipment, professional or nonprofessional services, or is

capable of giving or offering for sale supplies, equipment or services vital or incidental to the function of an emergency medical service system.

RESPONSE TIME - The total time from "in-service" to arrival on the scene.

RESPONSIBLE CHARGE - The individual who is identified as having both the responsibility and authority to ensure full and complete compliance with all requirements of this regulation.

SECONDARY AMBULANCE SERVICE - Ambulance Service provided under contract to specific locations within a primary ambulance service district by a BLS Ambulance Service Provider other than the primary provider.

SECONDARY AMBULANCE SERVICE PROVIDER - An organization or company which provides supplemental BLS ambulance service anywhere in the state and always under specific contractual agreements.

BLS AMBULANCE SERVICE

IV. BLS AMBULANCE SERVICE PERMITS

A. Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing BLS Ambulance Service upon the streets or highways of this state shall hold a valid permit as either a Primary or Secondary Ambulance Service Provider issued by the State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Commission (Appendix B).

B. The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

C. Prior to issuing an original or renewal permit, the Commission shall determine that all requirements of this regulation are fully met. Additionally, the Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

D. Only companies holding a current, valid BLS Ambulance Service Provider Permit shall be authorized to respond and provide BLS Ambulance Service within the state.

E. A Primary or Secondary Ambulance Service Provider may not discontinue BLS ambulance service until a replacement provider has been selected and can assume service with no reduction in service.

V. BLS AMBULANCE SERVICE DISTRICTS

A. The Commission shall have the authority to establish Ambulance Service Districts.

B. The role of Primary Ambulance Service Provider shall be assigned to those fire departments providing BLS Ambulance Service at the time this regulation is officially adopted. The ambulance service district for these providers shall correspond to their established fire districts as certified by the Commission.

C. In those areas in which fire departments are not providing BLS Ambulance Service at the time this regulation is officially adopted, the organization who is currently providing BLS Ambulance Service shall be designated as the Primary Ambulance Service Provider. The ambulance service district for these providers shall correspond to their current boundaries.

D. After adoption of this regulation and the establishment of ambulance service districts, fire companies which ARE NOT providing ambulance service:

4. Have the authority to establish ambulance service at any time PROVIDED ambulance service in their district is being provided by another fire company.

5. DO NOT have the authority to establish ambulance service if ambulance service in their district is being provided by a private organization such as: VFW, American Legion or Mid-Sussex. In these cases, the fire company will be required to follow Section VI(C) of this regulation.

VI. PRIMARY AND SECONDARY BLS AMBULANCE SERVICE PROVIDERS

A. BLS Ambulance Service may be provided by Primary Ambulance Service Providers within their ambulance service district or in the course of providing mutual aid within other ambulance service districts provided:

1. They have a current permit
2. They are designated by the Commission as a Primary Ambulance Service Provider

B. The Commission shall be authorized to select a new Primary Ambulance Service Provider at such time that:

1. The current Primary Ambulance Service Provider chooses to discontinue service
2. Failure to meet one or more elements of these regulations creates a threat to public safety

C. Any organization desiring to assume the role of Primary Ambulance Service Provider will be required to apply to the Commission showing adequate cause in the interest of public safety to justify the change.

D. BLS Ambulance Service may be provided by Secondary Ambulance Service Providers only to those with whom they have a contract for such service provided:

1. They have a current permit
2. They have a written contract to provide BLS Ambulance Service to that specific location or site
3. They provide the names, locations and conditions of all Secondary Ambulance Service contracts to the Commission within 20 days of contract finalization

VII. BLS AMBULANCE SERVICE PROVIDER PERMIT REQUIREMENTS

ADMINISTRATIVE REQUIREMENTS

A. Procedures for securing a BLS ambulance service primary or secondary ambulance service permit include:

1. The owner or registered agent must apply to the Commission upon forms provided and according to procedures established by the Commission.
2. The Primary or Secondary Ambulance Service Provider shall either:
 - a. Be based in Delaware; or
 - b. Maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".
3. All requirements set forth in this regulation must be met before issuance of permit.
4. The Primary or Secondary Ambulance Provider must provide proof of liability insurance the amount of \$1 Million blanket liability coverage.
5. The Primary or Secondary Ambulance Provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence.

B. Permits shall be valid for a period of one year from the permits effective date.

C. The Commission may issue temporary permits when determined to be in the interest of public safety.

D. On an on-going basis throughout the term of the permit, the owner or individual in "responsible charge" shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

E. No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

F. All ambulance service providers shall be required to participate in the Commission approved ambulance data collection system which includes:

6. A BLS run report will be completed on all dispatched responses.
7. A completed copy of the report will be left at the hospital receiving the patient, at the time of the call.
8. A completed copy of the report will be forwarded to the state EMS office.
9. When available, the report will be entered electronically and forwarded to the state EMS office.

OPERATIONAL REQUIREMENTS

A. Vehicle Standards

1. All ambulances shall be registered and licensed in the State of Delaware by the Delaware Motor Vehicle Department. EXCEPTIONS:

- a. Those vehicles to which the international registration plan applies
- b. Those vehicles properly registered in some other state.

2. Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle's specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

3. Vehicle patient compartment shall conform with the criteria within the GSA Federal Specifications for ambulances (KKK-1822).

B. Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Commission within Appendix "A" and updated annually considering recommendations from the Fire School Director with concurrence from the Commissions Medical Advisor.

C. Staffing Requirements

1. Minimum acceptable crew staffing when transporting a patient shall consist of a driver and one ambulance attendant.

2. A minimum of one ambulance attendant shall always be in the patient compartment when a patient is present.

3. Within 6 months following adoption of this regulation, BLS ambulance drivers are required to have completed the "Emergency Vehicle Operators" course conducted by the Delaware State Fire School or an equivalent program approved by the Commission.

D. Quality Assurance

1. Each Primary and Secondary Ambulance Service Provider shall be responsible for monitoring quality assurance in the form of patient care and both mobilization and response times. The method in which this is accomplished is the authority and responsibility of the Primary or Secondary Ambulance Service Provider.

NOTE: For Primary Ambulance Service Providers- this monitoring shall only apply to response within their Primary Ambulance Service District - NOT for mutual aid calls to other ambulance service districts.

2. As identified above, included within the quality assurance program is the responsibility for assuring the public a consistently reasonable response to BLS ambulance calls. In the interest of public safety, primary and secondary ambulance service providers are responsible for meeting the following mobilization and response times:

Mobilization Times

80% of all emergency missions within 8 minutes -
1st Year regulation is in effect

85% of all emergency missions within 8 minutes -
2nd Year regulation is in effect

90% of all emergency missions within 8 minutes -
3rd Year regulation is in effect

Response Times - 90% of all BLS calls shall not exceed 18 minutes

3. For the purposes of monitoring quality control, both mobilization and response times will be monitored based on calendar year quarterly periods.

4. Upon periodic review of both mobilization and response times, the Commission may consider extraordinary weather and traffic conditions as impacting these times.

NOTE: As stated above, this regulation is striving to ensure, within a high percentage of ambulance calls, that two goals are met:

1. That ambulances will be in-service within 8 minutes from the time of station alert.

2. That, once an ambulance is in-service, time to arrive on the scene is not more than 18 minutes.

NOTE: The intent of this criteria is to cause the review and monitoring of both mobilization and response time. By reviewing these times based on quarterly periods, both mobilization and response times are being monitored relative to the above criteria in order to determine if a problem is developing. Mobilization or response time exceeding the above criteria for any quarter requires review. The same problem(s) occurring for a second period or within a total one year period of time require some form of correction action. The form of corrective action taken is the prerogative of the BLS Ambulance Service Provider and may include but not be limited to the following: Providing an incentive to personnel respond-

ing to ambulance calls during problem time periods, providing paid personnel during difficult time periods, contracting with secondary ambulance service providers on an individual or regional basis. Once determined to be necessary, corrective action is required to be implemented within 3 months. Additional corrective action shall be required if monitoring indicates a problem continues to exist.

E. Communications Requirements

Dispatch Centers

1. Dispatch centers for both Primary and Secondary Ambulance Service Providers shall meet the criteria of NFPA 1221 as amended by the Commission.

2. Secondary ambulance service providers dispatch centers shall be responsible for following call taking protocols as established by the Commission. Calls determined to be ALS in nature shall be transferred to the appropriate public safety answering point (PSAP) within 30 seconds of taking the call utilizing a dedicated phone line to that PSAP.

3. Calls determined to be BLS in nature shall not be required to be forwarded to the PSAP.

4. Dispatch centers shall follow an Emergency Medical Dispatch System approved by the Commission.

Ambulances

1. All Ambulances shall be equipped with reliable communications systems which permit direct communications with their dispatch center and all medical command facilities with which the ambulance will or may operate.

F. SAED Requirements

Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the Department of Health and Human Services, Office of Emergency Medical Services

G. Infection Control

All ambulance service providers will comply with the infection control requirements in chapter 12A, Title 16 of the Delaware code.

H. Medical Control

Once medical control is established, ambulance service providers shall be required to follow all orders issued.

VIII. COMPLIANCE

A. The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or sec-

ondary Ambulance Service Provider and filed with the Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

B. Grievances - All grievances relative to ambulance service shall follow procedures established within the State Fire Prevention Regulations "Fire Service Standards" sections 1.1 through 6.1

C. Penalties - Following review of a valid complaint or upon failure to comply with any provision of this regulation, the Commission, following procedures established within the State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

D. Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

E. For those violations representing an imminent danger to the public, the Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Commission.

F. The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Commission after determination that the provider is guilty of such violation.

G. In addition to (F), it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

- (a) Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit
- (b) Is guilty of gross negligence, incompetence or misconduct in providing services
- (c) Is guilty of a violation of the codes and regulations adopted by the State Fire Prevention Commission
- (d) Has been found guilty of an unfair or deceptive trade practice
- (e) Has violated any contractual agreement related to providing ambulance service

H. Upon issuance of an order, the ambulance service provider accused may request a review of the order by the Commission. All hearings shall be conducted in conformity with procedures established by the Commission.

I. Any person aggrieved by a violation or order may file an appeal to the State Fire Prevention Commission pursuant to Delaware Code, Title 16, Chapter 66, Section 6608.

NON-EMERGENCY AMBULANCE SERVICE

IX. NON-EMERGENCY AMBULANCE SERVICE PERMITS

A. Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing non-emergency ambulance service upon the streets or highways of this state shall hold a valid permit issued by the State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Commission (Appendix B).

B. The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

C. Prior to issuing an original or renewal permit, the Commission shall determine that all requirements of this regulation are fully met. Additionally, the Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

D. Only companies holding a current, valid non-emergency ambulance service provider permit shall be authorized to respond and provide non-emergency ambulance service within the state.

X. NON-EMERGENCY AMBULANCE SERVICE PROVIDER PERMIT REQUIREMENTS

ADMINISTRATIVE REQUIREMENTS

A. Procedures for securing a non-emergency ambulance service permit include:

1. The owner or registered agent must apply to the Commission upon forms provided and according to procedures established by the Commission.
2. The non-emergency ambulance service provider shall either:

- a. Be based in Delaware or

b. Maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".

3. All requirements set forth in this regulation must be met before issuance of permit.

4. The non-emergency ambulance service provider must provide proof of liability insurance in the amount of \$1 Million blanket liability coverage.

5. The non-emergency ambulance service provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence.

B. Permits shall be valid for a period of one year from the permits effective date.

C. The Commission may issue temporary permits when determined to be in the interest of public safety.

D. On an on-going basis throughout the term of the permit, the owner or individual in "responsible charge" shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

E. No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

OPERATIONAL REQUIREMENTS

A. Vehicle Standards

1. All ambulances shall be registered and licensed in the State of Delaware by the Delaware

Motor Vehicle Department. EXCEPTIONS:

a. Those vehicles to which the international registration plan applies

b. Those vehicles properly registered in some other state.

2. Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle's specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

3. Vehicle patient compartment shall conform with the criteria within the GSA Federal Specifications for ambulances (KKK-A-1822C).

B. Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Commission within Appendix "A" and updated annually following recommendations from the Fire School Director with concurrence from the Commissions Medical Advisor.

C. Staffing Requirements

1. Minimum acceptable crew staffing when transporting a patient shall consist of a driver and one ambulance attendant.

2. A minimum of one ambulance attendant shall always be in the patient compartment when a patient is present.

D. Communications Requirements

Ambulances

1. All Ambulances shall be equipped with a reliable communications systems which permit direct communications with all medical command facilities with which the ambulance will or may operate.

E. SAED Requirements

Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the Department of Health and Human Services, Office of Emergency Medical Services

F. Infection Control

All ambulance service providers will comply with the infection control requirements in chapter 12A, Title 16 of the Delaware code.

XI. COMPLIANCE

A. The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or secondary Ambulance Service Provider and filed with the Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

B. Grievances - All grievances relative to ambulance service shall follow procedures established within the State Fire Prevention Regulations "Fire Service Standards" sections 1.1 through 6.1

C. Penalties - Following review of a valid complaint or upon failure to comply with any provision of this regulation, the Commission, following procedures established within the State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

D. Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

E. For those violations representing an imminent danger to the public, the Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Commission.

F. The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Commission after determination that the provider is guilty of such violation.

G. In addition to (F), it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

- (a) Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit
- (b) Is guilty of gross negligence, incompetence or misconduct in providing services
- (c) Is guilty of a violation of the codes and regulations adopted by the State Fire Prevention Commission
- (d) Has been found guilty of an unfair or deceptive trade practice
- (e) Has violated any contractual agreement related to providing ambulance service

H. Upon issuance of an order, the ambulance service provider accused may request a review the order by the Commission. All hearings shall be conducted in conformity with procedures established by the Commission.

I. Any person aggrieved by a violation or order may file an appeal to the State Fire Prevention Commission pursuant to Delaware Code, Title 16, Chapter 66, Section 6608.

APPENDIX "A"

REQUIRED AMBULANCE EQUIPMENT AND SUPPLIES

- 1 - SET BATTERY JUMPER CABLES OR DUAL BATTERY SYSTEM
- 1 - FIRE EXTINGUISHER (MINIMUM 5 POUND DRY CHEMICAL)
- 1 - PORTABLE RESUSCITATION, OXYGEN INHALATION APPARATUS
- 1 - FIXED OXYGEN INHALATION APPARATUS
- 1 - PORTABLE SUCTION APPARATUS
- 1 - PERMANENTLY MOUNTED SUCTION APPARATUS
- 1 - ADULT BAG MASK VENTILATOR
- 1 - CHILD BAG MASK VENTILATOR
- 1 - INFANT BAG MASK VENTILATOR
- 2 - Size "D" OR "E" BOTTLES OF OXYGEN
- SPLINTS FOR TWO ARMS & TWO LEGS (MAY BE INFLATABLE SPLINTS, TIMMONS SPLINTS, OR WOODEN PADDED BOARDS)
- 1 - HARE TRACTION SPLINT OR EQUIVALENT
- 1 - KED (OR AN EQUIVALENT EXTRICATION DEVICE)
- 1 - SPINE BOARD (OR EQUIVALENT CPR DEVICE)
- 2 - BACKBOARDS
- 1 - ORTHOPEDIC STRETCHER
- 8 - EXTRICATION COLLARS (2 LARGE ADULT, 2 MEDIUM, 2 SMALL & 2 CHILD)
- 1 - BANDAGE SHEARS
- 1 - HAND LANTERN
- 1 - SET OROPHARYNGEAL AIRWAYS (SEVEN SIZES)
- 1 - AMBULANCE COT
- 1 - FOLDING STRETCHER OR SQUARE BENCH
- 1 - STAIR CHAIR OR COMBINATION STRETCHER-CHAIR
- 1 - WRECKING BAR - 24" MINIMUM
- 2 - SPUTUM PANS OR BUCKETS
- 3 - BP CUFFS (ONE LARGE ADULT, ONE ADULT & ONE CHILD)
- 1 - STETHOSCOPE
- 1 - HEAD IMMOBILIZER FOR EACH LONG BACKBOARD
- 1 - AED (EFFECTIVE ONE YEAR FROM ADOPTION OF THIS REGULATION)

SUPPLIES

- 1 - SET DOT TRIANGLES
- 5 - ADHESIVE TAPE (VARIOUS SIZES)
- 2 - TOWELS
- 2 - BLANKETS
- 2 - PILLOWS
- 24- STERILE GAUZE PADS (4"X 4")
- 6 - ROLLER BANDAGE, SELF-ADHERING TYPE (3"X 5 YD)
- 2 - ROLLER BANDAGE, SELF ADHERING TYPE (6"X 5 YD)
- 1 - UNIVERSAL DRESSING (10"X 36")
- 3 - TRIANGULAR BANDAGES
- 2 - SETS OF COT LINENS
- 1 - OB. KIT (STERILE) including:
 - 2 - DRAPE SHEETS
 - 2 - PAIR RUBBER GLOVES
 - 2 - RECEIVING BLANKETS
 - 1 - BULB ASPIRATOR
 - 2 - HAND TOOLS
 - 2 - CORD CLAMPS OR UMBILICAL TAPE
- 1 - GALLON OF WATER (DISTILLED)
- 12- TRAUMA DRESSINGS
- 4 - ICE PACKS
- 12- SURGICAL DISPOSABLE GLOVES
- 4 - HOT PACKS
- 1 - BURN KIT
- 1 - SHARPS CONTAINER
- 6 - OXYGEN MASKS - NON REBREATHERS AND 6 NASAL CANULES
- 12- EYE/MOUTH/NOSE PROTECTION (DISPOSABLE)
- 1 - CHILD CAR SEAT
- EYE PROTECTION
- DISPOSABLE GOWNS

Symbol Key

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

Final Regulations

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

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

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

Statutory Authority: Title 24, Section
706(a)(1) of the Delaware Code
(24 Del.C. 706(a)(1))

**BEFORE THE BOARD OF CHIROPRACTIC
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE ADOPTION |
OF REGULATIONS TO GOVERN | ORDER
CERTAIN ASPECTS OF THE PRACTICE |
OF CHIROPRACTIC |

ORDER ADOPTING REGULATIONS

Pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Subsection 706(a)(1), the Delaware Board of Chiropractic conducted a public hearing concerning proposed regulations to govern certain aspects of the practice of chiropractic in the State of Delaware.

The public hearing was held upon due notice on April 17, 1997 before the undersigned individuals constituting a quorum of the Board. There were no written comments received by the Board concerning this rulemaking proceeding, and the oral testimony of one witness and a presentation on continuing education were received and considered by the Board. Deputy Attorney

**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**

General Marc Niedzielski advised the Board

Upon consideration of the testimony of Dr. Eleanor Stump, a Delaware licensed Chiropractor the Board determined to modify and clarify the proposed Rule No. 712(a)(1) by the addition of the following language:

Certification in any nationally recognized Chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such Chiropractic specialty or technique by the nationally recognized certification body.

Dr. Stump supported the 100 hours as a certification requirement but suggested the addition of an examination requirement. The Board felt that the concern for examination should be reasonably accommodated by meeting the requirements of a nationally certifying entity.

The Board recognized that various techniques or types of chiropractic with nationally recognized certification bodies may reasonably require the Chiropractor to meet additional or other requirements of the national group or society and recognition of that fact should be incorporated into the proposed rule by the additional language noted above.

The Board also determined that further clarification was required in Rule 712.2(d) by the addition of the term "willful" to insure that any violations caused by an accident or inadvertence would not be included.

The Board also considered for the presentation of Diane Vincent of the Exam Master Corporation concerning possible methods for meeting the requirements of Rule No. 706.2 concerning the completion of a course to be approved by the Board involving AIDS/Communicable diseases.

The Board, at the hearing on April 17, 1997, also determined that it would hold the record of the proceedings open for an additional (15) days to facilitate the filing of further written comments. No such comments have been received.

NOW, THEREFORE, the Board finds and concludes on the basis of the evidence and comments received and the deliberation of the Board, that the hereto attached Rules are reasonable, appropriate, and should be and hereby are adopted to be effective thirty (30) days from the date of this Order.

BEFORE THE BOARD OF CHIROPRACTIC OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION |
OF REGULATIONS TO GOVERN | ORDER
CERTAIN ASPECTS OF THE PRACTICE |
OF CHIROPRACTIC |

IT IS SO ORDERED this 15th day of May, 1997.

Hal Bowen, D.C., President
Trent Camp, D.C., Member
Bryan R. Errico, D.C., Member
Kristina a. Hollstein-Rash, D.C., Member
W. Monroe Hearne, Public Member
Rebecca T. Gates, Public Member

DELAWARE BOARD OF CHIROPRACTIC RULES AND REGULATIONS ADOPTED JUNE 14, 1997

RULE 701. CHIROPRACTIC DEFINED; LIMITATIONS OF CHIROPRACTIC LICENSE

701.1 An adjunctive procedure not otherwise prohibited by Chapter 7 which aids and or assists the chiropractor in providing chiropractic care and includes by way of example and is not limited to:

Acupuncture Procedures
Physiological Therapeutics
Diet and Nutritional Programs
Rehabilitation/Exercise Programs

RULE 703. OFFICERS; MEETINGS; QUORUM

703.1 The Board will hold elections for the offices of President and Secretary at the regularly scheduled meeting in October of each year or as soon thereafter as practical. Vacancies occurring in an office shall be filled for the remainder of the term in the month following the vacancy or as soon thereafter as is practical.

RULE 706. POWERS AND DUTIES: IMMUNITY. Continuing Education for New Licensees:

706.1 During the first reporting period after initial licensure, each licensee shall complete as part of his or her continuing education requirements a two (2) hour course in Delaware Chiropractic law and Regulations or general Chiropractic jurisprudence approved by the Board.

706.2 During the first reporting period after

initial licensure, each licensee shall complete as part of his or her continuing education requirements a two (2) hour course in AIDS/Communicable diseases approved by the Board.

706.3 - At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be pro-rated as follows:

License Granted During First Year:	Credit Hours Required:
July 1 - December 31	24 hours
January 1 - June 30	18 hours
License Granted During Second Year:	Credit Hours Required:
July 1 - December 31	12 hours
January 1 - June 30	6 hours

Continuing Education for Licensees other than new licensees:

706.4 Unless otherwise excused by the Board for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence or inadvertence, all Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twenty four (24) hours of Board approved continuing education within the immediately preceding two (2) year period. A licensee who has failed to meet the continuing education requirement for renewal of licensure but who has paid the renewal fee may be granted a period of thirty (30) days to complete the continuing education.

RULE 710. ISSUANCE OF LICENSE; RENEWAL; INACTIVE STATUS; REINSTATEMENTS.

710.1 The Biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one (1) year.

Inactive Status and Termination of Practice.

710.2 Any licensee who seeks to be placed on

inactive status or who terminates his or her practice and is not transferring his or her records to another chiropractor shall notify the Board in writing and notify all patients treated within the last three years by publication in a newspaper of general circulation throughout the State of Delaware and offer to make the patients records available to the patient or his duly authorized representative. Such notice by publication shall be made at least ninety (90) days prior to termination of the practice except in an emergency situation where as much notice as is reasonably possible shall be given. All patients who have not requested their records form such publication of notice shall, within thirty days of the closing of the business be notified by first class mail to permit patients to procure their records. Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for three (3) years from the date of the last treatment.

**RULE 712. GROUNDS FOR DISCIPLINE
Unprofessional Conduct in Advertising**

712.1 Any Licensee who advertises or holds out to the public that he or she is a specialist in any specific chiropractic or adjunctive procedure without having a valid current certification as having special training and/or certification in such procedure or procedures from a recognized certification body is guilty of unprofessional conduct.

712.1(a) Certification in any nationally recognized specialty for a licensee requires a minimum of one hundred (100) or more hours of certified training beyond and in addition to any courses or training received toward a degree of Doctor of Chiropractic. Certification in any nationally recognized chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such chiropractic specialty or technique by the nationally recognized certification body.

712.2 The following advertising and promotional practices are deemed to be misleading, false, deceptive, dishonorable and/or unethical and shall constitute unprofessional conduct by a licensee:

(a) The use of testimonials without written permission of that doctor's patient.

(b) Offering free or discounted examinations unless all charges associated with such examinations, including all x-ray fees and charges, are conspicuously set out in writing at the time of and in conjunction with such offer and unless such examinations are offered regardless of the availability of insurance coverage of any recommended subsequent treatment.

(c) The use of unjustified or exaggerated claims, promises or statements which

guarantee or strongly imply cure or successful treatment or are otherwise false, fraudulent, deceptive, or misleading.

(d) Willful failure to identify licensee as a Doctor of Chiropractic.

Unprofessional conduct with patient, employees, or co-workers.

712.3 Sexual misconduct in violation of a statute of the State of Delaware or any State or Commonwealth where such conduct takes place, involving a licensee and a patient, employee or co-worker shall be deemed to be unprofessional conduct.

RULE 713. LICENSE TO PRACTICE

713.1 A Chiropractor licensed elsewhere but not licensed in the State of Delaware may practice chiropractic within the State of Delaware only in consultation with a duly Delaware licensed Chiropractor for not more than ten (10) consultations in any twelve (12) month period, which consultations shall be limited to examination, recommendation or testimony in litigation.

LINK TO AIR & WASTE MANAGEMENT PAGE

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DIVISION OF AIR & WASTE MANAGEMENT

Air Quality Management Section

Statutory Authority: Title 7, Chapter 60 of the
Delaware Code
(7 Del.C. Ch. 60)

**PLEASE NOTE THAT THE FOLLOWING
REGULATORY CHANGES WERE
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**PLEASE NOTE THAT THE FOLLOWING WAS
THE EXISTING REGULATION**

The Secretary of the Department of Natural Resources and Environmental Control (DNREC) approved a revision to Regulation No. 2 on May 1, 1997. The revision was proposed at a public hearing held on January 23, 1997, and the revised regulation took effect on June 1, 1997.

Regulation No. 2 establishes the procedures that satisfy the requirement of 7 Del. C. Chapter 60 to report and obtain approval of equipment which has the potential to discharge air contaminants into the atmosphere. It also satisfies, for construction or modification activities not subject to Regulation No. 25 (Preconstruction Review), the procedures that satisfy the requirement of 40 CFR Part 51 Subpart I and Section 110(a)(2)(c) of the federal Clean Air Act (i.e., the requirement for the State to establish a minor new source review program).

Regulation No. 2 was revised for two reasons: to implement the initiatives of the State's Permitting Policy Task Force (a group consisting of Department and Public representatives established by the Governor in late 1993 to analyze and, where possible, recommend initiatives to streamline DNREC's environmental permitting processes); and to create a mechanism to enable the Department to issue "federally enforceable" operating permits pursuant to Regulation No. 2. Permitting Policy Task Force Initiatives. The Permitting Policy Task Force approved five initiatives that related to Regulation No. 2. All five of the initiatives were implemented through the subject revision. The five initiatives are:

- a. Equipment emitting less than 0.2 pound per day will not be required to apply for either an exemption or a permit to construct and operate.
- b. Equipment emitting equal to or greater than 0.2 pound per day but less than 10 pounds per day will simply be required to register such equipment with the Department.
- c. Source Category Permits will be developed to streamline the permitting of very similar sources.
- d. Where possible, the "Insignificant Activities List" in Regulation No. 30 (Title V) has been matched with the "Permit Exemption List" in Regulation No. 2.
- e. Optional procedures have been developed that provide for construction permit terms and conditions to transfer to a Regulation No. 30 (Title V) permit via the administrative permit amendment process.

Federal Enforceability Mechanism. The Department also took advantage of this regulation revision opportunity to establish procedures that make all Regulation No. 2 permit terms and conditions legally and practically enforceable, and to establish optional procedures that make Regulation No. 2 permit terms and conditions federally enforceable. This optional mechanism may be used by truly small facility's and/or equipment so that they may avoid otherwise applicable complex permitting and/or control requirements.

Ronald A. Amirikian and Leslie C. Andersen [(302) 323-4542] are available to answer any questions you may have about revised Regulation No. 2. The Department will hold public training seminars this summer to help those subject to the regulation better understand the provisions and take full advantage of the changes made.

Secretary's Order No. 97-A-0014
Re: Regulation No. 2 ("Permits") of the
Delaware Regulations Governing the Control of Air
Pollution

Date of Issuance: May 1, 1997

I. Background

On January 23, 1997, a public hearing was held to receive comments on amending the Delaware Regulations Governing the Control of Air Pollution Regulation No. 2, entitled Permits.

II. Findings

1. The Department provided proper notice of the hearing as required by law.

2. The changes were proposed in part to effectuate permit reform initiatives in response to the Governor's Permit Reform Program of 1993.

3. Other changes involved were proposed to implement a mechanism to establish federally enforceable permits to provide industry with an additional option.

4. All of the proposed changes to the Regulation were subject to adequate public notice and comment.

5. The proposed regulatory changes are estimated to reduce workloads and burdens of the Department and the regulated industry.

6. Under these circumstances it may be appropriate to hold workshops to inform newly affected sources of the impact of the regulatory changes after the changes have been promulgated as required by law.

7. Seven Del.C. Chapter 60 which authorizes the Secretary to adopt rules, regulations or plans to effectuate the policies and purposes of Chapter 60, clearly delegates sufficient authority for the Secretary to adopt the proposed registration process.

III. Order

In view of the above findings, it is hereby ordered that the proposed Regulation No. 2 of the Delaware Regulations Governing the Control of Air Pollution be adopted and promulgated according to the Administrative Procedures Act and any other applicable law. In addition, it is ordered that the Department hold public seminars to educate the public with respect to the regulatory changes.

V. Reasons

The proposed regulatory changes are intended to effectuate permit reform initiatives in response to the Governor's Permit Reform Program of 1993 and to implement a mechanism to establish federally enforceable permits to provide industry with an additional option. In addition, the proposed regulatory changes are estimated to reduce the work load and burden of both the Department and the regulated industry. Consequently, the proposed regulatory changes will further the policies and purposes of 7 Del.C. Chapter 60.

Christophe A. G. Tulou,
Secretary

REGULATION NO. 2 PERMITS

02/01/81

Section 1 - General Provisions

1.1 The purpose of this Regulation is to describe the requirements to report and obtain approval of equipment which has the potential to discharge air contaminants into the atmosphere.

1.2 Information obtained through the provisions of this Regulation shall be made available for public inspection at any Department office except where such information is of confidential nature as defined in Title

7, Delaware Code, Section 6014.

02/18/87

Section 2 - Construction, Installation, Alteration and Operation Permits

2.1 No person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department except as provided in Section 2.9. In situations in which construction, installation, or alteration is proposed and operation of the equipment, facility, or air contaminant control device is to follow, only one application need be submitted. The application shall consist of a description of at least the following:

- a. The equipment or apparatus covered by the application; and
- b. Any equipment connected or attached to, or servicing or served by the unit of equipment or apparatus covered by the application; and
- c. The plot plan, including the distance and height of building within a reasonable distance from the place where the equipment is or will be installed, if necessarily required by the Department; and
- d. The proposed means for the prevention or control of the emissions or contaminant;
- e. The chemical composition and amount of any trade waste to be produced as a result of the construction, installation, or alteration of any equipment or apparatus covered by this application;
- f. Any additional information, evidence or documentation required by the Department to show what the proposed equipment or apparatus will do.
- g. Methods and expected frequency of occurrence of the start-up and shutdown of the equipment, including projected effects of emissions to the atmosphere and on ambient air quality.
- h. The nature and amount of emission to be emitted by equipment, the facility, or an air contaminant control device or emitted by associated mobile sources.

No approval to construct, install, alter, or initiate operation will be granted unless the applicant shows to the satisfaction of the Department that the source will not prevent or interfere with attainment or maintenance of any State or National Air Quality Standard. Any approval granted by the Department shall not relieve an owner or operator of the responsibility of complying with applicable local, State, and Federal laws and regulations.

2.2 In situations in which construction, installation, or alteration is proposed, and operation of the equipment, facility, or air contaminant control device is to follow, such operation shall not commence until written approval is obtained by the applicant from the Department. The Department may condition approval to operate on a demonstration by the applicant of satisfactory performance of the equipment, facility, or air contaminant control device. In the event the applicant fails to demonstrate satisfactory performance, the Department may require the applicant to cease emissions from the source. Upon granting written approval for operation, the Department shall give notice of such approval to any person who has submitted a written request for such notice.

2.3 Within 60 days of receipt of a written request by the Department, an owner or operator of an existing facility, equipment, or device which emits or causes to be emitted an air contaminant, and which is not exempted under Section 3.1, shall submit an application to the Department for a permit.

2.4 No permit shall be issued by the Department unless the applicant shows to the satisfaction of the Department that the equipment, facility, or air contaminant control device is designed to operate or is operating without causing a violation of any rule or regulation of the Department and without interfering with the attainment or maintenance of National and State ambient air quality standards. The Department may, from time to time, issue or accept criteria for the guidance of applicants indicating the technical specifications which it deems will comply with the performance standards referenced herein.

2.5 Before a permit is issued, the Department may require the applicant to conduct such tests as are necessary in the opinion of the Department to determine the kind and/or amount of the contaminants emitted from the equipment or whether the equipment or fuel or the operation of the equipment will be in violation of any of the provisions of any rule or regulation of the Department. Such tests shall be made at the expense of the applicant and shall be conducted in a manner approved by the Department.

2.6 A construction permit or any renewal thereof shall be valid for a period not to exceed three years from the date of issuance, unless sooner revoked by order of the Department, and may be renewed upon application to and approval by the Department.

2.7 An operating permit may be valid for an indefinite period, unless the equipment or operation for which a permit is written has controlled emissions of 100

tons or more per year of any air contaminant, in which case the permit shall be valid for not more than a 5-year period and shall be evaluated prior to re-issuance to determine if permitted emission limits are appropriate.

2.8 In the event the Department denies a request for approval of a permit to operate any equipment, facility, or device for which an application was made, the applicant shall not commence operation until such time that approval has been obtained from the Department or a permit to operate has been issued by the Department.

2.9 The provisions of Section 2.1 and 2.2 shall not apply to the operation of equipment or processes for the purpose of initially demonstrating satisfactory performance to the Department following construction, installation, modification or alteration of the equipment or processes. The applicant shall notify the Department sufficiently in advance of the demonstration and shall obtain the Department's prior concurrence of the operating factors, time period and other pertinent details relating to the demonstration.

2.10 Upon receipt of an application for the issuance of an operating permit the Department, in its discretion, may issue a temporary operating permit valid for a period not to exceed ninety (90) days. A temporary operating permit issued pursuant to this section shall not be extended more than once for an additional 90-day period.

01/31/90

Section 3 - Exemptions

3.1 A permit for installation, alteration, or operation shall not be required for the following equipment or apparatus:

- a. Air contaminant detector, air contaminant recorder, combustion controller or combustion shut-off.
- b. Fuel burning equipment, other than smokehouse generators, which:
 1. Uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 100 million BTU per hour; or
 2. Is used in a private dwelling as defined in Regulation 1; or
 3. Has a BTU input of less than 1,000,000 BTU per hour, except as provided in REGULATION NO. 22, RESTRICTION ON QUALITY OF FUEL IN FUEL BURNING EQUIPMENT.
- c. Air conditioning or comfort ventilating systems.
- d. Vacuum cleaning systems used exclusively for industrial, commercial, or residential housekeeping.

- e. Ventilating or exhaust systems for print storage room cabinets.
- f. Exhaust systems for controlling steam and heat.
- g. Laboratory equipment used exclusively for chemical or physical analysis.
- h. Internal combustion engines and vehicles used for transport of passengers or freight, except as may be provided in subsequent Regulations.
- i. Equipment or apparatus emitting less than ten pounds per day of any air contaminant which, in the written opinion of the Department, has little or no potential of causing air pollution.
- j. Maintenance, repair, or replacement in kind of equipment for which a permit to operate has been issued.
- k. Equipment which emits only nitrogen, oxygen, carbon dioxide, and/or water vapor.
 - l. Ventilating or exhaust systems used in eating establishments where food is prepared for the purpose of consumption.
 - m. Equipment used to liquify or separate oxygen, nitrogen or the rare gases from the air.
 - n. Fireworks.
 - o. Smudge pots for orchards or small outdoor heating devices to prevent freezing of plants.
 - p. Outdoor painting and sand blasting equipment.
 - q. Lawnmowers, tractors, farm equipment and construction equipment.
 - r. All storage tanks at gasoline dispensing facilities in Kent and Sussex Counties and any such tank in New Castle County having a capacity of 2,000 gallons or less; and all motor vehicle fuel dispensing pumps.
 - s. Fireplaces for burning of wood and paper.
 - t. Residential wood burning stoves.
 - u. Any stationary storage tank not subject to control by these regulations which contains any liquid having a true vapor pressure less than 0.5 psia at 70°F or is less than 5000 gallons capacity.

3.2 Provisions of Section 3.1 shall not apply to any source which emits an air contaminant designated as a hazardous pollutant by the Environmental Protection Agency.

07/17/84

Section 4 - Applications Prepared by Interested Party

4.1 Application for an installation or alteration permit or for the removal of such permit shall be made by the owner or lessee of the equipment, or apparatus or his agent, on forms furnished by the Department. If the

applicant is a partnership or group other than a corporation, the application shall be made by one individual who is a member of the group. If the applicant is a corporation, the application shall be made by an appropriate representative of the corporation. The application shall be filed with the Division of Environmental Control.

4.2 Each application shall be signed by the applicant, and certified by a professional engineer as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the application, plus plans and other papers submitted. The signature of the applicant shall constitute an agreement that the applicant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this Regulation.

10/08/82

Section 5 - Cancellation of Permits

5.1 The Department may cancel a permit if the installation or alteration is not begun or if the work involved in installation or alteration is not completed, within the time limits specified in the permit.

10/08/82

Section 6 - Action on Applications

6.1 If an application is disapproved, the Department shall set forth its objections in the notice of disapproval.

07/17/84

Section 7 - Suspension or Revocation of Operating Permits

7.1 The Department may suspend or revoke an operating permit for violation of any permit condition or violation of this or any other applicable rule or regulation of the Department or any law administered by the Department and may take such other actions as it deems necessary.

7.2 Suspension or revocation of an operating permit shall become final immediately upon service of notice on the holder of the permit, unless otherwise stated in the notice of suspension or revocation.

07/17/84

Section 8 - Transfer of Permit Prohibited

8.1 No person shall transfer a permit from one location to another, or from one piece of equipment to another. No person shall transfer a permit from one

person to another person unless thirty (30) days written notice is given to the Department, indicating the transfer is agreeable to both persons, and approval of such transfer is obtained in writing from the Department.

07/17/84

Section 9 - Availability of Permits

9.1 Any permit shall be available on the premises designated on the permit.

**THE FOLLOWING IS THE REGULATION THAT
BECAME EFFECTIVE JUNE 1, 1997**

REGULATION NO. 2

PERMITS

06/01/97

Section 1 - General Provisions

1.1 This regulation establishes the procedures that satisfy the requirement of 7 Del. C. Chapter 60 to report and obtain approval of equipment which has the potential to discharge air contaminants into the atmosphere, and, for construction or modification activities not subject to Regulation No. 25, the procedures that satisfy the requirement of 40 CFR Part 51 Subpart I (July 7, 1994 edition) and Section 110(a)(2)(C) of the federal clean air act (CAA) as amended November 15, 1990.

1.2 This regulation establishes procedures that enable a person to, as an option, secure federally enforceable terms and conditions in a permit issued pursuant to this regulation.

1.3 This regulation establishes procedures that enable a person subject to both this regulation and to Regulation No. 30 to, as an option, transfer the terms and conditions of a construction permit issued pursuant to this regulation into a Regulation No. 30 operating permit via the administrative permit amendment process specified in Regulation No. 30.

1.4 Within sixty (60) calendar days of receipt of a written request by the Department, an owner or operator of an existing facility, equipment, or air contaminant control device which emits or causes to be emitted any air contaminant shall submit to the Department any relevant information that the Department may request. Relevant information includes information that, in the Departments opinion, is relevant to any permit application/registration or that is necessary to determine the applicability of or compliance with any State or Federal requirement, any permit term or condition, or any condition of registration.

Such information also includes a permit application or a registration form, or a corrected or supplemented application/registration. This provision does not limit the applicability of, nor does it sanction noncompliance with the requirements of Section 2.1 of this regulation.

1.5 Any approval granted by the Department pursuant to this Regulation, and any exemption from the requirements of this Regulation provided for in Section 2.2 shall not relieve an owner or operator of the responsibility of complying with applicable local, State, and Federal laws and regulations.

06/01/97

Section 2 - Applicability

2.1 Except as exempted in Section 2.2, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.

a. For equipment that meets all applicable emission rate(s) and/or standard(s) specified in Section 11.8(a) and (b) without an air contaminant control device, and that meets the following conditions, the person shall submit to the Department a registration form pursuant to Section 9 of this regulation.

i. For equipment without an air contaminant control device, the equipment has actual emissions to the atmosphere of any air contaminant(s), in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than ten (10) pounds per day; and

ii. For equipment with an air contaminant control device, the equipment has actual emissions to the inlet of the air contaminant control device of any air contaminant(s), in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than ten (10) pounds per day; and

iii. Regulation No. 25 does not apply.

b. For equipment, a facility or an air contaminant control device that is not subject to Section 2.1(a) and that is subject to a source category permit, the person shall submit to the Department an application for a source category permit pursuant to Section 10 of this regulation. A list of established source category permits is available from the Department.

c. For equipment, a facility or an air contaminant control device that is not subject to Section 2.1(a) or 2.1(b), the person shall submit to the Department

an application for a permit pursuant to Section 11 of this regulation.

d. Any person who operates equipment, a facility or an air contaminant control device in accordance with a valid permit issued pursuant to Section 2.1(c) of this regulation, and who later becomes subject to a source category permit:

i. May, at any time, submit to the Department an application for a source category permit pursuant to Section 10 of this regulation; and

ii. Shall, within sixty (60) calendar days of receipt of written request from the Department, submit to the Department an application for a source category permit pursuant to Section 10 of this regulation.

2.2 Provided that Regulation No. 25 does not apply, a permit for installation, alteration, or operation pursuant to this regulation shall not be required for the following equipment or air contaminant control device. Note however that other State and Federal requirements may apply.

a. Equipment without an air contaminant control device that has actual emissions to the atmosphere of any air contaminant(s), in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:

i. The actual emissions are quantified and documented; and

ii. Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.

b. Equipment with an air contaminant control device that has actual emissions to the inlet of the air contaminant control device of any air contaminant(s), in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:

i. The actual emissions are quantified and documented; and

ii. Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.

c. The equipment listed in Appendix "A" of this regulation.

d. For operation, any equipment or air contaminant control device that is specifically identified in an operation permit issued pursuant to Regulation No. 30.

e. Equipment that is registered pursuant to Section 9 of this regulation.

2.3 Any person who operates fuel burning equipment which uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 100 million

BTUs per hour, or any other equipment, that was exempted from the requirement to have a permit by Regulation No. 2, Section 3.1 (as in effect immediately preceding the effective date of this regulation), or who operates a piece of equipment, a facility, or an air contaminant control device in accordance with a valid permit or letter of exemption that was issued by the Department prior to June 1, 1997, and who, with regard to that specific equipment, facility, or air contaminant control device, is now subject to Section 2.1 of this regulation:

a. May, at any time, submit to the Department a registration form or a permit application pursuant to Section 2.1; and

b. Shall, within sixty (60) calendar days of receipt of a written request from the Department, submit to the Department a registration form or a permit application pursuant to Section 2.1; and

c. Shall not initiate construction, installation, or alteration of the equipment, facility or air contaminant control device prior to complying with Section 2.1 of this regulation (i.e., prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form).

2.4 Any person may petition the Department to establish a source category permit. The petition and, if approved, the establishment of the source category permit shall be pursuant to the procedures in Regulation No. 30 of the State of Delaware "Regulations Governing the Control of Air Pollution."

06/01/97

Section 3 - Application/Registration Prepared by Interested Party

3.1 Any application/registration form submitted to the Department, or any request for the removal of any permit or registration, shall be made by the owner or lessee of the equipment, facility, or air contaminant control device or by his agent. If the applicant/registrant is a partnership or group other than a corporation, the application/registration shall be made by one individual who is a member of the group. If the applicant/registrant is a corporation, the application/registration shall be made by an appropriate representative of the corporation. The application/registration form shall be filed with the Air Quality Management Section of the Division of Air and Waste Management.

3.2 Each application form shall be signed by the applicant and certified by a professional engineer as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the

application, plus plans and other papers submitted. Any applicant who fails to submit any relevant facts or who submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the applicant shall constitute an agreement that the applicant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this Regulation.

3.3 Each registration form shall be signed and certified by the registrant as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the registration. Any registrant who fails to submit any relevant facts or who submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the registrant shall constitute an agreement that the registrant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this Regulation.

06/01/97

Section 4 - Cancellation of Construction Permits

4.1 The Department may cancel a construction permit if the installation or alteration is not begun or if the work involved in installation or alteration is not completed within the time limits specified in the permit.

06/01/97

Section 5 - Action on Applications

5.1 If an application is disapproved, the Department shall set forth its objections in the notice of disapproval.

5.2 Upon granting written approval for operation, the Department shall give notice of such approval to any person who has submitted a written request for such notice.

06/01/97

Section 6 - Denial, Suspension or Revocation of Operating Permits

6.1 In the event the Department denies a request for approval of a permit to operate any equipment, facility, or device for which an application was made, the applicant shall not commence operation until such time that approval has been obtained from the Department or a permit to operate has been issued by the Department.

6.2 The Department may suspend or revoke an operating permit for violation of any permit condition or violation of this or any other applicable rule or regulation of the Department or any law administered by the Department and may take such other actions as it deems necessary. Permit term(s) and condition(s) which were not identified under Section 11.2(i) and which were not subject to public participation under Section 12.3, and/or which do not otherwise conform to the requirements of this regulation, may be deemed not federally enforceable by the Administrator of the EPA.

6.3 Suspension or revocation of an operating permit shall become final immediately upon service of notice on the holder of the permit, unless otherwise stated in the notice of suspension or revocation.

06/01/97

Section 7 - Transfer of Permit/Registration Prohibited

7.1 No person shall transfer a permit from one location to another, or from one piece of equipment to another. No person shall transfer a permit from one person to another person unless thirty (30) days written notice is given to the Department, indicating the transfer is agreeable to both persons, and approval of such transfer is obtained in writing from the Department.

7.2 No person shall transfer a registration from one location to another, or from one piece of equipment to another. No person shall transfer a registration from one person to another person unless prior written notice is given to the Department, indicating the transfer is agreeable to both persons.

06/01/97

Section 8 - Availability of Permit/Registration

8.1 Any permit and any registration form shall be available on the premises where the construction, alteration, installation, or operation activity takes place.

06/01/97

Section 9 - Registration Submittal

9.1 Any person identified in Section 2.1(a) shall register the piece of equipment with the Department on forms furnished by the Department.

9.2 A person shall register with the Department by submitting to the Department a completed registration form that is certified by the person identified in Section 3.1. Registration forms are available from the Department upon request. The registration shall consist of at least the

following:

- a. A description of the equipment covered by the registration; and
- b. A description of the nature and quantification of the amount of the emission from the equipment; and
- c. A demonstration that the equipment meets the emission rate(s) and/or standard(s) specified in Section 11.8(a) and (b) of this regulation without an air contaminant control device.

9.3 Immediately after submitting to the Department the information specified in Section 9.2 of this regulation the registrant may initiate construction, install, alter or initiate operation of the equipment.

a. The registrant shall maintain records at the facility which document that the equipment meets the requirements of Section 2.1(a), and shall make such records available to the Department upon request.

b. If at any time the registered equipment does not meet the requirements of Section 2.1(a), operation of said equipment shall be immediately discontinued until all necessary permits have been secured.

c. If at any time the Department determines that the registered equipment does not meet the requirements of Section 2.1(a), a violation of this regulation may have occurred and enforcement action may ensue.

9.4 The submittal of a registration form does not relieve the registrant from the requirement to comply with all State and Federal requirements. Such requirements include, but are not limited to, monitoring, record keeping and reporting requirements, any requirement to consider actual emissions and/or the potential to emit of all equipment when determining the applicability of and/or compliance with certain State and Federal requirements, and any requirement to revise a Regulation No. 30 permit if required to do so by that regulation.

9.5 A person may, in lieu of submitting to the Department a registration form, elect to:

a. Apply for a permit pursuant to Section 2.1(b) or 2.1(c) of this regulation, as applicable.

b. Submit to the Department all of the information required by Section 9.2(a) and (b). In such a case the registrant shall not commence construction/operation until written approval is obtained from the Department.

06/01/97

Section 10 - Source Category Permit Application

10.1 Any person identified in Section 2.1(b) shall submit to the Department an application requesting a source category permit on forms furnished by the Department.

10.2 The application requesting a source category permit shall include all of the following:

a. All of the information called for by the source category application form. Source category application forms are available from the Department upon request.

b. Certification by the person identified in Section 3.1 that the source will comply with all of the terms and conditions of the source category permit.

c. For facilities subject to Regulation No. 30, the person identified in Section 3.1 of this regulation shall be a responsible official as defined in Regulation No. 30, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

10.3 For facilities not subject to Regulation No. 30, the Department shall grant approval by issuing to the applicant a source category permit.

10.4 For facilities subject to Regulation No. 30, the Department shall grant approval by incorporating the source category permit into the Regulation No. 30 permit by reference, and such incorporation shall be via the administrative permit amendment process specified in Regulation No. 30.

10.5 A source category permit may be valid for an indefinite period, except as provided for in Regulation No. 30 for sources subject to that regulation.

06/01/97

Section 11 - Permit Application

11.1 Any person identified in Section 2.1(c) shall submit to the Department an application for a permit on forms furnished by the Department. Permit application forms are available from the Department upon request.

11.2 The application shall consist of a description of at least the following:

a. The equipment or apparatus covered by the application; and

b. Any equipment connected or attached to, or servicing or served by the unit of equipment or apparatus covered by the application; and

c. The plot plan, including the distance and

height of building within a reasonable distance from the place where the equipment is or will be installed, if necessarily required by the Department; and

d. The proposed means for the prevention or control of the emissions or contaminant;

e. The chemical composition and amount of any trade waste to be produced as a result of the construction, installation, or alteration of any equipment or apparatus covered by this application;

f. Any additional information, evidence or documentation required by the Department to show what the proposed equipment or apparatus will do.

g. Methods and expected frequency of occurrence of the start-up and shutdown of the equipment, including projected effects of emissions to the atmosphere and on ambient air quality.

h. The nature and amount of emission to be emitted by equipment, the facility, or an air contaminant control device or emitted by associated mobile sources.

i. If the applicant desires any of the term(s) or condition(s) of the permit to be federally enforceable, the applicant shall state that fact in the application. The ensuing permit shall clearly indicate the specific term(s) and condition(s) that are federally enforceable.

j. If the applicant desires any of the term(s) or condition(s) of a construction permit to transfer to a Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30 the following additional requirements apply:

i. The person identified in Section 3.1 of this regulation shall be a responsible official as defined in Regulation No. 30, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

ii. The application shall include the following additional information:

A. The citation and description of all applicable requirements that will apply to the equipment, facility, or air contaminant control device and that will become applicable to any covered source as a result of the construction, installation, alteration, or operation; and a description of, or reference to, any applicable test method for determining compliance with each applicable requirement. The terms "applicable requirement" and "covered source" retain the meanings accorded to them in Regulation No. 30.

B. Certification by the responsible official that the source will meet all applicable requirements on a timely basis, and, if a more detailed schedule is expressly required by any applicable requirement, that applicable requirement in accordance with that more detailed schedule.

C. If desired, information necessary to define alternative operating scenarios under Regulation No. 30, Section 6(a)(10), or to define permit terms and conditions to implement emission averaging or operational flexibility under Regulation No. 30, Section 6(a)(11) and 6(h).

D. If desired, a request that the Department, upon taking final action under Section 11.5(b) or 11.5(c) of this regulation, allow coverage under the permit shield as described in Regulation No. 30, Section 6(f).

iii. The applicant shall provide additional information necessary to address any requirements that become applicable to the equipment, facility, or air contaminant control device after the date it filed an application under this section but prior to the date advertisement is made pursuant to Section 12.4(b) of this regulation. This requirement is in addition to the requirement of Section 2.1 of this regulation in situations where construction, installation, or alteration is necessary to comply with the new applicable requirement.

iv. The ensuing construction permit shall clearly indicate the specific term(s) or condition(s) to transfer to the Regulation No. 30 permit, and each such term or condition shall specify the origin and the authority for that term or condition, and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

11.3 In situations in which construction, installation, or alteration is proposed, and operation of the equipment, facility, or air contaminant control device is to follow, such operation shall not commence until written approval is obtained by the applicant from the Department in accordance with Section 11.4 and 11.5, as applicable. The Department may condition approval to operate on a demonstration by the applicant of satisfactory performance of the equipment, facility, or air contaminant control device. In the event the applicant fails to demonstrate satisfactory performance, the Department may require the applicant to cease emissions from the source.

11.4 Persons not requesting review under Section 11.2(j) shall, upon completion of the construction, installation or alteration, request that the Department grant approval to operate.

a. An application does not need to be submitted to the Department. Note however that an application may be required under Regulation No. 30 for persons subject to that regulation.

b. Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all of the terms and conditions of the construction permit, the Department shall grant approval

to operate by issuing an operation permit.

11.5 Persons requesting review under Section 11.2(j) shall, upon completion of the construction, installation or alteration, request that the Department transfer the terms and conditions of the construction permit into the Regulation No. 30 operating permit.

a. The request shall contain the following information, and shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

i. A description of the compliance status, a compliance schedule, and a certification of compliance for the equipment, facility, or air contaminant control device with respect to all applicable requirements, in accordance with Regulation No. 30, Section 5(d)(8) and (9); and

ii. A statement of the methods used to determine compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

b. Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all applicable requirements and all of the terms and conditions of the construction permit, and not prior to the expiration of the EPA review period provided for in Section 12.5, the Department shall transfer the specified terms and conditions to the Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30.

c. If the Department determines that the equipment, facility, or air contaminant control device does not comply with any applicable requirement the Department may take enforcement action, and shall do one of the following:

i. Provide an opportunity for the applicant to resolve the noncompliance; then, upon resolution, transfer the specified terms and conditions of the construction permit to the Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30; or

ii. Transfer the specified terms and conditions of the construction permit, and an enforceable compliance schedule which satisfies the requirements of Regulation No. 30, Section 5(d)(8)(iii), to the Regulation No. 30 permit by reopening the permit for cause pursuant to the procedures in Regulation No. 30; or

iii. Deny the request for approval to operate.

11.6 No permit shall be issued by the Department unless the applicant shows to the satisfaction of the

Department that the equipment, facility, or air contaminant control device is designed to operate or is operating without causing a violation of the State Implementation Plan, or any rule or regulation of the Department, and without interfering with the attainment or maintenance of National and State ambient air quality standards, and without endangering the health, safety, and welfare of the people of the State of Delaware. The Department may, from time to time, issue or accept criteria for the guidance of applicants indicating the technical specifications which it deems will comply with the performance standards referenced herein.

11.7 Before a permit is issued, the Department may require the applicant to conduct such tests as are necessary in the opinion of the Department to determine the kind and/or amount of the contaminants emitted from the equipment or whether the equipment or fuel or the operation of the equipment will be in violation of any of the provisions of any rule or regulation of the Department. Such tests shall be made at the expense of the applicant and shall be conducted in a manner approved by the Department.

11.8 The following emission rates and/or standards for each air contaminant emitted from any equipment, facility or air contaminant control device shall be specified in each permit issued pursuant to this regulation:

a. The rate and/or standard established and/or relied upon in the State Implementation Plan (SIP) to include the State of Delaware "Regulations Governing the Control of Air Pollution" and regulations promulgated pursuant to Section 111 and Section 112 of the Clean Air Act (CAA); and

b. The rate that was shown under Section 11.6 as not interfering with the attainment and maintenance of any National and State ambient air quality standard, and not endangering the health, safety, and welfare of the people of the State of Delaware; or

c. The rate requested by the applicant. In no case shall this rate be greater than the potential to emit of the equipment, facility, or air contaminant control device; and in no case shall this rate be less stringent than the rate specified in Section 11.8(a) and (b) of this regulation.

11.9 Each emission rate and standard shall be enforceable as a practical matter. Enforceable as a practical matter means that each emission rate and standard:

a. Is stated in the permit as a technically specific and accurate limitation.

b. Is specifically associated with a particular piece(s) of equipment or air contaminant control device(s).

c. Has associated conditions which, in total,

establish a method to determine compliance. Such associated conditions shall include appropriate testing, monitoring, record keeping, and reporting requirements.

d. Has a recurring, predictable time period under which compliance with the limitation will be demonstrated. Such time period shall be that specified in the underlying State regulation or federal rule or, in the absence of such specification and upon approval by the Department, shall be hourly, daily, monthly, or some other time period which provides for the demonstration of compliance with the limitation no less frequently than monthly.

11.10 A construction permit or any renewal thereof shall be valid for a period not to exceed three years from the date of issuance, unless sooner revoked by order of the Department, and may be renewed upon application to and approval by the Department.

11.11 An operating permit may be valid for an indefinite period, unless the equipment or operation for which a permit is written has controlled emissions of 100 tons or more per year of any air contaminant, in which case the permit shall be valid for not more than a 5-year period and shall be evaluated prior to re-issuance to determine if permitted emission limits are appropriate.

11.12 The provisions of Section 2.1 and 11.3 shall not apply to the operation of equipment or processes for the purpose of initially demonstrating satisfactory performance to the Department following construction, installation, modification or alteration of the equipment or processes. The applicant shall notify the Department sufficiently in advance of the demonstration and shall obtain the Department's prior concurrence of the operating factors, time period and other pertinent details relating to the demonstration.

11.13 Upon receipt of an application for the issuance of an operating permit the Department, in its discretion, may issue a temporary operating permit valid for a period not to exceed ninety (90) days. A temporary operating permit issued pursuant to this Section shall not be extended more than once for an additional 90-day period.

06/01/97

Section 12 - Public Participation

12.1 Information obtained through the provisions of this Regulation shall be made available for public inspection at any Department office except where such information is of confidential nature as defined in 7 Del. C. Chapter 60, Section 6014. The Department shall provide for public participation and comment in

accordance with Section 12.2 through 12.6, as applicable.

12.2 Upon receipt of a source category permit application or a permit application, in proper form, the Department shall provide for public participation and comment by:

a. Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment).

b. Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

c. Sending notice of the information detailed in Section 12.2(b) by mail to any person who has requested such notification from the Department by providing to the Department their name and mailing address.

d. Holding, if the Department receives a meritorious request for a hearing within fifteen (15) calendar days of the date of the advertisement described in Section 12.2(b), or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action.

i. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

ii. Not less than twenty (20) calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

A. Served upon the applicant as summonses are served or by registered or certified mail; and

B. Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

e. Considering all comments submitted by the applicant and the public in reaching its final

determination.

12.3 For each permit application requesting to make the terms and conditions of a permit federally enforceable, the Department shall provide for public participation and comment by:

a. Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.

b. Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

c. On or before the date of the advertisement described in Section 12.3(b):

i. Sending notice of the information detailed in Section 12.3(b) by mail to the Administrator of the EPA, through the Region III office, and to any person who has requested such notification from the Department by providing to the Department their name and mailing address.

ii. Providing the Administrator of the EPA, through the Region III office, a copy of the draft permit.

d. Holding, if the Department receives a meritorious request for a hearing within thirty (30) calendar days of the date of the advertisement described in Section 12.3(b), or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.

i. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

ii. Not less than thirty (30) calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

A. Served upon the applicant as summonses are served or by registered or certified mail; and

B. Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

e. Affording the applicant an opportunity to submit, within fifteen (15) days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

f. Considering all comments submitted by the applicant, the public, and the Administrator of the EPA in reaching its final determination.

g. Providing to the Administrator of the EPA, through the Region III office, a copy of the permit.

12.4 For each permit application requesting to allow the terms and conditions of a construction permit to transfer to a Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30, the Department shall provide for public participation and comment by:

a. Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.

b. Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

c. On or before the date of the advertisement described in Section 12.4(b):

i. Sending notice of the information detailed in Section 12.4(b) by mail to any person who has requested such notification from the Department by providing to the Department their name and mailing address, and to the representative of any affected states designated by those states to receive such notices. The term "affected states" retains the meaning accorded to it in Regulation No. 30.

ii. Providing the Administrator of

the EPA, through the Region III office, affected states, any person who requests it, and the applicant a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions).

iii. Providing the Administrator of the EPA, through the Region III office, a copy of the permit application unless the Administrator waives the requirement.

d. Holding, if the Department receives a meritorious request for a hearing within thirty (30) calendar days of the date of the advertisement described in Section 12.4(b), or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.

i. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

ii. Not less than thirty (30) calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

A. Served upon the applicant as summonses are served or by registered or certified mail; and

B. Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

e. Affording the applicant an opportunity to submit, within fifteen (15) days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

f. Considering all comments submitted by the applicant, the public, and any affected state in reaching its final determination. The Department shall maintain a list of all commenters and a summary of the issues raised and shall make that information available in the public file and supply it to EPA upon request.

g. After meeting the requirements of 12.4(a) through 12.4(f), providing the Administrator of the EPA, through the Region III office, a copy of the proposed permit [i.e., the version of the permit that represents the Department's final determination under Section 12.4(f)], all necessary supporting information, and providing a notice to the Administrator and to any affected state of any refusal by the Department to accept all recommendations for the proposed permit that the affected state submitted during the public review period. The notice shall include the Department's reasons for

not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements. The term “applicable requirement” retains the meaning accorded to it in Regulation No. 30.

h. On or before the date that the Department provides the proposed permit to EPA for review under Section 12.4(g), issuing a written response to all comments submitted by affected states and all significant comments submitted by the applicant and the public.

12.5 The Department shall not issue the permit if the Administrator objects to its issuance in writing within forty-five (45) days of receipt of all of the information provided to the Administrator pursuant to Section 12.4(g). Any EPA objection under this paragraph shall include a statement of the Administrator’s reasons for objection and a description of the terms and conditions that must be revised to respond to the objection. The Administrator will provide the applicant a copy of the objection. The Department may thereafter issue only a revised permit that satisfies EPA’s objection.

12.6 If the Administrator does not object in writing under Section 12.5, any person may petition the Administrator within sixty (60) days after the expiration of the Administrator’s 45-day review period to make such objection. Any such petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period provided for in Section 12.4, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Department shall not amend the Regulation No. 30 permit until EPA’s objection has been resolved, except that a petition for review does not stay the effectiveness of the construction permit and/or the amended Regulation No. 30 permit or its requirements if the construction permit or the amended Regulation No. 30 permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued an amended the Regulation No. 30 permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the time limits established in 40 CFR 70.7(g)(4) or (5)(i) and (ii), except in emergencies, and the Department may thereafter issue only a revised permit that satisfies EPA’s objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application under Regulation No. 30.

06/01/97

Section 13 - Department Records

13.1 The Department will keep for five (5) years such records and submit to the Administrator of the EPA such information as the Administrator may reasonably require to ascertain whether the optional procedures to establish and transfer the terms and conditions of a construction permit issued pursuant to this regulation into a Regulation No. 30 operating permit via the administrative permit amendment process specified in Regulation No. 30 comply with the requirements of the Federal Clean Air Act and 40 CFR Part 70.

Appendix “A”

(For the applicability of Appendix “A” see Section 2.2 of the regulation)

- a. Air contaminant detector, air contaminant recorder, combustion controller or combustion shut-off.
- b. Except as provided for in Regulation No. 22, “Restriction on Quality of Fuel in Fuel Burning Equipment,” fuel burning equipment which:
 - i. Uses any fuel and has a rated heat input of less than 10 million British-Thermal Units (BTUs) per hour.
 - ii. Uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 15 million British-Thermal Units (BTUs) per hour.
- c. Air conditioning or comfort ventilating systems.
- d. Vacuum cleaning systems used exclusively for office applications or residential housekeeping.
- e. Ventilating or exhaust systems for print storage room cabinets.
- f. Exhaust systems for controlling steam and heat.
- g. Any equipment at a facility used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance, provided the operation of the equipment is not an integral part of the production process and the total actual emissions from all such equipment at the facility do not exceed 450 pounds in any calendar month.
- h. Internal combustion engines in vehicles used for transport of passengers or freight.
 - i. Maintenance, repair, or replacement in kind of equipment for which a permit to operate has been issued.
 - j. Equipment which emits only nitrogen, oxygen, carbon dioxide, and/or water vapor.

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- k. Ventilating or exhaust systems used in eating establishments where food is prepared for the purpose of consumption.
 - l. Equipment used to liquefy or separate oxygen, nitrogen or the rare gases from the air.
 - m. Fireworks display.
 - n. Smudge pots for orchards or small outdoor heating devices to prevent freezing of plants.
 - o. Outdoor painting and sand blasting equipment.
 - p. Lawnmowers, tractors, farm equipment and construction equipment.
 - q. Gasoline dispensing facilities that never exceed a monthly throughput of 10,000 gallons.
 - s. Stationary gasoline storage tanks that:
 - 1. Have a capacity less than 550 gallons and that are used exclusively for the fueling of implements of husbandry; or
 - 2. Have a capacity less than 2000 gallons and that were constructed prior to January 1, 1979; or
 - 3. Have a capacity less than 250 gallons and that were constructed after December 31, 1978.
 - t. Fire schools or fire fighting training.
 - u. Residential wood burning stoves and wood burning fireplaces.
 - v. Any stationary storage tank not subject to control by these regulations which contains any liquid having a true vapor pressure less than 0.5 psia at 70°F or is less than 5000 gallons capacity.
 - w. Buildings, cabinets, and facilities used for storage of chemicals in closed containers.
 - x. Sewage treatment facilities.
 - y. Water treatment units.
 - z. Quiescent wastewater treatment operations.
 - aa. Non-contact water cooling towers (water that has not been in direct contact with process fluids).
 - bb. Laundry dryers, extractors, or tumblers used for fabrics cleaned with a water solution of bleach or detergents.
 - cc. Equipment used for hydraulic or hydrostatic testing.
 - dd. Blueprint copiers and photographic processes.
 - ee. Kilns used for firing ceramic ware that are heated exclusively by natural gas, electricity, and/or liquid petroleum gas, and the BTU input is less than 15 million BTUs per hour.
 - ff. Inorganic acid storage tanks equipped with an emission control device.
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[LINK TO GOVERNOR'S HOME PAGE](#)

**The following are the Governor's Executive
Orders received as of June 15, 1997**

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

EXECUTIVE ORDER NUMBER FORTY-FIVE

TO: HEADS OF ALL STATE DEPARTMENTS,
AGENCIES AND AUTHORITIES, AND ALL
POLITICAL SUBDIVISIONS AND GOVERNMENTAL
UNITS OF THE STATE OF DELAWARE

RE: EMPLOYEE AND LABOR-MANAGEMENT
RELATIONS IN STATE GOVERNMENT

WHEREAS, a responsive and adaptive government helps promote the public interest by rationally managing its workforce to assure accountability, efficiency, and stability in the provision of government services; and

WHEREAS, while the various Executive Branch departments and agencies have different structures, histories, and missions, their goals are identical in the employee and labor relations arena: efficient and effective management practices that encourage employee productivity and creativity, and produce workplace fairness and stability at the lowest practical cost; and

WHEREAS, the provision of consistent and effective labor-management relations requires that the Executive Branch and its departments and agencies speak with one voice to assure a uniform employer position, high quality management services, equitable treatment of employees, and the ability to address issues in a timely and decisive manner; and

WHEREAS, these goals can best be achieved by affirming that employee and labor relations should continue to be managed centrally by the State Personnel Office, reinforcing that responsibility by increasing the day-to-day responsibilities of the State Personnel Director for labor-management relations, and ensuring that the Governor determines the situations where it is appropriate to allow individual agencies to conduct their labor-management relations issues with the assistance of advisors in addition to those employed by the State Personnel Office.

NOW, THEREFORE, I, THOMAS R. CARPER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The State Personnel Office shall maintain the central managerial role over all employee and labor relations matters in the Executive Branch, and shall represent the interests of the Executive Branch and its departments and agencies. Public and Higher Education agencies and the Judicial Branch of government are urged to continue using the State Personnel Office in an advisory role.

2. To manage this critical function effectively, the responsibilities and duties performed by State Personnel Office are set forth herein as follows:

a) The State Personnel Director shall assign the Deputy State Personnel Director to be the State's lead official in the day-to-day management of labor relations;

b) The State Personnel Office shall exercise the authority and responsibilities reposed in it, or any of its sections, by prior Executive Orders, policy statements and directives; c) Unless otherwise approved by the Governor's Office, the State Personnel Office shall manage and conduct all collective bargaining negotiations with employee organizations, including, after prior consultation with the department or client agency, approving management team members nominated by departments and agencies. On behalf of the State, the State Personnel Office shall approve and sign all collective bargaining agreements and any other agreements or arrangements made involving employee organizations that represent employees subject to Executive Branch authority;

d) The State Personnel Office shall manage and represent the Executive Branch and its departments and agencies in labor arbitration, Public Employment Relations Board, Department of Labor, and other administrative proceedings involving employee and labor relations issues;

e) The State Personnel Office shall provide policy direction and professional/technical expertise on employee and labor relations issues;

f) The State Personnel Office shall assist department and agency managers and personnel representatives in maintaining consistency with the State's management policies and objectives, and adherence to specified contractual terms, defined

GOVERNOR'S EXECUTIVE ORDERS

employee due process rights, and Merit System requirements;

g) The decision whether to use any non-State Personnel Office staff or outside representatives or advisors, e.g., outside consultants or attorneys, to perform or otherwise engage in any employee or labor relations activities shall be made by the Governor's Office, after consultation with the Deputy Director and Director of State Personnel, in compliance with relevant state laws, including 29 Del.C. § 2507; and

h) All departments and agencies shall notify the State Personnel Office promptly of any information requests or subpoenas involving any employee or labor relations matter, including contract negotiations and grievance arbitration proceedings. Upon review and consultation with the affected department or agency, the State Personnel Office shall determine the appropriate response to all such requests and non-court subpoenas. Where major policy and/or legal considerations may be involved, the State Personnel Office shall consult with the Governor's Office and/or the Department of Justice.

3. This Order shall be circulated by all cabinet secretaries and agency heads to their relevant personnel managers. Executive Order Number Twelve is hereby repealed.

Approved this 30th day of April, 1997.

Thomas R. Carper
Governor

Attest:

Edward J. Freel
Secretary of State

[LINK TO GOVERNOR'S HOME PAGE](#)

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

EXECUTIVE ORDER NUMBER FORTY-SIX

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE

RE: GOVERNOR'S TASK FORCE ON VIOLENT CRIME

WHEREAS, the health and safety of our communities and neighborhoods is of paramount importance to the quality of life of Delawareans; and

WHEREAS, violent crime and drugs in our neighborhoods greatly diminishes the quality of life in those communities and undermines public confidence in government and community; and

WHEREAS, violent crime is on the rise in certain areas of our State; and

WHEREAS, those areas of concentrated criminal activity tax the resources of local law enforcement, making it difficult for local law enforcement to respond in a manner sufficient to address the problem; and

WHEREAS, the studies of many experts conclude that a high percentage of violent crime is committed by a small number of offenders who are already known to the criminal justice system; and

WHEREAS, the studies of many experts conclude that an aggressive, concentrated law enforcement effort in high crime areas along with intense supervision of those persons on probation and parole will help reduce violence, thereby greatly benefiting the law-abiding citizens in those communities; and

WHEREAS, the Delaware State Police often join forces with local law enforcement in cooperative law enforcement initiatives; and

WHEREAS, the Delaware State Police and the Wilmington Police Department conducted one such successful operation in 1996 called Operation Joint Venture which resulted in one hundred and ninety-four people arrested and three hundred and thirty felony drug charges; and

WHEREAS, state probation and parole officers, both juvenile and adult, are often charged with monitoring the most dangerous offenders in our community; and

WHEREAS, state probation and parole officers are aware of each offenders' probation conditions and are afforded broader arrest powers than police officers; and

WHEREAS, state probation and parole officers

working together with local law enforcement agencies can undertake a high impact initiative against offenders with proven criminal tendencies; and

WHEREAS, Delaware has a proud tradition of cooperation among our law enforcement agencies.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The Governor's Task Force on Violent Crime is hereby created to work in cooperation and conjunction with local law enforcement agencies to provide support and assistance to address violent crime in the most crime-prone areas of our State.

2. Each mission of the Task Force shall be initiated at the invitation of the relevant local law enforcement agency and shall be preceded by a thorough analysis of the crime problem at issue.

3. The Task Force, in conjunction with the Criminal Justice Council, shall analyze such requests in terms of the extent and nature of violent crime problems in a particular area.

4. The Task Force shall review and, where appropriate, propose modifications of existing initiatives so as to provide the most effective assistance to local communities.

5. The Task Force shall be composed of officers from the Delaware State Police, probation and parole officers for the Department of Correction, probation and parole officers for the Department of Services for Children, Youth and Their Families and such others as the Governor shall direct to be deployed to assist the Task Force.

6. The Governor shall appoint a commander of the Task Force who will oversee the operations of the Task Force working in coordination with local law enforcement agencies.

Approved this 28th day of May, 1997.

Thomas R. Carper
Governor

Attest:

Edward J. Freel
Secretary of State

[LINK TO GOVERNOR'S HOME PAGE](#)

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

EXECUTIVE ORDER NUMBER FORTY-SEVEN

TO: HEADS OF ALL STATE DEPARTMENTS,
AGENCIES AND AUTHORITIES, AND ALL
POLITICAL SUBDIVISIONS AND GOVERN-
MENTAL UNITS OF THE STATE OF DELA-
WARE

RE- EXECUTIVE COMMITTEE OF THE
WORKFORCE DEVELOPMENT COUNCIL

WHEREAS, ensuring a high-quality workforce that will meet Delaware's economic needs in the Twenty-First Century is one of the highest priorities of the Carper-Minner Administration and of the State's employers, and

WHEREAS, a customer-driven and accountable workforce development system which promotes skill development and self-sufficiency among- the State's emerging, transitional, and current workers is critical to generating and maintaining a high-quality workforce; and

WHEREAS, the Federal Government has failed to take legislative action to overhaul a fragmented, out-moded, and inflexible array of categorical federal job-training programs which impair the State's ability to meet its workforce development goals, and

WHEREAS, despite the absence of federal leadership, other states have proceeded to undertake significant reforms of their workforce development systems, and

WHEREAS, the Delaware Workforce Development Council (alternatively, the "Council") was established in 1994 for the purpose of creating a coordinated, comprehensive workforce development system for Delaware, and

WHEREAS, the Council was charged in 1994 with developing a strategic plan that includes goals, strategies, and performance measures for a continuum of workforce development programs, including school-to-work, welfare-to-work, prison-to-work, economically disadvantaged persons, dislocated workers, and customized worker training programs, and

WHEREAS, the Council should be designed in order to have the capacity to conduct effective strategic planning and to set funding priorities which are consistent with key state policy objectives, and

WHEREAS, the lack of federal reform has resulted in the need for the continuation of multiple workforce development governance bodies which have conflicting and overly prescriptive membership requirements, and

WHEREAS, it is therefore necessary to create a body of reasonable size which has the authority and structure to provide effective leadership in coordinating the State's various workforce development efforts, and

WHEREAS, until the federal government enacts meaningful workforce development reform, the most efficient method to create such a body is to constitute an Executive Committee of the Workforce Development Council with the mandate and authority to set priorities and ensure that workforce development funds are efficiently and coherently used to accomplish important state objectives.

NOW, THEREFORE, I, THOMAS R. CARPER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that

1. An Executive Committee of the Workforce Development Council shall be established to coordinate the Council's efforts and produce a strategic plan on or before November 15, 1997.

2. The Executive Committee shall be chaired by the Lieutenant Governor and include among its members: the Secretary of Labor, the Secretary of Health and Social Services, the Secretary of Education, the Director of the Delaware Economic Development

Office, and four private sector members from the Council, including the Chairperson of the Workforce Development Council (or the Vice-Chairperson if the Chairperson of the Council is also the Chairperson of the Executive Committee)

3. The Executive Committee shall forthwith select an Executive Director of the Council to prepare the strategic plan with staff and funding support from the Council, the Delaware Private Industry Council ("DPIC"), and state agencies with representation on the Council. In addition to those requirements for the strategic plan set forth in Executive Order Number Twenty-Five, the strategic plan shall include a plan for ensuring that federal workforce development funds are used in concert with state workforce development funds appropriated to or expended by agencies with representation on the Council. The strategic plan shall include performance measures for gauging the effectiveness of workforce development programs, and identify and include a timetable for sunseting inactive and/or duplicative councils, including consolidating the functions of the Council and DPIC into one entity.

4. The Executive Director and other staff of the Workforce Development Council shall report directly to the Chairperson of the Executive Committee and be housed in physical space within the Chairperson's office.

5. The Workforce Development Council shall continue to function as a Human Resources Investment Council as delineated by the 1992 Amendments to the federal Job Training Partnership Act ("JTPA"), with the understanding that a change in federal law may significantly change the Council's composition, mission, and goals.

6. The Delaware Private Industry Council shall become a subcommittee of the Workforce Development Council, with a majority of private-sector members and in accordance with federal regulations promulgated pursuant to the JTPA.

7. In the absence of new federal workforce development legislation, the Executive Committee shall identify federal barriers to reform in its strategic plan and propose a plan to the Governor to pursue federal waivers to allow Delaware to streamline and improve its workforce development system.

8. The Executive Committee shall work with the Budget Director to implement a process on or before September 15, 1997 for presenting an annual plan to the Governor and Budget Director for the allocation and use of federal funds, state appropriated special funds, or non-appropriated special funds for workforce development administered by the Council, state agencies with representation on the Council, and/or the DPIC so that the Governor and Budget Director can work with the Council to ensure that such funds are utilized in concert with related state general fund appropriations to advance state workforce development objectives.

9. The Executive Committee shall become the State's Governance Council for allocating and administering the funds granted by the federal government pursuant to the School-To-Work Opportunities Act. In that capacity, the Executive Committee shall review the use of federal funds, state appropriated special funds, and non-appropriated special funds for youth employment and training with a view toward promoting the effective use of such funds in concert with state general funds appropriated to serve similar goals. The staff for the State's school-to-work efforts shall be housed within the Department of Education.

10. Executive Order Seventeen is hereby repealed and Executive Order Twenty-Five is hereby rescinded to the extent inconsistent with this Order.

Approved this 10th of June, 1997

Thomas R. Carper
Governor

Attest:

Edward J. Freel
Secretary of State

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Committee on Information Services (Chair)	The Honorable John C. Carney, Jr.	Pleasure of Governor
Advisory Council on Tidal Finfisheries	Acie L. Mankins	06/29/00
Associate Judge of Family Court	The Honorable Peggy L. Ableman	04/15/09
Board of Architects	Constance P. Cecil	05/06/00
	Willa M. Gains	05/06/00
	C. Terry Jackson, II	05/06/00
	Charles B. Ryan	05/14/00
Board of Audiologists, Speech Pathologists & Hearing Aid Dispensers	Saundra G. Sutton	04/30/00
	Marilyn R. Karam	04/30/00
	Jean Davison	04/30/00
Board of Chiropractic	Dr. Tamara J. Blossic	04/30/00
Board of Cosmetology & Barbering	Chong A. Nelms	04/30/00
	Abby Betts	04/30/00
	Orin F. Burdette	04/30/00
Board of Funeral Services	Gary J. Wallick	04/30/00
Board of Landscape Architects	Denise Husband	01/29/00
Board of Medical Practice	Dr. Venerando J. Maximo	08/16/97
Board of Pilot Commissioners	H. Edward Maull, Jr.	04/30/02
	I. Randall Kenworthy	04/30/02
Board of Podiatry Examiners	Dr. Kathryn Lightcap	05/06/00
	Gary D. Evans	05/06/00

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Children's Trust Fund Board of Directors	Daniel F. Kelleher, Esq.	02/26/00
	Dr. Donald G. Unger	02/26/00
	The Honorable M. Jane Brady	02/26/00
	The Honorable Deborah H. Capano	03/14/00
	Tamra S. Brittingham	04/09/00
Combined Charitable Solicitation Campaign Committee	Diane Hastings	05/30/99
	Karen Barlow	05/30/00
Council on Apprenticeship and Training	Charles C. Ryan	04/30/00
Council on Forestry	Mary S. Burton	03/19/00
	Earl Christensen	03/19/00
	Roger M. Levy	03/26/00
	John E. Clark	04/16/00
	Raymond Taraila	04/30/00
Allen Jones	04/30/00	
Council on Hispanic Affairs	Israel Valenzuela	12/14/97
Council on Housing and Community Development	Christopher W. White	03/27/00
Council on Libraries	Grace S. Husted	09/26/98
	Richard J. Geisenberger	04/09/00
	David H. Burdash	04/16/00
Council on Soil and Water Conservation	Constance C. Holland	03/19/00
Council on Transportation	Thomas W. Bennett	05/06/99
	June D. MacArtor	05/06/00
Court of Common Pleas for Kent County	Judge Merrill C. Trader	02/07/09

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Criminal Justice Council	Thomas P. McGonigle	Pleasure of Governor
Delaware Alcoholic Beverage Control Commission	George Coyle	04/09/00
Delaware Arts Council	Charles E. Grandberry, III Phyllis Levitt Richard Vague	03/13/00 03/13/00 03/13/00
Delaware Bicycle Council	William H. Boyd Carole D. White Edith M. Carlson	04/18/98 04/18/99 04/18/00
Delaware Board of Nursing	Emma Lou Browning Maryjeanette J. Monihan	03/17/00 05/06/00
Delaware Commission on Interstate Cooperation	Leo E. Strine, Esq.	02/01/99
Delaware Council on Career & Vocational Education	Samuel Lathem	Pleasure of Governor
Delaware Harness Racing Commission	Mary Ann Lambertson Fred C. Sears, III	01/07/03 04/28/00
Delaware Health Resources Board (Vice Chairperson)	Gregg Sylvester, M.D. MPH Dr. Wilfred E. Kingsley	12/09/97 04/30/99
Delaware Heritage Commission (Chairman)	William E. Lowe	Pleasure of Governor
Delaware River & Bay Authority	Dian C. Taylor	07/01/00
Delaware State Dental Examiners	Dr. Martin W. Scanlon Dr. Mario DiSabatino Nancy Tannen-Brohawn	04/16/00 04/30/00 04/30/00
Delaware Technical and Community College Board of Trustees (Chairman)	Dr. James R. Soles	Pleasure of Governor

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Dental Hygiene Advisory Committee	Patricia A. Murphy-Davis	04/18/00
Diamond State Port Corporation	Samuel E. Lathem Leonard W. Quill	04/30/03 04/30/03
Dover Housing Authority	Philemon Hill	03/14/00
Examining Board of Physical Therapists	Kathy Watson	05/14/00
Foster Care Review Board	Elma E. Jackson Caroline N. Bither Nancy Lefevre Caroline Massafieri Richard Ogden B. Claire Zaragoza Sandra S. Lord Marlene Collins Juanita Stone	03/14/00 03/14/00 03/14/00 03/14/00 03/14/00 03/14/00 03/14/00 03/14/00 03/14/00
Foster Care Review Board Executive Committee	William L. Murray	09/26/98
Health Resources Council	Robert Tremain Robert E. Lawson A. Herbert Nehrling, Jr. Jon C. McDowell Suzanne C. Moore	04/30/99 04/30/99 04/30/99 04/30/99 02/10/00
Housing Capacity Building Program	John J. Gorlich Collis. O. Townsend Kimberly Brockenbrough	04/30/99 04/30/99 04/30/99
Human Relations Commission	Catherine A. Blough	03/27/01
Local Records Commission	Ross Trader	Pleasure of Governor
Public Employee Relations Board	Henry E. Kressman	04/16/03

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Real Estate Commission	James D. McGinnis	03/07/00
Secretary of Education	Iris T. Metts, Ed.D	Pleasure of Governor
Secretary of Finance	John C. Carney, Jr.	Pleasure of Governor
Shellpot Creek Abatement Committee	Kathleen Connolly	Pleasure of Governor
Small Employer Health Reinsurance Board	Patrick C. Miller	03/17/00
	Michael E. Norman	04/10/00
	Jay E. Moorhead	04/10/00
State Board of Accountancy	Mary C. Landis	04/22/00
State Board of Education	Dr. Joseph A. Pika	04/21/03
	Dennis J. Savage	04/21/03
State Board of Education (President)	James L. Spartz, Ed.D	Pleasure of Governor
State Board of Examiners of Optometry	Dr. Susan Betts	05/06/00
	Dr. Phyllis E. Chambers	05/06/00
	Marina Ney	05/06/00
State Board of Pharmacy	Ruth B. Melvin	07/01/98
State Board of Registration for Land Surveyors	Joseph J. Kliment	08/10/98
State Board of Social Work Examiners	Dr. Charles E. Marvil	03/14/00
Tourism Advisory Board	Frank Fantini	01/07/00
Unemployment Compensation Advisory Council	Samuel E. Lathem	03/21/00
University of Delaware Board of Trustees	Ernst Dannemann	04/24/03

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
LINK TO GOVERNOR'S HOME PAGE		
Violent Crimes Compensation Board	Thomas W. Castaldi	05/14/00
Wastewater Facilities Advisory Council	Peggy J. Baunchalk	02/07/00
Welfare Employment Committee	Claire F. McElwee	02/21/99
	Kenneth R. Wildman	02/21/99
	Joseph L. Mastin	02/21/00
	Nancy Ward	02/21/00
	Joseph C. Holler	02/21/00

**THE FOLLOWING OPINIONS WERE ON
FILE AS OF JUNE 15, 1997**

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 97-IB01

January 14, 1997

Mr. David F. Edwards, Jr.
114 Lakeside Drive
Laurel, DE 19956

[LINK TO AG'S
HOME PAGE](#)

RE: Freedom of Information Act Complaint against
Town of Laurel

Dear Mr. Edwards:

Pursuant to 29 Del.C. Section 10005(e), the Attorney General's Office makes this final written determination of whether a violation of the Freedom of Information Act, 29 Del.C. Sections 10001-10005 ("FOIA"), occurred. Because of the ongoing nature of your complaint, a complete procedural recitation is in order.

Your original complaint letter dated November 6, 1996 was received by this Office on November 12, 1996. By letter dated November 14, 1996 to the Laurel Acting Town Manager, we asked that she respond to your allegations that the Town violated the public records and open meeting provisions of FOIA. We did not ask the Town to respond to the other allegations in your complaint, since they "involve matters that are outside the jurisdiction of the Attorney General's Office."

By letter dated November 18, 1996, you posed three questions regarding the jurisdiction of the Attorney General's Office. By letter dated November 22, 1996, we responded to those questions. By letter dated December 3, 1996, we asked the Town's attorney for additional information in order to complete our investigation of this case. By letter dated December 31, 1996, the Town's attorney responded, enclosing the documents we had requested. Based on all the information and documents provided to us in the course of our investigation, we make the following written determination.

By two letters dated October 16, 1996, you asked the Town for copies of approximately twenty documents. By letter dated November 26, 1996, the Town's attorney

responded, enclosing some but not all of those documents, and stating that the other documents did not exist. At my request, the Town's attorney caused to be executed an Affidavit of Bonnie Walls, Acting Town Manager of the Town of Laurel, sworn to on December 31, 1996, which states: "That she is executing this affidavit to verify that she has made a diligent search of the Town records, over which she has custody, and that she has not been able to locate the documents specified below requested by David F. Edwards, Jr., in his letters dated October 16, 1996." It is the practice of the Attorney General's Office to accept such an affidavit from the custodian of public records to determine that such documents do not exist for purposes of FOIA. See Att. Gen. Op. 93-I023 (August 31, 1993) (City of New Castle).

As for the September 9, 1996 public meeting, 29 Del.C. Section 10004 (a) provides that "[e]very meeting of all public bodies shall be open to the public" except for authorized executive sessions. Section 10004(e)(2) provides that "[a]ll public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings;. . . ." Section 10004(4) further provides that public notice "shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, . . ."

The documents submitted by the Town's attorney in response to our request show that the agenda for the September 9, 1996 hearing was posted on August 30, 1996, and that notice of the meeting was published in The Leader/State Register on September 4, 1996. The minutes of the "regularly scheduled" September 9, 1996 meeting of the Planning Commission show that there was discussion about the proposed Laurel Estates and Shopping Mall for approximately one hour and forty minutes.

The gravamen of your complaint regarding the notice given of the September 9, 1996 meeting is that it did not comply with the town's subdivision regulations by specially notifying adjoining property owners. The Town of Laurel does not dispute that special notice was not given. But, according to the Town's attorney, "it was announced at such meeting that the discussion would be for informational purposes only and that a public hearing, as required by the Subdivision Regulations, would be held at a later date." The minutes of the September 9, 1996 meeting show that the Subdivision Regulations were not discussed. Even if they were, the notice requirements of those regulations are separate and distinct from the notice requirements of FOIA.

We conclude, however, that a violation of FOIA

occurred in connection with the September 9, 1996 regularly scheduled meeting of the Planning Commission. The agenda was posted on August 31, 1996 at the Commission's principal office, the Laurel Municipal Building, Poplar & Mechanic Streets. Notice was also given in The Leader/State Register on September 4, 1996. The agenda gave the date and purpose of the meeting, but not the time and place of the meeting. The newspaper notice gave the date, time (7:00 p.m.), and place of the hearing, as well as the purpose of the meeting to discuss the Laurel Estates and Shopping Mall.

FOIA requires that all pertinent information about a regular public meeting -- date, time, place, and purpose - must be given at least seven days in advance. In this case, only the newspaper notice published five days before the meeting contained all the pertinent information. Adequate notice of public meetings must be given sufficiently in advance to allow concerned citizens time to decide whether to attend the meeting and otherwise get involved in the political process.

In your original letter of complaint, you stated that you in fact had notice of the meeting from the newspaper publication, as must have sixty other citizens who you say "showed up in protest." Since a large number of concerned citizens clearly had notice of the September 9, 1996 meeting of the Planning Commission, we find that five-days' notice, as opposed to seven days, was a "technical violation" of FOIA which did not adversely affect "substantial public rights" to attend the meeting. Ianni v. Department of Elections of New Castle County, Del. Ch., 1986 WL 9610, at p. 5 (Aug. 29, 1986) (Allen, C.). Nevertheless, the Town of Laurel is hereby placed on notice that the open meeting requirements of FOIA are to be strictly complied with, and that any future violations may be deemed "deliberate" or "an ongoing pattern of infractions." Levy v. Board of Education of the Cave Henlopen School District, Del. Ch., 1990 WL 154147, at p. 7 (Oct. 1, 1990) (Chandler, V.C.).

Based on our review of your complaint, and the responses of the Town of Laurel, we conclude that there was a violation of the open meeting provisions of FOIA in connection with the September 9, 1996 regularly scheduled meeting of the Planning Commission. For the reasons stated above, we do not believe it necessary to direct the Town of Laurel to re-notice that meeting in order to validate any action taken at that meeting.

Very truly yours,

W. Michael Tupman
Deputy Attorney General

APPROVED:

Michael J. Rich
State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION NO. 97-IB02

February 12, 1997

Roger A. Aiken, Esq.
P.O. Box 390 Sent via facsimile and first class mail.
Newark, DE 19715-0390

[LINK TO AG'S
HOME PAGE](#)

Re: Freedom of Information Act Inquiry

Dear Roger:

On February 11, 1997 you addressed a letter to the Attorney General requesting the Department of Justice's position concerning a proposed meeting between DelDot officials and "local elected officials" for Thursday, February 13, 1997 at 7:30 p.m. in the city council chambers to discuss DeIDOT's plans for the intersection of Elkton Road, New London Road, Main Street and a railroad crossing. Your concern was whether the attendance by council at a meeting called by DeIDOT would constitute a FOIA violation in light of our ruling of January 2, 1996. In your letter you also stated that we never responded to your letter of July 29, 1996 requesting a modification of our January 2nd opinion. As a result of our phone discussions, we determined that my letter of October 17, 1996, which was mailed to your address at the city of Newark, was apparently not received. A copy of that letter enclosed.

Under 29 Del.C. § 10005(e), we are considering your request as a petition to determine whether a FOIA violation has occurred or is about to occur. As you may also know, under that section, subsection (e) does not apply to potential or alleged violations of state agencies which are represented by our office.

Based on information which was published in newspapers of record and considering case law which suggests that meetings of the type discussed in your letter of February 11th would subject the city to a potential complaint of FOIA violation, we believe that the meeting scheduled for February 13, 1997 can go forward as planned if the city will issue a notice at least 24 hours in advance of the meeting pursuant to Section 10004(e)(3). Under that subsection, a public notice of a special meeting shall include an explanation as to why the required seven day notice was not given and it is our opinion that it is a

sufficient explanation to state that an earlier notice was not possible because legal opinions had not been obtained from the City Solicitor and the Attorney General prior to the posting of the notice. If such a notice is posted by the close of business today, February 12, 1997, it is our opinion that a FOIA violation will not occur and that the meeting may go forward as scheduled. It is also our understanding that DelDOT will also issue a similar notice since it is the agency which set up the meeting. It would still be appropriate for the city to publish a notice of a meeting of its council for the same time setting forth the receipt of information from DelDOT as a purpose for the meeting.

Please feel free to call me if you have any further questions concerning this matter,

Very truly yours,

Michael J. Rich
State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION NO. 97-IB03

February 27, 1997

Mr. Milton F. Morozowich
R.D. 2, Box 166
Bridgeville, DE 19933

James D. Griffin, Esquire
Griffin & Hackett, P.A.
Mellon Bank Building, #200
P.O. Box 612
Georgetown, DE 19947

Re: Freedom of Information Act Complaint
dated Sept. 19, 1996
Woodbridge School District Board of Education

Dear Mr. Morozowich and Mr. Griffin:

This is the Attorney General's written decision on the above referenced complaint pursuant to 29 Del.C. § 10005(e).

By letter dated September 19, 1996, Mr. Morozowich alleges that the Woodbridge School District Board of Education (the "Board") violated the Freedom of Information Act ("FOIA") in connection with the hiring of personnel for the 1996 - 1997 school year.¹ Specifically, Mr. Morozowich alleges that, at an August 20, 1996 Board workshop, the School District Superintendent presented the Board with a "list of

recommended 'new hires,'" and advised the Board that the Assistant Superintendent would call Board members the next day for a consensus vote on the recommendations. Mr. Morozowich contends that the Assistant Superintendent tried to call him on August 21 and August 22, 1996. Mr. Morozowich further contends that, by letter dated August 22, 1996, the persons on the list of new hires were advised that the Board had "officially approved their appointment on August 20, 1996." Mr. Morozowich complains that the consensus vote was improper, and that the discussion of "new hires" should have been done at a Board meeting open to the public.

Our office forwarded Mr. Morozowich's complaint to the Board on December 24, 1996 and requested a response within ten days. We received the Board's response on January 13, 1997.

In its response, the Board states that the Assistant Superintendent called individual Board members on August 21, 1996 to inquire whether "they had any problems with the recommendations" for new employees. The Board explains that, if there were no problems, the recommendations were to be placed on the agenda for the next regular Board meeting scheduled for August 28, 1996. The notice and minutes for that meeting confirm that the Board reviewed and unanimously approved the recommended new hires.

The Board also explains that the August 22 letter advising new employees that they were approved on August 20, 1996 was a mistake, and that a subsequent letter dated August 27, 1996 advised such employees that they "had only been tentatively approved and that their names would be officially presented to the Board" for hiring approval at the August 28 meeting. Subsequent letters dated August 29, 1996 advised the new employees that they had been officially approved at the August 28 meeting. The Board contends that "no violation of FOIA occurred based on the fact that the Board of Education approved the questioned personnel actions in open public session at its August 28, 1996 meeting."

We find that the Assistant Superintendent's phone calls to individual Board members amounted to a consensus vote on the recommendations. As the Board has been advised in the past, consensus votes conducted outside of open meetings are in violation of FOIA. See Att'y Gen. Op. No. 96-IB32. See also Levy v. Board of Education of Cape Henlopen School District, Del. Ch., C.A. No. 1447, Chandler, V.C. (October 1, 1990) (recognizing that one of the purposes of FOIA is "to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance"). We find, however, that no remedial action is required for this violation since the subject matter of the consensus vote was properly noticed for the August 28, 1996 public Board meeting, and properly voted on at that

time. The Board is cautioned, however, to discontinue the practice of calling individual Board members to obtain their views on matters which are to be put to Board vote.

The Attorney General's Office is increasingly concerned about what appears to be a pattern of violations of the open meeting laws by the Board. This is the fourth time in the last two years that this Office has determined that the Board violated the open meeting provisions of FOIA. See Att'y. Gen. Op. No. 94-I033 (Nov. 28, 1994) ("the Board has violated the public notice requirements of the Act"); Att'y. Gen. Op. No. 95-IB04 (Jan. 23, 1995) (breakfast meetings); Att'y. Gen. Op. No. 95-IB37 (Mar. 8, 1995) (same); Att'y. Gen. Op. No. 96-IB12 (Apr. 15, 1996) (discussion of public business after close of public meeting). In addition, this Office has advised the Board to discontinue practices, such as gathering in the Superintendent's office prior to public meetings, which "give the appearance that public business is being conducted in a manner other than in an open and public forum." Att'y. Gen. Op. No. 95-IB35 (Nov. 2, 1995). See also Att'y. Gen. Op. No. 95-IB20 (June 15, 1995) ("We urge the District to review our January 23, 1995 Opinion detailing the parameters of the public meeting provisions of the Act so that future violations of the Act may be avoided.").

Although we decline to direct remedial action in this case, the Board is advised that a later public meeting may not always validate a prior private meeting, particularly where the FOIA violation appears "deliberate" or involves "an ongoing pattern of infractions." Levy, supra. Further violations which appear deliberate or part of an ongoing pattern of infractions may prompt a petition to the Court of Chancery for permanent injunctive relief and such other damages and fees as may be permissible under FOIA.

Very truly yours,

W. Michael Tupman
Deputy Attorney General

Michele C. Gott
Deputy Attorney General

APPROVED:

Michael J. Rich
State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION NO. 97-IB04

February 28, 1997

Mr. Ronald J. Torgerson
Executive Director
Delaware Criminal Justice Information System
Board of Managers
801 Silverlake Boulevard
P.O. Box 370
Dover, DE 19903

[LINK TO AG'S
HOME PAGE](#)

Re: Access to Delaware Criminal Justice
Information System

Dear Mr. Torgerson:

The Secretary of the Board of Managers of the Delaware Criminal Justice Information System ("DELJIS") has asked for an opinion of the Attorney General on two questions: (1) whether the Town of Elsmere ("Town") may have access to information in DELJIS to utilize a voluntary assessment system to collect mail-in fines for motor vehicle offenses; and (2) whether the Town has the authority to establish a mail-in center for payment of fines for motor vehicle offenses. The Secretary provided us with a copy of the Town's "Request for DELJIS Services" and a letter from the Town's attorney enclosing a copy of the Town Charter and Chapter 13 of the Elsmere Code. In the event we were to answer the second question no, you also asked us to determine whether the Town could impose, collect and/or retain court costs in addition to the fines levied for the violations.

As to whether the Town is authorized by statute to receive criminal history information from DELJIS, we conclude that it is not. As to whether the Town has authority under State law to establish and operate a mail-in center (as opposed to a Mayor's Court) for payment of fines for certain motor vehicle offenses, we conclude that it does not. We also conclude that if the Town does not operate a court, it may not impose, collect or retain court costs of any similar administrative fee.

OPINION

DELJIS is a computer database supervised by a Board of Managers pursuant to Chapter 86, Title 11 of the Delaware Code. The central repository for the criminal history information in that database is the State Bureau of Identification. See 11 Del.C. Section 8503(a). State law prohibits the dissemination of criminal history information from DELJIS except as specifically authorized by statute. Section 8513 of Title 11 authorizes disclosure of such

information to (1) criminal justice agencies, courts, any person (or attorney) who requests a copy of his or her own criminal history record, and the State Public Defender.

The "Request for DELJIS Services" was made by the Town of Elsmere to help operate its voluntary assessment program. Although Chapter 13 of the Elsmere Code establishes a "Mayor's Court," it is our understanding that no such court actually exists. Indeed, in his letter dated July 1, 1996, the Town's attorney stated that "Elsmere is not purporting to operate a court in the sense of holding any trials or otherwise performing a judicial function."

Since the criminal history information requested is not intended for the use of the "courts of the State or of any political subdivision thereof," as required by 11 Del. C. Section 8513(a)(1), the question remains whether the Town is a criminal justice agency authorized to receive information from DELJIS. Section 8502(3) of Title 11 defines a "criminal justice agency" as:

- a. Every court of this State and of every political subdivision thereof;
- b. A government agency or any sub-unit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:
 1. The Delaware State Police;
 2. All law enforcement agencies and police departments of any subdivision of this State;
 3. The State Department of Justice;
 4. The Office of the Solicitor of the City of Wilmington;
 5. The Delaware Criminal Justice Information System, Office of the Director;
 6. The Department of Correction;
 7. The Division of Youth Rehabilitative Services.

In its "Request for DELJIS Services," the Town checked "NO" in response to the question whether it is a "Criminal Justice Agency." Since, by its own admission, the Town is not a criminal justice agency -- nor any one of the other entities authorized by statute to receive criminal history information -- it may not have access to DELJIS. This office has previously decided that only those entities specifically authorized by statute can receive DELJIS criminal history information. See Att'y Gen. Op. No. 90-I008 (May 23, 1990) (Kent County Department of Inspections and Enforcement is not a criminal justice agency); Att'y. Gen. 012. No. 87-I038 (Dec. 31, 1987)

(Office of Auditor of Accounts is not a criminal justice agency authorized to receive DELJIS criminal history information).

We next address the issue of the Town's mail-in fine center. The authority to use a voluntary assessment system for motor vehicle offenses is set forth in Section 709 of Title 21 of the Delaware Code:

Any duly constituted peace officer in the State who charges any person with any of the offenses hereinafter designated "motor vehicle offenses subject to voluntary assessment" may, in addition to issuing a summons for such offenses, provide the offending operator with a voluntary assessment form which, when properly executed by the officer and the offender, allows the offender to dispose of the charge without the necessity of personally appearing in the court to which the summons is returnable. The court to which the summons is returnable shall be determined by § 703 of this title; provided, however, that the Courts of the Justices of the Peace may establish a mail-in fine center for each county within the State, in which case the summons may be made returnable to the applicable mail-in fine center.

Section 703(d) of Title 21 of the Delaware Code provides that "in those incorporated municipalities which provide duly constituted alderman's courts or mayor's courts, the alderman and mayor shall continue to hear and adjudicate those cases in which a person is arrested without a warrant and where the alderman's court or the mayor's court is the court of original jurisdiction." Construing Sections 709 and 703(d) together, a peace officer can issue a traffic summons returnable to the alderman's or mayor's court in the municipality where the traffic offense occurred, and the traffic violator can dispose of the by paying a voluntary assessment to that court, without having to personally appear in court.

Chapter 13 of the Elsmere Code establishes a "Mayor's Court" with jurisdiction "limited to the offenses hereinafter designated 'motor vehicle offenses subject to voluntary assessment' which are committed within the limits of the Town of Elsmere." Section 13-1.B. The designated motor vehicle offenses are violations of Title 21, Sections 2701 (driving without a license), 2756 (driving during suspension), 4103 (failure to obey police officer), 4175 (reckless driving), 4177 (driving under the influence), 4201 (failure to stop at scene of property damage accident), 4202 (failure to stop at scene of

accident involving physical injury or death), and any violation of Title 21, Chapter 67. Those are the same motor vehicle offenses subject to voluntary assessment under State law. Compare 21 Del.C. Section 709(e). Section 13-3. of the Elsmere Code provides that “[a]ny duly constituted police officer of the state who charges any of the offenses hereinafter designated ‘motor vehicle offenses subject to voluntary assessment’ committed within the Town of Elsmere may, in addition to issuing a summons for any such offenses, provide the offending operator with a voluntary assessment form which, when properly executed by the officer and the offender, allows the offender to dispose of the charge without the necessity of personally appearing in the Mayor’s Court of the Town of Elsmere.” Section 13.4. further provides that: “A. Payments made pursuant to this chapter shall be remitted to the Mayor’s Court of the Town of Elsmere. B. The payment must be received by the court within ten (10) days from the date of the arrest (excluding Saturday and Sunday) and shall be paid by check or money order.” Again, these Town ordinances comport with the State voluntary assessment law. Compare 21 Del.C. Sections 709(a), (c).

Under State law, for the Town to operate a voluntary assessment system, summonses issued by the Town police must be returnable to the Mayor’s Court. Only the “Courts of the Justices of the Peace may establish a mail-in fine center, . . . in which case the summons may be made returnable to the applicable mail-in fine center.” 21 Del.C. Section 709(a) The statute does not authorize a municipality to establish a mail-in fine center for payment of fines for motor vehicle offenses which occur within the town.

Nor can a town avail itself of the voluntary assessment procedure unless it has an Alderman’s or Mayor’s Court that is “duly established.” 21 Del.C. Section 703(d). Stated differently, there must be an actual court, to which payments for motor vehicle offenses can be remitted “to dispose of the charge without the necessity of personally appearing in the court to which the summons is returnable.” Id. Section 709(a).

Section 706(a) of Title 21 provides that “[a]ll costs collected for the violation of any of the provisions of [Title 21 of the Delaware CD&] shall be paid to the jurisdiction whose court imposed said costs.” The Superior Court has held that “the word ‘costs’ as it appears in 21 Del.C. § 706(a) must of necessity refer only to those costs routinely incurred.” State v. Cephas, Del. Super., 265 A.2d 49, 53 (1970) (Quillen, J.). The statute was intended to preserve to the municipalities the income for costs actually “incurred” by their courts. Id. In contrast, Section 706(a) requires that traffic fines (as distinct from costs) shall be payable to the municipality where the motor vehicle offense occurred. See Cephas, supra.

Court costs are chargeable for the purpose of recouping the costs of administration for the court system having jurisdiction over the cause of action or offense giving rise to the charge. In this case, the Town does not operate a court and apparently uses the imposition of court costs as a general revenue source for the Town. In fact, it is our understanding that the Town recently raised the court costs for traffic offenses from fifteen dollars to twenty dollars. The imposition of any costs by the Town is inappropriate and must cease.

In conclusion, the Town of Elsmere is not an entity designated by statute to receive criminal history information from DELJIS. It may only operate a voluntary assessment system through a duly established Alderman’s or Mayor’s Court. In the absence of such a court, it may not charge, impose or collect “court costs” or any similar fee from persons charged with motor vehicle violations within its boundaries.

Very truly yours,

W. Michael Tupman
Deputy Attorney General

Allison E. Hare
Deputy Attorney General

APPROVED:

Michael J. Rich
State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION NO. 97-IB05

March 4, 1997

Mr. Bruce L. Hoster
415 East 6th Street
Laurel, DE 19956

[LINK TO AG'S
HOME PAGE](#)

RE: Freedom of Information Act Complaint
Against Town of Laurel

Dear Mr. Hoster:

Pursuant to 29 Del.C. Section 10005(e), the Attorney General’s Office makes this written determination whether a violation of the Freedom of Information Act, 29 Del.C. Sections 10001 - 10005 (FOIA”), has occurred.

By letter dated December 5, 1996, you alleged that the Town of Laurel (“Town”) denied your request to inspect and copy public records. Your letter was received

by our Office on December 11, 1996, but was mistakenly directed to the Division of Consumer Affairs, instead of the Civil Division which did not receive it until after Christmas. We apologize for any resultant delay in responding to your complaint.

By letter dated January 2, 1997, we asked the Acting Town Manager to respond in writing to your complaint within ten days. At the request of the Town's attorney, we granted a twenty-day extension of time, because of the attorney's other work commitments. By letter dated January 21, 1997, we received the Town's response.

By letter dated January 24, 1997, we posed several follow-up questions to the Town's attorney in order to clarify the factual record. By letter dated February 3, 1997, we received the Town's response. Since you have made a number of similar FOIA requests to the Town over the last several years, a brief history is in order.

By letter dated August 7, 1995, you first asked the Town to produce "[a]ny and all minutes, documents, notes, memoranda, cassette tapes, inter-agency or extra-agency memos or letters, incoming letters of memos, telephone logs or records and electronic recordings which refer to or are in any way connected to Bruce L. Hoster, Delaware Bankruptcy Court Case 91-1168 or 93-01363HSB, the house located at 415 East 6th Street, and/or all consequent communication between all parties including for the town of Laurel."

By letter dated September 11, 1995, the Town's attorney responded to your request. Except for "communications between the Town Solicitor and Town officials," the Town agreed to produce "copies of the documentation you have requested, upon payment of the reasonable copying expenses." The Town itemized three documents that it was not producing, claiming that they were "exempt from disclosure as pertaining to pending or potential litigation" (citing 29 Del.C. Section 10002(d)(9)). "The charge for copying such documents is \$8.55. Copies of the referenced documents may be obtained at the Laurel Town Hall upon the payment of such fee."

By letter dated September 24, 1995, you requested the same documents as in your letter of August 7, but also requested additional categories of documents: "Any and all minutes, documents, notes, memoranda, cassette tapes, inter-agency or extra-agency memos or letters, incoming letters or memos, telephone logs or records and electronic recordings which refer to or are in any way connected to Bruce L. Hoster, the investigation, arraignment, arrest, and fugitive warrants issued for same concerning any incident, action, ticket, or arrest in absentia or not." Apparently, that letter was never received by the Town, and therefore no response was forthcoming.

By letter dated December 5, 1996, you again requested the records pertaining to your bankruptcy that were the subject of your original letter dated August 7, 1995, but also asked to inspect and copy: the Town's water and sewer billing records and tax assessment books; all parking tickets issued by the Laurel Police Department since January 1, 1996; and your criminal file from Alderman's Court and from the Laurel Police Department.

By letter dated January 10, 1997, the Town's attorney responded to your latest request to copy and inspect documents. The Town reiterated that the bankruptcy records had previously been made available to you in September 1995. As for the criminal files, the "Laurel Police Department does not have a criminal file on you as an arrestee." The only document the Police Department has relating to you is an arrest card for "the parking violation charge disposed of on December 11, 1996." The Town agreed to make available for your inspection printed computer billing records for water and sewer from 1990-July 1996, and town assessment books. More recent billing records are maintained only in computerized form, and, for security reasons, the Town cannot allow you access to operate the computer. See Att'y Gen Op. No. 94-I011 (Mar. 7, 1994) (FOIA does not require a public body to provide on-line access to a computer database).

The Town objected to your request to see copies of parking tickets issued to other persons "on the grounds that such request is overbroad, burdensome and would constitute an invasion of personal privacy, thus being exempt from disclosure pursuant to 29 Del.C. Section 10002(d)(4)."

In its letter dated February 3, 1997, the Town's attorney confirmed the following information:

1. The post-July 1996 water and sewer billing records can be printed out for inspection and copying, on a monthly basis. The Town has already printed out the records through December 3, 1996, and the Town's attorney has asked the Town to print billing records through January 3, 1997. Mr. Hoster can retrieve such records by paying a forty-five cents per page copying charge.

2. The Town of Laurel issued 53 parking tickets during 1996.

3. The Town is willing to produce for inspection and copying the documents in the Laurel Police Department's files relating to Mr. Hoster, including the July 1996 parking summons that was disposed of on December 11, 1996.

4. The Town will make available for your

inspection and copying the files maintained in Alderman's Court relating to the two charges that went to trial in the Court of Common Pleas on December 11, 1996. The Town has previously advised you (per its letter dated January 10, 1996) that you "can contact Alderman Sheridan at 875-2855 to request a convenient time to review the files"

For the foregoing reasons, we determine that the Town of Laurel has not violated the public records provisions of FOIA. The Town has made available to you for inspection and copying most of the public records you requested in your letters dated August 7, 1995, September 24, 1996, and December 5, 1996. The documents the Town has objected to producing are exempt from disclosure under FOIA. Specifically, the three documents identified in Mr. Waehler's letter to you of September 11, 1995 are exempt from disclosure, both because they relate to pending litigation (29 Del.C. Section 10002(d)(9)) and are protected by attorney-client privilege (id. Section 1002(d)(6)).² As for parking tickets issued by the Town to individuals other than yourself, we do not agree with the Town that the clerical task of producing those public records would be unduly burdensome, since the Town issued only 53 tickets in 1996. We find, however, that those records are exempt from disclosure under the common law right of privacy, 29 Del.C. Section 10002(d)(6). Law enforcement requires "the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed." Whalen v. Roe, 429 U.S. 589,605. See Att'y Gen. Op., No. 96-IB33 (Dec. 11, 1996) (names and addresses of business license holders protected by common law right of privacy).

Very truly yours,

W. Michael Tupman
Deputy Attorney General

APPROVED:

Michael J. Rich
State Solicitor

¹ The Attorney General's Office received that letter on September 23, 1996. Unfortunately, due to an internal error in case processing, the complaint did not come to the attention of the unit that handles FOIA matters until mid-December, 1996. We have made every effort since then to respond to the complaint as quickly as possible.

² Those documents are: a fax from William S.

Hitch to John E. Messick, Esquire, dated June 15, 1992, relating to the Hoster bankruptcy proceedings; letter from Donna K. Adkins of the Town of Laurel to Tunnel & Raysor, dated June 19, 1992, relating to outstanding amounts due for water, sewer, trash, and real estate taxes; and letter from John E. Messick, Esquire to William S. Hitch, dated February 25, 1993, relating to the Hoster bankruptcy proceedings and sale of properties for tax delinquency.
