

---

---

# Delaware Register of Regulations



---

Issue Date: May 1, 1998

Volume 1 - Issue 11

Pages 1665 - 1833

---

---

## IN THIS ISSUE

### Regulations:

Errata

Proposed

Final

### Governor

Appointments

### Attorney General

Opinions

### General Notices

### Calendar of Events/ Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before April 15, 1998.

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

---

## CITATION TO THE DELAWARE REGISTER

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

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

---

## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$100.00 from January - December. Single copies are available at a cost of \$9.00 per issue, including postage. For more information contact the **Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.**

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations.

---

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

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

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

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

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

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

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

---

---

## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

---

---

ISSUE DATE	CLOSING DATE	CLOSING TIME
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 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**, Brit  
Shop Supervisor; **Deborah A. Porter**,  
Administrative Secretary; **Virginia L. Potts**,  
Administrative Assistant; **Don Sellers**, Printer;  
**Thom Shiels**, Legislative Attorney; **Marguerite P.  
Smith**, Public Information Clerk; **Mary Jane  
Starkey**, Senior Secretary; **Marvin L. Stayton**,  
Printer; **Rochelle Yerkes**, Senior Secretary.

# TABLE OF CONTENTS

Cumulative Table of Regulations ..... 1670

## ERRATA

### DEPARTMENT OF PUBLIC SAFETY DELAWARE STATE POLICE

Board of Examiners of Private Investigators &  
Private Security Agencies ..... 1678

### DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL DIVISION OF AIR & WASTE MANAGEMENT

Regulation No. 32, Transportation Conformity of  
the Delaware Regulations Governing the Control  
of Air Pollution ..... 1678  
Regulation No. 37, NO<sub>x</sub> Budget Program ..... 1678

## PROPOSED REGULATIONS

### DELAWARE STATE FIRE PREVENTION COMMISSION

Minimum Requirements for Dispatch Centers ..... 1679

### DEPARTMENT OF FINANCE DIVISION OF REVENUE OFFICE OF THE STATE LOTTERY

Video Lottery Regulations ..... 1681

### DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

DSSM Section 3002.7 ..... 1684  
Amendments to Durable Medical Equipment,  
EPSDT & Practitioner Provider Manuals ..... 1685

### DEPARTMENT OF INSURANCE

Regulation No. 80, Standards for Prompt,  
Fair and Equitable Settlement of  
Claims for Health Care Services ..... 1698

### DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL DIVISION OF AIR & WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

Motor Vehicle Inspection & Maintenance,  
Regulations 26, 31, 33 ..... 1699

### DEPARTMENT OF EDUCATION

Cooperative Education Programs ..... 1729  
Diversified Occupations Programs ..... 1731  
Student Rights & Responsibilities ..... 1732  
Comprehensive School Discipline Improvement  
Program ..... 1733  
Constitution & Bylaws of DSSAA ..... 1740

## FINAL REGULATIONS

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Respiratory Care Practice Advisory Council ..... 1746  
Delaware Real Estate Commission ..... 1755

### DEPARTMENT OF FINANCE DIVISION OF REVENUE

Technical Information Memo 98-1,  
Check The Box Regulations ..... 1817

### OFFICE OF THE STATE LOTTERY

Regulations Dealing with Americans with  
Disabilities Act ..... 1763

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

Tidal Finfish Regulation No. 4, Summer Flounder ..... 1767  
Tidal Finfish Regulation No. 10, Weakfish ..... 1770  
Tidal Finfish Regulation No. 22, Tautog ..... 1771  
Tidal Finfish Regulation No. 23, Black Sea Bass ..... 1772

### ENFORCEMENT SECTION

Boating Regulations ..... 1772

---

---

# TABLE OF CONTENTS

---

1669

**DIVISION OF AIR & WASTE MANAGEMENT**

Regulation No. 38, Emission Standards for Hazardous Air Pollutants for Source Categories .....	1788
---	------

**DEPARTMENT OF EDUCATION**

Vision Screening .....	1797
Hearing Screening Procedures .....	1797
Delaware School Health Record Card .....	1798
Delaware Emergency Treatment Card .....	1799
Daily Log .....	1800
Accident Reporting .....	1801
Parental Request to have Prescription Medications Administered in Schools .....	1802
Guidelines for the Administration of Nonprescription Drugs .....	1803
Policy on the School Nurse & the Handicapped Child & Policy for Providing Care to the Child with Special Health Needs .....	1804
Repeal of Fire & Emergency Preparedness .....	1805
Repeal of Title IX of the Educational Amendments of 1972 Concerning Physical Education .....	1806
Smoking Regulations .....	1807
Immunization Rules & Regulations of the State Board of Education .....	1808
Policy for Providing Education to Students with HIV Infection .....	1810
Physical Examinations .....	1811
Orthopedic Screening .....	1812
Repeal of Minimum-Maximum Program Assignment & Experimentation & Modification of Studies .....	1813

**PUBLIC SERVICE COMMISSION**

Regulation Docket No. 48, The Implementation of the Universal Service Provisions of the Telecommunications Act of 1996 .....	1814
--	------

---

**GENERAL NOTICES**

Delaware River Basin Commission meeting .....	1820
Delaware State Housing Authority Comprehensive Plan Notice .....	1820

**GOVERNOR**

Governor's Appointments .....	1822
-------------------------------	------

---

**ATTORNEY GENERAL OPINIONS**

Opinion No. 98-IB01 .....	1825
Opinion No. 98-IB02 .....	1827
Opinion No. 98-IB01A .....	1829

---

**CALENDAR OF EVENTS/HEARING NOTICES**

Fire Prevention Commission, Public Hearing Notice .....	1831
State Lottery, public hearing notice .....	1831
Dept. Health & Social Service, notice of public comment period, DSSM sec. 3002.7 .....	1831
Dept. Health & Social Service, notice of public comment period, durable medical equipment, EPSDT & practitioner provider manuals .....	1831
Insurance Dept., notice of public hearing, Regulation No. 80 .....	1832
DNREC, Div. of Air & Waste Management, Notice of Public Hearing, Regulations, 26, 31 & 33, Motor Vehicle Inspection & Maintenance .....	1832
Dept. of Education, notice of regularly scheduled meeting .....	1833
Delaware River Basin Commission, meeting notice ...	1833
Delaware State Housing Authority, Comprehensive Plan Notice & notice of public hearing .....	1833

## CUMULATIVE TABLES

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

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

### Attorney General's Office

Opinion No. 97-IB01, FOIA Complaint against the Town of Laurel .....	1:1	<b>Del.R.</b>	74
Opinion No. 97-IB02, FOIA Inquiry .....	1:1	<b>Del.R.</b>	75
Opinion No. 97-IB03, FOIA Complaint against Woodbridge School District .....	1:1	<b>Del.R.</b>	76
Opinion No. 97-IB04, Access to DELJIS .....	1:1	<b>Del.R.</b>	77
Opinion No. 97-IB05, FOIA Complaint against the Town of Laurel .....	1:1	<b>Del.R.</b>	79
Opinion No. 97-IB06, FOIA Complaint Against Appoquinimink School District .....	1:9	<b>Del.R.</b>	1438
Opinion No. 97-IB07, FOIA Complaint Against Colonial School District .....	1:9	<b>Del.R.</b>	1441
Opinion No. 97-IB08, FOIA Complaint Against Sussex County .....	1:9	<b>Del.R.</b>	1442
Opinion No. 97-IB09, Status of Public Member of the Board of Medical Practice .....	1:9	<b>Del.R.</b>	1443
Opinion No. 97-IB10, Criminal History Information Relating to Child Care Personnel and foster And Adoptive Parents .....	1:9	<b>Del.R.</b>	1445
Opinion No. 97-IB11, Effect of Pending Criminal Charges On the Licensing of Veterinarians .....	1:9	<b>Del.R.</b>	1446
Opinion No. 97-IB12, Twenty-four <u>Del.C.</u> §3519(e)- Exemption of Licensure .....	1:9	<b>Del.R.</b>	1451
Opinion No. 97-IB13, FOIA Complaint Against City of Lewes .....	1:9	<b>Del.R.</b>	1452
Opinion No. 97-IB14, FOIA Complaint Against Red Clay Consolidated School District Board of Education .....	1:9	<b>Del.R.</b>	1456
Opinion No. 97-IB15, FOIA Complaint Against Caesar Rodney School District .....	1:9	<b>Del.R.</b>	1461
Opinion No. 97-IB16, Twenty-four <u>Del.C.</u> §3520 .....	1:9	<b>Del.R.</b>	1463
Opinion No. 97-IB17, FOIA Complaint Against City of New Castle .....	1:9	<b>Del.R.</b>	1464
Opinion No. 97-IB18, FOIA Complaint Against Town of Bridgeville .....	1:9	<b>Del.R.</b>	1466
Opinion No. 97-IB19, FOIA Complaint Against Milford City Council .....	1:9	<b>Del.R.</b>	1467
Opinion No. 97-IB20, FOIA Complaint Against Cape Henlopen School District .....	1:9	<b>Del.R.</b>	1469
Opinion No. 97-IB21, Mailing of Absentee Ballots .....	1:9	<b>Del.R.</b>	1470
Opinion No. 97-IB22, FOIA Complaint Against City of Wilmington .....	1:9	<b>Del.R.</b>	1471
Opinion No. 97-IB23, FOIA Complaint Against Woodbridge School District .....	1:9	<b>Del.R.</b>	1473

### Delaware State Fire Prevention Commission

1997 State Fire Prevention Regulations .....	1:2	<b>Del.R.</b>	197 (Final)
Ambulance Service Regulations .....	1:1	<b>Del.R.</b>	35 (Prop.)

### Department of Administrative Services

#### Division of Professional Regulation

Board of Chiropractic .....	1:1	<b>Del.R.</b>	45 (Final)
Board of Dental Examiners .....	1:5	<b>Del.R.</b>	543 (Prop.)
	1:7	<b>Del.R.</b>	852 (Final)
Board of Electrical Examiners .....	1:7	<b>Del.R.</b>	795 (Prop.)
Board of Examiners in Optometry .....	1:7	<b>Del.R.</b>	820 (Prop.)
	1:10	<b>Del.R.</b>	1494 (Prop.)
Board of Examiners of Psychologists .....	1:8	<b>Del.R.</b>	1009 (Prop.)

---

---

# CUMULATIVE TABLES

---

1671

Board of Funeral Services .....	1:10	<b>Del.R.</b>	1500	(Prop.)
Board of Nursing, Advanced Practice Nurse .....	1:1	<b>Del.R.</b>	15	(Prop.)
Board of Nursing .....	1:2	<b>Del.R.</b>	146	(Final)
Board of Pharmacy .....	1:4	<b>Del.R.</b>	428	(Prop.)
Board of Physical Therapy .....	1:2	<b>Del.R.</b>	101	(Prop.)
	1:6	<b>Del.R.</b>	714	(Final)
Board of Professional Counselors of Mental Health .....	1:9	<b>Del.R.</b>	1308	(Prop.)
Board of Veterinary Medicine .....	1:7	<b>Del.R.</b>	805	(Prop.)
	1:10	<b>Del.R.</b>	1573	(Final)
Nursing Home Administrators .....	1:2	<b>Del.R.</b>	141	(Final)
Council on Real Estate Appraisers .....	1:8	<b>Del.R.</b>	1172	(Prop.)
Real Estate Commission .....	1:8	<b>Del.R.</b>	1015	(Prop.)
Respiratory Care Practice Advisory Council .....	1:8	<b>Del.R.</b>	1022	(Prop.)
Department of Agriculture				
Aquaculture Regulations .....	1:4	<b>Del.R.</b>	309	(Prop.)
Delaware Harness Racing Commission .....	1:2	<b>Del.R.</b>	92	(Prop.)
	1:5	<b>Del.R.</b>	498	(Final)
	1:5	<b>Del.R.</b>	541	(Prop.)
Whips & Blood Gases .....	1:7	<b>Del.R.</b>	921	(Final)
Delaware Thoroughbred Racing Commission .....	1:2	<b>Del.R.</b>	100	(Prop.)
	1:3	<b>Del.R.</b>	248	(Prop.)
	1:5	<b>Del.R.</b>	508	(Final)
	1:6	<b>Del.R.</b>	649	(Prop.)
	1:6	<b>Del.R.</b>	713	(Final)
Bleeder Program .....	1:8	<b>Del.C.</b>	1183	(Final)
Claimed Horses .....	1:9	<b>Del.R.</b>	1312	(Prop.)
Department of Education				
Accident Reporting .....	1:9	<b>Del.R.</b>	1312	(Prop.)
Administration of Non-Traditional Remedies .....	1:9	<b>Del.R.</b>	1328	(Prop.)
Agriscience Education Framework .....	1:2	<b>Del.R.</b>	154	(Final)
Daily Log .....	1:9	<b>Del.R.</b>	1313	(Prop.)
Delaware Administrator Standards .....	1:6	<b>Del.R.</b>	650	(Prop.)
	1:8	<b>Del.R.</b>	1184	(Final)
Delaware Emergency Treatment Card .....	1:9	<b>Del.R.</b>	1317	(Prop.)
Delaware School Health Record Card .....	1:9	<b>Del.R.</b>	1319	(Prop.)
Delaware Teaching Standards .....	1:6	<b>Del.R.</b>	654	(Prop.)
	1:8	<b>Del.R.</b>	1188	(Final)
Driver Education .....	1:5	<b>Del.R.</b>	559	(Prop.)
	1:7	<b>Del.R.</b>	964	(Final)
DSSAA Requirements .....	1:2	<b>Del.R.</b>	172	(Final)
Education of Homeless Children & Youth .....	1:5	<b>Del.R.</b>	556	(Prop.)
	1:7	<b>Del.R.</b>	962	(Final)
Extended Illness .....	1:10	<b>Del.R.</b>	1510	(Prop.)
Foreign Language Content Standards .....	1:2	<b>Del.R.</b>	156	(Final)
Glossary of Terms, Manual for Certification of Professional School Personnel .....	1:2	<b>Del.R.</b>	158	(Final)
Guidelines for Approval of School Improvement Grants .....	1:7	<b>Del.R.</b>	815	(Prop.)
	1:9	<b>Del.R.</b>	1400	(Final)
Guidelines for the Administration of Non-Prescription Drugs .....	1:9	<b>Del.R.</b>	1326	(Prop.)
Guidelines for the School Districts to Comply with the Gun Free Schools Act .....	1:10	<b>Del.R.</b>	1511	(Prop.)
Hearing Screening Procedures .....	1:9	<b>Del.R.</b>	1321	(Prop.)

# CUMULATIVE TABLES

High School Diploma & the Record of Performance .....	1:5	<b>Del.R.</b> 554 (Prop.)
	1:7	<b>Del.R.</b> 960 (Final)
Immunization Rules of the State Board of Education .....	1:9	<b>Del.R.</b> 1324 (Prop.)
Interscholastic Athletics .....	1:4	<b>Del.R.</b> 361 (Prop.)
	1:6	<b>Del.R.</b> 724 (Final)
Manual for Certification of Professional School Personnel .....	1:2	<b>Del.R.</b> 163 (Final)
Membership in Fraternities & Sororities .....	1:4	<b>Del.R.</b> 363 (Prop.)
	1:6	<b>Del.R.</b> 723 (Final)
Orthopedic Screening .....	1:9	<b>Del.R.</b> 1329 (Prop.)
Parental Request to have Prescription Medications Administered in Schools .....	1:9	<b>Del.R.</b> 1331 (Prop.)
Physical Examinations .....	1:9	<b>Del.R.</b> 1332 (Prop.)
Policy for Providing Education to Students with HIV Infection .....	1:9	<b>Del.R.</b> 1323 (Prop.)
Policy for School Districts on the Possession, Use & Distribution of Drugs & Alcohol .....	1:9	<b>Del.R.</b> 1314 (Prop.)
Policy on the School Nurse & the Handicapped Child & Policy for Providing Care to the Child with Special Health Needs .....	1:9	<b>Del.R.</b> 1334 (Prop.)
Regulations on School/Police Relations .....	1:3	<b>Del.R.</b> 256 (Prop.)
	1:5	<b>Del.R.</b> 510 (Final)
Repeal of certain parts of section V, Vocational Technical Education Programs .....	1:6	<b>Del.R.</b> 664 (Rep.)
	1:8	<b>Del.R.</b> 1199 (Final)
Repeal of certain regulations concerning Student Activities .....	1:4	<b>Del.R.</b> 365 (Rep.)
	1:6	<b>Del.R.</b> 726 (Final)
Repeal of Minimum-Maximum Program Assignment, Experimentation and Modification .....	1:7	<b>Del.R.</b> 817 (Rep.)
Repeal of Regulation for Minors Consent to Diagnostic Procedures .....	1:10	<b>Del.R.</b> 1513 (Rep.)
Repeal of Regulation for Reporting Cases of Child Abuse or Neglect .....	1:10	<b>Del.R.</b> 1513 (Rep.)
Repeal of six Regulations that are in the Delaware Code .....	1:7	<b>Del.R.</b> 817 (Rep.)
	1:9	<b>Del.R.</b> 1396 (Final)
Repeal of Section B.1.a, Discipline Powers & Responsibilities of Superintendents .....	1:3	<b>Del.R.</b> 263 (Rep.)
	1:5	<b>Del.R.</b> 517 (Final)
Repeal of three regulations .....	1:8	<b>Del.R.</b> 1029 (Prop.)
Requirements for Vocational Technical Education Programs .....	1:6	<b>Del.R.</b> 662 (Prop.)
	1:8	<b>Del.R.</b> 1196 (Final)
Satellite School Agreements .....	1:2	<b>Del.R.</b> 170 (Final)
School Bus Regulations .....	1:2	<b>Del.R.</b> 87 (Prop.)
	1:5	<b>Del.R.</b> 473 (Final)
Smoking Regulations .....	1:8	<b>Del.R.</b> 1029 (Prop.)
State Content Standards .....	1:2	<b>Del.R.</b> 151 (Final)
The School Health Tuberculosis (TB) Control Program .....	1:9	<b>Del.R.</b> 1336 (Prop.)
Vision Screening .....	1:9	<b>Del.R.</b> 1338 (Prop.)
Visual & Performing Arts Content Standards .....	1:2	<b>Del.R.</b> 90 (Prop.)
	1:6	<b>Del.R.</b> 729 (Final)
Visual & Performing Arts Graduation Requirements .....	1:2	<b>Del.R.</b> 88 (Prop.)
Department of Finance		
Div. of Revenue, Delaware State Lottery Office, Background Investigation Requirements for Lottery Employees .....	1:8	<b>Del.R.</b> 1032 (Prop.)
Video Lottery Employee Organization and Lottery Employee Regulations .....	1:3	<b>Del.R.</b> 243 (Prop.)
	1:8	<b>Del.R.</b> 1202 (Final)
	1:10	<b>Del.R.</b> 1575 (Final)
Regulations dealing with Americans with Disabilities Act .....	1:7	<b>Del.R.</b> 826 (Prop.)

---

---

# CUMULATIVE TABLES

---

1673

Technical Information Memo. 97-6 .....	1:9	<b>Del.R.</b> 1341	(Prop.)
Technical Information Memo. 97-6 .....	1:6	<b>Del.R.</b> 712	(Prop.)
Technical Memo. 98-1, Check Boxes .....	1:8	<b>Del.R.</b> 1033	(Prop.)
Department of Health & Social Services			
Division of Public Health,			
Adult Day Care Facilities, Regulations .....	1:10	<b>Del.R.</b> 1521	(Prop.)
Licensing & Registration of Operators of Public Water Supply Systems .....	1:1	<b>Del.R.</b> 28	(Prop.)
	1:7	<b>Del.R.</b> 932	(Final)
Plumbing Code Regulations .....	1:7	<b>Del.R.</b> 830	(Final)
Practice of Midwifery, Rules & Regulations .....	1:9	<b>Del.R.</b> 1349	(Prop.)
Public Pools .....	1:2	<b>Del.R.</b> 174	(Final)
Trauma System Rules .....	1:2	<b>Del.R.</b> 110	(Prop.)
	1:7	<b>Del.R.</b> 891	(Final)
Prehospital Trauma Triage Scheme, ALS & BLS (Errata) .....	1:3	<b>Del.R.</b> 213	(Prop.)
Division of Services for Aging & Adults with Physical Disabilities			
Adult Abuse Registry .....	1:7	<b>Del.R.</b> 803	(Prop.)
	1:9	<b>Del.R.</b> 1405	(Final)
Division of Social Services			
A Better Chance/Food Stamp Program .....	1:10	<b>Del.R.</b> 1514	(Prop.)
Amendments to Medicaid Provider Manuals, General Policy Manual, Long-Term Care Provider Manual, and others .....	1:8	<b>Del.R.</b> 1035	(Prop.)
	1:10	<b>Del.R.</b> 1577	(Final)
Ambulance Provider Policy Manual, Criteria for Non-Emergency Ambulance Transportation for Medicaid Clients in a Nursing Facility .....	1:4	<b>Del.R.</b> 394	(Prop.)
	1:8	<b>Del.R.</b> 1214	(Final)
Assisted Living Agencies, Regulations for .....	1:4	<b>Del.R.</b> 300	(Prop.)
	1:7	<b>Del.R.</b> 951	(Final)
Dental Reimbursement .....	1:9	<b>Del.R.</b> 1307	(Emer.)
DHS revision of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act, Se. 403, 8 USC 1613, the 1993 Mickey Leland Childhood Hunger Relief Act, the Food, Agriculture, Conservation and Trade Act Amendments of 1991Public Law 104-203, Title 38, USC, and DSSM Sec. 4006 & 4012 .....			
	1:4	<b>Del.R.</b> 313	(Prop.)
	1:9	<b>Del.R.</b> 1401	(Final)
DMAP, Amendments to Medicaid Eligibility Policy Manual .....	1:8	<b>Del.R.</b> 1058	(Prop.)
	1:10	<b>Del.R.</b> 1600	(Final)
DMAP Sec. 301.25, Composition of Budget Unit .....	1:10	<b>Del.R.</b> 1532	(Prop.)
DMAP Sec. 410.15, Vehicles .....	1:4	<b>Del.R.</b> 368	(Prop.)
	1:8	<b>Del.R.</b> 1211	(Final)
DMAP Sec. 420 Personal Needs Allowance .....	1:4	<b>Del.R.</b> 369	(Prop.)
	1:7	<b>Del.R.</b> 921	(Final)
	1:8	<b>Del.R.</b> 1212	(Final)
DSSM Section 8000, A Better Chance Program .....	1:4	<b>Del.R.</b> 297	(Prop.)
Durable Medical Equipment Manual .....	1:5	<b>Del.R.</b> 563	(Prop.)
	1:8	<b>Del.R.</b> 1213	(Final)
Inpatient Hospital Provider Manual .....	1:4	<b>Del.R.</b> 370	(Prop.)
Long-Term Care Provider Manual, Billing of Third Party Payer .....	1:4	<b>Del.R.</b> 394	(Prop.)
Long-Term Care Provider Manual, Criteria for Non-Emergency Ambulance Transportation for Medicaid Clients in a Nursing Facility .....	1:4	<b>Del.R.</b> 394	(Prop.)
Medicaid Outpatient Hospital Provider Specific Manual .....	1:10	<b>Del.R.</b> 1516	(Prop.)
Outpatient Hospital Provider Manual .....	1:4	<b>Del.R.</b> 383	(Prop.)

# CUMULATIVE TABLES

Revision of Regulation of the Medicaid/Medical Assistance Program Contained in			
DMAP Sec. 420 .....	1:3	<b>Del.R.</b> 214	(Emer.)
	1:7	<b>Del.R.</b> 858	(Final)
Revision of Regulation Contained in DSSM 8201 .....			
	1:5	<b>Del.R.</b> 456	(Emer.)
	1:6	<b>Del.R.</b> 711	(Prop.)
Revision of Regulation Contained in DSSM 8301.3 .....			
	1:3	<b>Del.R.</b> 215	(Emer.)
Revision of Regulation DSSM 8205.2, 8304 & 8305 .....			
	1:6	<b>Del.R.</b> 709	(Prop.)
Revision of Regulation Contained in DSSM 9910, Simplified Food Stamp			
Workfare .....	1:9	<b>Del.R.</b> 1303	(Emer.)
Simplified Food Stamp Program, ABC Benefits .....			
	1:9	<b>Del.R.</b> 1347	(Prop.)
Surety Bonds, Requirement for Home Health Agencies .....			
	1:9	<b>Del.R.</b> 1346	(Prop.)
Department of Justice, Delaware Securities Act .....			
	1:8	<b>Del.R.</b> 1078	(Prop.)
Department of Labor			
Div. of Employment & Training Apprenticeship Programs .....			
	1:1	<b>Del.R.</b> 21	(Prop.)
Governor's Advisory Council on Apprenticeship & Training .....			
	1:8	<b>Del.R.</b> 1116	(Prop.)
Division of Industrial Affairs			
Prevailing Wage Regulations .....			
	1:5	<b>Del.R.</b> 519	(Prop.)
Procedures of Equal Employment Review Board .....			
	1:5	<b>Del.R.</b> 537	(Prop.)
	1:8	<b>Del.R.</b> 1215	(Final)
Industrial Accident Board .....			
	1:5	<b>Del.R.</b> 548	(Prop.)
	1:7	<b>Del.R.</b> 938	(Final)
Proposed Amendments, Rules 8, 9, 30 & 31 .....			
	1:8	<b>Del.R.</b> 1153	(Prop.)
	1:10	<b>Del.R.</b> 1621	(Final)
Special Employment Practices relating to Health Care & Child Care Facilities &			
Adult Abuse Registry Check .....			
	1:5	<b>Del.R.</b> 533	(Prop.)
	1:8	<b>Del.R.</b> 1216	(Final)
	1:9	<b>Del.R.</b> 1269	(Errata)
Department of Natural Resources & Environmental Control			
Division of Air & Waste Management			
Regulations Governing Hazardous Waste .....			
	1:3	<b>Del.R.</b> 278	(Final)
Regulation 38, Emission Standards for Hazardous Air Pollutants for			
Source Categories .....			
	1:9	<b>Del.R.</b> 1373	(Prop.)
	1:10	<b>Del.R.</b> 1534	(Prop.)
Division of Air & Waste Management, Air Quality Management Section,			
Development of the Phase II Ozone Attainment Demonstration for Kent &			
New Castle Counties as a Revision to the State Implementation Plan .....			
	1:10	<b>Del.R.</b> 1538	(Prop.)
NO <sub>x</sub> Budget Program .....			
	1:5	<b>Del.R.</b> 564	(Prop.)
	1:8	<b>Del.R.</b> 1220	(Final)
	1:9	<b>Del.R.</b> 1275	(Errata)
Regulation No. 2 .....			
	1:1	<b>Del.R.</b> 48	(Final)
Reg. No. 20, Sec. No. 28, Standards for Performance for Municipal			
Solid Waste Landfills .....			
	1:4	<b>Del.R.</b> 330	(Prop.)
	1:10	<b>Del.R.</b> 1653	(Final)
Transportation Conformity Regulation No. 32 .....			
	1:8	<b>Del.R.</b> 1125	(Prop.)
	1:10	<b>Del.R.</b> 1625	(Final)
Division of Fish & Wildlife,			
Boating Regulations .....			
	1:9	<b>Del.R.</b> 1357	(Prop.)
Shellfish Reg., Horseshoe Crab .....			
	1:7	<b>Del.R.</b> 807	(Prop.)
	1:9	<b>Del.R.</b> 1411	(Final)
Shellfish Reg. No. S-41, Growing Areas Closed to Harvesting Clams,			

---

---

# CUMULATIVE TABLES

---

1675

Mussels & Oysters .....	1:4	<b>Del.R.</b>	354	(Prop.)
	1:7	<b>Del.R.</b>	835	(Final)
Shellfish Regulation No. S-48. Conch Minimum Size Limits .....	1:3	<b>Del.R.</b>	250	(Prop.)
	1:7	<b>Del.R.</b>	835	(Final)
Shellfish Reg. No. 55, Crab Trotlines & S-56, Crab Traps .....	1:4	<b>Del.R.</b>	354	(Prop.)
	1:7	<b>Del.R.</b>	837	(Final)
Tidal Finfish Regulation No. 4, Summer Flounder .....	1:9	<b>Del.R.</b>	1351	(Prop.)
Tidal Finfish Regulation No. 8 .....	1:3	<b>Del.R.</b>	270	(Final)
Tidal Finfish Regulation No. 10, Weakfish .....	1:9	<b>Del.R.</b>	1353	(Prop.)
Tidal Finfish Regulation No. 12, Atlantic Sturgeon .....	1:7	<b>Del.R.</b>	787	(Prop.)
	1:10	<b>Del.R.</b>	1655	(Final)
Tidal Finfish Regulation No. 22, Tautog .....	1:9	<b>Del.R.</b>	1354	(Prop.)
Tidal Finfish Regulation No. 24, Black Sea Bass .....	1:9	<b>Del.R.</b>	1356	(Prop.)
Tidal Finfish Regulation No. 25 for Atlantic Shark .....	1:4	<b>Del.R.</b>	345	(Prop.)
	1:7	<b>Del.R.</b>	844	(Final)
	1:8	<b>Del.R.</b>	1005	(Errata)
Div. of Water Resources, Regulations for Licensing Operators of Wastewater Facilities .....	1:4	<b>Del.R.</b>	323	(Prop.)
	1:7	<b>Del.R.</b>	924	(Final)
Regulations Governing the Control of Water Pollution .....	1:4	<b>Del.R.</b>	395	(Prop.)
Department of Public Safety				
Delaware State Police, Board of Examiners of Private Investigators & Private Security Agents .....	1:10	<b>Del.R.</b>	1570	(Prop.)
Department of Services for Children, Youth and Their Families				
Division of Family Services				
Licensing Requirements for Residential Child Care Facilities and Day Treatment Programs .....	1:6	<b>Del.R.</b>	668	(Prop.)
Office of Child Care Licensing, Child Abuse Registry .....	1:7	<b>Del.R.</b>	801	(Prop.)
Department of State, Office of the State Bank Commissioner				
Regulation No. 5.1101(f).0001, Election to be treated for tax purposes as a “Subsidiary corporation” of a Delaware chartered banking organization or trust company, national bank having its principal office in Delaware, or out-of-state bank that operates a resulting branch in Delaware .....	1:3	<b>Del.R.</b>	219	(Prop.)
	1:5	<b>Del.R.</b>	474	(Final)
Regulation No. 5.1101etal.0002, Instructions for preparation of Franchise Tax Report	1:3	<b>Del.R.</b>	221	(Prop.)
	1:5	<b>Del.R.</b>	476	(Final)
Regulation No. 5.1101etal.0003, Estimated Franchise Tax Report .....	1:3	<b>Del.R.</b>	224	(Prop.)
	1:5	<b>Del.R.</b>	479	(Final)
Regulation No. 5.1101etal.0004, Final Franchise Tax Report .....	1:3	<b>Del.R.</b>	226	(Prop.)
maintaining branches in this State .....	1:3	<b>Del.R.</b>	228	(Prop.)
	1:5	<b>Del.R.</b>	481	(Final)
Regulation No. 5.1101etal.0005, Instructions for preparation of Franchise Tax for Federal Savings Banks not headquartered in this state but maintaining branches in this state .....	1:3	<b>Del.R.</b>	228	(Prop.)
	1:5	<b>Del.R.</b>	483	(Final)
Regulation No. 5.1101etal.0006, Estimated Franchise Tax Report Federal Savings Banks not headquartered in Delaware .....	1:3	<b>Del.R.</b>	231	(Prop.)
	1:5	<b>Del.R.</b>	486	(Final)

# CUMULATIVE TABLES

Regulation No. 5.1101etal.0007, Final Franchise Tax Report Federal Savings Banks not headquartered in Delaware .....	1:3	<b>Del.R.</b>	232	(Prop.)
	1:5	<b>Del.R.</b>	487	(Final)
Regulation No. 5.1101.etal.0008, Instructions for calculation of Employment Tax Credits .....	1:3	<b>Del.R.</b>	233	(Prop.)
	1:5	<b>Del.R.</b>	488	(Final)
Regulation No. 5.1101etal.0009, Instructions for preparation of Franchise Tax for Resulting Branches in this state of out-of-state banks .....	1:3	<b>Del.R.</b>	235	(Prop.)
	1:5	<b>Del.R.</b>	490	(Final)
Regulation No. 5.1101etal.0010, Estimated Franchise Tax Report for Resulting Branches in this state of out-of-state banks .....	1:3	<b>Del.R.</b>	239	(Prop.)
	1:5	<b>Del.R.</b>	494	(Final)
Regulation No. 5.1101etal.0011, Final Franchise Tax Report for Resulting Branches in this state for out-of-state banks .....	1:3	<b>Del.R.</b>	241	(Prop.)
	1:5	<b>Del.R.</b>	496	(Final)
Regulation No. 5.131.0002, Procedures Governing the Creation & Existence of an Interim Bank .....	1:5	<b>Del.R.</b>	592	(Prop.)
Regulation No. 5.2111(b).0005, Report of Delaware Loan Volume .....	1:7	<b>Del.R.</b>	812	(Prop.)
	1:9	<b>Del.R.</b>	1415	(Final)
Regulation No. 5.2111/2210/2906.0006, Report of Delaware Assests .....	1:7	<b>Del.R.</b>	815	(Prop.)
	1:9	<b>Del.R.</b>	1418	(Final)
Regulation No. 5.2210(e).0005, Report of Delaware Loan Volume .....	1:7	<b>Del.R.</b>	813	(Prop.)
	1:9	<b>Del.R.</b>	1416	(Final)
Regulation No. 5.2318.0001, Report of Delaware Sale of Checks, Drafts, and Money Orders Volume .....	1:7	<b>Del.R.</b>	813	(Prop.)
	1:9	<b>Del.R.</b>	1416	(Final)
Regulation No. 5.2906(e).0003, Report of Delaware Loan Volume Motor Vehicle Installment Contracts .....	1:7	<b>Del.R.</b>	814	(Prop.)
	1:9	<b>Del.R.</b>	1417	(Final)
Regulation No. 5.701/774.0001, Procedures for applications to form a bank, bank & trust company or limited purpose trust company pursuant to Chapter 7 of Title 5 of the Delaware Code .....	1:5	<b>Del.R.</b>	595	(Prop.)
	1:7	<b>Del.R.</b>	862	(Final)
Regulation No. 5.761.0017, Incidental Powers .....	1:5	<b>Del.R.</b>	597	(Prop.)
	1:7	<b>Del.R.</b>	865	(Final)
Regulation No. 5.770.0009, establishment of a branch office by a bank or trust company .....	1:5	<b>Del.R.</b>	598	(Prop.)
	1:7	<b>Del.R.</b>	866	(Final)
Regulation No. 5.771.0005, Procedures governing applications to open branch offices outside the State of Delaware .....	1:5	<b>Del.R.</b>	599	(Prop.)
	1:7	<b>Del.R.</b>	867	(Final)
Regulation No. 5.795etal.0016, Merger with out-of-state banks .....	1:5	<b>Del.R.</b>	601	(Prop.)
	1:7	<b>Del.R.</b>	869	(Final)
Regulation No. 5.833.0004, Application by an out-of-state savings institution, out-of-state savings & loan holding company or out-of-state bank holding company to acquire a Delaware savings bank or Delaware savings & loan holding company ...	1:5	<b>Del.R.</b>	602	(Prop.)
	1:7	<b>Del.R.</b>	870	(Final)
Regulation No. 5.844.0009, Application by an out-of-state bank holding company to acquire a Delaware bank or bank holding company .....	1:5	<b>Del.R.</b>	605	(Prop.)
	1:7	<b>Del.R.</b>	873	(Final)
Regulation No. 5.777.0002, Application for a certificate of public convenience & advantage for a limited purpose trust company pursuant to subchapter V of Chapter 7 of Title 5 of the Delaware Code .....	1:5	<b>Del.R.</b>	609	(Prop.)
	1:7	<b>Del.R.</b>	877	(Final)

---

---

# CUMULATIVE TABLES

---

1677

Department of Transportation			
Aeronautical Regulations .....	1:9	<b>Del.R.</b> 1383	(Prop.)
Governor's Office			
Amendment to Executive Order No. 46 .....	1:3	<b>Del.R.</b> 279	
Appointments & Nominations .....	1:1	<b>Del.R.</b> 68	
	1:2	<b>Del.R.</b> 200	
	1:3	<b>Del.R.</b> 281	
	1:4	<b>Del.R.</b> 438	
	1:5	<b>Del.R.</b> 623	
	1:6	<b>Del.R.</b> 740	
	1:7	<b>Del.R.</b> 970	
	1:8	<b>Del.R.</b> 1248	
	1:9	<b>Del.R.</b> 1437	
	1:10	<b>Del.R.</b> 1657	
Executive Order No. 45, Employee & Labor - Management Relations in State Government .....	1:1	<b>Del.R.</b> 63	
Executive Order No. 46, Governor's Task Force on Violent Crime .....	1:1	<b>Del.R.</b> 64	
Amendment to Executive Order No. 46 .....	1:3	<b>Del.R.</b> 279	
Executive Order No. 47, Executive Committee of the Workforce Development Council .....	1:1	<b>Del.R.</b> 65	
Executive Order No. 49, Reallocation of State Private Activity Bond Volume Cap for Calenday Year 1997 & Initial Suballocation of State Private Activity Bond Volume Cap for Calendar Year 1998 .....	1:9	<b>Del.R.</b> 1432	
Executive Order No. 50, Establishing the Education Salary Schedule Improvement Committee .....	1:9	<b>Del.R.</b> 1433	
Executive Order No. 51, Establishment of Recommendations on the Coin Design for the Delaware Quarter Dollar Commemorative Coin .....	1:9	<b>Del.R.</b> 1434	
Insurance Department,			
Regulation No. 47 .....	1:8	<b>Del.R.</b> 1155	(Prop.)
Regulation No. 63 .....	1:8	<b>Del.R.</b> 1160	(Prop.)
Regulation No. 75, Written Notice by Insurers of Payment of Third Party Claims .....	1:5	<b>Del.R.</b> 591	(Prop.)
	1:9	<b>Del.R.</b> 1408	(Final)
Public Service Commission			
Regulation Docket No. 12, Notice of Investigation & Formulation of Rules Concerning Pay Phone Services .....	1:1	<b>Del.R.</b> 5	(Prop.)
Regulation Docket No. 12, Investigation & Adoption of Rules to Govern Payphone Services within the State of Delaware .....	1:3	<b>Del.R.</b> 263	(Prop.)
	1:6	<b>Del.R.</b> 730	(Final)
Regulation Docket No. 46, Tack One .....	1:9	<b>Del.R.</b> 1418	(Final)
Regulation Docket No. 47, Notice of Proposed Rule making Concerning Intrastate Discounts for Schools & Libraries .....	1:1	<b>Del.R.</b> 9	(Prop.)
	1:2	<b>Del.R.</b> 139	(Final)
Regulation Docket No. 47, Promulgation of Rules Regarding the Discounts for Intrastate Telecommunications & Information Services Provided to Schools & Libraries .....	1:5	<b>Del.R.</b> 462	(Final)
State Personnel Commission			
Merit Employee Relations Board Regulations .....	1:3	<b>Del.R.</b> 274	(Final)
Violent Crimes Compensation Board .....	1:8	<b>Del.R.</b> 1161	(Prop.)

The proposed regulatory change for the **Board of Examiners of Private Investigators & Private Security Agencies** in the April 1998 issue, page 1570 of the Register, was erroneously listed under the Department of Administrative Services. The Board is under the authority of the Department of Public Safety, Delaware State Police.

The Final Regulation entry in the April 1998 issue of the Register, for the **DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL DIVISION OF AIR & WASTE MANAGEMENT, Regulation No. 32 Transportation Conformity of the Delaware Regulations Governing the Control of Air Pollution** contained an error on pages 1626 and 1652. The Table of Contents on page 1626 lists two Section 25's. The second entry, "Section 25. . . Enforceability of design concept and scope and project-level mitigation and control measures", should be Section 26. On page 1652, the citation for Section 25, should read Section 26.

The Final Regulation entry for the **DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL DIVISION OF AIR & WASTE MANAGEMENT, Regulation No. 37 (NO<sub>x</sub> Budget Program)** in the April 1998 issue of the Register contained several incorrect numbers on page 1301 in Appendix "A". The correct numbers are contained in the following Appendix "A". For the full text of the Final Regulation please refer to 1:9 **Del.R.** 1275.

NO <sub>x</sub> BUDGET PROGRAM --- APPENDIX "A"						
COMPANY	FACILITY and PLANT POINT	OTC IDENTIFIED ALLOWANCES	EXCEPTIONAL CIRCUMSTANCES ALLOWANCES	RESERVE ALLOWANCES	FINAL ALLOWANCES	SOURCE TYPE
DELMARVA POWER	Christiana Sub 001	6	-0-	1	7	Non-Part 75
	Christiana Sub 002	6	-0-	1	7	Non-Part 75
	Delaware City 002	1	-0-	1	2	Non-Part 75
	Edge Moor 001	1	-0-	1	2	Non-Part 75
	Edge Moor 002	241	-0-	1	242	Part 75
	Edge Moor 003	345	-0-	1	346	Part 75
	Edge Moor 004	621	28	1	650	Part 75
	Hay Road 001	49	-0-	1	50	Non-Part 75
	Hay Road 002	34	-0-	1	35	Non-Part 75
	Hay Road 3*	-0-	-0-	-0-	-0-	Part 75
	Indian River 001	340	-0-	1	341	Part 75
	Indian River 002	397	-0-	1	398	Part 75
	Indian River 003	834***	-0-	1	835	Part 75
	Indian River 004	1,652	-0-	2	1,654	Part 75
	Indian River 10**	-0-	-0-	1	2	Non-Part 75
	Madison Str. 001	-0-	-0-	1	1	Non-Part 75
	West Sub 001	2	-0-	1	3	Non-Part 75
	DFD Operating Services	McKee Run 001	72***	-0-	1	73
McKee Run 002		44***	-0-	1	45	Non-Part 75
McKee Run 003		184	-0-	2	186	Part 75
VanSant 1*		-0-	-0-	-0-	-0-	Part 75
FIRST STATE	Co-Gen 1**	-0-	-0-	2	203	Non-Part 75
STAR ENTERPRISE	Delaware City 006****	-0-	-0-	1	105	Non-Part 75
	Delaware City 019	20	-0-	1	21	Non-Part 75
	Delaware City 034	70	-0-	1	71	Non-Part 75
	Delaware City 067	93	-0-	1	94	Non-Part 75
	Delaware City 068	206	-0-	1	207	Non-Part 75
	Delaware City 069	227	-0-	1	228	Non-Part 75
	Delaware City 070	214	-0-	2	216	Non-Part 75
	Delaware City 072	-0-	-0-	-0-	-0-	Non-Part 75
	Delaware City 074	117	-0-	1	118	Non-Part 75
	Delaware City 105	-0-	-0-	-0-	-0-	Non-Part 75
TOTAL		5,776	28	32	6,142	

NOTES: (\*) These Units did not start operation until after 1990.

(\*\*) Units operated in the 1990 NO<sub>x</sub> control period but were not included in the "1990 OTC Baseline Emissions Inventory".

(\*\*\*) OTC MOU allowances corrected from "1990 OTC Baseline Emissions Inventory" due to use of incorrect RACT factor.

(\*\*\*\*) OTC MOU allowances corrected from "1990 OTC Baseline Emissions Inventory" due to incorrect reporting of 1990 fuel use information.

**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.

---

**DELAWARE STATE FIRE  
PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code,  
Section 6603 (16 **Del.C.** 6603)

**NOTICE OF PUBLIC HEARING**

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 Del. C. §6603 and 29 Del. C. Ch., 101 on May 26, 1998 at 7:00 p.m. in Room 5 of the Delaware State Fire School at the Delaware Fire Service Center, 1461 Chestnut Grove Road, Dover, Delaware. The Commission is proposing to adopt the following:

Minimum Requirements for Dispatch Centers to include utilities, fire protection, emergency lighting power, staffing, qualifications, operating practices, records, equipment and operations, dispatching system and radio devices and computer aided dispatching systems.

Persons may view the proposed Requirements between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463

Chestnut Grove Road, Dover, Delaware, 19904.

Persons may present their views in writing by mailing their views to the Commission at the above address prior to the hearing, and the Commission will consider those responses received before 7:00 p.m. on May 26, 1998, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charged for copies of the proposed changes.

---

**Minimum Requirements for Dispatch Center**

Delaware State Fire Prevention Commission, Ambulance Service Regulation addresses Communication Requirements for Dispatch Centers. Section E- Communication Requirements, Dispatch Centers #1 states Dispatch Center for both Primary and Secondary Ambulance Service Providers shall meet the criteria of NFPA 1221 as amended by the Commission.

The following is the minimum requirement acceptable to meet this section.

**I. Fundamentals**

The System shall be under the control of a responsible jurisdiction.

**II. General Requirements**

Availability of an alternate facility must exist.

The Center met local building codes at time of construction.

The Center has a secured entry system.

The Center has restroom facilities.

**III. Utilities**

Climate Control must be available.

**IV. Fire Protection**

Fire Extinguishers provided in accordance with codes.

Meets State Codes at time of construction.

**V. Emergency Lighting**

Emergency Lighting required.

**VI. Power**

Two power sources provided.

Meets Electrical Code at time of construction.

Storage battery available.

**VII. Staffing**

Jurisdictions receiving more than 600 or more alarms per year, shall have at least one operator on duty.

A supervisor shall be on duty if three or more operators are working.

Operators shall be on duty and capable of operating the system.

**VIII. Qualifications**

Operators shall be in good health.

Operators shall be familiar with fire service operations.

Operators shall have a working knowledge of the overall EMS System.

**IX. Operating Practices**

Calls shall be recorded and tabulated.

Answering Agency shall be able to transfer calls directly, instead of relaying the information to an operator.

A status indication system of all units shall be readily available.

An audible warning or alerting signal, typically a distinctive tone(s) shall proceed any alarm transmitted by voice.

A report of important operations summary statistics shall be prepared annually.

**X. Records**

Complete records, sufficient to ensure reliable operations of all alarms system functions shall be maintained.

**XI. Directory Listing**

A specific telephone number shall be assigned for emergency service with a separate number assigned for normal business.

**XII. Equipment and Operations**

At least one telephone line shall be assigned for emergency calls.

At least one telephone line should be assigned for business calls.

In cases where the communications center is not the primary answering agency for emergency calls, the answering agency shall transfer the call directly to the emergency operator and remain on the line until assured the transfer is effected.

A voice recording facility shall be provided for each operator. Calls received by the telephone shall be recorded automatically and the receiving equipment shall be provided with capability of instant playback.

**XIII. Dispatching System**

All devices and equipment constructed and installed shall be suitable for which they were intended.

All system shall be installed in accordance with established practices.

All System shall pass an acceptance test in the presence of the authorized representative of the purchaser and of the authority having jurisdiction.

**XIV. Miscellaneous Radio Devices**

Where radio home alerting receiving hand held units, pocket pagers and similar radio devices are used to receive alarms or are used on the Emergency scene they shall:

Be manufactured for the environment.

Be capable of one hand operation.

Shall not be placed into transmit mode except by operator on a mechanically guarded switch.

Indicate audibly before the battery is incapable of operating the pager for alerting purposes.

**XV. Computer Aided Dispatching Systems**

CAD Systems shall meet the demands of the authority having jurisdiction at the time of installation.

**DEPARTMENT OF FINANCE**

**DIVISION OF REVENUE**

**OFFICE OF THE STATE LOTTERY**

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

The proposed regulations are amendments to the Lottery's existing Video Lottery Regulations. The Lottery proposes these amendments pursuant to 29 Del. C. section 4805(a).

The proposed amendments to Regulations 2.0, 3.1, 3.8, 3.12, 3.13, 4.2, 4.9, 5.1, 5.11, 6.0, 6.34, 7.0, 7.2, 7.3, 7.6, 7.8, 7.9, 8.0, 8.5, and 13.1 to make the regulations consistent with recently enacted legislation in 71 Del. Laws 253. The proposed amendments would add the legislative definition of "video lottery operations employees" to the regulations. The proposed regulations would also delete the existing provisions for agent license renewal based on the new lottery legislation. The Lottery proposes new regulations 13.12, 13.13, and 13.14 to be consistent with the provisions in the new legislation for enforcement of the Lottery statute.

Proposed regulation 5.1 allows a single technology provider to supply no more than 65% of video lottery machines at a single agent's sight. Proposed regulations 7.2 and 7.3 raise the maximum bet limit to \$25.00 per game. Proposed regulation 7.6 clarifies the procedures for voiding bets by underage players. Proposed regulations 7.8 and 7.9 limit the time period for redemption of jackpots to one hundred and eighty days.

The Lottery will accept written public comments from May 1, 1998 to May 31, 1998. A public hearing will also be conducted at the DNREC Building, Main Auditorium, 89 Kings Highway, Dover, on May 20, 1998 at 3:00 p.m. The Lottery's phone number is (302)739-5291. Please contact me if you have any questions about this matter or require any additional information.

---

Proposed Regulations  
2.0 Definitions

The following words shall be accorded these meanings:

"video lottery operations employee" - an individual employee, person or agent of an applicant or licensee who is responsible for the security of video lottery machines, or responsible for handling video lottery machine proceeds, or is otherwise employed in a position that allows direct access to the internal workings of video lottery machines.

3.0 Licensing of Agents; Business Plans

3.1. Any applicant desiring to obtain a license to act as an agent shall apply to the agency on forms specified by the Director from time to time. Application forms shall require the applicant to provide the following, without limitation:

(1) The applicant's legal name, form of entity (e.g., general or limited partnership, corporation), the names, addresses, employer identification or social security numbers (if applicable) and dates of birth (if applicable) of its directors, officers, partners, owners, ~~and~~ key employees, and video lottery operations employees.

(3) With respect to any persons named in subparagraph (1) that are not individuals, the names, addresses, social security numbers, and birth dates of all individuals who are directors, officers, owners, partners, ~~or~~ key employees, or video lottery operations employees of any such persons.

(6) The names, if any, and addresses, social security numbers, and dates of birth of any person who is or was a director, officer, owner, partner, ~~or~~ key employee, or video lottery operations employee of the applicant who has been ~~or was~~ charged with or convicted of a felony, a crime involving gambling, or a crime of moral turpitude.

3.8 The Director shall weigh the following factors in his or her evaluation of the application:

(2) The criminal background, if any, of the applicant, or any of its officers, directors, partners, owners, ~~and~~ key employees, and video lottery operations employees. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within 10 years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.

(9) Whether the person, or any of its officers, directors, partners, owners, ~~or~~ key employees, or video lottery operations employees are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the Lottery.

~~3.12 At least 180 days prior to the expiration of any license, the agent may apply for renewal of such license. The renewal application, if complete, shall be deemed approved if not acted upon by the agency within 100 days of its receipt.~~

3.13 If the Director proposes to deny a license application ~~or application for renewal of the license~~ and the agency is subject to the requirements contained in subchapter IV of 29 Del. C. chapter 101, the agency shall first give written notice

to the applicant or licensee of the intended action, the reasons therefor, and the right to a hearing as provided for in 29 Del. C. chapter 101.

#### 4.0 Licensing of Technology Providers

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

(2) Require the applicant to supply specified information and documents related to the applicant's fitness and the background of its owners, partners, directors, officers, key employees, and video lottery operations employees, including but not limited to copies of financial statements, tax returns, insurance policies, and lists of creditors.

(5) Require the applicant to disclose whether the applicant, or any of its present or former officers, directors, owners, partners, ~~or~~ key employees, or video lottery operations employees, is or has been the subject of an investigation in another jurisdiction, the nature of the investigation, and the outcome, if any, of such investigation.

(7) Require the applicant to disclose its legal name, form of entity (e.g., general or limited partnership, corporation), the names, addresses, social security numbers and dates of birth of its directors, officers, partners, owners, ~~and~~ key employees, and video lottery operations employees.

4.9. In evaluating applications, the Director shall consider:

(2) Any past conduct of the applicant, or any of its present or former officers, directors, partners, owners, ~~or~~ key employees, or video lottery operations employees which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.

(5) The association of the applicant, or any of its officers, directors, owners, partners, ~~or~~ key employees, or video lottery operations employees with persons of known criminal background or persons of disreputable character, that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of video lottery operations.

#### 5.0 Technology Providers: Contracts; Requirements; Duties

5.1 The Director shall, pursuant to the procedures set forth in section ~~6922~~ 6924 of Title 29 of the Delaware Code, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such numbers and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the lottery, or convenience of the players, and in accordance with the agents' business plans as approved and amended by the Director. No single technology provider shall supply more than ~~50%~~ 65% of the total number of video lottery machines at the premises of any agent. No more than ~~500~~ 1,000 video lottery machines shall be located within the confines of an agent's premises unless the Director approves up to an additional ~~500~~ 1,000 machines or other number approved by the Director as permitted by law.

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

(13) It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, video lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.

#### 6.0 Agents: Duties

The following duties are required of all licensed agents:

6.34 Notify the Director on a continuing basis of any change in officers, partners, directors, key employees, video lottery operations employees, and owners. Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the video lottery agent's license, provided that an agency is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation.

#### 7.0 Game Requirements

7.2 Video games shall be based on bills, coins, tokens or credits, worth between \$.05 and \$5 \$25.00 each, in conformity with approved business plans as amended.

7.3 The Director, in his or her discretion, may authorize extended play features from time to time to which the maximum wager limit of \$5 ~~\$25.00~~ shall not apply.

7.6 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet.

7.8 Credit slips may be redeemed by a player at the designated place on the premises where the video game issuing the credit slip is located during the ~~one (1) year~~ one hundred and eighty (180) day redeeming period commencing on the date the credit slip was issued.

7.9 No credit slip shall be redeemed more than ~~one (1) year~~ one hundred and eighty (180) days from the date of issuance. No jackpot from a coin-in/coin-out machine shall be redeemed more than one hundred and eighty (180) days from the date on which the jackpot occurred. Funds reserved for the payment of a credit slip or expired unclaimed jackpot shall be treated as net proceeds if unredeemed ~~one (1) year and one (1) day~~ one hundred and eighty one (181) days from the date of issuance of the credit slip or occurrence of the winning jackpot. The one hundred and eighty day redemption policy in this regulation shall be prominently displayed on the premises of the video lottery agent.

#### 8.0 Accounting and Distribution Procedures

8.5 The net proceeds of the video lottery operations shall be remitted daily or weekly to the agency at the discretion of the Lottery Director through the electronic transfer of funds to an EFT account segregated and held in trust for the agency. To the extent, if any, that such daily or weekly remission cannot be achieved due to the unavailability of bank services, the remission shall be made on the first day that such services are available. Agents shall furnish to the agency all information and bank authorizations required to facilitate the timely transfer of monies to the State lottery fund. Agents shall provide the agency thirty (30) days advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

#### 13.0 Enforcement

13.1 The license of a video lottery agent or technology provider may be suspended or revoked for the following reasons:

(3) For cause, such as, but not limited to falsifying any application for license or report to the agency; failure to report information required by the regulations; the material violation

of the regulations; or any conduct by the licensee, or any of its owners, officers, directors, partners, ~~or~~ key employees, or video lottery operations employees, which undermines the public confidence in the video lottery system or serves the interest of organized gambling or crime and criminals in any manner. A license may be revoked for an unintentional violation of any Federal, State or local law, rule or regulation provided that the violation is not cured within a reasonable time as determined by the Director, or a longer period where the video lottery agent has made diligent efforts to cure. For purposes of this provision, the licensee is deemed to be familiar with all provisions of these regulations and unintentional violations shall not include violations which the agent or technology provider asserts are unintentional because of lack of awareness of these regulations. Likewise, for purposes of this provision, diligent efforts to cure shall not constitute a defense to a suspension or revocation of the license arising out of reasons contained in section 13.1(1) or (2) or in situations where the violation would not have occurred had the licensee exercised diligent efforts to comply with the requirements when they were first applicable.

13.12 Whoever violates the Lottery chapter 29 Del. C. chapter 48, or any Lottery rule or regulation duly promulgated thereunder, or any condition of a license issued pursuant to 29 Del. C. section 4805, or any Administrative Order issued pursuant to Lottery statutes or Regulations shall be punishable as follows:

(i) If the violation has been completed, by a civil penalty imposed by Superior Court, which by 29 Del. C. section 4823 shall have jurisdiction of civil penalty actions brought pursuant to this section, of not less than \$1000 nor more than \$10,000 for each completed violation. Each day of a continued violation shall be considered as a separate violation if, on each such day, the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violation shall not be a defense to a continued violation with respect to the first day of its occurrence.

(ii) If the violation is continuing or there is a substantial likelihood that it will reoccur, the Director may also seek a temporary restraining order, preliminary injunction, or permanent injunction in the Court of Chancery, which shall have jurisdiction of an action for such relief.

(iii) In his discretion, the Director may impose an administrative penalty of not more than \$1,000 for each violation. Each day of continued violation shall be considered as a separate violation if the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violations shall not be a defense to a continued violation with respect to the first day of its occurrence. Prior to the assessment of an administrative

penalty, written notice of the Director's proposal to impose such penalty shall be given to the violator, and the violator shall have 30 days from receipt of such notice to request a public hearing. Any public hearing, if requested, shall be held prior to the imposition of the penalty and shall be governed by section 10125 of Title 29. If no hearing is timely requested, the proposed penalty shall become final and shall be paid no later than 60 days from receipt of the notice of proposed penalty. Assessment of an administrative penalty shall take into account the circumstances, nature, and gravity of the violation, as well as any prior history of violations, the degree of culpability, the economic benefit to the violator resulting from the violation, any economic loss to the State, and such other matters as justice may require. In the event of nonpayment of an administrative penalty within 30 days after all legal appeal rights have been waived or otherwise exhausted, a civil action may be brought by the Director in Superior Court for the collection of the penalty, and for interest, from the date payment was due, attorneys' fees and other legal costs and expenses. The validity or amount of such administrative penalty shall not be subject to review in an action to collect the penalty. Any penalty imposed after a public hearing is held pursuant to this subsection shall be appealable to Superior Court, and such appeal shall be governed by section 10142 of Title 29.

(iv) In his discretion, the Director may endeavor to obtain compliance with requirements of the Lottery chapter, 29 Del. C. chapter 48, by written Administrative Order. Such order shall be provided to the responsible party, shall specify the complaint, and propose a time for correction of the violation. It may also provide an opportunity for a public hearing at which the Director shall hear and consider any submission relevant to the violation, corrective action, or the deadline for correcting the violation.

13.13 The Director shall enforce chapter 48, of 29 Delaware Code and any rules, regulations, or Administrative Orders issued thereunder.

13.14 Any interest, costs or expenses collected by the Lottery under actions instituted by 29 Del. C. section 4823 or these regulations shall be appropriated to the State Lottery Office to carry out the purposes of 29 Del. Code chapter 48.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. 512)

**Delaware Health and Social Services is considering revising certain regulations contained in DSSM section 3002.7. The Department will receive comments and consider whether or not to adopt or modify the proposed regulations.**

The proposed regulations:

- Remove the possibility that an employable caretaker whose 48-month *A Better Chance* time limit has expired may re-apply for benefits after a family has not received assistance for 96 consecutive months.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by May 31, 1998.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the written materials filed by other interested persons.

---

- the adult caretaker did not make a good faith effort to comply with the terms of the CONTRACT OF MUTUAL RESPONSIBILITY.

The responsibility rests with the adult caretaker to demonstrate substantiality. It is not enough for the adult caretaker to simply make a claim that the agency failed in its effort to provide the services specified under the Contract of Mutual Responsibility. The adult caretaker must present the reasons for the claim and show how the agency failed to provide these services.

#### 3002.7 Re-Application after the Time Limit

Assistance will be denied to employable caretakers reapplying for benefits after the 48 cumulative month time limit, unless:

- the family has not received assistance for 96 consecutive months

or

· the caretaker proves that grounds exist for an extension.

Benefits will be provided to these families only in the pay-after-performance component, for a maximum of 12 cumulative months. DSS will conduct an assessment and notice the family prior to termination of benefits (See section 3002).

Families headed by unemployable caretakers can receive assistance under the Children's Program.

### 3003 Children's Program - Non Time limited Program

A BETTER CHANCE creates a non-time-limited program for certain families, referred to as the Children's Program. Families with the following status will receive benefits in the Children's Program:

· Families that the agency has determined are unemployable and unable to achieve self-sufficiency, either because a parent is too physically or mentally disabled to work in an unsubsidized work setting or because the parent is needed in the home to care for a child or another adult disabled to that extent; or

· Families headed by a non-needy, non-parent caretaker; or

---

---

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

**PUBLIC NOTICE****Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its durable medical equipment, EPSDT, and practitioner provider manuals.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than June 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma

Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

---

**REVISIONS:**

Durable Medical Equipment Provider Specific Policy Manual

**I. ~~DEFINITION AND OVERVIEW~~****III. CRITERIA FOR COVERAGE**

~~Powered Air Flotation~~ Fluidized Bed/Mattress

Incontinence Products

Coverage for Recipients age 4 Years and Over

Incontinence products for recipients age four years and older may be covered by the DMAP when prescribed by a physician as medically necessary for the treatment of incontinence related to a diagnosed condition. Treatment of incontinence aims to control the condition through bladder or bowel retaining, or other behavior management techniques, diet modification, drug therapy, and possibly surgery. All reasonable attempts at control treatment are expected to be made.

The DMAP may cover disposable incontinence products for recipients age four years and over. The DME supplier must maintain the physician's prescription for an incontinent product in their client files and the prescription must be renewed every six months.

The physician must prescribe the most appropriate type of incontinence products for the recipient and the DME supplier must dispense the least costly appropriate product of that type. Physicians are expected to prescribe an accurate daily allowance, and DME suppliers are cautioned not to routinely dispense the Medicaid maximum allowance of eight units per day unless medically necessary.

The DMAP considers the following types on incontinent

products suitable for recipients who have incontinence: diapers/briefs, incontinent undergarments, guards, pads or liners. Medicaid recognizes that some patients may require two types of incontinent products to meet their needs, but the daily combined usage of both is not to exceed the expected daily allowance of eight units per day.

The DME supplier must use the locally assigned procedure code WW798 - Disposable Incontinence Products - Medically Necessary - For Ages Over 4 Years. Billing must include a description of the product dispensed, manufacturer's name, and product number. The supplier must use locally assigned procedure code WW800 or WW801, depending on the age of the recipient, when reusable incontinent products are prescribed for the treatment of incontinence.

The DMAP does not cover menstruation sanitary supplies, nor additional incontinent supplies for menstruation. Further, Medicaid will not cover Pull-up disposable training pants as they are not viewed as an appropriate treatment for incontinence and do not represent the least costly appropriate alternative health service available. Disposable incontinent supplies are not to be dispensed under HCPCS procedure code A5149 (incontinence/ostomy supply, miscellaneous).

#### Coverage of Diapers for Children Under 4 Years of Age

Individual consideration may be given for the coverage of disposable diapers for those children under four years of age when the use is outside the normal range (the DMAP considers eight diapers per day to be normal usage). A letter from the attending practitioner must be submitted to the Medical Review Team detailing medical necessity. The letter must address the child's diagnosis, the effects of the condition, the duration of the condition, the functional level of the child, the number of diapers used per day, why the excessive number is medically necessary, and if attempted, the results of toilet training. Authorization is required for the coverage of diapers for children under four years of age. If the service is approved, the DME provider will be required to submit a CMN using the locally assigned procedure code WW799.

#### Exceeded Units

The DMAP has established an upper limit on medically necessary incontinence products for recipients age four years and over. This limit (8 per day) represents the maximum usage and will be waived only in extraordinary circumstances. If the recipient's need exceeds the limit, the DME supplier is required to submit a letter from the attending practitioner documenting the recipient's diagnosis, why the excessive number is medically necessary, the total number of incontinence products needed, and the period of time for which the approval is being requested. The letter will be returned to

the DME provider if these requirements are not met.

## VI. EPSDT PROGRAM SPECIFIC POLICY

### Non-Covered Services

#### Diapers

~~Diapers routinely used for children under 4 years of age are not covered. Refer to Equipment Specific Coverage Criteria for Diapers Section III, Criteria for Coverage, Incontinence Products, for a description of requirements for coverage of diapers under age four (4); specific coverage exceptions.~~

#### Pull-Up Disposable Training Pants

~~Pull-Up disposable training pants are not an appropriate treatment for incontinence and do not represent the least costly appropriate alternative health service available. Therefore, they are considered to be a non-covered service. If incontinence products are required during a lengthy training period we will continue our policy of covering diapers during toilet training when it is medically necessary.~~

~~The DMAP does not generally cover incontinence liners, diaper doublers, sanitary pads, etc.~~

#### Diapers

~~The DMAP may reimburse DME suppliers for disposable diapers for eligible recipients four years of age and older. Disposable diapers for children age four and above are covered when prescribed by a physician as medically necessary for the treatment of incontinence related to a diagnosed condition.~~

~~Individual consideration will be given for the coverage of disposable diapers for those children under four years of age when the use is outside the normal range (the DMAP considers 8 diapers per day to be normal usage). A letter from the attending practitioner must be submitted to the EPSDT Medical Review Team detailing medical necessity. The letter must address the child's diagnosis, the effects of the condition, the duration of the condition, the functional level of the child, the number of diapers used per day, why the excessive number is medically necessary, and if attempted, the results of toilet training. Prior authorization is required for the coverage of diapers for children under four years of age. If the service is approved, the DME provider will be required to submit a CMN using the local HCPCS code WW799.~~

~~The DMAP has established an upper limit on medically necessary disposable diapers for children over four years of age. This limit (8 per day) represents the maximum usage and will be waived only in extraordinary circumstances. If~~

the patient's need exceeds the limit, the DME supplier is required to submit a letter from the attending practitioner documenting the patient's diagnosis, why the excessive number is medically necessary, the total number of diapers needed, and the period of time for which the approval is being requested. The letter will be returned to the DME provider if these requirements are not met.

#### Equipment Specific Coverage Criteria

##### Biliblanket Phototherapy Blanket

The DMAP will cover biliblankets phototherapy blankets to treat abnormal bilirubin levels in newborns. The DME provider should use code WW802 WW839 when requesting authorization for the biliblanket phototherapy blanket. The EPSDT Medical Review Team may authorize the rental of a biliblanket Rental may be authorized for up to, but not to exceed, 9 7 days. ~~The DME provider must attach a letter of medical necessity from the attending practitioner to the CMN. The letter must include all bilirubin laboratory data. The DME provider may only bill for days the unit was in use and must attach all bilirubin laboratory data to the CMN. A separate physician's letter of medical necessity will be required when use exceeds the 7 day limit.~~

##### Augmentative Communication Devices

The DMAP may cover augmentative communication devices that are medically necessary for individuals under the age of 21 through the EPSDT program. The DME provider is required to attach a letter of medical necessity from the attending practitioner to the CMN. In addition, supportive documentation, as appropriate, must address the following areas:

- ~~Full evaluation by an expert examiner (such as a Speech-Language Pathologist).~~
- ~~Full school speech-language evaluation.~~
- ~~School-IEP.~~
- ~~Trial assessment with the requested device.~~
- ~~Comparison to other devices not selected.~~

The DME provider is further required to attach the catalog literature or manufacturer's invoice for the requested device to the CMN. This literature must document the cost to the provider for the device.

##### Orthotics/Prosthetics

The DMAP may cover orthotics/prosthetics for children under the age of 21 through the EPSDT program. Requests for these items require prior authorization with a CMN, and a practitioner's letter of medical necessity. It is important that

the supplier include ICD-9 CM diagnosis(es) that are relevant to the procedure codes being authorized on the CMN.

The DME provider must request prior authorization by using HCPCS procedure codes that begin with "L" followed by four (4) digits. The DME provider must not re-define the procedure and must use a code that describes the exact item dispensed. If the use of a miscellaneous code is necessary, the provider must include a description of the device and itemized explanation of all charges.

~~The replacement of an orthotic or prosthetic, due to growth, requires documentation of the previous and current measurements and a full explanation that all possible adjustments have been made. The supplier may be requested to submit documentation of measurements and/or adjustments for replacement of an orthotic or prosthetic due to growth.~~

##### Enuresis Alarm

~~The DMAP will cover enuresis alarms for children over age four years. This bed-wetting alarm requires prior authorization and a letter of medical necessity from the attending practitioner, with the CMN. The supplier must include the appropriate ICD-9 CM diagnosis code(s) on the CMN. When requesting authorization for the enuresis alarm the supplier is required to use the locally assigned code WW838. The following information must be documented in the practitioner's letter of medical necessity:~~

- ~~Physical findings in relation to nocturnal enuresis.~~
- ~~Effects of any behavior modification programs.~~
- ~~Effects of any medication therapy, if applicable.~~

##### Mic-Key Skin Level Gastrostomy Kit

This kit must be prior authorized with a CMN, and a letter of medical necessity is required from the attending practitioner. When requesting prior authorization for this kit the provider must use code WW800 848 on the CMN. Code WW800 849 may also be used when additional supplies, such as the Secur-Lok extension set (12" length), is needed. must be used when requesting adapters for skin level gastrostomy kits (the request is limited to 5 adapters per month). If approved, the DMAP will cover up to, but not exceed, 5 adapters per month. When requesting other additional supplies needed with the skin level gastrostomy kit code WW800 must be used. Approval for additional supplies will not be given prior to the dates of service. The CMN submitted to the DMAP for an authorization number must be signed by the attending practitioner.

#### VII AUGMENTATIVE & ALTERNATIVE COMMUNICATION DEVICES & SERVICES

**A. SCOPE OF COVERAGE**

Augmentative and alternative communication (AAC) devices are defined as electronic or non-electronic aids, devices, or systems that assist a Medicaid beneficiary to overcome or ameliorate (reduce to the maximum degree possible) the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities. Meaningful participation means effective and efficient communication of messages which takes into account the beneficiary's preferences. Examples of AAC devices include:

- communication boards or books;
- electrolarynxes;
- speech amplifiers; and
- electronic devices that produce speech and/or written output.

AAC devices include devices that are constructed for use as communication devices as well as systems that may include a computer, when an important use of the computer will be as the beneficiary's communication device. AAC devices also include related components and accessories, including software programs, symbol sets, overlays, mounting devices, switches, cables and connectors, auditory, visual, and tactile output devices, and necessary supplies, such as rechargeable batteries.

AAC services are treatment to assist Medicaid beneficiaries in meeting the full range of their communication needs. AAC services are within the scope of practice of speech-language pathologists. The goal of AAC services will be accomplished by:

- developing and improving expressive communication and/or language comprehension skills and abilities that may be adversely affected by e.g., congenital or developmental disabilities;
- maintaining and protecting beneficiaries' existing expressive communication and/or language comprehension skills and abilities from loss or deterioration due to e.g., progressive impairments and disabilities; and
- restoring beneficiaries' expressive communication and/or language comprehension skills and abilities damaged or lost due to e.g., diseases, disability, or traumatic injury.

The scope of AAC services includes diagnostic, screening, preventive, and corrective service provided by or under the direction of a speech-language pathologist. Specific activities include evaluation for, recommendation of, design, set-up, customization and training related to the use of AAC devices.

**Settings in Which AAC Services May be Provided**

AAC services are covered under multiple Medicaid categories, including, but not limited to:

- an individual's home as part of home health services, which includes supplies, equipment, and appliances suitable for use in the home;
- inpatient hospital services;
- out-patient hospital services;
- nursing facility services; and
- intermediate care facilities for persons with mental retardation, developmental disabilities and related condition.

Because all AAC devices are customized to overcome or ameliorate each beneficiary's communication limitations, and are for the sole and exclusive use of a single beneficiary, the cost of AAC devices for residents of nursing facilities and/or ICF/MR-DD facilities is not included in the facility's "per diem" or daily rate for that beneficiary.

**Treatment Plan & Physician Endorsement of Medical Necessity Required**

Assessment is necessary prior to the development of the treatment plan and physician endorsement. For detailed information refer to Section B, Assessment, Data Reporting and Procedural Requirements.

A speech-language pathology treatment plan is required for all requests for DMAP funding for AAC devices and AAC services. Other health professionals, as appropriate, may participate in the development of the treatment plan. The treatment plan must be prepared by a speech by a speech-language pathologist who:

- has a certificate of clinical competence from the American Speech-Language-Association;
- has completed the equivalent educational requirements and work experience necessary for the certificate; or
- has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

A physician must document endorsement of such plan through either completion of a DMAP approved form or letter of medical necessity. For individuals enrolled in a managed care plan, the endorsing physician must be the primary care physician.

The AAC devices and AAC services must be an integral part of the treatment plan. The treatment plan must address each beneficiary's unique communication abilities and the expressive communication or receptive (language

comprehension) limitations that preclude or interfere with meaningful participation in current and projected daily activities. It must:

- conform to the scope of coverage stated in this policy;
  - be based on the evaluation criteria and data reporting requirements stated in this policy;
  - satisfy the medical need criteria stated in the policy;
- and
- indicate that the beneficiary has demonstrated potential to benefit from AAC devices and/or services at a basic and reasonable level.

#### Eligible Individuals

AAC services will be provided to beneficiaries with significant expressive communication or receptive (language comprehension) impairments: beneficiaries who currently lack adequate functional communication skills and abilities through gestures, speech and/or writing. These impairments include but are not limited to: apraxia of speech, dysarthria, and cognitive communication disabilities.

#### Trial Use Periods for AAC Devices

A trial use period for AAC devices is not required but may be recommended by the speech-language pathologist who conducts the AAC evaluation as described in Section C, Review Criteria of this policy. The results of trial use periods are often instructive in determining the most appropriate AAC intervention, and thus are preferred. If the results of the assessment are clinically inconclusive, Medicaid may require a trial use period.

Medicaid authorization for rental of AAC device(s) will be approved for trial use periods when the speech-language pathologist prepares a request consistent with the requirements as described in the Trial Use Period Request section of this policy. The reasons for a trial use period request include, but are not limited to: the characteristics of the beneficiary's communication limitations; lack of familiarity with a specific AAC device; and concern that the beneficiary has not had sufficient experience with the requested device to permit determination of the device's appropriateness.

#### Trial Use Period Request

If a speech-language pathologist or Medicaid seeks a trial use period, a plan for this period must be developed by the speech-language pathologist that includes:

- the duration of the trial period;
- description of the speech-language pathologist's qualifications that satisfy Medicaid's provider participation

requirements:

- description of the speech-language pathologist's AAC services training and experience (and the AAC services experience of all other professionals, as appropriate) involved in the assessments of the beneficiary's functioning and communication limitations;
- beneficiary identifying information, such as name, Medical Assistance ID#, date of the assessment, medical diagnosis (primary, secondary, tertiary), and significant medical history;
- the AAC device(s) to be examined during the trial period, including all the necessary components (e.g., mounting device, software, switches or access control mechanism);
- description of the AAC devices assessment components, such as vocabulary requirements, representational system(s), display organization and features, rate enhancement techniques, message characteristics, speech synthesis, printed output, display characteristics, feedback, auditory and visual output, access techniques and strategies, and portability and durability concerns, if any.
- the identification of the service provider(s), e.g., speech-language pathologists, educators, residential providers, etc. who will assist the beneficiary in learning and using the AAC device(s) during the trial period;
- the identification of the AAC service provider(s) who will assess the trial period; and
- the data collection schedule and the evaluation criteria, specific to the beneficiary, that will be used to determine the success or failure of the trial period.

Trial use period proposals must request Medicaid funding for rental of, or otherwise state the source of all necessary components of the AAC devices, including AAC services provider(s) who will assist the beneficiary during the trial use period.

Trial periods may be extended and/or different AAC devices provided, when requested by the speech-language pathologist responsible for evaluating the trial use period.

#### Trial Use Period Results

Results of trial use periods must be submitted with a prior approval request. The results must include the following:

- identification of the requested AAC devices including all required components, accessories, peripheral devices, supplies, and the device vendor;
- identification of the beneficiary's and communications partner's AAC devices preference, if any;
- justification stating why the recommended AAC device (including description of the significant characteristics and features) is better able to overcome or ameliorate the

communicate limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities, as compared to the other AAC devices considered; and

- justification stating why the recommended AAC device (including description of the significant characteristics and features) is the least costly, equally effective alternative form of treatment to overcome or ameliorate the communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities.

#### Purchase or Rental

The speech-language pathologist is required to estimate whether it is more cost effective to rent or purchase the requested AAC device. In addition to price, material factors in determining cost effectiveness include availability, expected useful life, upgradability, and warranty availability, and terms. The determination to rent or purchase will be based upon cost effectiveness and must also take into account the comparative delay in providing the device to the beneficiary. No AAC device will be denied approval solely because it is not available for rental.

AAC devices purchased by the Medicaid program become the property of the beneficiary.

#### Repair and Replacement

##### AAC Device(s) Repair

Medicaid will pay for repair to keep AAC device(s), accessories and other system components ("devices") in working condition. Repair will be covered for the anticipated useful lifetime of the device(s), and for as long thereafter as the device(s) continue to be the appropriate treatment for the beneficiary. Medicaid payment for repair will include diagnostic testing of the device, parts, labor and shipping, when not otherwise available without charge pursuant to a manufacturer's warranty.

Medicaid AAC device repair will be subject to the following procedure:

- When a device ceases to function properly, the beneficiary, a person acting on behalf of a beneficiary, or Medicaid staff will notify the device manufacturer or the manufacturer's designee for the purpose of repair, and follow the manufacturer's or designee's instructions to send the device for assessment.

- When a device is received by the manufacturer or manufacturer's designee for the purpose of repair, the manufacturer or designee will conduct an assessment of the

device to determine whether it can be repaired, and if so, prepare a written estimate of the diagnostics, parts, labor, shipping, and total cost of the repair, as well as the effectiveness (i.e., estimated durability) of the repair.

If Medicaid was the original payment source for the device, the manufacturer or manufacturer's designee for the purpose of repair will:

- repair the device if the total cost of the repair is less than or equal to \$300.00; or

- notify the beneficiary or the person acting on the beneficiary's behalf that the total cost of the (non-battery) repair, including shipping, will be greater than \$300.00, and that prior approval must first be obtained before the repair can proceed. When the repair is completed, the manufacturer or representative for the purpose of repair will return the repair device to the beneficiary.

If Medicaid was not the original payment source for the device, the manufacturer or manufacturer's designee for the purpose of repair will notify the beneficiary or the person acting on the beneficiary's behalf of the repair cost and that prior approval must first be obtained before the repair can proceed.

If the manufacturer or manufacturer's designee for repair concludes the device is not able to be repaired, written notice will be provided to the beneficiary or person acting on the beneficiary's behalf that prior approval must be sought to replace the device.

##### Procedure for Repair or Replacement of AAC Device Batteries

If the assessment conducted by the manufacturer or manufacturer's designee for repair identifies the device battery as the malfunctioning or non-functioning part, the following procedure will be followed:

- repair of the battery will occur independent of the \$300.00 period approval threshold; and

- independent of whether Medicaid was the original payment source for the device, or replacement of the battery will occur without the need of prior approval.

Repair or replacement of an AAC device battery will be performed, and the device returned to the beneficiary, or person acting on the beneficiary's behalf, as soon as possible.

##### Rental of AAC Device During Assessment, Repair and/or Replacement Period

When the manufacturer or manufacturer's designee receives notification from the beneficiary or a person acting on the beneficiary's behalf that an AAC device is malfunctioning or non-functioning, and is being returned for assessment, the

manufacturer is authorized to provide the beneficiary, on a rental basis, an AAC device during the assessment, repair and/or replacement period. The rental period is authorized to continue without regard to the need for prior approval for the repair and/or replacement of the beneficiary's AAC device. Rental of an AAC device during the assessment, repair and/or replacement period is not limited to devices for which Medicaid was the original payment source.

#### AAC Device Repairs Greater Than \$300.00 and AAC Device Replacement

Requests for prior approval for AAC device repairs greater than \$300.00 and for AAC device replacements must be accompanied by the following information:

- description of the speech-language pathologist's AAC services training and experience (and the AAC services experience of all other professionals, as appropriate) involved in the assessments of the beneficiary's functioning and communication limitations; and
- beneficiary identifying information, such as name, Medical Assistance ID#, date of the assessment, medical diagnosis (primary, secondary, tertiary), and significant medical history.

The speech-language pathologist also must report whether there have been any significant changes in any of the subject areas identified in the Required Assessment & Data Reporting section of this policy. The information must include the items specifically listed in the Sensory Status, Postural, Mobility & Motor Status, Current Speed, Language & Expressive Communication Status, Communication Needs Inventory, Summary of Communication Limitations, AAC Devices Assessment Components, and the Treatment Plan and Follow-Up sections and whether the device remains the speech - language pathologist's recommendation for beneficiary's use.

#### AAC Devices Replacement or Modification

Modification or replacement of AAC devices will be covered by Medicaid subject to the following limitations:

- All modification or replacement requests will require prior approval:
- Prior approval request for replacement AAC devices may be submitted for identical or different devices;
- Requests for prior approval for replacement of identical AAC devices must explain how replacement is more cost-effective than repair of current device(s). Data must be provided about age, repair history (frequency, duration and cost), and repair projections (estimated durability of repairs).
- Requests for prior approval for modification or replacement of AAC devices with different devices due to

changed circumstances may be submitted at any time and must include the following additional information:

1. a significant change has occurred in the beneficiary's expressive communication impairments and/or receptive communication limitations. Modification or replacement requests due to changed individual circumstance must be supported by a new assessment of communication limitations; or

2. although there has been no significant change in the beneficiary's communication limitations, there has been a significant change in the characteristics, features or abilities of available AAC devices (i.e., a technological change) that will overcome or permit a significant further amelioration of the beneficiary's communication limitations as compared to the current AAC device. A detailed description of all AAC device changes and the purpose of the changes must be provided. In assessing such requests, Medicaid will place particular emphasis on whether the existing device reasonably achieves its purpose.

- requests for prior approval for replacement of AAC devices due to loss or damage (either for identical devices or different devices) must include additional information including a complete explanation of the cause of the loss or damage, and a plan to prevent the recurrence of the loss or damage.

#### B. ASSESSMENT, DATA REPORTING AND PROCEDURAL REQUIREMENTS

##### Role Of The Speech-Language Pathologist

An assessment of individual functioning and communication limitations that preclude or interfere with meaningful participation in current and projected daily activities is required for Medicaid funding for AAC devices and AAC services. The assessment must provide the information detailed in the Required Assessment & Data Reporting section of this chapter. It must be completed by a speech-language pathologist (with input from other health professionals, e.g., occupational therapists and rehabilitation engineers).

##### Prior Approval

All requests for AAC device(s):

- require prior approval;
- require physician endorsement consistent with the definition of AAC as discussed in section A, Scope of Coverage;
- must include a sign-off by the beneficiary, guardian or similar representative as well as the vendor; and
- repairs that are greater than \$300.00, and requests for modification or replacement of AAC devices require prior approval.

## Required Assessment & Data Reporting

The following data are required to be submitted in support of a prior approval request for AAC devices:

### Speech-Language Pathologist Identifying Information

- Description of the speech-language pathologist's qualifications that satisfy the requirements in this policy.
- Description of the speech-language pathologist's AAC services training and experience (and the AAC services experience of all other professionals, as appropriate) involved in the assessments of the beneficiary's functioning and communication limitations.

### Beneficiary Information

#### 1) Identifying Information:

- Name
- Medical Assistance ID number
- Date of the Assessment
- Medical diagnosis (primary, secondary, tertiary)
- Significant medical history

#### 2) Sensory Status:

- Vision
- Hearing
- Description of how vision, hearing, tactile and/or receptive communication impairments or disabilities affect expressive communication

#### 3) Postural, Mobility & Motor Status:

- Motor status
- Optimal positioning
- Integration of mobility with AAC devices
- Beneficiary's access methods (and options) for AAC devices

#### 4) Current Speech, Language & Expressive Communication Status

- Identification and description of the beneficiary's expressive or receptive (language comprehension) communication impairment diagnosis

- Speech skills and prognosis
- Language skills and prognosis
- Communication behaviors and interaction skills (i.e., styles and patterns)

- Indication of past treatment, if any

- Description of current communication strategies, including use of an AAC device, if any

#### 5) Communication Needs Inventory

- Description of beneficiary's current and projected (e.g., within 2 years) communication needs
- Communication partners and tasks, including

partners' communication abilities limitations, if any

- Communication environments and constraints which affect AAC device selection and/or features (e.g., verbal and/or visual output and/or feedback; distance communication needs)

#### 6) Summary of Communication Limitations

- Description of the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities (i.e., why the beneficiary's current communication skills and behaviors prevent meaningful participation in the beneficiary's current and projected daily activities)

#### 7) AAC Devices Assessment Components

- Vocabulary requirements
- Representational system(s)
- Display organization and features
- Rate enhancement techniques
- Message characteristics, speech synthesis, printed output, display characteristics, feedback, auditory and visual output
- Access techniques and strategies
- Portability and durability concerns, if any

#### 8) Identification of AAC Devices Considered for Beneficiary

- Identification of the significant characteristics and features of the AAC devices considered for the beneficiary
- Identification of the cost of the AAC devices considered for the beneficiary (including all required components, accessories, peripherals, and supplies, as appropriate)

#### 9) AAC Device Recommendation

- Identification of the requested AAC devices including all required components, accessories, peripheral devices, supplies, and the device vendor
- Identification of the beneficiary's and communication partner's AAC devices preference, if any
- Justification stating why the recommended AAC device (including description of the significant characteristics and features) is better able to overcome or ameliorate the communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities, as compared to the other AAC devices considered

- Justification stating why the recommended AAC device (including description of the significant characteristics and features) is the least costly, equally effective alternative form of treatment to overcome or ameliorate the communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities

#### 10) Treatment Plan & Follow Up

- Description of short term communication goals
- Description of long term communication goals
- Assessment criteria to measure beneficiary's progress toward achieving short and long term communication goals
  - Description of amount, duration and scope of the AAC services required for the beneficiary to achieve short and long term communication goals
  - Schedule of data collection
  - Identification and experience of AAC services provider responsible for training (these services providers may include, e.g.: occupational therapists, rehabilitation engineers, the beneficiary's parents, teachers and other services providers)

### C. REVIEW CRITERIA

Medicaid funding for AAC devices will be approved when the devices are established to be medically necessary and the least costly, equally effective, alternative form of treatment to overcome or ameliorate the communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities.

#### Medical Necessity

The medical need for AAC devices and services must be established by a speech-language pathologist (and other health professionals, as appropriate) according to the evaluation and data reporting criteria stated in section B, Required Assessment and Data Reporting, and be supported by a physician's completion of a DSS-approved form or letter of medical necessity.

In general, medical necessity is established when the requested device or service meets the criteria of the DSS-approved medical necessity standard. See Appendix H in the General Policy for the DSS-approved medical necessity standard.

Subject to these criteria, assessment of "medical necessity" for AAC devices and services will be guided by the following specific standards:

#### Medical Need Criteria for AAC Devices

Medical need will be established for beneficiaries:

- who have a diagnosis of a significant expressive or receptive (language comprehension) communication impairment or disability;
- whose impairment or disability either temporarily or permanently causes communication limitations that preclude or interfere with the beneficiary's meaningful

participation in current and projected daily activities;

- who have had a speech-language pathologist (and other health professionals, as appropriate) who:

1) perform an assessment and submit a report pursuant to the criteria set forth in section B, Required Assessment and Data Reporting;

2) recommend speech-language pathology treatment in the form of AAC devices and AAC services; and

3) prepare a speech-language pathology treatment plan that describes the specific components of the AAC devices and the required amount, duration and scope of the AAC services that will overcome or ameliorate communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities.

- whose requested AAC devices and AAC services constitute the least costly, equally effective form of treatment that will overcome or ameliorate communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities.

#### General Principles Governing Medical Need Determination

- The cause of the beneficiary's impairment or disability (e.g., congenital, developmental, or acquired) or the beneficiary's age at the onset of the impairment or disability may be relevant considerations in the determination of medical need.

• Whether a beneficiary's daily activities, communication partners and communication environments are related to or intersect with other benefits and/or services programs (e.g., school, early intervention services, adult services programs, employment) does not preclude a determination that the beneficiary has a medical need for AAC devices and AAC services.

- No cognitive, language, literacy, prior treatment, or other similar pre-requisites must be satisfied by a beneficiary in advance of a request for AAC devices and AAC services.

• The unavailability of an AAC device, component or accessory for rental will not serve as the basis for denying a prior approval request for that device, component or accessory. The prior approval request must document the manner in which a comparable device may be substituted for assessment purposes in the event that a trial period is required.

- The unavailability of a warranty for an AAC device or other component or accessory will not serve as the basis for denying a prior approval request for that device, component or accessory, although Medicaid encourages providers to consider the availability of a reasonable warranty as a factor within the device selection process.

#### Additional Information Needed - Request for Peer Review

- When the medical need for an AAC device cannot

## PROPOSED REGULATIONS

be established pursuant to the criteria stated in the Medical Need Criteria for AAC Devices in this section, based on the information submitted in support of a prior approval request, Medicaid will determine and take the following steps:

1) if information required by the Medical Need Criteria for AAC Devices in this section is not included in the prior approval request, then Medicaid will make contact directly with the speech-language pathologist who conducted the assessment for the beneficiary, identify the specific additional information that is needed, and request that the additional information be submitted; and/or

2) if an interpretation is required of information in the prior approval request, then Medicaid will seek the advice of speech-language pathologist(s) with extensive AAC experience recommend to Medicaid by the American Speech-Language & Hearing Association (ASHA), the United States Society for Augmentative & Alternative Communication (USSAAC) and/or RESNA, who will provide the required information

- Requested additional information and/or interpretations must be produced as soon as practicable but in no event more than 21 working days from the date of the request.

- Requests for additional information and/or requests for interpretations of information submitted will be made prior to issuance of any denial of a prior approval request.

### Time Limits and Notice for Decision Making

- Review of prior approval request required by the Medical Need Criteria for AAC Devices in this section will be completed within a reasonable amount of time (in most cases no longer than 60 days). If review has not been completed within 45 days, the beneficiary, guardian, or similar representative will be notified of the status of the pending application.

- Requests for additional information and/or request for interpretations will be made as soon as the need is identified.

- Decisions on prior approval requests that are not timely issued may entitle the beneficiary to pursue an appeal.

- Written notice of decisions to deny prior approval or to approve a funding request with or without modifications will be provided directly to the beneficiary and vendor. Written notice will be provided to other persons, as appropriate.

### D. GLOSSARY

Augmentative and Alternative Communication (AAC)  
AAC approaches support, enhance, or augment the communication of individuals who are not independent communicators in all situations. An individual's AAC system

should not be a single technique, device, or strategy, but rather an array of techniques, devices and strategies from which the individual chooses in order to effectively address the demands of a given communication opportunity.

### AAC Devices

Electronic or non-electronic aids, devices or systems that assist a beneficiary to overcome or ameliorate (to the maximum degree possible) the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities. Examples of AAC devices include: communication boards or books, electrolarynxes, speech amplifiers, and electronic devices that produce speech and/or written output. AAC devices include devices that are constructed for use as communication devices as well as systems that may include a computer, when an important use of the computer will be as the beneficiary's communication device. AAC devices also include related components and accessories, including software program, symbol sets, overlays, mounting devices, switches, cables and connectors, auditory, visual, and tactile output devices, and necessary supplies, such as rechargeable batteries.

### AAC Services

Treatment to assist beneficiaries in meeting the full range of their communication needs. The scope of AAC services includes diagnostic, screening, preventive, and corrective services provided by or under the direction of a speech-language pathologist. Specific activities include evaluation for, recommendation of, design, sup-up, customization, programming, and training related to the use of AAC devices.

### Beneficiary's Preferences

The means and mode of message transmission a beneficiary prefers to use in a given communication interaction.

### Current and Projected Daily Activities

The activities of daily living in which the individual now participates and in which it is anticipated the individual will participate when the individual's communication limitations have been overcome or ameliorated via the application of AAC approaches.

### Expressive Communication Limitations

Difficulties in language production via any expressive communication modality (speech, writing, sign language, gesture, facial expression, graphic symbol selection).

### Meaningful Participation

Effective and efficient communication of messages, taking into account the beneficiary's preferences regarding means and mode of transmission.

### Receptive Communication Limitations

Difficulties in language understanding via any communication modality (speech, writing, sign language, gesture, facial expression, graphic symbol selection).

## EPSDT Provider Specific Policy Manual

### II. QUALIFIED PROVIDERS

Providers of EPSDT services could include the State's health department, pediatricians, family practitioners and other private practicing physicians, therapy service providers, providers of specialized supplies and equipment, health maintenance organizations, prepaid health plans, community/migrant health centers, private dentists, and other agencies that are routinely involved with a child's physical and mental health needs.

### IV. CONTENTS/DESCRIPTION OF SERVICES

EPSDT Special Needs Dental Program include dental services provided by private dentists who are enrolled with the DMAP and are paid directly for dental services when provided to "special needs" children who meet the following eligibility criteria:

#### Special Needs Eligibility Criteria

Medicaid eligible children who have been diagnosed by their primary care provider with one or more of the following medical conditions may be treated by a dentist who is enrolled with the DMAP without prior approval by the DPH Dental Clinic:

- Autism
- Bleeding Disorders
- Craniofacial Anomalies
- Oral/Maxillofacial Trauma (requiring immediate service)
- Serious Emotional/Behavioral Disorders\*
- Severe Chronic Illness (respiratory, cardiac, renal, gastrointestinal)
- Severe Orthopedic Disorders/Wheelchair-bound
- Spinal Bifida
- Baby Bottle Syndrome
- Cancer
- HIV Infection
- Mental Retardation
- Seizure Disorders

\*When the diagnosed condition requires general anesthesia sedation, restraints, or other similar measures which preclude treatment in a DPH clinic setting.

All other Medicaid eligible children must first be evaluated by the DPH Dental Clinic before referral and treatment by a private dentist can be approved (except for orthodontics; see "Orthodontics" entry). This means that otherwise healthy children who need services which cannot be provided by DPH must still be referred to a private dentist by DPH.

#### Covered Services

For eligible children meeting the criteria, or for otherwise healthy children who need services which cannot be provided in the DPH Dental Clinic (and for whom a referral has been made by DPH), the DMAP will cover medically necessary dental services for the relief of pain and infections, restoration of teeth, and maintenance of dental health. Covered services include:

- Examinations
- Prophylactics
- Fluoride treatments
- Permanent and temporary fillings
- Extractions
- Pulpotomies
- Endodontics
- In-office sedation
- Stainless steel crowns
- Oral surgery
- Periodontics
- Prosthodontics
- Emergency services
- Adjunctive services

#### Orthodontics

Orthodontics is a covered services under the DMAP's EPSDT Program for children under age twenty-one (21) years who have been diagnosed with a "handicapping" or "crippling" malocclusion. However, all orthodontic care must still be referred by and approved by the DPH dental clinic. Payment of orthodontic services will continue to be managed by the DPH through its Special Dental Program.

#### Provider Enrollment

To be eligible for payment by the DMAP under the Special Needs Dental Program, dental providers must enroll and contract with the State of Delaware Department of Health and Social Services.

#### Billing and Reimbursement

# PROPOSED REGULATIONS

All dental services must be billed on a HCFA-1500 claim form and must be submitted directly to EDS, the Medicaid fiscal agent. Claims must be submitted within one year of the date of service to be considered for payment.

See Appendix A for the local HCPCS procedure code used by the DMAP for billing Special Needs Dental service.

When billing for Special Needs Dental service the place of service "3" (doctor's office) and the type of service "9" (other medical service) must be entered in the appropriate block on the claim form.

All services provided during a dental visit should be totaled and charged on one claim line corresponding to the dental procedure code given in Appendix A. Do not itemize each individual charge for a client's service. Dental services will be reimbursed at a negotiated rate.

### Third Party Liability

Medicaid is the payer of last resort. When a Medicaid client carries dental insurance coverage, that plan must be billed before Medicaid. A copy of the insurance voucher, explanation of benefits, or denial statement must be attached to the dental claim and any third party payment must be indicated in the appropriate field on the claim.

### EPSDT Dental Program

Dental services are covered by the DMAP for children under age 21 through the EPSDT program. While dental services continue to be provided through the DPH dental clinics, private dentists may enroll with the DMAP to help create broader access to dental care.

Under this dental policy there are minimal program requirements. An enrolled dental provider may treat any Medicaid eligible child and will be paid directly by the DMAP. The EPSDT dental program does not require prior authorization for services and does not require prior approval by DPH.

This EPSDT Dental Program incorporates the previous "Special Needs Dental Program" and provides general guidelines for the treatment of all Medicaid eligible children whether or not they have special needs. For those Medicaid clients who are "special needs" children, these guidelines dictate the requirements for the provision of dental care.

### Eligibility Criteria

Children under age 21 who are currently covered by the DMAP (Medicaid), are eligible to receive medically necessary

dental services. Eligible children need not have been evaluated and referred by the DPH Dental Clinics to be treated by dental providers enrolled in the DMAP. Clients aged 21 or older are not eligible for dental services under Medicaid; billings for clients 21 and older will be denied as non-covered services.

### Covered Services

Medicaid covers medically necessary dental services in appropriate care settings for the relief of pain and infections, restoration of teeth, and maintenance of dental health. Covered services include:

<u>Examinations</u>	<u>Prosthodontics</u>
<u>Endodontics</u>	<u>Sealants</u>
<u>Prophylactics</u>	<u>In-office Sedation</u>
<u>Oral Surgery</u>	<u>Permanent and temporary fillings</u>
<u>Radiographs</u>	<u>Periodontics</u>
<u>Extractions</u>	<u>Fluoride Treatments</u>
<u>Pulpotomies</u>	<u>Adjunctive Services (treatment of</u>
<u>dental</u>	<u>pain, anesthesia, drug</u>
<u>management, etc.)</u>	

### Orthodontics

Orthodontics is a covered service under Medicaid's EPSDT Dental Program for children under age 21 who have been diagnosed with a "handicapping" or "crippling" malocclusion. However, all orthodontic care must still be referred by and prior approved by the DPH dental clinics. Payment of orthodontic services will continue to be managed by the DPH through its Special Dental Program.

### Billing and Reimbursement

A locally assigned HCPCS procedure code is required for billing dental services provided to Medicaid eligible children. The locally assigned HCPCS procedure code, definition, unit of service definition, service limitations, prior authorization requirement, rate, place and type of service codes, and diagnosis codes are found in Appendix A.

When billing for EPSDT dental services the type of service "9" (Other Medical Service) and the appropriate place of service (as listed below) must be entered in the proper block on the claim form.

### Place of Service:

<u>1 - Inpatient Hospital</u>	<u>C - Residential Treatment Center</u>
<u>2 - Outpatient Hospital</u>	<u>D - Specialized Treatment Facility</u>
<u>3 - Doctor's Office</u>	<u>G - Emergency Room</u>
<u>4 - Patient's Home</u>	<u>J - Clinic</u>
<u>7 - Nursing Home</u>	

When billing for EPSDT dental services the diagnosis code "521" (Disorder of Tooth Development and Eruption) must be entered in the proper block on the claim form.

All services provided during a dental visit should be totaled and charged on one claim line corresponding to the dental HCPCS procedure code from Appendix A. One unit of service covers all charges incurred during the visit. Do not itemize each individual charge for a client's service on the claim form. However, you should maintain office records or files showing each individual service and charge for review purposes.

Dental services will be reimbursed at a pre-determined rate set by the State.

#### Third Party Liability

Medicaid is the payer of last resort. When a Medicaid client carries dental insurance coverage, that plan must be billed before Medicaid. A copy of the insurance voucher, explanation of benefits, or denial statement must be attached to the dental claim, and any third party payment must be indicated in the appropriate field on the claim. Medicaid will coordinate benefits and pay any balance due up to its fee.

The managed care organizations contracted by the State to provide medical care to Medicaid clients do not provide dental coverage under the Diamond State Health Plan.

#### Medicaid Card

The provider should check the recipient's Medicaid card for current eligibility before every service (cards are generally good for the whole month). Dental care is not a covered benefit for all Medicaid clients even if they have a Medicaid card. Clients aged 21 and older are not covered.

#### Freedom of Choice of Provider

Clients are permitted free choice of providers. If a dental provider decides not to bill Medicaid for a service, the provider must advise the client prior to the delivery of service that the client will be responsible for the bill. The client then retains the right to decide to be treated and to pay for the service personally or to seek another dental provider who will accept the Medicaid payment.

#### Medicaid Payment

Medicaid payment is considered payment in full. Therefore, dental providers may not charge clients for balances not covered by Medicaid, and may not charge clients for services and reimburse them once Medicaid pays the claim. However,

providers may bill a client when Medicaid denies a claim because the client is not eligible on the date of service, when the service is a non-covered benefit in the Medicaid Program (example, age 21 or older, cosmetic care, etc.), or when missed appointments are usually charged to patients and the Medicaid client was informed prior to the appointment that missed appointments are considered "not covered" by Medicaid.

#### Confidentiality

Client information may only be used for purposes directly related to the administration of the Medicaid Program. Client information may not be made public and lists of Medicaid clients may not be made and distributed to others. See the Medicaid Provider Contract for further details.

Specialized Supplies and Equipment Further information on coverage of equipment for children under age 21 is available in the EPSDT and Augmentative and Alternative Communication Devices and Services sections of the Durable Medical Equipment Provider Manual.

#### Practitioner Provider Specific Policy Manual

### IX. SPECIFIC CRITERIA FOR ORAL SURGEONS

Dental services, including the extraction of teeth, are restricted to recipients under twenty-one [21] (through age 20) years of age and are generally ~~must be~~ provided by the Division of Public Health (DPH Dental Clinics Referrals to private dentists are made by DPH when the scope of work required cannot be provided by the clinic. Dental services which cannot be provided by DPH may only be rendered by a private dentist/oral surgeon following an evaluation and referral by DPH.

Dental services are also provided by private dentist through the EPSDT Dental Program. Eligible children do not need to be evaluated or referred by the DPH dental clinic to be treated by dental providers enrolled with the DMAP in the EPSDT Dental Program.

Services that are authorized by DPH must be billed directly to DPH not the DMAP.

Dental procedures for recipients age 21 and over are not covered in any setting.

\*\*\*\*\*End of Manual Revisions\*\*\*\*\*

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Sections 311, 2304(16) & 2312  
(18 Del.C. 311, 2304(16), 2312)

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Thursday, May 28, 1998 at 10:00 a.m. in the Main Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. This Hearing is to consider implementation of Regulation No. 80 (Proposed) entitled "STANDARDS FOR PROMPT, FAIR AND EQUITABLE SETTLEMENT OF CLAIMS FOR HEALTH CARE SERVICES".

The purpose of the Regulation is to establish standards that will ensure that health insurers pay claims to policyholders and providers in a timely manner.

The Hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited by any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Friday, May 22, 1998, and should be addressed to Michael W. Teichman, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael W. Teichman at (302)739-4251, Ext. 171 no later than Friday, May 22, 1998.

REGULATION NUMBER 80 (PROPOSED)  
STANDARDS FOR PROMPT, FAIR AND EQUITABLE  
SETTLEMENT OF CLAIMS FOR HEALTH CARE  
SERVICES

### Sections

1. Authority
2. Definitions
3. Scope
4. Purpose
5. Prompt payment
6. General business practice
7. Penalty
8. Effective date

#### Section 1. Authority

This regulation is adopted by the Commissioner pursuant to 18 Del. C. §§ 311, 2304(16), and 2312. It is promulgated in accordance with 29 Del. C. Chapter 101.

#### Section 2. Definitions

For the purpose of this regulation, the following definitions shall apply:

a. *Health Insurer* - health insurance companies, health maintenance organizations, health service corporations and any other entity providing a plan of health insurance or benefits subject to state insurance regulation;

b. *Health Care Provider* - any entity or individual licensed, certified or otherwise permitted by law to provide health care in the ordinary course of business, practice or profession;

c. *Policyholder* - a person covered under such policy or a representative designated by such person and entitled to make claims on his or her behalf.

#### Section 3. Scope

This regulation shall apply to all health insurers as defined in Section 2 above, and shall apply to all contracts for insurance issued by these entities.

#### Section 4. Purpose

The purpose of this regulation is to ensure that health insurers pay claims to policyholders and health care providers in a timely manner. This regulation will establish standards for both determining promptness in settling claims and determining the existence of a general business practice for failing to promptly settle such claims under 18 Del. C. § 2304(16).

#### Section 5. Prompt payment of claims

a. A health insurer shall pay a claim to a policyholder or covered person, or make payment to a health care provider within 45 days of receipt of a claim or bill for services.

b. Paragraph "a." of this section shall not apply in the following cases:

(1) Where the obligation to pay a claim is not reasonably clear.

(2) There exists a reasonable basis supported by specific information, available for review by the Department, that such claim was submitted fraudulently.

c. In those cases covered by subparagraph b(1) above, a carrier shall pay any undisputed portion of the claim in accordance with paragraph "a." of this section and shall notify the policyholder, covered person or health care provider in writing within thirty days of the receipt of the claim:

(1) that such carrier is not obligated to pay the claim or make the medical payment, stating the specific reasons

why it is not liable; or

(2) to request all additional information needed to determine liability to pay the claim or make the healthcare payment.

Upon receipt of the information provided in subparagraph c(2) above, or of an appeal of a claim or bill for health care services denied pursuant to subparagraph c(1), a health insurer shall comply with paragraph "a." of this section.

Section 6. General business practice

a. Within a 36 month period, three instances of a health insurer's failure to pay a claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del. C.* § 2304(16)(f).

b. The 36 month period established in paragraph "a." above shall be measured based upon the date the complaints are received at the Department. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an "instance" as described in paragraph "a." above.

Section 7. Penalties

In addition to the imposition of penalties in accordance with 18 *Del. C.* § 2312(b), any health insurer that fails to adhere to the standards contained in this regulation shall be required to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 *Del. C.* 2301(a). This interest shall be computed from the date the claim or bill for services first became due.

Section 8. Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 *Del. C.* § 2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 *Del. C.* § 2304(16).

Section 9. Effective date

This regulation shall become effective 120 days from the date signed by the Commissioner.

---

**DEPARTMENT OF NATURAL  
RESOURCES & ENVIRONMENTAL  
CONTROL**

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

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

1. TITLE OF THE REGULATIONS:

Motor Vehicle Inspection and Maintenance -Regulation 26, 31, and 33

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

Regulation 26 is proposed to be changed by elimination of those requirements pertaining only to New Castle and Kent Counties, with the resulting regulation after changes pertaining only to Sussex County. Additions to Regulation 26 are underlined and deletions are in ~~strikeout~~. For completeness, new Regulation No. 31 (proposed as part of this package) will entirely replace the New Castle and Kent County requirements of current Regulations No.26 and No.33, with the latter being eliminated completely. The proposed Regulation 31 adds various administrative and operational requirements contained in the federal regulation.

3. POSSIBLE TERMS OF THE AGENCY ACTION: N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

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

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL: None

6. NOTICE OF PUBLIC COMMENT:

Public Hearing: May 21,1998, 6 PM, Richardson and Robbins Building, 89 Kings Highway, Dover Delaware,

7. PREPARED BY:

Philip Wheeler 739-4791  
April 9, 1998

# PROPOSED REGULATIONS

## REGULATION NO. 31

## Appendices to Regulation No. 31

## LOW ENHANCED INSPECTION AND MAINTENANCE PROGRAM

Proposed SIP Revision

DRAFT DRAFT

This document contains predecisional material  
Do NOT Cite or Quote

Prepared by the  
Delaware Department of Natural Resources and  
Environmental Control  
Division of Air and Waste Management  
Air Quality Management Section

April 15, 1998

## Table of Contents

Sec	Page	Title
1	1	Applicability.
2	4	Low enhanced I/M performance standard.
3	5	Network type and program evaluation.
4	7	Adequate tools and resources.
5	7	Test frequency and convenience.
6	8	Vehicle coverage.
7	10	Test procedures and standards.
8	13	Test equipment.
9	14	Quality control.
10	14	Waivers and compliance via diagnostic inspection.
11	16	Motorist compliance enforcement.
12	18	Motorist compliance enforcement program oversight.
13	18	Quality assurance.
14	18	Enforcement against operators and motor vehicle technicians.
15	19	Data collection.
16	19	Data analysis and reporting.
17	19	Motor vehicle technician training and certification
18	21	Public information and consumer protection
19	21	Improving repair effectiveness..
20	21	Compliance with recall notices
21	21	On-road testing..
22	21	Implementation deadlines.

\* PLEASE NOTE THAT THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT, NOT THE REGISTER.

Appendix 1 (d) Commitment to Extend the I/M Program to the Attainment Date Letter from Secretary Tulou to EPA Regional Administrator, W. Michael McCabe

Appendix 3 (a)(6) Exhaust Emission Limits According to Model Year.

Appendix 5 (a) Sections from Delaware Criminal and Traffic Law Manual

Appendix 6 (a) Division Of Motor Vehicles Policy on Out of State Renewals

Appendix 7 (a) Idle Test Procedure

Appendix 7 (a) (5) Vehicle Emission Repair Report Form

Appendix 7(a) (8) Evaporative System Integrity (Pressure) Test

Appendix 10 (a) Emission Repair Technician Certification Process

Appendix 11(a) Systems Requirement Document – Registration Denial

Appendix 14 (a) Enforcement against operators and motor vehicle technicians.

\* Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action.

\* State of Delaware Merit Rules

Note: The appendix number refers to the section number in Regulation 31.

To adopt a new regulation, Regulation No. 31 - Low enhanced Inspection and Maintenance Program, as follows:

Notes on the content of the regulation beginning on the next page:

\* The preparation of this document used the Federal I/M Rule from 40 CFR Part 51 Subpart S as the framework. All portions of that Rule are addressed in either Regulation No. 31, which follows, or the Plan for Implementation, a separate document. This procedure is consistent with the Introduction to the Checklist for Completing the Inspection/Maintenance SIP, dated March 1993, prepared by the US EPA, Office of Air and Radiation.

\* PFI means the Plan for Implementation document prepared separately from the regulation describing the process to be used to implement the regulation and the LEIM program, i.e. program documentation or technical support document.

\* Appendices are included as part of this regulation, however these should not be confused with the

appendices that are part of the PFI

Other Notes:

- \* This regulation supersedes existing Regulation No. 26 - Inspection and Maintenance Program, for the areas of New Castle and Kent Counties. A separate action is being taken concurrently to amend Regulation 26 to apply only to Sussex County.
- \* Under each section title, the related section from the Federal I/M Rule, 40 CFR Part 51 Subpart S is given in italics.

Low enhanced Inspection and Maintenance Program  
Regulation No. 31

Section 1 - Applicability. [ 40 CFR Part 51 Subpart S §51.350]

(a) This program shall be known as the "Low enhanced Inspection and Maintenance Program" or "LEIM Program", and shall be identified as such in the balance of this regulation.

(b) This regulation shall apply to New Castle and Kent Counties.

(c) This regulation shall apply to all vehicles registered in the following postal ZIP codes:

19701 19702 19703 19706 19707 19708 19709 19710 19711  
19712 19713 19714 19715 19716 19717 19718 19720  
19730 19731 19732 19733 19734 19735 19936 19703 19938  
19800 19801 19802 19803 19804 19805 19806 19807 19808  
19809 19810 19850 19890 19894 19896 19897 19898  
19899 19901 19902 19903 19904 19934 19936 19938  
19942 19943 19946 19952 19953 19954 19955 19960  
19961 19962 19963\* 19964 19977 19979 19980

\* Note: If vehicles registered in Sussex County and with this ZIP code, this regulation is not applicable.

(d) The legal authority for implementation of the LEIM Program is contained in 7 Del.C. Chapter 60, §6010(a). Appendix 1 (d) contains the letter from the State of Delaware, Secretary of the Department to EPA Regional Administrator, W. Michael McCabe committing to continue the I/M program through the enforcement of this regulation out to the attainment year and remain in effect until the applicable area is redesignated to attainment status and a Maintenance Plan is approved by the EPA. 7 Del. C. Chapter 60, §6010(a) does not have a sunset date.

(e) Requirements after attainment.  
This LEIM program shall remain in effect if the area is redesignated to attainment status, until approval of a Maintenance Plan, under Section 175A of the Clean Air Act,

which demonstrates that the area can maintain the relevant standard for the maintenance period (10 years) without benefit of the emission reductions attributable to the continuation of the LEIM program.

(f) Definitions

**Alternative Fuel Vehicle:** Any vehicle capable of operating on one or more fuels, none of which are gasoline, and which is subject to emission testing to the same stringency as a similar gasoline fueled vehicle.

**Certified Repair Technician:** Automotive repair technician certified jointly by the College (or other training agencies or training companies approved by the Department) and the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles as having passed a recognized course in emission repair. (See Appendix 10 (a))

**Certified Manufacturer Repair Technician:** Automotive repair technician certified by the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles, as trained in doing emission repairs on vehicles of a specific manufacturer. (See Appendix 10 (a))

**College:** The Delaware Technical and Community College

**Compliance Rate:** The percentage of vehicles out of the total number required to be inspected in any given year that have completed the inspection process to the point of receiving a final certificate of compliance or a waiver.

**Director:** The Director of the Division of Motor Vehicles in the Department of Public Safety.

**Division:** The Division of Motor Vehicles in the Department of Public Safety of the State of Delaware.

**Department:** The Department of Natural Resources and Environmental Control of the State of Delaware.

**Emissions:** Products of combustion and fuel evaporation discharged into the atmosphere from the tailpipe, fuel system or any emission control component of a motor vehicle.

**Emissions Inspection Area:** The emissions inspection area shall constitute the entire counties of New Castle and Kent.

**Emissions Standard(s):** The maximum

concentration of hydrocarbons (HC), carbon monoxide (CO) or oxides of nitrogen (NOX), or any combination thereof, allowed in the emissions from a motor vehicle as established by the Secretary, as described in this regulation.

**Failed Motor Vehicle:** Any motor vehicle which does not comply with applicable exhaust emission standards, evaporative system function check requirements and emission control device inspection requirements during the initial test or any retest.

**Flexible Fuel Vehicle:** Any vehicle capable of operating on more than one fuel type, one of which includes gasoline, which must be tested to program standards for gasoline. This is in contrast to alternative fuel vehicles.

**Going Concern:** An individual or business with a primary, full time interest in the repair of motor vehicles.

**GPM:** Grams per mile (grams of emissions per mile of travel).

**Manufacturer's Gross Vehicle Weight:** The vehicle gross weight as designated by the manufacturer as the total weight of the vehicle and its maximum allowable load.

**Model Year:** The year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

**Motor Vehicle:** Includes every vehicle, as defined in 21 Del. Code, Section 101, which is self-propelled, except farm tractors, off-highway vehicles, motorcycles and mopeds.

**Motor Vehicle Technician:** A person who has completed an approved emissions inspection equipment training program and is employed or under contract with the State of Delaware.

**New Motor Vehicle:** A motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin, unregistered vehicle title.

**Official Inspection Station:** All official Motor Vehicle Inspection Stations located in New Castle and Kent counties, operated by, or under the auspices of, the Division.

**Operator:** An employee or contractor of the State of Delaware performing any function related to motor vehicle inspections in the State.

**Performance Standard:** The complete matrix of emission

factors derived from the analysis of the model program as defined in 40 CFR Part 51 Subpart S, by using EPA's computerized Mobile5a emission factor model. This matrix of emission factors is dependent upon various speeds, pollutants and evaluation years.

**PFI:** The Plan for Implementation of Regulation No. 31, which can be also considered to be the technical support document for that regulation.

**Reasonable Cost:** The actual cost of parts and labor which is necessary to cause the failed motor vehicle to comply with applicable emissions standards or which contributes towards compliance. It shall not include the cost of those repairs determined by the Division to be necessary due to the alteration or removal of any part of the emission control system of the motor vehicle, or due to any damage resulting from the use of improper fuel in the failed motor vehicle.

**Registration Fraud:** Any attempt by a vehicle owner or operator to circumvent the requirements to properly and legally register any motor vehicle in the State of Delaware.

**Secretary:** The Secretary of the Department of Natural Resources and Environmental Control.

**Stringency Rate:** The tailpipe emission test failure rate expected in an I/M program among pre-1981 model year passenger cars or pre-1984 light-duty trucks.

**Vehicle Type:** EPA classification of motor vehicles by weight class which includes the terms light duty and heavy duty vehicle.

**Waiver:** An exemption issued to a motor vehicle that cannot comply with the applicable exhaust emissions standard and cannot be repaired for a reasonable cost.

**Waiver Rate:** The number of vehicles receiving waivers expressed as a percentage of vehicles failing the initial exhaust emission test.

Section 2 -Low Enhanced I/M performance standard.  
[ 40 CFR Part 51 Subpart S §51.351 ]

[ Performance evaluation and equivalent program determination is contained in the PFI Section 2 (a)]

(a) On-road testing:

The performance standard shall include on-road testing of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraph (a) of this section. The requirements are contained in Section 21 of this regulation.

(b) On-board diagnostics (OBD): [RESERVED]

(c) Modeling requirements:

[ Requirements can be found in the PFI Section 2 (a) ]

Section 3 - Network type and program evaluation.

[ 40 CFR Part 51 Subpart S §51.353 ]

(a) The LEIM Program shall be a test-only, centralized system operated in New Castle and Kent Counties by the State of Delaware's Division of Motor Vehicles.

(1) Network type:

Centralized testing.

(2) Start date:

January 1, 1995

(3) Test frequency:

Biennial testing.

(4) Model year coverage:

Idle test of all covered vehicles: Model years 1968 and newer for light duty vehicles and model years 1970 and newer for light duty trucks.

(5) Vehicle type coverage:

Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) Exhaust emission test type:

Idle test of all covered vehicles according to the requirements found in Appendix 7 (a).

(7) Emission standards:

(Emissions limits according to model year may be found in Appendix 3 (a) (7))

Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO<sub>2</sub>) on all tested vehicles (as described in Appendix B of the EPA Rule).

(8) Emission control device inspections:

Visual inspection of the catalyst on all 1975 and later model year vehicles with the exception of new motor vehicles registered in Delaware.

(9) Evaporative system function checks:

Evaporative system integrity (pressure) test on 1975 and later model year vehicles with the exception of the five most recent model years.

(10) Stringency:

A 20% emission test failure rate among pre-1981 model year vehicles.

(11) Waiver rate:

A 3% rate, as a percentage of failed vehicles.

(12) Compliance rate:

A 96% compliance rate.

(13) Evaluation date:

Low enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme

ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NOX shall be the same as for ozone..

(b) On-board diagnostics (OBD):

[Reserved]

(c) Modeling requirements:

[Modeling requirements may be found in Reg. 31, Section 2]

(d) Program Evaluation

(1) Program evaluation shall be used in determining actual emission reductions achieved from the LEIM program for the purposes of satisfying the requirements of sections 182(g)(1) and 182(g)(2) of the Clean Air Act, relating to reductions in emissions and compliance demonstration.

(2) Transient mass emission test procedure [Reserved].

[Additional requirements can be found in the PFI, Section 3]

Section 4 - Adequate tools and resources.

[ 40 CFR Part 51 Subpart S §51.354 ]

[Requirements can be found in the PFI, Section 4 ]

Section 5 - Test frequency and convenience.

[ 40 CFR Part 51 Subpart S §51.355 ]

(a) The LEIM Program shall be operated on a biennial frequency, which requires an inspection of each subject vehicle at least once every two years, regardless of any change in vehicle status, at an official inspection station. New vehicles must be presented for LEIM program testing not more than 36 months after initial titling.

(b) This system of inspections and registration renewals allows the additional benefit of coupling both enforcement systems together. Local, County and State police shall continue to enforce registration requirements, which shall require inspection in order to come into compliance. Violations of registration provisions and the resulting penalties are found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. One 60 day extension shall be available to allow testing and repair.(See Appendix 5 (a))

(c) Stations shall be open to the public at hours designed for maximum public convenience. These hours shall equal a minimum of 42 hours per week. Stations shall remain open continuously through the designated hours, and every vehicle presented for inspection during these hours shall receive a test prior to the daily closing of the station. Testing hours

shall be Monday and Tuesday: 8:00 am to 4:30 pm, Wednesday: 12 noon to 8 pm, Thursday and Friday 8:00 am to 4:30 pm. These hours may be subject to change by the State. Official inspection stations shall adhere to regular, extended testing hours and shall test any subject vehicle presented for a test during its test period.

[ Further requirements may be found in the PFI, Section 5]

Section 6 - Vehicle coverage. [ 40 CFR Part 51 Subpart S §51.356]

(a) Subject Vehicles

The LEIM program is based on coverage of all 1968 and later model year, gasoline powered, light duty vehicles and 1970 and later model year light duty trucks up to 8,500 pounds GVWR. The following is the complete description of the LEIM program adopted based on the equivalency evaluation in the PFI, Section 3.

Vehicles registered or required to be registered within the emission inspection area, and fleets primarily operated within the emissions inspection area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles, which are as follows: (See Appendix 6 (a) for DMV Out of State Renewals)

(1) All vehicles titled/registered in Delaware from model year 1968 light duty vehicles and 1970 and later model year light duty trucks and whose vehicle type are subject to the applicable test schedule.

(2) All subject fleet vehicles shall be inspected at an official inspection station.

(3) Subject vehicles which are registered in the program area but are primarily operated in another LEIM area shall be tested, either in the area of primary operation, or in the area of registration. Alternate schedules may be established to permit convenient testing of these vehicles (e.g., vehicles belonging to students away at college should be rescheduled for testing during a visit home).

(4) Vehicles which are operated on Federal installations located within an emission inspection shall be tested, regardless of whether the vehicles are registered in the emission inspection jurisdiction. This requirement applies to all employee-owned or leased vehicles (including vehicles owned, leased, or operated by civilian and military personnel on Federal installations) as well as agency-owned or operated vehicles, except tactical military vehicles, operated on the installation. This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year. In areas without test fees collected in the lane, arrangements shall be made by the installation with the LEIM program for

reimbursement of the costs of tests provided for agency vehicles, at the discretion of the Director. The installation manager shall provide documentation of proof of compliance to the Director. The documentation shall include a list of subject vehicles and shall be updated periodically, as determined by the Director, but no less frequently than each inspection cycle. The installation shall use one of the following methods to establish proof of compliance:

(i) Presentation of a valid certificate of compliance from the LEIM program, from any other LEIM program at least as stringent as the LEIM program described herein, or from any program deemed acceptable by the Director.

(ii) Presentation of proof of vehicle registration within the geographic area covered by the LEIM program, except for any Inspection and Maintenance program whose enforcement is not through registration denial.

(iii) Another method approved by the Director.

(5) Vehicles powered solely by a "clean fuel" such as compressed natural gas, propane, alcohol and similar non-gasoline fuels shall be required to report for inspection to the same emission levels as gasoline powered cars until standards for clean fuel vehicles become available and are adopted by the State.

(6) Vehicles able to be powered by more than one fuel, such as compressed natural gas and/or gasoline, must be tested and pass emissions standards for all fuels when such standards have become adopted by the Department..

(b) Exemptions

The following motor vehicles are exempt from the provisions of this regulation:

(1) Vehicles manufactured and registered as Kit Cars

(2) Tactical military vehicles used exclusively for military field operations.

(3) All motor vehicles with a manufacturer's gross vehicle weight over 8,500 pounds.

(4) All motorcycles and mopeds

(5) All vehicles powered solely by electricity generated from solar cells and/or stored in batteries.

(6) Non-road sources, or vehicles not operated on public roads

(7) Vehicles powered solely by Diesel fuel.

(c) Any exemption from inspection requirements issued to a vehicle under this Section shall not have an expiration date and shall expire only upon a change in the vehicle status for which the exemption was initially granted.

(d) Fleet owners are required to have all non-exempted vehicles under their control inspected at an official inspection station during regular station hours.

(e) Vehicles shall be pre-inspected prior to the emission inspection, and shall be prohibited from testing should any

unsafe conditions be found. These unsafe conditions include, but are not limited to significant exhaust leaks, and significant fluid leaks. The Division and the Department shall not be responsible for major vehicle component failures during the test, of parts which were deficient or excessively worn prior to the start of the test.

Section 7 -Test procedures and standards.  
[40 CFR Part 51 Subpart S §51.357 ]

(a) Test procedure requirements. (The test procedure use to perform this test shall conform to the requirements shown in Appendix 7 (a)).

(1) Initial tests (i.e., those occurring for the first time in a test cycle) shall be performed without repair or adjustment at the inspection facility, prior to the test, except as provided in paragraph (a)(10)(i) of this section.

(2) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition or unsafe conditions.

(3) Tests involving measurement shall be performed with equipment that has been calibrated according to the quality control procedures contained in the PFI Appendix 9 (a) (1).

(4) Vehicles shall be rejected from testing, as covered in this section, if the exhaust system is missing or leaking, or if the vehicle is in an unsafe condition for testing.

(5) After an initial failure of any portion of any emission test in the LEIM program, all vehicles shall be retested without repairs being performed. This retest shall be indicated on the records as the second chance test. After failure of the second chance test, prior to any subsequent retests, proof of appropriate repairs must be submitted indicating the type of repairs and parts installed (if any). This shall be done by completing the "Vehicle Emissions Repair Report Form" (Appendix 7 (a) (5) which will be distributed to anyone failing the emissions test.)

(6) Idle testing using BAR 90 emission analyzers (analyzers that have been certified by the California Bureau of Automotive Repair) shall be performed on all 1968 through current (minus three years) model year vehicles in New Castle and Kent Counties.

(7) Emission control device inspection.

Visual emission control device checks shall be performed through direct observation or through indirect observation using a mirror. These inspections shall include a determination as to whether each subject device is present.

(8) Evaporative System Integrity Test. Vehicles shall fail the evaporative system integrity test(s) if the system(s) cannot maintain the equivalent pressure of eight inches of water using USEPA approved fast pass methodology. Additionally, vehicles shall fail evaporative system integrity testing if the canister is missing or obviously disconnected, the hoses are crimped off, or the fuel cap is missing. Evaporative system

integrity test procedure is found in See Appendix 7(a) (8) .

(9) On-board diagnostic checks.

[Reserved]

(b) Test standards

(1) Emissions standards.

HC, CO, CO+CO<sub>2</sub> (or CO<sub>2</sub> alone), emission standards shall be applicable to all vehicles subject to the LEIM program and repairs shall be required for failure of any standard regardless of the attainment status of the area.

(i) Steady-state short tests.

Appropriate model program standards shall be used in idle testing of vehicles from model years 1968 light duty vehicles and model years 1970 light duty trucks and newer.

(2) Visual equipment inspection standards performed by the Motor Vehicle Technician.

(i) Vehicles shall fail visual inspections of subject emission control devices if such devices are part of the original certified configuration and are found to be missing, modified, disconnected, or improperly connected.

(3) On-board diagnostics test standards.

[Reserved].

(c) Applicability.

In general, section 203(a)(3)(A) of the Clean Air Act prohibits altering a vehicle's configuration such that it changes from a certified to a non-certified configuration. In the inspection process, vehicles that have been altered from their original certified configuration are to be tested by the Motor Vehicle Technician in the same manner as other subject vehicles.

(1) Vehicles with engines of a model year older than the chassis model year shall be required to pass the standards commensurate with the chassis model year.

(2) Vehicles that have been switched from an engine of one fuel type to another fuel type that is subject to the LEIM program (e.g., from a diesel engine to a gasoline engine) shall be subject to the test procedures and standards for the current fuel type, and to the requirements of paragraph (d)(1) of this section.

(3) Vehicles that are switched to a fuel type for which there is no certified configuration shall be tested according to the most stringent emission standards established for that vehicle type and model year. Emission control device requirements may be waived if the Division determines that the alternatively fueled vehicle configuration would meet the new vehicle standards for that model year without such devices.

(4) Vehicles converted to run on alternate fuels, frequently called a dual-fuel vehicle, shall be tested and required to pass the most stringent standard for each fuel type.

(5) Mixing vehicle classes (e.g., light-duty with heavy-duty) and certification types (e.g., California with Federal) within a single vehicle configuration shall be considered tampering.

Section 8 - Test equipment. [ 40 CFR Part 51 Subpart S §51.358 ]

Computerized test systems are required for performing any measurement on subject vehicles.

- (a) Performance features of computerized test systems.  
[ Requirements may be found in the PFI, Section 8 ]

Section 9 - Quality control. [ 40 CFR Part 51 Subpart S §51.359 ]

Quality control measures are designed to insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

- (a) General requirements.  
[ Requirements can be found in the PFI Section 9 (a) ]
- (b) [ Requirements can be found in the PFI Section 9 (b) ]
- (c) Document security.  
[ Requirements may be found in the PFI, Section 9 (c) ]

Section 10 - Waivers and compliance via diagnostic inspection.

[40 CFR Part 51 Subpart S §51.360 ]

- (a) Waiver issuance criteria.
- (1) Motorists shall expend a reasonable cost, as defined in Section 1 of this Regulation in order to qualify for a waiver. Effective January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County, in order to qualify for waiver repairs on any 1981 or later model year vehicle shall be performed by a certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation, and must have been appropriate to correct the emission failure. Repairs of primary emission control components may be performed by non-technicians (e.g., owners) to apply toward the waiver limit. The waiver would apply to the cost of parts for the repair or replacement of the following list of emission control component systems: Air induction system (air filter, oxygen sensor), catalytic converter system (converter, preheat catalyst), thermal reactor, EGR system (valve, passage/hose, sensor) PCV System, air injection system (air pump, check valve), ignition system (distributor, ignition wires, coil, spark plugs). The cost of any hoses, gaskets, belts, clamps, brackets or other emission accessories directly associated with these components may also be applied to the waiver limit.
- (2) Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted

towards the cost limits in paragraphs (a)(3) and (a)(4) of this Section. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

(3) Receipts shall be submitted for review to further verify that qualifying repairs were performed.

(4) A minimum expenditure for repairs of \$75 for pre-81 model year vehicles or a minimum expenditure of \$200 for 1981 model year and newer vehicles shall be spent in order to qualify for a waiver. The minimum repair cost for 1981 and newer vehicles shall increase to \$450 starting January 1, 2000. For each subsequent year, the \$450 minimum expenditure shall be adjusted in January of that year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index for 1989.

(5) The issuance of a waiver applies only to those vehicles failing an exhaust emission tests. No waivers are granted to vehicles failing the evaporative emission integrity test.

(6) Waivers shall be issued by the Division Director only after:

(i) a vehicle has failed a retest for only the exhaust emissions portions of the program, performed after all qualifying repairs have been completed;

(ii) and a minimum of 10% improvement (reduction) in hydrocarbons (HC) and carbon monoxide (CO) has resulted from those repairs. This requirement (Section 10 (a) (6) (ii)) will cease to be in effect starting January 1, 2000.

(7) Qualifying repairs include repairs of primary emission control components performed within 90 days of the test date.

(8) Waivers issued pursuant to this regulation are valid until the date of current registration expiration.

(9) Waivers will not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in paragraph (a)(3) of this section. The Director will issue exemptions for tampering-related repairs if it can be verified that the part in question or one similar to it is no longer available for sale

(b) Compliance via diagnostic inspection.  
Vehicles subject to an emission test at the cutpoints shown in Appendix 3 (a)(6) of Regulation 31 may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by a Delaware Certified Emission Repair Technician shows that no additional emission-related repairs are needed.

(c) Quality control of waiver issuance.  
[Requirements may be found in the PFI, Section 10 (c) ]

(d) (1) In order to meet the requirements of the EPA Rule, the State commits to maintaining a waiver rate equal to or less than 3% of the failed vehicles.

(2) The Secretary shall take corrective action to lower the waiver rate should the actual rate reported to EPA be above 3%.

(3) Actions to achieve the 3% waiver rate, if required, shall include measures such as not issuing waivers on vehicles less than 6 years old, raising minimum expenditure rates, and limiting waivers to once every four years. If the waiver rate cannot be lowered to levels committed to in the SIP, or if the State chooses not to implement measures to do so, then the Secretary shall revise the I/M emission reduction projections in the SIP and shall implement other LEIM program changes needed to ensure the performance standard is met.

Section 11 - Motorist compliance enforcement.

[ 40 CFR Part 51 Subpart S §51.361 ]

(a) Registration denial.

Registration denial enforcement (See Appendix 11(a), the Systems Requirement Document for the Registration Denial process) is defined as rejecting an application for initial registration or re-registration of a used vehicle (i.e., a vehicle being registered after the initial retail sale and associated registration) unless the vehicle has complied with the LEIM program requirement prior to granting the application. This enforcement is the express responsibility of the Division with the assistance of police agencies for on road inspection and verification. The law governing the registration of motor vehicles is found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. Pursuant to section 207(g)(3) of the Act, nothing in this section shall be construed to require that new vehicles shall receive emission testing prior to initial retail sale. In designing its enforcement program, the Director shall:

(1) Provide an external, readily visible means of determining vehicle compliance with the registration requirement to facilitate enforcement of the LEIM program. This shall be in the form of a window sticker and tag sticker which clearly indicate the vehicles compliance status and next inspection date;

(2) Adopt a schedule of biennial testing that clearly determines when a vehicle shall have to be inspected to comply prior to (re)registration;

(3) Design a registration denial system which features the electronic transfer of information from the inspection lanes to the Division's Data Base, and monitors the following information:

- (i) Expiration date of the registration;
- (ii) Unambiguous vehicle identification information; and
- (iii) Whether the vehicle received either a waiver or

a certificate of compliance, and;

(iv) The Division's unique windshield certificate identification number to verify authenticity; and

(v) The Division shall finally check the inspection data base to ensure all program requirements have been met before issuing a vehicle registration.

(4) Ensure that evidence of testing is available and checked for validity at the time of a new registration of a used vehicle or registration renewal.

(5) Prevent owners or lessors from avoiding testing through manipulation of the title or registration system; title transfers do not re-start the clock on the inspection cycle.

(6) Limit and track the use of time extensions of the registration requirement to only one 60 day extension per vehicle to prevent repeated extensions.

(b) Legal Authority: [Requirements may be found in the PFI, Section 11 (b) ]

(c) (1) (i) Owners of subject vehicles must provide valid proof of having received a passing test or a waiver to the Director's representative in order to receive registration from the Division.

(ii) State and local enforcement branches, such as police agencies, as part of this program, shall cite motorist who do not visibly display evidence of compliance with the registration and inspection requirements.

(iii) Fleet and all other registered applicable vehicle compliance shall be assured through the regular enforcement mechanisms concurrent with registration renewal, on-road testing and parking lot observation. Fleets shall be inspected at official inspection stations.

(iv) Federal fleet compliance shall be assured through the cooperation of the federal fleet managers as well as also being subject to regular enforcement operations of the Division.

Section 12 - Motorist compliance enforcement program oversight.

[ 40 CFR Part 51 Subpart S §51.362 ]

[Requirements may be found in the PFI, Section 12]

Section 13 - Quality assurance.

[ 40 CFR Part 51 Subpart S §51.363 ]

[ Requirements may be found in the PFI, Section 13]

Section 14 - Enforcement against operators and motor vehicle technicians.

[ 40 CFR Part 51 Subpart S §51.364 ]

(a) Imposition of penalties

The State of Delaware shall continue to operate the LEIM program using State of Delaware Employees for all functions. Should enforcement actions be required for violations of

# PROPOSED REGULATIONS

program requirements, the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action, and, the State of Delaware Merit Rules, shall be adhered to in all matters. Applicable provisions of these documents are found in Appendix 14 (a).

(b) Legal authority.

(1) The Director shall have the authority to temporarily suspend station motor vehicle technicians' certificates immediately upon finding a violation or upon finding the Motor Vehicle Technician administered emission tests with equipment which had a known failure and that directly affects emission reduction benefits, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8 Disciplinary Action.

(2) The Director shall have the authority to impose disciplinary action against the station manager or the motor vehicle technician, even if the manager had no direct knowledge of the violation but was found to be careless in oversight of motor vehicle technicians or has a history of violations, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, and the State of Delaware Merit Rules. The lane manager shall be held fully responsible for performance of the motor vehicle technician in the course of duty.

(c) Recordkeeping.

[ Requirements can be found in the PFI, Section 14 (c) ]

Section 15 - Data collection. [ 40 CFR Part 51 Subpart S §51.365]

[ Requirements may be found in the PFI, Section 15 ]

Section 16 - Data analysis and reporting.

[ 40 CFR Part 51 Subpart S §51.366 ]

[ Requirements may be found in the PFI, Section 16 ]

Section 17 - Motor vehicle technician training and certification.

[ 40 CFR Part 51 Subpart S §51.367 ]

Section 18 - Public information and consumer protection.

[ 40 CFR Part 51 Subpart S §51.368 ]

[ Requirements may be found in the PFI, Section 18 ]

Section 19 - Improving repair effectiveness.

[ 40 CFR Part 51 Subpart S §51.369 ]

[ Additional requirements may be found in the PFI, Section 19]

(1) A prerequisite for a retest shall be a completed repair form that indicates which repairs were performed. (See Section 7 (a) (5) of this Regulation)

Section 20 - Compliance with recall notices.

[ 40 CFR Part 51 Subpart S §51.370 ]

[Reserved]

Section 21 - On-road testing.

[ 40 CFR Part 51 Subpart S §51.371]

(a) Periodic random Delaware registered vehicle pullovers on Delaware highways will occur without prior notice to the public for on-road vehicle exhaust emission testing.

(b) Vehicles identified by the on-road testing portion of the LEIM program shall be notified of the requirement for an out-of-cycle emission retest, and shall have 30 days from the date of the notice to appear for inspection. Vehicles not appearing for a retest shall be out of compliance, and be liable for penalties under Title 21 of Delaware Criminal and Traffic Law Manual and the Division will take action to suspend the vehicle registration.

[ Additional requirements may be found in the PFI, Section 21 ]

Section 22 - Implementation deadlines.

[ 40 CFR Part 51 Subpart S §51.373 ]

All requirements related to the LEIM program shall be effective ten days after the Secretary's order has been signed and published in the State Register. This regulation supersedes the existing Regulation Numbers 26 and 33 for Kent and New Castle Counties effective ten days after the Secretary's order has been signed and published in the State Register.

---

## PLAN FOR IMPLEMENTATION

Regulation No. 31

## LOW ENHANCED INSPECTION AND MAINTENANCE PROGRAM

Proposed SIP Revision

DRAFT DRAFT

Prepared by the

Division of Air and Waste Management

Air Quality Management Section

Delaware Department of Natural Resources and  
Environmental Control

---

---

# PROPOSED REGULATIONS

1709

Sec	Page	Title	
		Table of Contents	
1	1	Applicability.	Appendix 9 (c) Quality Control Procedures - Document Security
2	5	Low Enhanced I/M performance standard.	Appendix 11 (b) Legal Authority for I/M Program
3	7	Network type and program evaluation.	Appendix 11 (c)(1) Exemption of Vehicles
4	8	Adequate tools and resources.	Appendix 12 (a)(4) Quality Assurance Enforcement Procedures
5	8	Test frequency and convenience.	Appendix 12 (a)(5) Document Handling Procedures - Division Personnel
6	9	Vehicle coverage.	Appendix 12 (a)(6) Test Record Audits - Department and Division Personnel
7	9	Test procedures and standards.	Appendix 18 (b) Consumer Protection Plan
8	10	Test equipment.	
9	13	Quality control.	
10	13	Waivers and compliance via diagnostic inspection.	
11	14	Motorist compliance enforcement.	
12	15	Motorist compliance enforcement program oversight.	Note: The appendix number refers to the section number in the PFI
13	17	Quality assurance.	
14	21	Enforcement against operators and motor vehicle technicians.	To adopt a Plan for Implementation (PFI) of Regulation No. 31 - Enhanced Inspection and Maintenance Program, as follows:
15	21	Data collection.	
16	23	Data analysis and reporting.	
17	27	Inspector training and certification.	Notes on the content of the PFI beginning on the next page:
18	27	Public information and consumer protection.	* The preparation of this document used the Federal I/M Rule from 40 CFR Part 51 Subpart S as the framework. All portions of that Rule are addressed in either the PFI, which follows, or Regulation No. 31, a separate document. This procedure is consistent with the Introduction to the <u>Checklist for Completing the Inspection/Maintenance SIP</u> , dated March 1993, prepared by the US EPA, Office of Air and Radiation.
19	28	Improving repair effectiveness.	* Regulation No. 31 means the new regulation which is a separate document prepared from this PFI which describes the regulatory requirements to implement the LEIM program.
20	30	Compliance with recall notices.	* Appendices are included as part of this PFI, however these should not be confused with the appendices that are part of the regulation.
21	30	On-road testing.	* Under each section title, the related section from the Federal I/M Rule, 40 CFR Part 51 Subpart S is given in italics.
22	31	State implementation plan submissions.	
23	31	Implementation deadlines.	
* PLEASE NOTE THAT THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT, NOT THE REGISTER.			
Appendices to the Plan for Implementation			
Appendix 2- (b)		Input and Output Files Relating to Mobile5a Analysis Mobile5a Local Input Sources and CalculationsResults of Modeling Analysis	
Appendix 4 (a)		LEIM Program Dedicated Funding Statute.	
Appendix 4 (b)		LEIM Program - Personnel Allocation and Responsibilities	Low Enhanced Inspection and Maintenance Program Plan for Implementation (PFI)
Appendix 5 (a)		Citation of authority in Delaware Code (DMV) that enables the program to a biennial test frequency	Section 1 - Applicability. [ 40 CFR Part 51 Subpart S §51.350]
Appendix 8 (a)		Idle Test Equipment Specifications	This program shall be known as the "Low Enhanced Inspection and Maintenance Program" or the "LEIM Program", and shall be identified as such in the balance of this document.
Appendix 9 (a) (1)		Quality Control Procedures - Equipment	

Enhanced programs are required in serious or worse ozone nonattainment areas, depending upon population and nonattainment classification or design value. The determination of whether an area has a "Low Enhanced" or a "High Enhanced" program depends on the emission reductions required for the area. If minimal reductions are needed to meet the Rate of Progress Plan/Attainment requirements, the "Low Enhanced" program is acceptable, otherwise the "High Enhanced" program must be adopted and implemented.

The following analysis first portrays the tests of the EPA Rule, first for classification and population criteria and then for extent of area of coverage. For both analyses, various criteria are used to determine applicability. Following each criteria is an analysis which identifies the areas of Delaware where each criteria may or may not apply. The rule language is shown in italics.

(a) Nonattainment area classification and population criteria.

*(1) States or areas within an ozone transport region shall implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, within the state or area with a 1990 population of 100,000 or more as defined by the Office of Management and Budget (OMB) regardless of the area's attainment classification. In the case of a multi-state MSA, enhanced I/M shall be implemented in all ozone transport region portions if the sum of these portions has a population of 100,000 or more, irrespective of the population of the portion in the individual ozone transport region state or area.*

Applicability: This criteria includes New Castle and Kent Counties.

This criteria excludes Sussex County due to no 1990 MSA.

*(2) Apart from those areas described in paragraph (a)(1) of this section, any area classified as serious or worse ozone nonattainment, or as moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1980 Bureau of Census-defined (Census-defined) urbanized area population of 200,000 or more, shall implement enhanced I/M in the 1990 Census-defined urbanized area.*

Applicability: This criteria includes New Castle and Kent Counties.

This criteria excludes Sussex County, with a classification of Marginal.

*(3) Any area classified, as of November 5, 1992, as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less shall continue operating I/M programs that were part of an approved State Implementation Plan (SIP) as of November 15, 1990, and shall update those programs as necessary to meet the basic I/M program requirements of this subpart. Any such area*

*required by the Clean Air Act, as in effect prior to November 15, 1990, as interpreted in EPA guidance, to have an I/M program shall also implement a basic I/M program. Serious, severe and extreme ozone areas and CO areas over 12.7 ppm shall also continue operating existing I/M programs and shall upgrade such programs, as appropriate, pursuant to this subpart.*

Applicability: This criteria does not apply to New Castle or Kent Counties since they are required to adopt enhanced I/M.

This criteria does not apply to Sussex since the SIP Revision to include that county in the statewide basic I/M program was not adopted by EPA by November 15, 1990.

*(4) Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area.*

Applicability: This criteria applies to no Delaware counties since no counties are classified as Moderate.

*(5) Any area outside an ozone transport region classified as serious or worse ozone nonattainment, or moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1990 Census-defined urbanized area population of less than 200,000 shall implement basic I/M in the 1990 Census-defined urbanized area.*

Applicability: This criteria applies to no Delaware counties since no counties are outside the ozone transport region.

*(6) If the boundaries of a moderate ozone nonattainment area are changed pursuant to section 107(d)(4)(A)(i)-(ii) of the Clean Air Act, such that the area includes additional urbanized areas, then a basic I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas.*

Applicability: This criteria applies to no Delaware counties since no counties are classified as Moderate.

*(7) If the boundaries of a serious or worse ozone nonattainment area or of a moderate or serious CO nonattainment area with a design value greater than 12.7 ppm are changed any time after enactment pursuant to section 107(d)(4)(A) such that the area includes additional urbanized areas, then an enhanced I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas, if the 1980 Census-defined urban area population is 200,000 or more. If such a newly included area has a 1980 Census-defined population of less than 200,000, then a basic I/M*

program shall be implemented in the 1990 Census-defined urbanized area.

Applicability: This criteria applies to no Delaware counties since no counties (other than Kent) have urbanized areas.

(8) *If a marginal ozone nonattainment area, not required to implement enhanced I/M under paragraph (a)(1) of this section, is reclassified to moderate, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area. If the area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. If less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.*

Applicability: This criteria could only apply to Sussex, however data does not demonstrate that Sussex should be reclassified to Moderate nonattainment.

(9) *If a moderate ozone or CO nonattainment area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. In the case of ozone areas reclassified as serious or worse, if the 1980 Census-defined population of the urbanized area is less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.*

Applicability: This criteria applies to no Delaware counties since no counties are classified as Moderate.

(b) Extent of area coverage.

(1) *In an ozone transport region, the program shall entirely cover all counties within subject MSAs or subject portions of MSAs, as defined by OMB in 1990, except largely rural counties having a population density of less than 200 persons per square mile based on the 1990 Census can be excluded provided that at least 50% of the MSA population is included in the program. This provision does not preclude the voluntary inclusion of portions of an excluded rural county. Non-urbanized islands not connected to the mainland by roads, bridges, or tunnels may be excluded without regard to population.*

Applicability: This criteria does not apply to New Castle or Kent Counties since they are already classified as Severe.

This criteria does not apply to Sussex since there are no MSAs in Sussex.

(2) *Outside of ozone transport regions, programs shall nominally cover at least the entire urbanized area, based on the 1990 census. Exclusion of some urban population is allowed as long as an equal number of non-urban residents*

*of the MSA containing the subject urbanized area are included to compensate for the exclusion.*

Applicability: This criteria applies to no Delaware counties since no counties are outside the ozone transport region.

(3) *Emission reduction benefits from expanding coverage beyond the minimum required urban area boundaries can be applied toward the reasonable further progress requirements or can be used for offsets, provided the covered vehicles are operated in the nonattainment area, but not toward the enhanced I/M performance standard requirement.*

Applicability: Delaware does not plan to include credits from vehicles registered in Sussex and operated in Kent or New Castle due to the tentative nature of this analysis.

(4) *In multi-state urbanized areas outside of ozone transport regions, I/M is required in those states in the subject multi-state area that have an urban area population of 50,000 or more, as defined by the Bureau of Census in 1990. In a multi-state urbanized area with a population of 200,000 or more that is required under paragraph (a) of this section to implement enhanced I/M, any state with a portion of the urbanized area having a 1990 Census-defined population of 50,000 or more shall implement an enhanced program. The other coverage requirements in paragraph (b) of this section shall apply in multi-state areas as well.*

Applicability: This criteria applies to no Delaware counties since no counties are outside the ozone transport region.

The conclusion of this analysis is that New Castle and Kent Counties are subject to the LEIM program requirements.

(c) Requirements after attainment.

[ This requirement is included in Regulation 31, Section 1 (e) ]

(d) Definitions: (**Note: Definitions are found in Regulation 31**).

Section 2 - Low Enhanced I/M performance standard. [40 CFR Part 51 Subpart S §51.351]

(a) The LEIM programs will be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the LEIM program. The performance standard was established using the following LEIM program inputs and local characteristics, such as vehicle mix and local fuel controls. The Delaware LEIM program inputs can be found in Appendix 2 (b).

- (1) Network type:  
Centralized testing.
- (2) Start date:  
January 1, 1995
- (3) Test frequency:  
Annual testing.
- (4) Model year coverage:  
Testing of 1968 and newer vehicles.
- (5) Vehicle type coverage:  
Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).
- (6) Exhaust emission test type:  
Idle test of all covered vehicles. (As described in appendix B of Subpart S of 40 CFR 51.
- (7) Emission standards:  
Those specified in 40 CFR Part 85, Subpart W.  
Emission standards for 1981 and newer vehicles of 1.2% CO, and 220 ppm HC for the idle test (as described in Appendix B of the EPA Rule); and

Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO<sub>2</sub>) on all tested vehicles (as described in Appendix B of the EPA Rule).

- (8) Emission control device inspections:  
Visual inspection of the positive crankcase ventilation valve on all 1968 through 1971 model year vehicles, inclusive, and of the exhaust gas recirculation valve on all 1972 and newer model year vehicles.
- (9) Evaporative system function checks: none
- (10) Stringency:  
A 20% emission test failure rate among pre-1981 model year vehicles.
- (11) Waiver rate:  
A 3% waiver rate, as a percentage of failed vehicles.
- (12) Compliance rate:  
A 96% compliance rate.
- (13) Evaluation date:  
Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO<sub>x</sub> shall be the same as for ozone.

(b) The emission factors determined from the application of the above inputs to Mobile5a are shown in the document submitted to EPA, in November, 1995, entitled "State of Delaware Demonstration of Meeting the Environmental Protection Agency Performance Standard for the Low-Enhanced Motor Vehicle Inspection and Maintenance Program". This document has been provided in Appendix 2 (b).

(c) On-board diagnostics (OBD):  
[Reserved]

(d) Modeling requirements:  
[Modeling requirements may be found in the document cited in paragraph (b) above]

Section 3 - Network type and program evaluation. [ 40 CFR Part 51 Subpart S 51.353 ]

(a) Program evaluation.  
The LEIM program includes an ongoing evaluation by the Department to quantify the emission reduction benefits of the program, and to determine if the LEIM program is meeting the requirements of the Clean Air Act and Regulation 31.

(1) LEIM program evaluation reports will be prepared by the Department on a biennial basis, starting two years after the initial start date of mandatory testing as required in Section 24 of this PFI. The first report will be due to EPA by July 1, 1998, and every two years thereafter.

(2) The LEIM program evaluation test data will be submitted to EPA and used by the State to calculate local fleet emission factors, to assess the effectiveness of the program, and to determine if the performance standard is being met. The most recent version of EPA's mobile source emission factor model, will be used to reflect the appropriate emission reduction effectiveness of LEIM program elements within Section 2 of this PFI based on actual performance.

Section 4 - Adequate tools and resources. [ 40 CFR Part 51 Subpart S §51.354 ]

(a) Administrative resources.  
The LEIM program will maintain the administrative resources necessary to perform all of the LEIM program functions including quality assurance, data analysis and reporting, and the holding of hearings and adjudication of cases.

Based on the passage of HB 360 which was signed by the Governor on November 9, 1993, on an annual schedule \$2.8 million is dedicated from fines derived from the Justice of the Peace Courts for the purpose of ongoing operation of the LEIM program. This signed legislation amends §6102 of Title 29 of the Delaware Code which is found in Appendix 4 (a). In addition, the yearly expected expenditures which Delaware is committed to for the I/M program is detailed in Appendix 4 (a).

(b) Personnel.  
The LEIM program shall employ sufficient personnel to effectively carry out the duties related to the program, including but not limited to administrative audits, inspector audits, data analysis, LEIM program oversight, LEIM program evaluation, public education and assistance, and enforcement

against motorists who are out of compliance with LEIM program regulations and requirements. The category of personnel, the numbers of each category, the duties and responsibilities of each category and the location of each category within the structure of Delaware government is shown in Appendix 4 (b). When required, enforcement actions taken involving Division and Department personnel shall be conducted in accordance with the Agreement between the State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules.

(c) Equipment.

The LEIM program shall possess equipment necessary to achieve the objectives of the program and meet LEIM program requirements, including but not limited to a steady supply of vehicles for covert auditing, test equipment and facilities for LEIM program evaluation, and computers capable of data processing, analysis, and reporting. Vehicles used for covert auditing will be derived from the State owned fleet of vehicles.

Section 5 - Test frequency and convenience. [ 40 CFR Part 51 Subpart S §51.355 ]

(a) The biennial LEIM program test frequency is consistent with Delaware Code requirements of 7 Del.Chapter 21 §§2109 and 2110 and found in Appendix 5(a). The test frequency shall be automatically integrated with the enforcement process since the date of registration renewal is the same date as that of the emission testing requirement. Vehicles are assigned inspection cycles in Delaware. The inspection cycle normally remains with the vehicle when sold or transferred within the State. New vehicles, or used vehicles newly tagged in Delaware, enter the "cycle" on the date of registration, and remain on that cycle until removed from service or transferred to another state.

(b) In LEIM programs, test systems are to be designed in such a way as to provide convenient service to motorists required to get their vehicles tested. The location of official inspection stations are located in Wilmington, New Castle and Dover and are essentially the same locations as before the requirement for the LEIM program. These locations have been found to be adequate and publicly accepted convenient locations since 1983.

The network of stations are to provide test services that are sufficient to insure short waiting times to get a test. In preparing the estimates for the number of lanes required, the State based all assumptions on the peak hours of operation, based on local experience. Additional relief will be realized with the inception of the change of expiration dates to daily, avoiding end of period delays. Short-term wait times will be

addressed by opening only enough lanes to provide a convenient wait of no more than a monthly average of 20 minutes.

Section 6 - Vehicle coverage. [ 40 CFR Part 51 Subpart S §51.356 ]

The legal authority for this section is contained in 7 Del. C. §6707, as included in Appendix 11 (b).

The requirements of this section and the corresponding section in Regulation 31, shall apply to all of the subject vehicles registered in Delaware as described in the PFI. For the start up of the program on January 1, 1996, this number is an historical growth data projection of 478,000 vehicles. Delaware has confidence in this estimation based on a lengthy record of 3 percent per annum growth in the vehicle population.

Section 7 -Test procedures and standards. [ 40 CFR Part 51 Subpart S §51.357 ]

[ Requirements may be found in Section 7 of Regulation No. 31 ]

(a) Test procedure requirements

(1) On-board diagnostic checks.

[Reserved].

(b) Test standards

Section 8 -Test equipment. [ 40 CFR Part 51 Subpart S §51.358 ]

(a) Performance features of computerized test systems.

Test equipment specifications are attached as Appendix 8-(a). Each test lane will be equipped with the following equipment for the idle test, at a minimum: a tailpipe probe, a flexible sample line, a water removal system, particulate trap, sample pump, flow control components, analyzers for HC, CO and CO<sub>2</sub>, and O<sub>2</sub> displays for exhaust concentrations of HC, CO, O<sub>2</sub> and CO<sub>2</sub>. Materials that are in contact with the gases sampled shall not contaminate or change the character of the gases to be analyzed, including gases from alcohol fueled vehicles. The probe shall be capable of being inserted to a depth of at least eight inches into the tailpipe of the vehicle being tested, or into an extension boot if one is used. A pressure gauge and equipment for flowing compressed air into the fuel tank evaporative control system will be used for the pressure test. The same equipment shall be used to separately test the gas tank cap.

Test equipment for the Idle Test shall comply with the Bureau of Automotive Repair BAR 90 TEST ANALYZER SYSTEM

SPECIFICATIONS dated April 1996, and is incorporated here by reference. Public review of this document may be requested by contacting the Department at (302) 739-4791.

All test equipment will be fully computerized and all processes will be automated to the highest degree possible. All computerized equipment will have lock-out features to prevent tampering by unauthorized personnel. Station managers, or their supervisors will have authorization to clear lock-outs or access the hardware for any purpose other than to perform an emissions test: and will be required to enter an access code that identifies them personally in order to do so. The date and reason for all lock-outs, as well as the date, and by whom lock-outs are cleared will be kept in a data file.

The test process is completely computerized. The process begins with data entry, which will involve entering the license plate number or the VIN. The Motor Vehicle Technician will obtain the VIN digits from the vehicle itself and will check the tag number as well. The entry will either, call up a pre-existing or, create a new vehicle file based on the registration data base and previous inspections of the vehicle. The Motor Vehicle Technician will compare the data in the file and confirm that the vehicle presented matches the VIN/tag number combination in the file. The test process is completely automatic, including the pass/fail decision and test procedure. Test lanes will be linked on a real-time basis to a central computer; test data will be recorded onto the station server and to the central data base as each test is completed, and multiple initial testing will be prevented. Records will be kept on the central data base for 10 years or the life of the vehicle whichever is less. The central data base will be backed up nightly, and if the vehicle is purged, data will be recorded on microfiche permanently. System lockouts will be initiated whenever the following quality control checks are failed or not conducted on schedule: periodic calibration or leak checks, and check of the pressure monitoring devices. All electronic calibration and system integrity checks will be performed automatically, i.e., without specific prompting by the Motor Vehicle Technician prior to each test, and quality control will be under computer control to the extent possible.

(1) Emission test equipment shall be capable of testing all subject vehicles and will be updated from time to time to accommodate new technology vehicles as well as changes to the LEIM program.

(2) At a minimum, emission test equipment:

(i) Shall be automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;

(ii) Shall be secure from tampering and/or abuse;

(iii) Shall be based upon written specifications; and

(iv) Shall be capable of simultaneously sampling dual exhaust vehicles.

(v) Shall be able to determine the RPM of the vehicle.

(3) The vehicle owner or driver will normally be provided with a computer-generated record of test results, including all of the items listed in 40 CFR part 85, subpart W as being required on the test record. The test report will include:

(i) A vehicle description, including license tag number, vehicle identification number, and odometer reading;

(ii) The date and time of test;

(iii) The name or identification number of the individual(s) performing the tests and the location of the test station and lane;

(iv) The type of tests performed, including emission tests, visual checks for the presence of emission control components including catalytic converter, and functional, evaporative system checks including a gas cap test;

(v) The applicable test standards;

(vi) The test results, including exhaust concentrations and pass/fail results for each mode measured, pass/fail results for evaporative system checks, and which emission control devices inspected were passed, failed, or not applicable;

(vii) A handout indicating the availability of warranty coverage as required in Section 207 of the Clean Air Act;

(viii) Certification that tests were performed in accordance with the regulations; and

(ix) For vehicles that fail the tailpipe emission test, some possible causes of the specific pattern of high emission levels found during the test are given in the Vehicle Inspection Program Brochure distributed at the inspection lane.

(b) Functional characteristics of computerized test systems. The test system is composed of emission measurement devices and other motor vehicle test equipment controlled by a computer.

(1) The test system shall automatically:

(i) Make a pass/fail decision for all measurements;

(ii) Record test data to an electronic medium;

(iii) Conduct regular self-testing of recording accuracy;

(iv) Perform electrical calibration and system integrity checks before each test, as applicable, forwarded electronically to the inspection database where it shall be retained for 10 years or the life of the vehicle whichever is less, and;

(v) Initiate system lockouts for:

(A) Tampering with security aspects of the test system;

(B) Failing to conduct or pass periodic calibration or leak checks;

(C) Failing to conduct or pass the pressure monitoring device check (if applicable);

(D) A full data recording medium or one that does not pass a cyclical redundancy check.

(2) The test systems will include a real-time data link to a host computer that prevents unauthorized multiple initial

tests on the same vehicle in a test cycle and to insure test record accuracy.

(3) The test system will insure accurate data collection by limiting, cross-checking, and/or confirming manual data entry.

(4) On-board diagnostic test equipment requirements. [Reserved].

Section 9 - Quality control. [ 40 CFR Part 51 Subpart S §51.359 ]

Quality control measures will insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained. (Concerning document maintenance see Regulation 31 Appendix 11(a) Systems Requirement Document - Registration Denial)

(a) General provisions.

(1) The practices described in this section and in Appendix 9 (a) (1) to this PFI shall be followed, at a minimum.

(2) Preventive maintenance on all inspection equipment necessary to insure accurate and repeatable operation will be performed on a periodic basis.

(3) Computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering, and any other recordable circumstances which should be monitored to insure quality control (e.g., service calls).

(b) Requirements for evaporative system functional test equipment.

Requirements for evaporative system functional test equipment.

Equipment shall be maintained by the operator according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Appendix 9 (b) contains periodic maintenance procedures which shall be performed on all emission testing equipment by the State.

(c) Document security.

Measures shall be taken to ensure that compliance documents and data files cannot be stolen, removed, changed or edited without being damaged or marked for detection. Additional procedures concern document security can be found in Appendix 9 (c)

Section 10 -Waivers and compliance via diagnostic inspection. [ 40 CFR Part 51 Subpart S §51.360 ]

The LEIM program allows for the issuance of a waiver, which

is a form of compliance with the LEIM program requirements that allows a motorist to comply without meeting the applicable test standards, as long as prescribed criteria are met.

(a) Issuance criteria.

[Requirements may be found in Regulation 31, Section 10 (a)]

(b) Compliance via diagnostic inspection.

[Requirements may be found in Regulation 31, Section 10 (b)]

(c) Quality control of waiver issuance.

(1) The Director shall provide control of waiver issuance and processing by establishing a system of waivers issued by the Division.

(2) Vehicle owners or lessors shall be informed via a standardized form provided by the Division, of potential warranty coverage, and ways to obtain warranty repairs upon their failure of an emissions inspection.

(3) Division personnel shall insure that repair receipts are authentic and cannot be revised or reused. All qualified receipts shall be permanently marked so they cannot be revised or reused. Department personnel or personnel contracted by the Department, on a periodic schedule shall perform visual inspections of all related repairs done by anyone, except for waiver repairs done by Certified Emission Repair Technicians.

(4) Waivers shall be tracked, managed, and accounted for by the Division with respect to time extensions or exemptions in the Division's database so that owners or lessors cannot receive or retain a waiver improperly. Records shall be maintained in secured, limited access data files and cross checked on a quarterly basis with the main data base to ensure waivers are being properly managed and reinspected biennially by the inspection program.

(d) [Requirements may be found in Regulation 31, Section 10 (d)]

Section 11 - Motorist compliance enforcement. [ 40 CFR Part 51 Subpart S §51.361 ]

Compliance shall be ensured through the denial of motor vehicle registration which, in Delaware, can only be obtained upon provision of proof of compliance with LEIM program and safety inspections requirements.

(a) (1) A registration renewal notice shall be sent to each vehicle owner in advance of the expiration of the current registration/inspection.

(2) In Delaware, the compliance sticker (and vehicle tag) normally remains with any vehicle already in the program, regardless of ownership. Vehicles changing the compliance sticker and vehicle tag with a change in vehicle ownership shall be assigned a new inspection cycle and require a new

compliance sticker prior to re-registration. Manipulation of the title or registration shall therefore be ineffective in attempting to avoid inspection.

(b) The legal authority is contained in 7 Del. C. 60, §6010(a), 7 Del. C. 67, §6702.. These provisions are found in Appendix 11 (b). In Regulation 31, Section 11 and Appendix 5(a) procedures to be followed by the Division in the specific operation of the enforcement program, as well as a penalty schedule to be followed when violations occur, are included.

(c) (1) In the future, through the examination of data, test records and enforcement actions the Department will be able to assess the compliance rate. In addition, the Department will conduct on-road and parking lot surveys of vehicles with Delaware tags, noting the vehicle inspection sticker located on the tag and indicating the month and year of expiration. In these same surveys, tag numbers will be tracked and verified with the Division's record as to registration compliance.

(2) The State commits to a sustained level of LEIM program enforcement which shall ensure a compliance rate of no less than 96% of subject vehicles. This reflects the compliance rate used in LEIM program modeling. In the event that LEIM program evaluation reveals that this compliance rate is not being continuously met, the following contingency measures shall be implemented by the Department:

(i) additional on-road testing and additional parking lot surveillance

(ii) contact fleet and federal fleet managers to ensure full compliance

(3) Should these measures not be sufficient to bring the State's compliance rate to the needed level, a final measure shall be implemented. The Division shall generate a list of all vehicles known to be operating in the State under legal tags. This list shall be compared to a list of all vehicles in compliance with the LEIM program. Any outstanding vehicles shall be investigated by the Department and brought into compliance subject to current laws and regulations.

(d) As described in Section 6 (c) of Regulation No. 31, certain vehicles shall be exempt from the inspection requirements of the LEIM program. Detailed in Appendix 11 (c)(1), is a 1993 estimation of the percentage of the fleet by vehicle type, and, the percentage of the subject fleet that vehicle type represents. The exempt status of these vehicles shall be confirmed through the registration inspection requirements and through other established enforcement mechanisms. If a violation is found, the exempt status of any individual vehicle may be revoked.

Section 12 - Motorist compliance enforcement program oversight.

[ 40 CFR Part 51 Subpart S §51.362 ]

The enforcement program shall be audited regularly and shall

follow effective program management practices, including adjustments to improve operation when necessary.

(a) Quality assurance and quality control.

A quality assurance program has been implemented to insure effective overall performance of the enforcement system. Quality control procedures are required to instruct individuals in the enforcement process regarding how to properly conduct their activities. Audits of the Quality Assurance and Quality Control procedures shall be performed by Department Auditors and reported to EPA on an annual basis. The quality control and quality assurance program shall include:

(1) Verification of exempt vehicle status by inspecting and confirming such vehicles during registration;

(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical character readers, or through redundant data entry performed upon appearance for testing by lane personnel;

(3) Maintenance of an audit trail to allow for the assessment of enforcement effectiveness such that all documentation can be controlled, tracked and reported to EPA by the Department on an annual basis with program evaluations;

(4) Establishment of written procedures for personnel directly engaged in LEIM program enforcement activities, contained in Appendix 12 (a)(4);

(5) Establishment of written procedures for Division personnel engaged in LEIM program document handling and processing, such as registration clerks or personnel involved in sticker dispensing and waiver processing, as well as written procedures for the auditing of their performance, contained in Appendix 12- (a)(5);

(6) A determination of enforcement program effectiveness through annual audits of test records and LEIM program compliance documentation, with the procedures described in Appendix 12- (a)(6). Results shall be provided to EPA with annual program evaluation reports;

(7) Enforcement procedures in accordance with the Agreement Between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules for immediate disciplining, retraining, or removing enforcement personnel who deviate from established requirements;

[Additional requirements may be found in Section 12 of the PFI]

(b) Information management.

The information data base to be used in characterizing, evaluating, and enforcing the LEIM program shall:

(1) Determine the subject vehicle population through

analysis of vehicles receiving State of Delaware tags in New Castle and Kent Counties;

(2) Permit EPA audits of the enforcement process;

(3) Assure the accuracy of registration and other program document files and data bases through internal and cross data base comparisons of records;

(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party Departmental review; through automated or redundant data entry; and, through automated analysis for valid alphanumeric sequences of the vehicle identification number (VIN), certificate number, or tag number. Department auditors shall annually review and verify analyses, and assist the Division and Police agencies in enforcement actions;

(5) Compare on a quarterly and annual basis, the testing database to the registration database to determine LEIM program effectiveness and establish compliance rates.

(6) Sample the fleet as a determination of compliance through parking lot surveys, road-side pull-overs, or other in-use vehicle measurements.

(c) The legal authority in Appendix 11 (b), 7 Del. C. §6010(a), includes the authority to develop and implement the enforcement oversight element of the LEIM program. The regulations also include procedures to be followed by the Division in the specific operation of the registration denial system, as well as a penalty schedule to be followed when violations occur. (See Regulation 31, Appendix 11 (a) Systems Requirement Document- Registration Denial)

Section 13 - Quality assurance. [ 40 CFR Part 51 Subpart S §51.363 ]

An ongoing quality assurance LEIM program has been implemented to discover, correct and prevent fraud, waste, and abuse and to determine whether procedures are being followed, are adequate, whether equipment is measuring accurately, and whether other problems might exist which would impede LEIM program performance. The quality assurance and quality control procedures shall be evaluated at least annually to assess their effectiveness and relevance in achieving LEIM program goals.

(a) Performance audits.

Performance audits shall be conducted by the Departments auditors on a minimum of an annual basis to determine whether Motor Vehicle Technicians are correctly performing all tests and other required functions. Performance audits shall be of two types: overt and covert, and shall include:

(1) Performance audits based upon written procedures and results shall be reported using either electronic or written forms to be retained by the Division, with sufficient detail using violations of procedures found, to support a hearing if necessary. This shall include all evidence uncovered of a

violation, including the time, date, nature of the violation, and possible effect on vehicles being inspected and the programs overall effectiveness. Preliminary results shall be discussed with the lane manager. Final results shall be transmitted to both the Division Director and the Department Secretary who shall decide if further action is required, and initiate that further action;

(2) Performance audits in addition to regularly programmed audits for Motor Vehicle Technicians suspected of violating regulations as a result of audits, data analysis, or consumer complaints;

(3) Overt performance audits shall be performed once per month and shall include:

(i) A check for the observance of issuing windshield stickers (when implemented);

(ii) A check to see that required record keeping practices are being followed;

(iii) A check for licenses or certificates and other required display information; and

(iv) Observation and written evaluation of each Motor Vehicle Technician's ability to properly perform an inspection;

(4) Covert performance audits shall include:

(i) Remote visual observation of Motor Vehicle Technician performance, which shall include the use of aids such as binoculars or video cameras, at least once per year per Motor Vehicle Technician.

(ii) Site visits at least once per year per number of Motor Vehicle Technicians using covert vehicles set to fail (this requirement sets a minimum level of activity to one covert inspection for each Motor Vehicle Technician at each station, not a requirement that each Motor Vehicle Technician be involved in a covert audit);

(iii) Full documentation of all audit preparation, execution and performance, including verified vehicle condition and preparation, which shall be sufficient for building a legal case and establishing a performance record;

(iv) Covert vehicles covering the range of vehicle technology groups (e.g., carbureted and fuel-injected vehicles) included in the LEIM program, including a full range of introduced malfunctions covering the emission test, the evaporative system tests, and emission control component checks (as applicable);

(v) Sufficient numbers of covert vehicles and auditors to allow for frequent rotation of both to prevent detection by station personnel during audits conducted once per month; and,

(vi) Access to on-line inspection databases by Department and Division personnel to permit the creation and maintenance of covert vehicle records.

Covert vehicles to be used in this requirement shall be supplied from the pool maintained by the State of Delaware for use throughout the State by various agencies. The records of these

vehicles shall be temporarily modified by the Division and fitted with regular tags so that they cannot be identified either visually or through an electronic search of Division records as being anything other than regular vehicles used by an individual for normal transportation. Should re-use of any vehicle be necessary in conducting audits, the Division's System Administrator or designee only, shall reset the test records to avoid detection of the vehicle by lane personnel.

(b) Record audits.

Station and Motor Vehicle Technician records shall be reviewed or screened at least monthly by the Department, to assess station performance and identify problems that may indicate potential fraud or incompetence. Such review shall include:

(1) Software-based, computerized analysis which can be initiated by Division personnel to examine station records and identify statistical inconsistencies, unusual patterns, and other discrepancies;

(2) Visits to inspection stations by Department auditors, to review records not already covered in the electronic analysis (if any); and

(3) Comprehensive accounting for the windshield stickers (when implemented) used to demonstrate compliance with the LEIM program.

(c) Equipment audits.

During overt site visits, auditors shall conduct quality control evaluations of the required test equipment, including (where applicable):

(1) A gas audit using gases of known concentrations at least as accurate as those required for regular equipment quality control and comparing these concentrations to actual readings;

(2) A check for tampering, worn instrumentation, blocked filters, and other conditions that would impede accurate sampling;

(3) A leak check;

(4) A check to determine that station gas bottles used for calibration purposes are properly labeled and within the required tolerances;

(5) A check of the system's ability to accurately detect background pollutant concentrations;

(6) A check of the pressure monitoring devices used to perform the evaporative canister pressure test; and

(d) Auditor training and proficiency.

(1) Auditors are required to be formally trained and knowledgeable in:

(i) The use of analyzers;

(ii) LEIM program rules and regulations;

(iii) The basics of air pollution control;

(iv) Basic principles of motor vehicle engine repair,

related to emission performance;

(v) Emission control systems;

(vi) Evidence gathering;

(vii) State administrative procedures laws;

(viii) Quality assurance practices; and

(ix) Covert audit procedures.

(2) Auditors shall themselves be audited by their supervisor, at least once per annum.

(3) The training and knowledge requirements in paragraph (d)(1) of this section may be waived for temporary auditors engaged solely for the purpose of conducting covert vehicle runs.

Section 14 - Enforcement against operators and motor vehicle technicians.

[ 40 CFR Part 51 Subpart S §51.364 ]

Enforcement against operators or motor vehicle technicians shall include swift, sure, effective, and consistent penalties for violation of LEIM program requirements in accordance with the Agreement between the State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules..

(a) Imposition of penalties.

[ Requirements may be found in Section 14 of Regulation No. 31 ]

(b) Legal authority.

[ Requirements may be found in Section 14 of Regulation No. 31 ]

(c) Recordkeeping. The Department shall maintain records of all warnings, civil fines, suspensions, revocations, and violations and shall compile statistics on violations and penalties on an annual basis. These records shall be provided to the Division Director and to the EPA on an annual basis beginning July 1, 1998.

Section 15 - Data collection. [ 40 CFR Part 51 Subpart S §51.365 ]

Accurate data collection is essential to the management, evaluation, and enforcement of an LEIM program. The Director shall gather test data on individual vehicles, as well as quality control data on test equipment.

(a) Test data.

The goal of gathering test data is to unambiguously link specific test results to a specific vehicle, LEIM program registrant, test site, and Motor Vehicle Technician, and to determine whether or not the correct testing parameters were

observed for the specific vehicle in question. In turn, these data can be used to distinguish complying and non-complying vehicles as a result of analyzing the data collected and comparing it to the registration database, to screen inspection stations and Motor Vehicle Technicians for investigation as to possible irregularities, and to help establish the overall effectiveness of the LEIM program. At a minimum, the LEIM program shall collect the following with respect to each test conducted:

- (1) Test record number;
- (2) Inspection station and Motor Vehicle Technician numbers;
- (3) Test system number;
- (4) Date of the test;
- (5) Vehicle Identification Number;
- (6) Delaware tag number;
- (7) Manufacturer's Gross Vehicle Weight Rating (GVWR) for vehicles above 8,500 pounds;
- (8) Vehicle model year, make, and body style and EPA vehicle classification;
- (9) Odometer reading;
- (10) Category of test performed (i.e., initial test, first retest, or subsequent retest);
- (11) Fuel type of the vehicle (i.e., gas, diesel, or other fuel);
- (12) Emission test sequence(s) used;
- (13) Hydrocarbon emission scores and standards for each applicable test mode;
- (14) Carbon monoxide emission scores and standards for each applicable test mode;
- (15) Carbon dioxide emission scores (CO+CO<sub>2</sub>) and standards for each applicable test mode;
- (16) Nitrogen oxides emission scores, if available, and standards for each applicable test mode;
- (17) Results (Pass/Fail/Not Applicable) of the applicable visual inspections for the gas cap, catalytic converter, evaporative system, and any other visual inspection for which emission reduction credit is claimed;

(18) Results of the evaporative system pressure test expressed as a pass or fail; and

(b) Quality control data. At a minimum, the program shall gather and report the results of the quality control checks required under Section 9 of this PFI, identifying each check by station number, system number, date, and start time. The data report shall also contain the concentration values of the calibration gases used to perform the gas characterization portion of the quality control checks.

Section 16 -Data analysis and reporting. [ 40 CFR Part 51 Subpart S §51.366 ]

Data analysis and reporting are required to allow for monitoring and evaluation of the program by program management and EPA, and shall provide information regarding the types of program activities performed and their final outcomes, including summary statistics and effectiveness evaluations of the enforcement mechanism, the quality assurance system, the quality control program, and the testing element. Initial submission of the following annual reports shall commence on July 1, 1996. The biennial report shall commence on July 1, 1998.

(a) Test data report.

The Secretary shall submit to EPA by July of each year a report providing basic statistics on the testing program for January through December of the previous year, including:

- (1) The number of vehicles tested by model year and vehicle type;
- (2) By model year and vehicle type, the number and percentage of vehicles:
  - (i) Failing the emissions test initially;
  - (ii) Failing each emission control component check initially;
  - (iii) Failing the evaporative system integrity check initially;
  - (iv) Failing the first retest for tailpipe emissions;
  - (v) Passing the first retest for tailpipe emissions;
  - (vi) Initially failed vehicles passing the second or subsequent retest for tailpipe emissions;
  - (vii) Initially failed vehicles passing each emission control component check on the first or subsequent retest by component;
  - (viii) Initially failed vehicles passing the evaporative system integrity check on the first or subsequent retest;
  - (ix) Initially failed vehicles receiving a waiver; and
  - (x) Vehicles with no known final outcome (regardless of reason);
- (3) The initial test volume by model year and test station;
- (4) The initial test failure rate by model year and test

station; and

(5) The average increase or decrease in tailpipe emission levels for HC, CO, and NO<sub>x</sub> (if applicable) after repairs by model year and vehicle type for vehicles receiving an emission test.

(b) Quality assurance report.

The Secretary shall submit to EPA by July of each year a report providing basic statistics on the quality assurance program for January through December of the previous year, including:

(1) The number of inspection stations and lanes operating throughout the year; and

(2) The number of inspection stations and lanes operating throughout the year:

(i) Receiving overt performance audits in the year;

(ii) Not receiving overt performance audits in the year;

year;

(iii) Receiving covert performance audits in the year;

(iv) Not receiving covert performance audits in the year.

(3) The number of covert audits:

(i) Conducted with the vehicle set to fail the emission test;

(ii) Conducted with the vehicle set to fail the component check;

(iii) Conducted with the vehicle set to fail the evaporative system check;

(iv) Conducted with the vehicle set to fail any combination of two or more of the above checks;

(v) Resulting in a false pass for emissions;

(vi) Resulting in a false pass for component checks;

(vii) Resulting in a false pass for the evaporative system check; and

(viii) Resulting in a false pass for any combination of two or more of the above checks;

(4) The number of Motor Vehicle Technicians and stations, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules:

(i) That were suspended, fired, or otherwise prohibited from testing as a result of overt or covert audits;

(ii) That were suspended, fired, or otherwise prohibited from testing for other causes; and

(5) The number of Motor Vehicle Technicians certified to conduct testing;

(6) The number of hearings:

(i) Held to consider adverse actions against Motor Vehicle Technicians and stations; and

(ii) Resulting in adverse actions against Motor Vehicle Technicians and stations;

(7) The total number of covert vehicles available for undercover audits over the year; and

(8) The number of covert auditors available for undercover audits.

(c) Quality control report.

The Secretary shall submit to EPA by July of each year a report providing basic statistics on the quality control program for January through December of the previous year, including:

(1) The number of emission testing sites and lanes in use in the LEIM program;

(2) The number of equipment audits by station and lane;

(3) The number and percentage of stations that have failed equipment audits; and

(4) Number and percentage of stations and lanes shut down as a result of equipment audits.

(d) Enforcement report.

(1) The Secretary shall, at a minimum, submit to EPA by July of each year a report providing basic statistics on the enforcement program for January through December of the previous year, including:

(i) An estimate of the number of vehicles subject to the inspection program, including the results of an analysis of the registration data base;

(ii) The percentage of motorist compliance based upon a comparison of the number of valid final tests with the number of subject vehicles;

(iii) The number of compliance surveys conducted, number of vehicles surveyed in each, and the compliance rates found.

(2) The Secretary shall provide the following additional information obtained from the Director:

(i) A report of the LEIM program's efforts and actions to prevent motorists from falsely registering vehicles out of the LEIM program area or falsely changing fuel type on the vehicle registration, and the results of special studies to investigate the frequency of such activity; and

(ii) The number of registration file audits, number of registrations reviewed, and compliance rates found in such audits.

(e) Additional reporting requirements.

In addition to the annual reports in paragraphs (a) through (d) of this section, LEIM programs shall submit to EPA by July of every other year, beginning with July 1, 1998, biennial reports addressing:

(1) Any changes made in LEIM program design, personnel levels, procedures, regulations, and legal authority, with detailed discussion and evaluation of the impact on the LEIM program of all such changes; and

(2) Any weaknesses or problems identified in the LEIM

program within the two-year reporting period, what steps have already been taken to correct those problems, the results of those steps, and any future efforts planned.

Section 17 -Motor Vehicle Technician training and certification.

[ 40 CFR Part 51 Subpart S §51.367 ]

The Department and the Division shall jointly ensure that adequate and appropriate training is available within the state. Interested agents may apply to be a state training facility. Upon evaluation of the program and a positive finding, the agent may be certified. The Department and the Division shall monitor and evaluate the training program delivery at least annually to ensure that it continues to meet the requirements of the program and reflects changes occurring in the program over time.

(a) Training.

(1) Motor vehicle technician training shall impart knowledge of the following:

- (i) The air pollution problem, its causes and effects;
- (ii) The purpose, function, and goal of the inspection LEIM program;
- (iii) State inspection regulations and procedures;
- (iv) Technical details of the test procedures and the rationale for their design;
- (v) Emission control device function, configuration, and inspection;
- (vi) Test equipment operation, calibration, and maintenance;
- (vii) Quality control procedures and their purpose;
- (viii) Public relations; and
- (ix) Safety and health issues related to the inspection process.

(2) [ Requirements for monitoring and evaluating the training program delivery can be found in the PFI, Section 17]

(3) In order to complete the training requirement, a trainee shall pass with a minimum of 80% of correct responses to all questions, a written test administered by the Division. In addition, a hands-on test shall be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection, to properly utilize equipment and to follow other procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The LEIM program shall take appropriate steps to insure the security and integrity of the testing process, and that sufficient training is provided to allow all motor vehicle technicians to complete the training requirements.

(b) Motor Vehicle Technician Certification.

(1) All motor vehicle technicians shall be certified by the Division in order to perform official inspections.

(2) Completion of motor vehicle technician training and passing required tests with a grade of at least 80% shall be a condition of certification.

(3) Motor vehicle technician certificates shall be valid for no more than 2 years, at which point refresher training and testing shall be required prior to renewal. Alternative approaches based on more comprehensive skill examination and determination of motor vehicle technician competency may be used.

(4) Certificates shall not be considered a legal right but rather a privilege bestowed by the LEIM program conditional upon adherence to LEIM program requirements.

Section 18 -Public information and consumer protection.

[ 40 CFR Part 51 Subpart S §51.368 ]

(a) Public awareness.

The Department and the Division shall ensure the development of a plan for informing the public on an ongoing basis throughout the life of the LEIM program of the air quality problem, the requirements of federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an LEIM program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the LEIM program. This information will be provided to motorists whose vehicles fail the emission test in a brochure developed by the Division entitled "Vehicle Inspection Program Brochure@. Motorists shall also be offered a list of repair facilities in the area and information on the results of repairs performed by repair facilities in the area, as described in Section 20 (b)(1) of this PFI.

(b) Consumer protection.

The Department shall institute procedures and mechanisms to protect the public from fraud and abuse by Motor Vehicle Technicians, and others involved in the LEIM program. It shall include mechanisms for protecting whistle blowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty covered repairs for eligible vehicles that fail a test. Additional consumer protection policies by the Division is included in Appendix 18-(b).

Section 19 -Improving repair effectiveness. [ 40 CFR Part 51 Subpart S §51.369 ]

Effective repairs are the key to achieving LEIM program goals and the state shall take steps to ensure the capability exists in the repair industry to repair vehicles that fail I/M tests.

(a) Technical assistance.

The Department shall provide the repair industry with information and assistance related to vehicle inspection diagnosis and repair.

(1) The Department shall regularly inform repair facilities of changes in the inspection LEIM program, training course schedules, common problems being found with particular engine families, diagnostic tips and the like.

(2) The Department shall provide a telephone number where the public may call with questions related to the legal requirements of state and Federal law with regard to emission control device tampering, engine switching, or similar issues. Where possible, the Department will assist repair technicians with repair problems and answer technical questions that arise out of the repair process.

(b) Performance monitoring.

(1) The Department shall monitor the performance of individual motor vehicle repair facilities, and provide to the public at the time of initial failure, a summary of the performance of Certified Emission Repair Technicians that have repaired vehicles for retest. Performance monitoring shall include statistics on the number of vehicles submitted for a retest after repair by the repair facility, the percentage passing on first retest, the percentage requiring more than one repair/retest trip before passing, and the percentage receiving a waiver. After six months of program operation, the Department shall issue procedures to weight the averages for repair shops, to avoid causing a shop to carry a poor record from the beginning of the program that does not reflect their current ability to make repairs. The LEIM program may provide motorists with alternative statistics that convey similar information on the relative ability of repair facilities provide effective and convenient repairs, in light of the age and other characteristics of vehicles presented for repair at each facility.

This performance monitoring shall be achieved by requiring waiver applicants to have repairs performed at repair facilities with state certified technicians beginning on January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County. Shops shall be encouraged to participate because market forces dictate the majority of customers will want to seek out State Certified repair technicians due to their implied and State regulated qualifications to perform emission repairs. By "closing the loop", a standard form readable by a scanner can be used to report repair information by shop and technician directly to a data-base, which will readily allow compilation of the required reporting statistics on performance monitoring.

(2) The Secretary shall provide feedback, including statistical and qualitative information prior to releasing the information to the public, to individual repair facilities on a regular basis (at least annually) regarding their success in repairing failed vehicles. Copies will be sent to the Division.

(c) Repair technician training.

The Secretary shall assess the availability of adequate repair technician training in the emissions inspection area and, if the types of training described in paragraphs (c)(1) through (4) of this section are not currently available, shall insure that training is made available to all interested individuals in the community either through private or public facilities. This shall involve working with the College (or other training agencies or training companies approved by the Department and Division) to add curricula to existing programs or start new programs. The training available shall include:

(1) Diagnosis and repair of malfunctions in computer controlled, closed-loop vehicles;

(2) The application of emission control theory and diagnostic data to the diagnosis and repair of failures on the emission test and the evaporative system functional check;

(3) Utilization of diagnostic information on systematic or repeated failures observed in the emission test and the evaporative system functional check; and

(4) General training on the various subsystems related to engine emission control.

(d) The College (or other training agencies or training companies approved by the Department and Division) shall provide, jointly certified by the Department and the Division, adequate training in emission repair to qualified individuals. The program of study shall be consistent with the EPA Rule, and shall qualify the trainees to perform effective repairs on vehicles failing the emission test. The course of study shall be available on ongoing basis. The Department shall cooperate with the College (or other training agencies or training companies approved by the Department) on an ongoing basis to ensure the training program remains current with any changes to the program or its requirements.

Section 20 -Compliance with recall notices. [ 40 CFR Part 51 Subpart S §51.370 ]

[RESERVED]

Section 21 -On-road testing. [ 40 CFR Part 51 Subpart S §51.371 ]

On-road testing is defined as the measurement of HC, CO, and/or CO<sub>2</sub> emissions on any road or roadside in any I/M area. On-road testing is required in the emission inspection area as defined in Regulation No. 31.

(a) General requirements.

(1) On-road testing shall be part of the emission testing system, but is to be a complement to testing otherwise required. Using a mobile Bar 90 unit to fulfill this requirement is one alternative under consideration.

(2) On-road testing shall evaluate the emission performance of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, including any vehicles that may be subject to the follow-up inspection provisions of paragraph (a)(4) of this section, each inspection cycle. For Delaware, that means that at least 1,125 valid inspections on vehicles are to be conducted in this manner, adjusting annually for any changes in subject fleet size.

(3) Owners of vehicles that have previously been through the normal periodic inspection and passed the final retest and found to be high emitters shall be notified that the vehicles are required to pass an out-of-cycle follow-up inspection. Notification of the requirement to appear for testing shall be issued by mail.

Section 22 -Implementation deadlines. [ 40 CFR Part 51 Subpart S §51.373 ]  
[Requirements may be found in Regulation 31, Section 23]

---

APPENDICES TO REGULATION 31, PLAN FOR IMPLEMENTATION

THIS DOCUMENT MAY BE REVIEWED IN THE OFFICE OF THE AIR QUALITY MANAGEMENT SECTION  
156 SOUTH STATE STREET  
DOVER, DELAWARE  
302/439-4791  
FROM THE HOURS OF 8 AM TO 4:30 PM  
MONDAY THROUGH FRIDAY

THIS DOCUMENT WILL ALSO BE AVAILABLE FOR REVIEW AT THE PUBLIC HEARING FOR THIS REGULATION ON MAY 21, 1998, 6 PM AT THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL  
89 KINGS HIGHWAY  
DOVER, DELAWARE

---

Motor Vehicle Emission Inspection Program  
Regulation No. 26

Proposed SIP Revision

This document contains predecisional material  
Do not cite or quote

Prepared by the  
Delaware Department of Natural Resources and Environmental Control  
Division of Air and Waste Management  
Air Quality Management

November 12, 1996

Proposed change: Regulation 26 is proposed to be changed by elimination of those requirements pertaining only to New Castle and Kent County, with the resulting regulation after changes pertaining only to Sussex County. Additions are underlined and deletions are in ~~strikeout~~. For completeness, new Regulation No. 31 (proposed as part of this package) will entirely replace the New Castle and Kent County requirements of current Regulations No.26 and Regulation No.33, with the latter being eliminated completely.

---

REGULATION NO. 26  
MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM

01/31/90

Section 1 -Applicability and General Provisions

1.1 Except as provided in Section 4 of this regulation, the standards, requirements and procedures set forth in this regulation are applicable to all motor vehicles titled and registered within Sussex County ~~the State of Delaware~~ and as specified by the Department, including any motor vehicles owned or operated by the federal, state and local governments and their agencies.

02/08/95

Section 2 -Definitions

DIVISION: The Division of Motor Vehicles in the Department of Public Safety of the State of Delaware.

WAIVER: An exemption issued to a motor vehicle that cannot comply with the applicable emissions standard and cannot be repaired for reasonable cost.

DEPARTMENT: The Department of Natural Resources and Environmental Control of the State of Delaware.

EMISSIONS: Products of combustion discharged into the atmosphere from the tailpipe of a motor vehicle engine.

EMISSIONS INSPECTION AREA: The emissions inspection area will constitute the entire State effective April 1, 1990.

EMISSIONS STANDARD(S): The maximum concentration of either hydrocarbon (HC) or carbon monoxide (CO), or both, allowed in the emissions from the tailpipe of a motor vehicle as established by the Secretary of the Department of Natural Resources and Environmental Control or his designee in Technical Memorandum #2 entitled "Motor Vehicle Inspection and Maintenance Program - Emission

Limit Determination" dated 12/29/87.

**FAILED MOTOR VEHICLE:** Any motor vehicle which does not comply with applicable emission standards during the initial test or any retest.

**FLEET INSPECTION STATION:** A facility approved by the Department to conduct emissions inspections of the motor vehicles of a qualified fleet as determined by the Department.

**MODEL YEAR:** The year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

**MOTOR VEHICLE:** Includes every vehicle, as defined in 21 Del. Code, Section 101, which is self-propelled, except farm tractors and off-highway vehicles.

**MOTOR VEHICLE OFFICER:** A person who has completed an approved emissions inspection equipment training program and is employed by an official inspection station.

**NEW MOTOR VEHICLE:** A motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin.

**OFFICIAL INSPECTION STATION:** The Motor Vehicle Safety Inspection Stations in Wilmington, New Castle, Dover and Georgetown, Delaware, operated by the Division.

**REASONABLE COST:** The actual cost of parts and labor which is necessary to cause the failed motor vehicle to comply with applicable emissions standards or which contributes toward compliance. It shall not include the cost of those repairs determined by the Division to be necessary due to alteration or removal of any part of the emission control system of the motor vehicle, or due to any damage resulting from the use of improper fuel in the failed motor vehicle.

**REGISTERED GROSS VEHICLE WEIGHT (G.V.W.):** The vehicle gross weight designated by the Division on the vehicle registration card which is the total weight of the vehicle and its maximum allowable load.

**VEHICLE:** Means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks and excepting off-highway vehicles.

05/09/85

### Section 3 - Registration Requirement

3.1 Effective January 1, 1983, no motor vehicle that is subject to this regulation may be granted registration in the State of Delaware unless the motor vehicle is in compliance with the applicable emissions standards, regardless of its pass/fail status of other tests normally performed at the official inspection station.

### Section 4 - Exemptions

4.1 The following motor vehicles are exempt from the provisions of this regulation:

- A. All farm vehicles not required by law to be registered
- B. All historic vehicles, kit cars or antique vehicles displaying antique vehicle registration plates.
- C. All motor vehicles with a registered G.V.W. over 8,500 pounds.
- D. All motorcycles.
- E. All vehicles that are registered in Delaware, but are not operated in Delaware consistent with established procedures of the Division.
- F. All vehicles that obtain power by a means other than gasoline internal combustion. (Example: diesel, electric, propane, etc.)

4.2 Any exemption issued to a vehicle under this Section will not have an expiration date and will expire only upon a change in the vehicle status for which exemption was initially granted.

07/06/82

### Section 5 - Enforcement

5.1 Enforcement shall be in accordance with the provisions of 7 Del. C., Chapter 67.

08/14/96

### Section 6 - Compliance, Waivers and Extensions of Time

6.1 Compliance with applicable emissions standards shall be determined at an official inspection station or at a fleet inspection station. The idle test procedure prescribed by the Department in Technical Memorandum #1 entitled "Motor Vehicle Inspection and Maintenance Program - Vehicle Test Procedure and Machine Calibration", dated 6/9/82, shall be the official test procedure. A pass/fail printout from the emission testing equipment given to the driver will serve as the driver's record of the test results.

- A. Any motor vehicle shall be deemed to be in compliance with Section 3.1 if the test results are equal to or less than the emissions standards applicable to the motor vehicle.

B. Except as provided in Section 6.1 C, any motor vehicle shall be deemed to be in noncompliance with Section 3.1 if the test results are greater than the emissions standards applicable to the motor vehicle.

C. Any motor vehicle which fails its initial emissions test shall be deemed to be in compliance with Section 3.1 if not later than the registration expiration date, the motor vehicle either (1) is repaired at reasonable cost and is in compliance with applicable emissions standards as determined by an emissions retest at an Official Inspection Station, or (2) is granted a waiver pursuant to Section 6.2, or (3) is granted an extension of time not to exceed one month.

D. Whenever the owner of a failed motor vehicle determines to the satisfaction of the Division that it cannot be repaired at reasonable cost, the owner may be granted a waiver provided the owner makes application to the Division prior to the registration expiration date or by such other time as may be specified by the Division.

#### 6.2 Waiver issuance criteria

A. Waivers shall be issued only after a vehicle has failed a retest performed after all qualifying repairs have been completed, and a minimum of 10% improvement (reduction) in hydrocarbons (HC) and carbon monoxide (CO) has resulted from those repairs.

B. Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in Section 6.2 E of this regulation. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

C. Waivers shall not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in Section 6.2 F of this regulation. An exemption for tampering-related repairs may be issued if it can be verified that the part in question or one similar to it is no longer available for sale.

Repairs shall be appropriate to the cause of the test failure, and a visual check shall be made to determine if repairs were actually made if, given the nature of the repair, it can be visually confirmed. Receipts shall be submitted for review to further verify that qualifying repairs were performed.

~~E. Effective January 1, 1997, repairs on any 1981 or later model year vehicle registered in New Castle or Kent Counties shall be performed by a repair technician jointly certified by the Department, the Department of Public Safety and the Delaware Technical and Community College (or other training agency or training company approved by the Department), in order to qualify for a waiver. Repairs performed by non-technicians (e.g. owners) may apply toward the waiver limit for pre-1981 model year vehicles. Repair facilities shall report monthly to the Department the Certificate~~

~~Serial Number of all Certified Emissions Repair Technicians under their employ:~~

~~F.E. A minimum of \$75 for pre-81 vehicles and \$200 for 1981 and later vehicles shall be spent on related repairs in order to qualify for a waiver. This minimum cost should not be construed as an amount which must be spent as a condition of compliance after an initial failure. This cost relates only to the minimum cost which must be incurred when determining the eligibility of granting a waiver. In addition, this regulation does not prevent the vehicle owner from performing self-repairs.~~

6.3 The Division shall be responsible for specifying any forms or procedures to be followed in making applications pursuant to Section 6.2.

6.4 Waivers issued pursuant to this regulation are valid until the date of current registration expiration.

#### 6.5 Quality control of waiver issuance.

A. The program shall include methods of informing vehicle owners or lessors of potential warranty coverage, and ways to obtain warranty repairs.

B. The program shall insure that repair receipts are authentic and cannot be revised or reused.

C. The program shall insure that waivers are only valid for one test cycle.

07/06/82

#### Section 7 - Inspection Facility Requirements

7.1 Motor Vehicle Officers employed by the Division shall meet the requirements specified in this regulation.

7.2 Test equipment used by the Division shall be a type approved by the Department and testing procedures shall be conducted in accordance with the provisions of this regulation.

7.3 No person employed by the Division to test motor vehicle emissions shall engage in or have an interest in the operation of repair facilities located in this State; perform emission related repairs for compensation; or recommend repair facilities to owners or operators of vehicles being tested.

07/06/82

#### Section 8 - Certification of Motor Vehicle Officers

8.1 A person may not perform the duties of a motor vehicle officer for testing motor vehicle emissions or operating emission testing equipment to determine the compliance or noncompliance of a motor vehicle as required by this regulation at an official inspection station unless that person has applied for and has received certification in accordance with the provisions of this Section.

8.2 To become certified, a person shall successfully complete a training course for this purpose approved by the Division.

07/06/82

Section 9 - Calibration and Test Procedures and Approved Equipment

9.1 All emissions testing for the purpose of determining compliance with emissions standards shall be performed using equipment approved by the Department and calibration and test procedures as provided in this regulation.

9.2 Calibration and test procedures shall be those established by the Department in Technical Memorandum #1 entitled "Motor Vehicle Inspection and Maintenance Program - Vehicle Test Procedure and Machine Calibration", dated 6/9/82.

---

REGULATION NO. 33

MOTOR VEHICLE PRESSURE TEST AND EMISSION CONTROL DEVICE INSPECTION PROGRAM

02/08/95

Section 1 - Applicability and General Provisions

1.1 Except as provided in Section 4 of this regulation, the standards, requirements and procedures set forth in this regulation are applicable to all 1968 and later automobiles and station wagons and 1970 and later light duty trucks titled and registered within the counties of New Castle and Kent, in the State of Delaware and as specified by the Department, including any motor vehicles owned or operated by the federal, state and local governments and their agencies.

02/08/95

Section 2 - Definitions

**DEPARTMENT:** The Department of Natural Resources and Environmental Control of the State of Delaware.

**DIVISION:** The Division of Motor Vehicles in the Department of Public Safety of the State of Delaware.

**EMISSIONS:** For the purposes of this regulation, emissions are uncombusted fuel from the fuel storage and delivery system of motor vehicles.

**EMISSIONS INSPECTION AREA:** For the purposes of this regulation, the emissions inspection area will constitute the counties of New and Kent, effective January 1, 1995.

**EMISSIONS STANDARD(S):** The fuel system integrity standards in Technical Memorandum #1 entitled "Motor Vehicle Pressure Test Program Procedure, Standards and Machine Calibration" dated 02/08/95, or the emission control device integrity standards in Technical Memorandum #2 entitled "Motor Vehicle Emission Control Device Inspection Program Procedure and Standards" dated 02/08/95.

**FAILED MOTOR VEHICLE:** Any motor vehicle which does not comply with applicable emission standards as prescribed in Technical Memorandums #1 or #2 to this Regulation during the initial test or any retest.

**FLEET INSPECTION STATION:** A facility approved by the Division to conduct emissions inspections of the motor vehicles of a qualified fleet as determined by the Division.

**MODEL YEAR:** The year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

**MOTOR VEHICLE:** Includes every vehicle, as defined in 21 Del. Code, Section 101, which is self-propelled, except farm tractors and off-highway vehicles.

**MOTOR VEHICLE OFFICER:** A person who has completed an approved emissions inspection equipment training program and is employed by an official inspection station.

**NEW MOTOR VEHICLE:** A motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin.

**OFFICIAL INSPECTION STATION:** The Motor Vehicle Safety Inspection Stations in Wilmington, New Castle, Dover and Georgetown, Delaware, operated by the Division.

**REGISTERED GROSS VEHICLE WEIGHT (G.V.W.):** The vehicle gross weight designated by the Division on the vehicle registration card which is the total weight of the vehicle and its maximum allowable load.

**VEHICLE:** Means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks and excepting off-highway vehicles.

02/08/95

**Section 3 - Registration Requirement**

3.1 Effective January 1, 1995, no motor vehicle that is subject to this regulation may be granted registration in the State of Delaware unless the motor vehicle is in compliance with the applicable emissions standards as prescribed in Technical Memorandums #1 and #2 to this Regulation regardless of its pass/fail status of other tests normally performed at the official inspection station.

02/08/95

**Section 4 - Exemptions**

4.1 The following motor vehicles are exempt from the provisions of this regulation:

- A. All farm vehicles not required by law to be registered.
- B. All historic vehicles, kit cars or antique vehicles displaying antique vehicle registration plates.
- C. All motor vehicles with a registered G.V.W. over 8,500 pounds.
- D. All motorcycles.
- E. All vehicles that are registered in Delaware, but are not operated in Delaware consistent with established procedures of the Division.
- F. All vehicles that obtain power by a means other than gasoline internal combustion. (Example: diesel, electric, propane, etc.)

4.2 Any exemption issued to a vehicle under this Section will not have an expiration date and will expire only upon a change in the vehicle status for which exemption was initially granted.

02/08/95

**Section 5 - Enforcement**

5.1 Enforcement shall be in accordance with the provisions of 7 Del. C., Chapter 67.

02/08/95

**Section 6 - Compliance**

6.1 Compliance with applicable emissions standards shall be determined at an official inspection station or at a fleet inspection station.

A. The Pressure Test procedure for vehicles registered in the Emissions Inspection Area prescribed by the Department in Technical Memorandum #1 to this regulation entitled "Motor Vehicle Pressure Test Program Procedure, Standards and Machine Calibration", dated 02/08/95, shall be the official test procedure. A pass/fail indication on the inspection card given to the driver will serve as the driver's record of the test results.

1. Any motor vehicle shall be deemed to be in

compliance with Section 3.1 if the test results indicate adequate fuel storage and delivery system integrity as a result of the test being performed.

2. Except as provided in Section 6.2, any motor vehicle shall be deemed to be in noncompliance with Section 3.1 if the test results do not indicate adequate fuel storage and delivery system integrity as a result of the test being performed.

B. The Emission Control Device Inspection procedure for vehicles registered in the Emissions Inspection Area prescribed by the Department in Technical Memorandum #2 to this regulation entitled "Motor Vehicle Emission Control Device Inspection Program Procedure and Standards", dated 02/08/95, shall be the official test procedure. A pass/fail indication on the inspection card given to the driver will serve as the driver's record of the test results.

1. Any motor vehicle shall be deemed to be in compliance with Section 3.1 if the test results indicate that no removal or tampering is indicated on the appropriate emission controls as a result of the test being performed.

2. Except as provided in Section 6.2, any motor vehicle shall be deemed to be in noncompliance with Section 3.1 if the test results indicate that removal or tampering is indicated on the appropriate emission controls as a result of the test being performed.

6.2 Any motor vehicle which fails its initial pressure test or emission control device inspection shall be deemed to be in compliance with Section 3.1 if not later than the registration expiration date, the motor vehicle either (1) is repaired and is in compliance with applicable emissions standards as determined by an emissions retest at an Official Inspection Station, or (2) is granted an extension of time not to exceed one month.

02/08/95

**Section 7 - Inspection Facility Requirements**

7.1 Motor Vehicle Officers employed by the Division shall meet the requirements specified in this regulation.

7.2 Test equipment used by the Division shall be a type approved by the Department and testing procedures shall be conducted in accordance with the provisions of this regulation.

7.3 No person employed by the Division to test motor vehicles shall engage in or have an interest in the operation of repair facilities located in this State; perform emission related repairs for compensation; or recommend repair facilities to owners or operators of vehicles being tested.

02/08/95

**Section 8 - Certification of Motor Vehicle Officers**

8.1 A person may not perform the duties of a motor vehicle officer or operate emission testing equipment to determine

the compliance or noncompliance of a motor vehicle as required by this regulation at an official inspection station unless that person has applied for and has received certification in accordance with the provisions of this Section.

8.2 To become certified, a person shall successfully complete a training course for this purpose approved by the Division.

02/08/95

Section 9 - Calibration, Test Procedures, Standards and Approved Equipment

#### 9.1 Pressure Test Inspection

A. All pressure testing for the purpose of determining compliance with emissions standards as prescribed in Technical Memorandum #1 to this Regulation, dated 02/08/95, shall be performed using equipment approved by the Department and calibration and test procedures as provided in this regulation.

B. Calibration, test procedures and standards for Pressure Testing shall be those established by the Department in Technical Memorandum #1 to this regulation, dated 02/8/95.

#### 9.2 Emission Control Device Inspection

A. All emission control device inspections, for the purpose of determining compliance with emissions standards as prescribed in Technical Memorandum #2 to this Regulation, dated 02/08/95, shall be performed using equipment approved by the Department and calibration and test procedures as provided in this regulation.

B. Test procedures and standards for emission control device inspection shall be those established by the Department in Technical Memorandum #2 to this regulation, dated 02/08/95.

Motor Vehicle Pressure Test and Emission Control Device  
Inspection Program

Technical Memorandum #1                      02/08/95  
Pressure Test

#### A. Purpose

The integrity (pressure) test determines that the fuel vapors are not leaking into the atmosphere, but are being correctly routed to the carbon canister where they are stored until being recycled into the engine.

#### B. Test Procedures

The test procedures using nitrogen or "clean air" as tracer gas are as follows:

1. Remove the gas cap and connect the appropriate filler adapter;
2. Locate the carbon canister; and clamp the hose from the canister to the gas tank as close to the canister as possible. Make sure the hose does not crack during clamping.

3. Pressurize the gas tank to 28 inches of water, then shut off the flow and allow the pressure to stabilize;

4. Monitor the system pressure decay for two (2) minutes; and

5. Remove the clamp and monitor for a drop in pressure.

#### C. Pass/Fail Criteria

Vehicles fail the evaporative system pressure test if the system cannot maintain a pressure above eight inches of water for two minutes after being pressurized (or after some lesser time if a demonstrated equivalency is accepted by the Department). Additionally, vehicles fail the evaporative test if the canister is missing or obviously damaged, if hoses are missing or obviously disconnected, or if the gas cap is missing.

#### D. Calibrations, Adjustments and Quality Control

##### 1. Evaporative System Integrity Test Equipment

(a) On a weekly basis pressure measurement devices shall be checked against a reference device with performance specifications equal to or better than those specified for the measurement device. Deviations exceeding the performance specifications shall be corrected. Flow measurement devices, if any, shall be checked.

(b) Systems that monitor evaporative system leaks shall be checked for integrity on a daily basis by sealing and pressurizing.

2. Pass/fail determinations will be recorded electronically for test compliance along with all other test data and incorporated in the Motor Vehicle database.

Motor Vehicle Pressure Test and Emission Control Device  
Inspection Program

Technical Memorandum #2                      02/08/95  
Emission Control Device Inspection

#### A. Purpose

Visual emission control device checks will be performed by the inspector through direct observation or through indirect observation using a mirror, video camera or other visual aid. These inspections will include a determination as to whether each subject device is present and appears to be properly connected and appears to be the correct type for the certified vehicle configuration.

B. The test procedures used to perform the inspections includes the following:

1. Verify the existence of the fuel inlet restrictor and the gas cap;
2. Verify that the fuel inlet restrictor is in place and undamaged, and
3. Check for the presence of a catalytic converter(s).

#### C. Pass/Fail Determinations

Vehicles will fail the visual inspection of emission control devices if such devices are part of the original certified configuration and are found to be missing, modified, disconnected, or improperly connected. Aftermarket parts, as well as original equipment manufactured parts, may be considered correct if they are proper for the certified vehicle configuration. Where EPA aftermarket approval or self-certification program exists for a particular class of subject parts, vehicles will fail visual equipment inspections if the part is neither original equipment nor from an approved or self-certified aftermarket manufacturer.

#### D. Calibrations, Adjustments and Quality Control

1. Data must be recorded for each vehicle tested in electronic format. This data must positively identify that all three tests of the vehicle's emission control system were tested and the results for each three tests separately recorded for that vehicle.

2. All pass/fail determinations will be recorded electronically for test compliance along with all other test data and incorporated in the Motor Vehicle database.

---

## DEPARTMENT OF EDUCATION

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

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

### COOPERATIVE EDUCATION PROGRAMS

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the consent of the State Board of Education to amend the regulations entitled Cooperative Education, page E-5, Section V.D.2. a and b., and Credit for Vocational-Technical Courses, pages E-6 and E-7, Section V.E. Both of these existing regulations address the same topic, Cooperative Education Programs. The amended regulation combines the regulatory elements of both sections and adds the word "shall" to the statements to be clear that these are required elements. Because the amended regulation now takes a stronger position on the requirements for Cooperative Education Programs the amended regulation will not take effect until the 1999-2000 school year to allow the districts to make the necessary adjustments.

#### C. IMPACT CRITERIA

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

This amended regulation is designed to more clearly and completely define the elements necessary for cooperative education programs to be eligible for Vocational-Technical Education funding units.

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

This regulation will help ensure that all cooperative education programs meet the same standards.

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

This amended regulation helps to ensure that students in cooperative education programs are well supervised at their job site.

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

This amended regulation will help to ensure that students' legal rights are protected through requiring signed work agreements.

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

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

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

The amended regulation may increase the reporting and administrative requirements if the existing regulation was not being followed as intended but the program is elective and is not required by the state.

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

The amended regulation will maintain decision making authority and accountability in the same entity.

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

This amended regulation will not be an impediment to the implementation of other state educational policies.

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

The amended regulation is necessary because it provides the local districts with the requirements that must be met in order to secure funding for the programs.

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

The amended regulation does not add any additional costs that will not be met through vocational-technical education funding units.

#### FROM THE HANDBOOK FOR K-12 EDUCATION

##### V.D.2. CO-OPERATIVE EDUCATION

a. ~~Co-operative education is the educational component which provides the vocational-technical student with coordinated on-the-job work and training not ordinarily available within the classroom. During the student's senior year, employers provide on-the-job training in occupations directly related to the vocational-technical education program in which the student is enrolled.~~

b. ~~One class period for every fifteen (15) students enrolled will be provided to a vocational-technical teacher-coordinator to make regular visits to the student's place of employment to ensure coordination between the classroom and the on-the-job learning experience.~~

~~(1) The following requirements must be in place prior to a student's participation in a co-operative education program:~~

~~(a) A student must possess minimum occupational competencies specified by the teacher-coordinator before being placed in co-operative employment;~~

~~(b) The student must be enrolled in a high school or a vocational-technical school;~~

~~(c) The student must be actively enrolled in an approved vocational-technical education program;~~

~~(d) The co-operative work experience must directly relate to the student's vocational-technical education program and be supervised through on-site visits by an assigned vocational teacher coordinator;~~

~~(e) The school must have a training agreement on file and signed by a parent or guardian, the employer, the student and the teacher; and~~

~~(f) The school must have on file a State Work Permit for Minors (ages 14-17) signed before employment begins by the student's parent or guardian, employer and issuing school officer.~~

~~(g) All state and federal labor and Office of Civil Rights (OCR) laws must be enforced.~~

##### ~~E. CREDIT FOR VOCATIONAL-TECHNICAL COURSES~~

~~Vocational-Technical education has become a valuable~~

~~part of the high school Program of Studies as part of the emphasis upon career development and preparation of every student. All vocational-technical education courses have established standards of expectation or performance and convey credit to students based upon either appropriate instructional time and/or equivalent performance criteria.~~

~~1. Where co-operative work experience is an integral part of the vocational-technical education program course of study, reference should be made to guidelines establishing the basis for earning units of credit. Two hours of co-operative work experience are equivalent to one hour of instructional time. In order to receive credit for co-operative work experience, a student must be enrolled in a full-time vocational-technical program. The student must also be employed in a work assignment directly related to the vocational program with on site coordination visits provided by district vocational personnel.~~

~~a. Up to one-half unit of credit shall be granted to students by the principal of each high school for successful participation in each approved summer co-operative work experience program. This credit may be applied toward the units of credit necessary for graduation.~~

~~b. A minimum of one class period per day for every fifteen (15) students enrolled and counted in a co-operative work program must be provided to the vocational-technical teacher for the purpose of making work station visitations and providing the necessary coordination between classroom and on-the-job training.~~

#### AS AMENDED

##### COOPERATIVE EDUCATION

1. Cooperative Education provides senior Vocational-Technical students with coordinated on-the-job training not ordinarily available in the classroom. During the student's senior year, employers may provide this on-the-job training in occupations directly related to the vocational-technical education program in which the student is enrolled. For the purpose of granting credit during the school year two hours of cooperative work experience shall equal one hour of instructional time. In a summer cooperative education work experience program one half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.

2. In order to qualify for Vocational-Technical Education funding units beginning with the 1999-2000 school year:

a. A vocational-technical education teacher shall be provided with a full class period, each day, for every thirty (30) students enrolled in the program in order to make quarterly visits to the student's place of employment to ensure coordination between the classroom and the on-the-job

experience.

b. Students shall possess minimum occupational competencies specified by the vocational-technical teacher coordinator before being placed in cooperative employment.

c. Students shall be in their senior year.

d. The cooperative work experience shall relate directly to the student's current or completed vocational-technical education program and be supervised through on site visits by an assigned vocational-technical teacher coordinator.

e. The school shall have on file, for each student:

(1) a training agreement signed by a parent or guardian, the employer, the student and a representative of the district.

(2) a State Work Permit for Minors (ages 14-17) signed by the parent or guardian, the employer, and the issuing school officer before employment begins.

funding.

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

This regulation will help insure that all diversified education programs meet the same standards.

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

This regulation helps to ensure that students in diversified occupations programs are well supervised at their job site.

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

This regulation will help to ensure that students' legal rights are protected through requiring signed work agreements.

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

This regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

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

This regulation does require some additional reporting and administration but it is an elective program and not required by the state.

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

This regulation will maintain decision making authority and accountability in the same entity.

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

This regulation will not be an impediment to the implementation of other state educational policies.

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

The regulation is necessary because it provides the local districts with the requirements that must be met in order to secure funding for the program.

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

---

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

**DIVERSIFIED OCCUPATIONS PROGRAMS**

**A. TYPE OF REGULATORY ACTION REQUESTED**

New Regulation

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

The Secretary seeks the consent of the State Board of Education to adopt regulations for Diversified Occupations Programs. Diversified Occupations Programs have been in existence for many years and have been eligible for State Vocational-Technical Education funding units but the programs have never had any specific regulations. The program is similar to the Cooperative Education Program and the regulations have been developed to reflect the similarity. The major differences in the regulations are the type of work experience required and the years when students can participate. Because the regulations now take a stronger position than is evident in actual practice, the regulation will not take effect until the 1999-2000 school year to allow the districts to make the necessary adjustments.

**C. IMPACT CRITERIA**

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

The regulation is designed to clearly and completely define the elements necessary for diversified education programs to be eligible for vocational-technical education

The regulation does not add any additional costs that will not be met through vocational-technical education funding units.

## DIVERSIFIED OCCUPATIONS PROGRAMS

1. Diversified Occupations Programs provides students with coordinated on-the-job training not ordinarily available in the classroom. During the student's junior and senior year, employers provide this on-the-job training. For the purpose of granting credit during the school year, two hours of work experience shall equal one hour of instructional time. In a summer Diversified Occupations work experience program one half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

2. In order to qualify for Vocational-Technical Education funding units beginning with the 1999-2000 school year:

a. A vocational-technical education teacher shall be provided with a full class period, each day, for every thirty (30) students enrolled in the program in order to make quarterly visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

b. Students shall possess minimum competencies as specified by the teacher coordinator before being placed in a diversified occupations employment situation.

c. Students shall be in their junior or senior year and be actively enrolled in a Diversified Occupations Program.

d. The Diversified Occupations work experience shall be supervised through on-site visits by the teacher coordinator.

e. The school shall have on file, for each student:  
 (1) a training agreement signed by a parent or guardian, the employer, the student and the teacher.

(2) a State Work Permit for Minors (ages 14-17) signed by the student's parent or guardian, employer and issuing school officer before employment begins.

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

### **STUDENT RIGHTS AND RESPONSIBILITIES**

#### **A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

The Secretary seeks the consent of the State Board of Education to amend the Regulation, Student Rights and Responsibilities, page A-2, I.B.4, in the Handbook for K-12 Education. The regulation requires the local school districts to establish their own policies on student rights and responsibilities and to base the policies on the Department of Education document Guidelines for the Development of District Policies on Student Rights and Responsibilities and on the Policy for School Districts on the Possession, Use or Distribution of Drugs and Alcohol. The amendment changes the word "must" to "shall", changes the title of the DOE document to Technical Assistance Manual for the Development of District Policies on Student Rights and Responsibilities, and adds the policy, School District Compliance with the Gun Free School Act to the list for school district reference. The regulation is also amended to add that the school district "shall" distribute these policies to every student in the school district every year.

#### **C. IMPACT CRITERIA**

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

This amended regulation addresses student rights and responsibilities, not curriculum issues.

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

This amended regulation does not deal directly with issues of an equitable education.

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

The amended regulation does address safety as an aspect of student rights and responsibilities.

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

This amended regulation is designed to assure that districts have adopted policies that protect students rights.

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

The amended regulation maintains the policy making on student rights and responsibilities at the local level.

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

The amended regulation does not add any reporting or administrative requirements.

7. Will decision making authority and accountability

for addressing the subject to be regulated be placed in the same entity?

The amended regulation maintains the decision making authority and accountability at the local district level.

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

The amended regulation will not be an impediment to other state educational policies.

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

This amended regulation must be in place to protect students' rights.

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

The amended regulation does not add any additional cost.

FROM THE HANDBOOK FOR K-12 EDUCATION

I.B.4. STUDENT RIGHTS AND RESPONSIBILITIES

~~All local school districts must establish their own policies on student rights and responsibilities. The local district's policy should be based on the State Board of Education Document, Guidelines for the Development of District Policies on Student Rights and Responsibilities (October 1988) and to the State Board Policy for School Districts on the Possession, Use or Distribution of Drugs and Alcohol (State Board Approved July 1990, Revised January 1991). See Page A-55.~~

AS AMENDED

STUDENT RIGHTS AND RESPONSIBILITIES

All local school districts shall have their own policies on student rights and responsibilities and shall distribute these policies to every student in the school district at the beginning of every school year. The local district's policies shall be based on the Technical Assistance Manual for the Development of District Policies on Student Rights and Responsibilities and on the Department of Education Regulations, Policy for School Districts on the Possession, Use or Distribution of Drugs and Alcohol, and School District Compliance with the Gun Free School Act.

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

**COMPREHENSIVE SCHOOL DISCIPLINE IMPROVEMENT PROGRAM**

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the consent of the State Board of Education to amend the regulations entitled Comprehensive School Discipline Improvement Program. These regulations are found in a document entitled Comprehensive School Discipline Improvement, Regulations Governing Alternative and Intervention Programs, which is located in Appendix G of the Handbook for K-12 Education. There is also a reference to Appendix G and to these programs in the Handbook for K-12 Education, page A-3, I.B.5. These regulations were developed as required by 14 Del. C., Chapter 16, Sections 1601 to 1607, Comprehensive School Discipline Improvement Program. The Code defines three programs available to school districts. They include Alternative Settings for Disruptive Students, School Based Intervention Programs and Prevention Programs. The first two programs are administered and regulated by the Department of Education, the third is co-administered by the Family Services Cabinet Council, the Department of Services for Children, Youth and their Families, and the Department of Education. In reviewing the DOE regulations for these programs the materials presented in the first section, Alternative Settings for Disruptive Students, contain nine DOE regulations which need to be amended and readopted. The other section in the DOE regulations, School Based Intervention Programs, does not contain any DOE regulations since the materials in this section are simply a repeat of information which is in the Code or is technical assistance. The Department of Education did not regulate or provide technical assistance in this document for the third program, Prevention Programs, described in the Code. The nine regulations for the Alternative Settings For Disruptive Students Program include regulations on the following: Population to be Served, Non-referral of Students, Informing the Legal Guardian, Age/Grade Level to be Served, Placement in Alternative Programs, September 30<sup>th</sup> Enrollment Count, Alternative Program Setting, Alternative Program Design and Staffing.

C. IMPACT CRITERIA

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

# PROPOSED REGULATIONS

This amended regulation is designed to provide an alternative setting for students that will be conducive to improving their academic achievement.

2. Will the amendments help ensure that all students receive an equitable education? This amended regulation helps both the student assigned to the alternative program and the other students to have a chance at an equitable education.

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

This regulation will help to ensure that all students' safety is protected by removing those students that are discipline problems from the mainstream classroom setting.

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

This amended regulation will help to protect the legal rights of all students by providing an alternative educational setting for those students who are disruptive.

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

The amended regulation does not alter the authority and flexibility of decision making at the local board and school level.

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

This amended regulation does not place any unnecessary reporting or administrative requirements upon decision makers at the local board or school level.

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

The authority and accountability will remain in the same entity.

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

The amended regulation will not be an impediment to any other educational policies.

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

The Del. C., Chapter 16, requires the Department of Education to make regulations for these programs.

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

The amended regulation does not add any additional costs.

## FROM THE HANDBOOK FOR K-12 EDUCATION

### ~~I.B.5. COMPREHENSIVE SCHOOL DISCIPLINE IMPROVEMENT PROGRAM~~

~~Title 14, Delaware Code, was amended by HB 247, which adds a new Chapter 16, Comprehensive School Discipline Improvement Program. This chapter provides for the establishment of a statewide comprehensive program to improve student discipline in the public elementary and secondary schools of the State. The program shall provide for the treatment of pupils who are exhibiting discipline problems and for the establishment of services to school pupils which will reduce the rate and severity of discipline problems in the future. The program shall operate under the supervision and direction of the State Board of Education. For the Regulations Governing Alternative, Intervention, and Prevention Programs, see Appendix G, State Board Approved September, 1994.~~

## APPENDIX G

STATE BOARD OF EDUCATION  
and  
DEPARTMENT OF PUBLIC INSTRUCTION  
COMPREHENSIVE SCHOOL DISCIPLINE  
IMPROVEMENT

REGULATIONS GOVERNING  
ALTERNATIVE, INTERVENTION AND PREVENTION  
PROGRAMS

STATE OF DELAWARE

COMPREHENSIVE SCHOOL DISCIPLINE  
IMPROVEMENT

REGULATIONS GOVERNING  
ALTERNATIVE AND INTERVENTION  
PROGRAMS

Approved by State Board of Education  
August, 1995

For further information or explanation, please contact:

Ronald A. Meade

Education Associate, School Climate and Discipline  
Department of Public Instruction

P. O. Box 1402  
 Dover, Delaware 19903  
 (302) 739-4676

**TABLE OF CONTENTS**

	Page
<b>I. ALTERNATIVE SETTINGS FOR DISRUPTIVE STUDENTS</b>	
A. Student Population to be Served	1
B. Age/Grade Levels to be Served	2
C. Governance and Management	2
D. Funding	2
E. Transportation	2
F. Placement in Alternative Programs	2
G. September 30 Enrollment Count	3
H. Alternative Program Setting	3
I. Alternative Program Design	3
J. Staffing	4
K. Application	4
L. Evaluation	4
<b>H. SCHOOL BASED INTERVENTION PROGRAMS</b>	
A. Student Population to be Served	5
B. Placement in School Based Programs	5
C. Staffing	5
D. School Based Program Design	5
E. Site Based Committee	5
F. Funding	6
G. Application	7
H. Evaluation	7

**\* PLEASE NOTE THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT AND NOT THE REGISTER**

**ALTERNATIVE SETTINGS FOR DISRUPTIVE STUDENTS**

A. Student Population to be Served. Alternative settings will serve those students whose behavior has resulted in recommendations for expulsion, who have been expelled, or who exhibit such severe behavior problems that recommendations for expulsion appear to be imminent. Except as otherwise provided herein, all students who are expelled by a local school district must be placed in these alternative programs unless the student is expelled for an offense equivalent to a violation of one of the following: 11 Del. C. Sec. 613 (Assault in the First Degree); or 11 Del. C. Sec. 1457 (Possession of a Weapon in a Safe School and Recreation Zone); or 11 Del. C. Sec. 802 (Arson in the Second Degree); or 11 Del. C. Sec. 803 (Arson in the First Degree); or 11 Del. C. Sec. 770 (Unlawful Sexual Penetration in the

Third Degree); or 11 Del. C. Sec. 771 (Unlawful Sexual Penetration in the Second Degree); or 11 Del. C. Sec. 772 (Unlawful Sexual Penetration in the First Degree); or 11 Del. C. Sec. 773 (Unlawful Sexual Intercourse in the Third Degree); or 11 Del. C. Sec. 774 (Unlawful Sexual Intercourse in the Second Degree); or 11 Del. C. Sec. 775 (Unlawful Sexual Intercourse in the First Degree); or 16 Del. C. Sec. 4753A (Trafficking in Marijuana, Cocaine, Illegal Drugs or Methamphetamine). In any case in which an expelled student is not referred to an alternative program, the decision of the local school district to expel must state with specificity the reason for nonreferral and the evidence in support thereof. Notwithstanding that a student is found to have committed an offense equivalent to one or more of those enumerated above, a local superintendent may on a case-by-case basis, assign a student to an alternative program. Also, other placements must be pursued to the extent possible through the courts and other agencies. Students sixteen years of age or older may be placed in the alternative program, or may be directed to some other educationally oriented program that will best serve his/her needs, but shall not be denied educational services unless the student is expelled for an offense equivalent to those enumerated above. Districts must inform the legal guardian of students for whom expulsion is being considered or who are expelled of the alternative education options that are then currently available to the students. These options shall include but not be limited to alternative schools, GED programs, James H. Groves High School and others.

Both regular and special education students will be served by these programs. In addition, students who are returning to local school districts from DSCYF facilities (Ferris, Stevenson House, New Castle County Detention Center, etc.) may be placed in these programs as a transition step. This placement will be determined in concert by the DSCYF staff, local school district Alternative Placement Team, the Alternative Program staff, and the student's custodial adult.

Students with disabilities must be served under the rules and regulations in the Administrative Manual: Programs for Exceptional Children (AMPEC). When considering placement, the IEP (Individual Education Program) Team must be convened to determine the appropriate placement in alternative or other educational settings based on the needs of the student. The Alternative Program is designed to primarily serve students who exhibit serious disciplinary problems and who have been expelled or are in danger of being expelled. The Alternative Placement Team and the IEP Team may be one and the same provided it includes the essential membership of the IEP Team as defined in AMPEC.

B. Age/Grade Levels to be Served. Eligible students will be primarily those who are enrolled in grades 6 through 12, however students in lower grades may also be served

through these funds.

C. **Governance and Management.** Alternative programs will be established by agreement of a consortium of school districts, one in each of the three counties. Representatives to the consortia will be one person per school district and may be the superintendent or his/her designee. Each consortium will agree regarding the site, program provider, fiscal agent, and the overall design of the program, including behavioral guidelines and expectations, within the parameters outlined in these regulations. Multiple sites may be established in each county, however funds will not be allocated to individual school districts to establish single district programs. Programs may be provided through contracted services. One person from the consortium will be designated by the consortium as the point of contact for matters concerning the Alternative Programs in each of the counties. This person will be responsible for seeing that reports and other related requirements for the programs are met in a timely manner.

D. **Funding.** The annual budget act allocates funds to the State Board for these programs statewide. Although specific amounts are not allocated per county, approximate amounts should be as follows: New Castle County--approximately 50% of the base amount; Kent and Sussex Counties--approximately 25% of the base amount each. In addition, consideration will be given to the number of students served in the previous school year. Districts must agree to fund at least 30 percent of the total cost of services from sources of funding other than those authorized by this appropriation. These funds may be generated through tuition tax. Other sources for the 30 percent match may be other state funds as allowable and appropriate, local funds, or funds generated through foundation or other grants. Funds may not be used to pay salaries or other employment costs above the state share for teachers and aides. Funds may be used for any other purpose for which Division I and II funds may be used.

E. **Transportation.** Costs for transportation will be paid by the state from funds appropriated for student transportation if transportation is provided by extending already existing routes. Shuttle services that extend existing routes will be allowed. Additional routes established to transport students to and from the Alternative Programs or other special transportation designs will not be paid by the state from the school transportation appropriation and must be included in the Alternative Program budget and be paid from the state allocation for alternative programs and/or the districts' 30% share. Planning committees for these programs must include the transportation supervisors who will be providing services. In addition, those supervisors must coordinate planning with the Education Associate, School Transportation at the Department of Public Instruction. Transportation plans must

be submitted to the Education Associate, School Transportation.

F. **Placement in Alternative Programs.** Each district will establish an Alternative Placement Team to review each case and prescribe the appropriate placement for each student. The Placement Team, in concert with the Alternative Program staff, will design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both the student and his/her family. The ISP will include a tentative re-entry/transition plan. Clear expectations for behavior must be defined and agreed to by all parties involved in the development of the ISP. These behavioral guidelines must be consistent for all students in the Program, should be designed so that they are easily understood and will raise expectations for student conduct and academic achievement without being punitive. They should also be flexible enough to address special intervention needs of individual students. The Alternative Placement Team will be composed of a representative of the Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; student's custodial adult; guidance counselor and/or school social worker; representatives from DSCYF such as Youth Rehabilitation Service or other worker with whom the family is involved as appropriate. Other school, alternative program, or agency personnel may be invited as needed and determined by the Placement Team. Students who are being placed in the Alternative Program as a transition from DSCYF facilities will have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult. If students from either a school district or DSCYF facility are students with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the IEP team may be the same if membership is consistent with that described in Section II.A.

G. **September 30 Enrollment Count.** A student enrolled in an Alternative Program may be counted in the regular school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

H. **Alternative Program Setting.** The Alternative Program setting shall be apart from any regular school setting, however a part of a school building may be used for these programs so long as the students do not interact with the regular school population or use any school facility at the same time as the

regular school population. Use of other agency facilities (Boys and Girls Clubs, YMCA, YWCA, etc.) is encouraged. Settings must meet safety regulations for student occupancy as outlined in Delaware Code.

I. **Alternative Program Design.** The Alternative Program shall include an educational program designed to maintain and improve skills at least in core academic areas such as English/language arts, mathematics, science, and social studies that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Every effort shall be made to provide courses comparable to the regular school setting for each student. Opportunities for academic acceleration will also be provided. The academic program should focus on applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Credit for work accomplished in the Alternative Program setting will be automatically transferred to the regular school. Included in the academic core studies should be study skills, test taking strategies, and academic confidence building.

The academic portion of the day should be structured so that significant time can be devoted to behavioral and social skill intervention, including conflict management strategies. These skills should be emphasized in the interactions during academic learning as well as in other group and one-on-one activities. Students should be involved in individual and group counseling activities conducted by appropriate personnel. These activities should focus on appropriate interaction with peers, adults in the school setting, and peers and adults in their families and communities and should include conflict management skills. Counseling and other services shall be delivered on-site for students. In all cases the school day must meet the requirements as outlined in the Delaware Handbook for K-12 Education. County consortia may request waivers for the length of the school day. Requests must include specific descriptions of the daily schedule, activities and rationale for the waiver. Any shortening of the school day for students with disabilities must be addressed through the IEP process.

Consideration should be given to the development of a community service/community employment component that will provide opportunities for students to assume responsibility in a real world setting, to become aware of career possibilities, and to develop a sense of self-worth. This component may be developed in conjunction with service agencies, volunteer or civic organizations, and/or vocational education providers.

Family participation in the Alternative Programs must be encouraged through volunteer assistance, family night programs, involvement in counseling, and other activities.

J. **Staffing.** Instructional staff should include at least two certificated teachers in the major academic subject areas who can provide the lead for academic instruction and at least two instructional/service aides. Priority should be given to hiring staff who are qualified to teach special education. Student/staff ratios should be kept as low as possible to allow for significant interaction between adults and students as well as appropriate supervision. Counseling and other services can be provided by personnel hired directly by the Program, by personnel from other agencies contracted by the Program, or by personnel from other agencies who are involved with the student and/or his/her family. Staff should be individuals who have demonstrated ability and interest in working with students of this age group who exhibit behavioral problems. Staff must be willing to work collaboratively with school staff, agency staff, and parents. Student and family counseling should be arranged as needed and should be coordinated with other service providers such as DSCYF Child Mental Health and Youth Rehabilitation Services. The Secretary of the Department of Services for Children, Youth and Families has committed that the service providers from that agency will cooperate to every extent possible in assisting with these programs.

K. **Application.** County consortia must make application for funds using forms and instructions provided by the Department of Public Instruction.

L. **Evaluation.** In accordance with the Comprehensive School Oversight Program, evaluation shall: 1) examine the cost-effectiveness and programmatic results of the program; 2) examine consortium use of funding; 3) determine what, if any, modification should be made to the alternative program to deliver appropriate services to assigned students; and 4) develop performance measures to evaluate, on an on-going basis, the effectiveness of the alternative program. Criteria shall include student demographic data, types of interventions employed, prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement, recidivism, and other criteria as determined.

#### SCHOOL BASED INTERVENTION PROGRAMS

School Based Intervention Programs should be designed to provide services directed at behavioral change of students who disrupt the classroom setting and create distractions that impede the learning process and the well-being of the educational environment but whose behavior is not severe enough for the student to be considered for expulsion. The Programs must be designed based on the individual school/school district needs for such programs at grades K-12.

A. **Student Population to be Served.** All students in grades K and above may be served by these programs. Special

education students must be served according to the rules and regulations in the Administrative Manual for Programs for Exceptional Children:

B. Placement in School-Based Programs. Placement in these programs shall be made at the discretion of the building principal or assistant principal with consultation and recommendation by the school counselor, school nurse, and/or instructional staff. When placing students with disabilities, the IEP team should be convened to consider appropriateness of placement. Each school/district proposal must explain how placement will be accomplished in each program. When placements are made for a time period beyond one day or for more than three short term interventions (time outs for one or more periods, etc.) contact with the parent must be made to ascertain the student's/family's involvement with other agencies so that a total support system can be put in place via the Intervention Team (see Program Design section)/Alternative Placement Team. The Secretary of the Department of Services for Children, Youth and Families has committed that staff in the department will cooperate and collaborate to the extent possible in providing services for students and families.

C. Staffing. Districts may use funds allocated for these programs to hire staff which may include hiring two instructional/service aides in lieu of one certificated staff member. Staff may be hired directly by the district or through contracted services. Staff who are qualified to teach special education should be a priority. Staff must be individuals who have demonstrated ability and interest in working with students of this age group who exhibit behavioral problems. Staff must also be willing to work collaboratively with school staff, agency staff, and parents.

D. School-Based Program Design. The program design should include levels of service that will provide short term intervention strategies that will deal with immediate needs as well as longer term strategies that will provide counseling to improve behavior, to improve academic performance, and to determine the need for possible referral for other services either within the school district or to other agencies. These programs should also include support services for students who are returning to the regular school from the Alternative Program and/or from a DSCYF setting to provide a smooth transition. This support may range from short counseling or discussion sessions to academic support to placement for a period or two each day as an "ease-in" to the regular school structure. Each school should put in place an Intervention Team, which may be called by another title depending on the school district's choice, that will include appropriate building level personnel such as the building principal or assistant principal, school nurse, counselor and/or social worker, a regular and a special education teacher. Other staff may be

invited as appropriate. It is strongly suggested that at least one or more members of the Intervention Team also serve on the Alternative Placement Team for that building. The Intervention Team and the IEP team may be one and the same provided the essential membership of the IEP team as defined by AMPEC is convened.

E. Site-Based Committee. Local school districts are eligible to receive a supplemental grant greater than the dollar amount for base grants funded in support of school-based intervention programs. In order to qualify, schools shall establish a site-based committee in the school to govern discipline matters and shall meet the following criteria. Supplemental grants shall be available for grades 7, 8, 9, and 10 only:

1) The grant application must certify that the majority of the members of the Site-Based Committee are members of the school professional staff, of which a majority shall be instructional staff; that the committee contains representatives of the support staff, student body (for schools enrolling students grades 7 through 12), parents, and the community; that representatives of the employee groups are chosen by members of each respective group and representatives of the non-employee groups are appointed by the local board of education; and that the committee operates on the one-person, one-vote principle for reaching all decisions.

2) The grant application must certify that the committee has the authority, within established state and federal laws, state and federal regulations, local board policies, local district codes of conduct, and local district budgetary guidelines (unless relevant waivers have been granted) to:

(i) establish a school code of conduct which defines the roles and responsibilities of all members of the school community (administrators, teachers, support staff, contracted service personnel, students, families and child/family advocates);

(ii) hear concerns from a staff member dissatisfied with the disposition of any disciplinary matter by the school administration;

(iii) refer students to alternative programs provided, however, that any child with disabilities be referred to such programs through the child's Individualized Education Plan;

(iv) design, approve, and oversee school-based intervention programs established in the school;

(v) establish and enforce the school's attendance policy;

(vi) establish extended day, week, or year programs, for students with discipline or attendance problems, or at risk of academic failure, that provide for the assessment of penalties for violations of school discipline or attendance policies and for academic acceleration and tutoring, mentoring, and counseling services for such students and their

families as an integral program component;

(vii) establish staff development programs for conflict resolution for all school staff, and establish programs in classroom and behavioral management for schools' staff identified as needing improvement;

(viii) design student mentoring, conflict resolution, and/or peer counseling programs for all students, especially for those who are identified as having chronic discipline, academic, or attendance problems.

F. Funding. Incentive grants shall be provided as specified in the budget bill appropriation and will be based on enrollment levels as follows:

- Schools with less than 500 students grades K-12;
- Schools with 500-799 students grades K-12;
- Schools with 800-1,199 students grades K-12;
- Schools with 1,200 students grades K-12.

Enrollment levels shall be determined based on September 30 counts for the prior school year. Funds may not be used to pay salaries or other employment costs above the state share for teachers and aides. Funds may be used for any other purpose for which Division I and II funds may be used. Schools or school districts may contract for educational or related goods and services with these funds.

G. Application. Districts/schools must make application for funds using forms and instructions provided by the Department of Public Instruction. All applications must have the approval of the board of education of the school district in which the applicant school is located. In order to provide districts with grants in a timely manner, all applications for base grants must be submitted for review by the State Board of Education no later than November 15 of each year.

H. Evaluation. In accordance with the Comprehensive School Oversight Program, evaluation shall: 1) examine the cost-effectiveness and programmatic results of the program; 2) examine the district's use of funding; 3) determine what, if any, modification should be made to the program to deliver appropriate services to assigned students; and 4) develop performance measures to evaluate, on an on-going basis, the effectiveness of the program.

Criteria shall include student demographic data, types of interventions employed, prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement, recidivism and other criteria as determined.

AS AMENDED

COMPREHENSIVE SCHOOL DISCIPLINE  
IMPROVEMENT PROGRAMS  
REGULATIONS GOVERNING ALTERNATIVE

## INTERVENTION PROGRAMS

### 1. Population to be Served

Except as otherwise provided herein, all students who are expelled by a local school district shall be placed in these alternative programs unless the student is expelled for an offense equivalent to a violation of one of the following: 11 Del. C., Sec. 613 (Assault in the First Degree); or 11 Del. C., Sec. 1457 (Possession of a Weapon in a Safe School and Recreation Zone); or 11 Del. C., Sec. 802 (Arson in the Second Degree); or 11 Del. C., Sec. 803 (Arson in the First Degree); or 11 Del. C., Sec. 771 (Unlawful Sexual Penetration in the Second Degree); or 11 Del. C., Sec. 772 (Unlawful Sexual Penetration in the First Degree); or 11 Del. C., Sec. 773 (Unlawful Sexual Intercourse in the Third Degree); or 11 Del. C., Sec. 774 (Unlawful Sexual Intercourse in the Second Degree); or 11 Del. C., Sec. 775 (Unlawful Sexual Intercourse in the First Degree); or 16 Del. C., Sec. 4753A (Trafficking Marijuana, Cocaine, Illegal Drugs or Methamphetamine).

### 2. Non-referral of Students

In any case in which an expelled student is not referred to an alternative program, the decision of the local school district to expel shall state with specificity the reason for non-referral and the evidence in support thereof.

### 3. Informing the Legal Guardian

Districts shall inform the legal guardian of students for whom expulsion is being considered or who are expelled of the alternative education options that are then currently available to the students. These options shall include but not be limited to alternative schools, GED programs, James H. Groves High School and others.

### 4. Age/Grade Level to be Served

Eligible students shall be primarily those who are enrolled in grades 6 through 12, however students in lower grades may also be served through these funds.

### 5. Placement in Alternative Programs

Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for each student. The Placement Team, in concert with the Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both the student and his/her family. The ISP shall include a tentative re-entry/transition plan. The Alternative Placement Team shall be composed of a representative of the Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; student's custodial adult; guidance counselor and/or school social worker; representatives from DSCYF such as Youth

# PROPOSED REGULATIONS

Rehabilitation Service or other worker with whom the family is involved as appropriate. Other school, alternative program, or agency personnel may be invited as needed and determined by the Placement Team. Students who are being placed in the Alternative Program as a transition from DSCYF facilities will have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult. If students from either a school district or DSCYF facility are students with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the IEP Team may be the same.

## 6. September 30 Enrollment Count

A student enrolled in an Alternative Program may be counted in the regular school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

## 7. Alternative Program Setting

The Alternative Program setting shall be apart from the regular school setting, however a part of a school building may be used for these programs so long as the students do not interact with the regular school population or use any school facility at the same time as the regular school population. Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Settings shall meet safety regulations for student occupancy as outlined in Delaware Code.

## 8. Alternative Program Design

The Alternative Program shall include an educational program designed to maintain and improve skills at least in core academic areas such as English/language arts, mathematics, science, and social studies that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Every effort shall be made to provide courses comparable to the regular school setting for each student. Opportunities for academic acceleration will also be provided. The academic program should focus on applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Credit for work accomplished in the Alternative Program setting shall be automatically transferred to the regular school. Included in the academic core studies should be study skills, test taking strategies, and academic confidence building. Counseling and other services shall be delivered on site for students.

## 9. Staffing

Instructional staff shall include at least two certified teachers in the major academic subject areas who can provide the lead for academic instruction and at least two instructional/service aides. Priority should be given to hiring staff who are qualified to teach special education.

---

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

### THE CONSTITUTION AND BYLAWS OF THE DELAWARE SECONDARY SCHOOL ATHLETIC ASSOCIATION (DSSAA)

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the consent of the State Board of Education in adopting these recommended changes and revisions to the Constitution and Bylaws. The attached proposals are the result of an annual review of the Constitution and Bylaws of the Delaware Secondary School Athletic Association (DSSAA) by the DSSAA Constitution and Bylaws Committee and the DSSAA Board of Directors. Approximately two-thirds of the proposals are editorial changes or minor changes that received no opposition from member school representatives at the 53rd Annual Membership Meeting. The proposed revisions were submitted to the DSSAA Constitution and Bylaws Committee by either a member school, a conference, or the Executive Director. They were discussed at length by the Committee on November 4, 1997, and then submitted to the DSSAA Board of Directors for initial review at the November 20, 1997 meeting. One of the proposals was rejected by the Board and the remainder were approved. The proposals that received initial approval from the Board were forwarded to the member schools with an invitation to either attend the 53rd Annual Membership Meeting and participate in an open discussion of the proposed revisions or to submit written comments regarding the proposed changes. The entire package of proposals was presented to the member school representatives in attendance for their consideration and comment. At the regularly scheduled DSSAA Board meeting following the Annual Membership Meeting, all of the proposed changes, with the exception of five proposals, received a second affirmative vote. One of the aforementioned five proposals was rejected and the other four were remanded back to the Constitution and Bylaws Committee for further review and revision. Those

four proposals were then forwarded to the member schools for written comment and a second vote was taken at the March 26, 1998 DSSAA Board meeting. All four proposals were approved and the twenty-seven proposed changes which received two affirmative votes from the DSSAA Board were forwarded to the Secretary for approval and for the consent of the State Board of Education.

Changes to the bylaws which are more than word changes include:

- A revised statement about the organization reflecting DOE regulations and revised organizational objectives.
- The inclusion of additional persons who are subject to the Sportsmanship rule and expanded authority for the Executive Director to discipline violators.
- A clarification of eligibility for shared time students, choice students, students who are absent or drop out, students changing their residences, students in Intensive Learning Centers and foreign exchange students.
- A clarification of passing work for seniors.
- A revised definition of Junior High School/Middle School and a revised statement on athletic participation for students in this age group.
- An addition to the Wrestling Weight Control Code.
- A change in the definition of a scrimmage.

### C. IMPACT CRITERIA

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

Proposal #19 closes a loophole in the current academic eligibility requirement for twelfth-grade students and also holds them accountable for night school courses and correspondence courses taken outside of the normal school day. The intent of the revision is to prevent a twelfth-grade student from avoiding the consequences of failing a semester-length course during the fall by simply repeating the course or taking another course that satisfies the same graduation requirement during the spring semester. In as much as athletic participation is a powerful motivator for many students, this proposal should result in greater academic achievement by raising the level of accountability.

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

The primary responsibility for enforcing the rules and regulations of the Delaware Secondary School Athletic Association belongs to the member schools. If properly applied, the rules and regulations provide "a level playing field" and an equal opportunity for all interested to participate

in interscholastic athletics. The DSSAA Board of Directors and the Executive Director will enforce the proposed regulations equitably without regard to athletic ability, race, gender, economic standing, or school of attendance.

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

The Constitution and Bylaws have been written to protect the health and safety of student athletes and the amendments especially the middle school and wrestling weight amendment continue to support health and safety concerns.

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

The Constitution and Bylaws address student athletes' legal rights and the amendments especially those concerned with eligibility for sports participation help to clarify those rights.

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

The amendments will not alter the existing authority and flexibility for decision makers at the local board and school level as provided in the Constitution and Bylaws.

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

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

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

The decision making authority and accountability will remain in the same entity.

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

The amendments will not be an impediment to the implementation of other state educational policies.

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

The Constitution and Bylaws must be amended in this way in order to be regulatory.

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

Compliance with the amendments will not add any costs for the state and local boards.

---

**THE PRECEDING REGULATORY CHANGES WILL BE PRESENTED AT  
THE NEXT STATE BOARD OF EDUCATION MEETING ON  
THURSDAY, MAY 15, 1998**

# PROPOSED REGULATIONS

## CONSTITUTION AND BYLAWS PROPOSALS

<u>NUMBER</u>	<u>PAGE</u>	<u>CURRENT ARTICLE OR BYLAW</u>	<u>ADDITION, DELETION, OR REVISION</u>
1.	10	Article I Name A.	<p><b>CHANGE</b></p> <p>A. This organization shall be known as the Delaware Secondary School Athletic Association functioning as a body under the auspices of the Delaware State Board of Education.</p> <p style="text-align: center;"><b>TO</b></p> <p>This organization shall be known as the Delaware Secondary School Athletic Association <u>and shall function as the official designee of the Secretary of Education with the authority to implement the Department of Education's rules and regulations governing the conduct of interscholastic athletics.</u></p>
2.	10	Article II Objectives A., B., C., and D.	<p><b>CHANGE</b></p> <p>A. To encourage athletics.....</p> <p>B.</p> <p>C.</p> <p>D. sportsmanship.</p> <p style="text-align: center;"><b>TO</b></p> <p>A. <u>To preserve and promote the educational significance of interscholastic athletics.</u></p> <p>B. <u>To ensure that interscholastic athletics remains compatible with the educational mission of the member schools.</u></p> <p>C. <u>To provide for fair and equitable competition between the member schools.</u></p> <p>D. <u>To promote sportsmanship and ethical behavior.</u></p> <p>E. <u>To establish and enforce standards of conduct for athletes, coaches, administrators, officials, and spectators.</u></p> <p>F. <u>To protect the physical well-being of the athletes.</u></p> <p><u>To promote healthy adolescent lifestyles.</u></p>
3.	21	Sportsmanship Rule, Section 2. Processing Violations of the Sportsmanship Rule B. 1. f. (1) and (4).	<p><b>CHANGE</b></p> <p>1. He/she makes degrading remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or</p> <p style="text-align: center;"><b>TO</b></p> <p>1. He/she makes <u>disparaging</u> remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or</p> <p><b>CHANGE</b></p> <p>4 He/she makes degrading or unprofessional remarks about another school's personnel.</p> <p style="text-align: center;"><b>TO</b></p> <p>4. He/she makes <u>disparaging</u> or unprofessional remarks about another school's personnel.</p>
4.	22	Sportsmanship Rule Section 2. C. 2. a.	<p><b>CHANGE</b></p> <p>a. Warning - a warning may be given...repeated.</p> <p style="text-align: center;"><b>TO</b></p> <p><u>Reprimand</u> - a <u>reprimand</u> may be given by the Executive Director or the Sportsmanship Committee. It is official notice that an unethical or unsportsmanlike act has occurred is a matter of record, and that such an occurrence must not be repeated.</p>

# PROPOSED REGULATIONS

5.	22	Sportsmanship Rule, Section 2. C. 2. b. and b. (1)	<b>CHANGE</b>	<p>b. Probation - Probation is a more severe penalty and may be imposed only by the Sportsmanship Committee on a member school or a particular team of a member school. Probation may be expressed in one of the following ways:</p> <ol style="list-style-type: none"> <li>1. Conditional probation wherein a member school may engage in its regular season schedule, sanctioned events, and conference and state championships provided the school files with DSSAA a program indicating the measures it shall take to alleviate the problem which caused it to be placed on probation, or</li> </ol> <p style="text-align: center;"><b>TO</b></p> <p>b. Probation - Probation is a more severe penalty and may be imposed <u>by the Executive Director or the Sportsmanship Committee</u> on a member school, a particular team of a member school, <u>a particular coach or athlete of a member school, or an official.</u> Probation may be expressed in one of the following ways:</p> <ol style="list-style-type: none"> <li>1. Conditional probation wherein <u>the offending party</u> may participate in regular season contests, sanctioned events, and conference and state championships provided <u>he/she/school</u> files with DSSAA a plan indicating the measures that shall be taken to alleviate the problem which caused <u>him/her/school</u> to be placed on probation, or</li> </ol>
6.	22	Sportsmanship Rule, Section 2. C. 2. c.	<b>CHANGE</b>	<p>c. Suspension - a school or a particular team suspended from DSSAA may not engage in interscholastic competition of any kind with any other school.</p> <p style="text-align: center;"><b>TO</b></p> <p><u>Suspension - a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official may not participate in any DSSAA sanctioned interscholastic competition.</u></p>
7.	23	Rule 1. Eligibility, Section 2. Attendance and Competition Dates	<b>CHANGE</b>	<p>Section 2. Attendance and Competition Dates</p> <p style="text-align: center;"><b>TO</b></p> <p>Section 2. <u>Enrollment and Attendance</u></p>
8.	23	Rule 1. Eligibility, Section 2. B., B. 1., and B. 2.	<b>ADD</b>	<p>B. <u>A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school.</u></p> <ol style="list-style-type: none"> <li>1. <u>A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements.</u></li> </ol> <p><u>A shared-time student shall not be eligible to participate at the school at which he/she is receiving only specialized educational instruction, e.g. vocational training.</u></p>
9.	23	Rule 1. Eligibility, Section 2. C.	<b>ADD</b>	<p><u>A student who is participating in the Delaware School Choice Program as authorized by House Bill 144 of the 138th General Assembly is obligated to attend the "choice school" for a minimum of two(2) years unless the student's parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the "choice school". If a student attends a "choice school" for less than two(2) years and subsequently transfers back to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible to participate in interscholastic athletics.(see Section 4. L.)</u></p>
10.	23	Rule 1. Eligibility, Section 2. C.	<b>CHANGE</b>	<p>C. A student must be legally in attendance...</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3. lawyer.</li> </ol> <p style="text-align: center;"><b>TO</b></p> <p>C. A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.</p> <ol style="list-style-type: none"> <li>1. <u>A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.</u></li> </ol>

**PROPOSED REGULATIONS**

11.	23	Rule 1. Eligibility, Section 2. E.	<b>CHANGE</b>	<p>E. If a student drops out of school due to illness or injury, is unable to participate in athletics and misses more than half of the scheduled contests of a sports season, and must return to school beyond the normal period of eligibility to complete academic requirements for graduation, he/she may petition the DSSAA Board of Directors for an extension of athletic eligibility. All other DSSAA eligibility requirements must be met.</p> <p style="text-align: center;"><b>TO</b></p> <p>E. If a student drops out of school due to illness or injury, misses more than half of the scheduled contests <u>at the level of competition at which he/she was participating</u>, and must return to school beyond the normal period of eligibility to complete academic requirements for graduation, he/she may petition the DSSAA Board of Directors for an extension of athletic eligibility. All other DSSAA eligibility requirements must be met.</p>
12.	23	Rule 1. Eligibility, Section 2. F. and G.	<b>DELETE</b>	
13.	23-24	Rule 1. Eligibility, Section 3. Residence A.	<b>CHANGE</b>	<p>A. A student must be living with his/her parent(s) or legal guardian(s) in the attendance zone.....school.</p> <p style="text-align: center;"><b>TO</b></p> <p>A. A student must be living with his/her <u>custodial</u> parent(s) or legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible to participate in interscholastic athletics at that school. <u>In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.</u></p>
14.	24	Rule 1. Eligibility, Section 3. A. 4.	<b>CHANGE</b>	<p>4. Seniors shall be permitted...occurred.</p> <p style="text-align: center;"><b>TO</b></p> <p>4. A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. <u>This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.</u></p>
15.	24	Rule 1. Eligibility, Section 3. Interpretation A.	<b>CHANGE</b>	<p>A. Assignment to Intensive Learning Center - The DSSAA Board of Directors determined...ILC.</p> <p style="text-align: center;"><b>TO</b></p> <p>A. Assignment to Intensive Learning Center - The DSSAA Board of Directors determined at its November 21, 1991 meeting that all ILC students in grades 9 thru 12 will participate in interscholastic athletics at the school in which the ILC is located. If that school does not sponsor interscholastic teams in any sport, ILC students will be permitted to participate at their home school. <u>Students who are assigned to an ILC and students who are reassigned to their home school from an ILC are not subject to the provisions of Rule 1. Section 4. Transfer and are immediately eligible to participate provided they are in compliance with all other DSSAA eligibility requirements.</u></p>
16.	25	Rule 1. Eligibility, Section 4. Transfer B. 2. a.	<b>ADD</b>	<p><u>In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. (A petition for the transfer of guardianship/custody, an affidavit, or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.)</u></p>
17.	25	Rule 1. Eligibility, Section 4. E.	<b>DELETE</b>	
18.	26	Rule 1. Eligibility, Section 4. J. and J. 1.	<b>CHANGE</b>	<p>J. If a student transfers....</p> <p style="padding-left: 20px;">1. met.</p> <p style="text-align: center;"><b>TO</b></p> <p>J. <u>If a student transfers at any time during the school year for reasons other than those specified in B. above, the student shall be ineligible for a period of ninety(90) school days commencing with the first day of official attendance in the receiving school except as permitted by A. above.</u></p> <p><u>If a student transfers with fewer than ninety(90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.</u></p>

**PROPOSED REGULATIONS**

19.	29	Rule 4. Passing Work B.	<b>CHANGE</b>	<p>B. In the case of a student in the twelfth grade...participation.</p> <p style="text-align: center;"><b>TO</b></p> <p>In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. <u>A course necessary for graduation shall be any course, whether taken during or outside of the normal school day, that satisfies an unmet graduation requirement.</u></p>
20.	31	Rule 4. Passing Work Interpretation C.	<b>DELETE</b>	
21.	32	Rule 7. Foreign Exchange Students/Foreign Students A. 1.	<b>CHANGE</b>	<p>1. All foreign exchange programs...recognized.</p> <p style="text-align: center;"><b>TO</b></p> <p>All foreign exchange programs which are included in the Advisory List of International Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) <u>and are two(2) semesters in length shall be considered as recognized.</u></p>
22.	58	Rule 5. Participation A., B., and C.	<b>CHANGE</b>	<p>A. No student shall represent...inclusive.</p> <p style="text-align: center;"><b>TO</b></p> <p>A. No student shall represent a school in athletics after six(6) <u>consecutive semesters from the date of his/her first entrance into the seventh grade in schools with grades 7 through 8, inclusive.</u></p> <p>B. Seventh grade students shall not be permitted...teams.</p> <p style="text-align: center;"><b>TO</b></p> <p>B. <u>No student shall represent a school in athletics after eight (8) consecutive semesters from the date of his/her first entrance into the sixth grade in schools with grades 6 through 8, inclusive.</u></p> <p style="padding-left: 20px;">1. <u>Participation on the part of a sixth-grade student shall be at the discretion of the individual school.</u></p> <p style="padding-left: 20px;">2. <u>Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DSSAA Board of Directors.</u></p> <p>C. Students below the seventh grade...teams.</p> <p style="text-align: center;"><b>TO</b></p> <p>C. Students below the <u>sixth</u> grade shall not be permitted to practice, scrimmage, or compete on junior high/middle school interscholastic teams.</p>
23.	58	Rule 6. Grades A.	<b>CHANGE</b>	<p>A. The junior high/middle school shall be grades seven and eight.</p> <p style="text-align: center;"><b>TO</b></p> <p>A. <u>The junior high/middle school interscholastic athletic program shall include grades 6 through 8, inclusive.</u></p>
24.	70	Rule 29. Wrestling Weight Control Code B.	<b>CHANGE</b>	<p>B. The weight classifications....</p> <p style="padding-left: 40px;">250 lbs.</p> <p style="text-align: center;"><b>TO</b></p> <p>B. The weight classifications shall be as follows:</p> <p style="padding-left: 40px;">76 lbs. 100 lbs. 124 lbs. 148lbs. 82 lbs. 106 lbs. 130 lbs. 155 lbs. 88 lbs. 112 lbs. 136 lbs. 165 lbs. 94 lbs. 118 lbs. 142 lbs. 250 lbs. (Minimum Weight 164 lbs.)</p>
25.	70	Rule 29. Wrestling Weight Control Code D. 1.	<b>DELETE</b>	
26.	74	Glossary - Conference, Junior High/Middle School, and Semesters	<b>DELETE</b>	
27.	74	Glossary - Practice Game or Scrimmage	<b>CHANGE</b>	<p>Practice Game or Scrimmage - A game...purposes.</p> <p style="text-align: center;"><b>TO</b></p> <p>Scrimmage - <u>An informal competition between schools in which the officials are not compensated, score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt play to provide instruction and the competition is strictly for practice purposes.</u></p>

## 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  
DELAWARE BOARD OF MEDICAL PRACTICE  
**RESPIRATORY CARE PRACTICE  
ADVISORY COUNCIL****

Statutory Authority: 24 Delaware Code,  
Section 1770B(c)(5) (24 **Del.C.** 1770B(c)(5))

BEFORE THE BOARD OF MEDICAL PRACTICE  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF REGULATIONS GOVERNING THE PRACTICE OF RESPIRATORY CARE BY LICENSED RESPIRATORY CARE PRACTITIONERS IN THE STATE OF DELAWARE		ORDER APPROVING INITIAL REGULATIONS
--	--	--

ORDER

AND NOW, to-wit, this 7<sup>th</sup> day of April, 1998, the Board of Medical Practice having considered the hereto attached Order of the Respiratory Care Practice Advisory Council which recommends to the Board the approval of the initial Rules and Regulations attached to the aforesaid Order of the Respiratory Care Practice Advisory Council pursuant to 29 Del. C. §1770B;

AND, the Board having determined to approve the Rules and Regulations as proposed by the Respiratory Care Practice Advisory Council;

NOW, THEREFORE, IT IS ORDERED:

1. That the hereto attached Rules and Regulations recommended by the Respiratory Care Practice Advisory Council are hereby approved by the Board of Medical Practice.

2. That such Rules and Regulations shall be hereafter published in the Delaware Register of Regulations and shall be deemed to be effective ten (10) days after such publication.

## BY THE BOARD OF MEDICAL PRACTICE:

## SUMMARY OF EVIDENCE

Jose Barriccanal, M.D. Board Member	Vicenta G. Marquez, M.D. Board Member
Jorge Pereira-Ogan, M.D. Board Member	Ms. Carolyn E. McKown Public Board Member
Stephanie Malleus, M.D. Board Member	Mr. Robert Emrich Public Board Member
Catherine T. Hickey, Esq. Public Board Member	Janet Kramer, M.D. Board Member
Venerando J. Maximo, M.D. Board Member	Edward J. McDonnell, M.D. Board Member
Stephen Fanto, M.D. Board Member	Bentley A. Hollander, M.D. Board Member
Ms. Cleo H. Fountain Public Board Member	Constantine W. Michell, D.O. Board Secretary
Cecil C. Gordon, M.D. Board Vice-President	Yogesh C. Kansal Board President

BEFORE THE RESPIRATORY CARE PRACTICE  
ADVISORY COUNCIL

IN THE MATTER OF THE	ORDER
ADOPTION OF	ADOPTING
REGULATIONS GOVERNING	INITIAL
THE PRACTICE OF	REGULATIONS
RESPIRATORY CARE	
BY LICENSED RESPIRATORY	
CARE PRACTITIONERS IN THE	
STATE OF DELAWARE	

Pursuant to 29 Del. C. Ch.101 and 24 Del. C. §1770(e)(5), the Respiratory Care Practice Advisory Council ("Council") which functions under the auspices of the Delaware Board of Medical Practice ("Board") gave notice of its intent to consider adoption of initial regulations governing the practice of respiratory care by licensed respiratory care practitioners in the State of Delaware.

A public hearing was held upon due public notice beginning at 2:30 P.M. on March 5, 1998 to receive oral public comment and consider any written comments which had been filed concerning the proposed regulations as set forth in the version of the Regulations published for public review and comment in the Delaware Register of Regulations.

At the public hearing, the Respiratory Care Practice Advisory Council introduced evidence of the publication of the notice of the proposed Rule Making in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Ch. 101, including proof of publication of the notice of the public hearing in the Delaware State News newspaper and the News Journal newspaper, as well as the publication of the proposed regulations and the notice of the hearing in the Register of Regulations of the State of Delaware. (Exhibit Nos. 1 and 2).

Robert Lang, the Chairman of the Respiratory Care Practice Advisory Council, made a brief introductory presentation concerning the subject matter encompassed by the proposed Regulations and discussed the practical need for such regulations and the statutory authority for the Board to adopt and promulgate them subject to the approval of the Board of Medical Practice of the State of Delaware. Chairman Lang marked as Council Exhibit No. 3 the original of a two-page letter of written comments concerning the proposed Regulations which had been received from the Delaware Board of Nursing.

A number of individuals attended the hearing but only one individual wished to make comments to the Council. Ms. Ellen Hamilton, the Vice-President for patient service at the Nanticoke Hospital, commended the Council for its work in producing the Regulations to govern the practice of respiratory care. She stated that the document provides a sound foundation to begin regulation of respiratory care practitioners. Ms. Hamilton expressed concern over the language in Regulation Section 5.1 which provided that respiratory care practitioners may administer medical gases via the respiratory route. She was concerned over the lack of a specific definition of the term "medical gases".

The written comments from the Delaware Board of Nursing (Exhibit No. 3) also expressed concern about Section 5.1 observing that medical gases via the respiratory route authorizes the administration of anesthesia in the absence of a specific definition of the term "medical gases". The Board of Nursing suggested that there should be either a definition of the term medical gases or that the administration of anesthesia should be specifically prohibited.

In its written comments, the Board of Nursing also suggested clarification of the definition of "Programs Approved by the Board" in Regulation Section 1.5 and, finally, questioned the operations of the temporary student permit provided for in Regulation Section 7.3.

After discussion, the Council determined that

modification to the provisions of proposed Regulation 5.3 is not necessary. It is not feasible to define in any comprehensive manner the term "medical gases" which comes directly from the Respiratory Care Practitioner Practice Act, 24 Del. C. §1770B. As a practical matter, the changes in medical technology are sufficiently rapid that any attempt to define the term "medical gases" would likely be outdated by the time the regulatory process was completed. Furthermore, there are medical gases with anesthetic properties such as Isoflurane which is finding acceptance in the treatment of intractable asthma, not so much for its anesthetic aspects, but for its use as bronchodilator. It is clear that an absolute prohibition on the use of anesthesia would not be appropriate, and the Council finds that there are sufficient safeguards contained in the proposed Regulations in Sections 5.2 and 5.3 which delineate the requirement for training and documentation required for any medications that the respiratory care practitioner is to administer. Therefore, modifications to Regulation Section 5.3 were not deemed necessary.

After discussion, the Council determined that the clarification requested by the Board of Nursing regarding Section 1.5 was appropriate and should be made. Therefore, the Council, by unanimous vote of the undersigned members, determined to clarify Section 1.5. by adding the terms "initial course of study" before the word "program" and adding and "s" to the word "organization" so that the definition as clarified reads:

" 'Programs Approved by the Board' means initial course of study programs accredited by the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or its successor organizations which have been approved by the Board."

These minor modifications are not substantive since the JRCRTE only accredits the initial course of study in respiratory care and does not certify or accredit continuing education programs. It is currently the only accrediting agency available for programs training respiratory care practitioners. The entry level or initial programs it approves are a minimum of twelve (12) months (3 full semesters) and normally closer to two (2) years in duration as associate degree programs.

The length of the entry level programs accredited by the JRCRTE addresses the final concern raised by the Board of Nursing concerning the authority of the Council and the board to deny a temporary permit to a student after completion of one week of a twenty-one week program. The temporary student permit is available to a student who is enrolled in an accredited respiratory care education program. The conditions the Council has established for the granting of

such a temporary permit and the requirement that any such practice be only under direct supervision of a licensed respiratory care practitioner are deemed by the Council to be reasonably adequate safeguards.

## FINDING OF FACT AND CONCLUSIONS

The Council finds and recommends to the Board of Medical Practice that it is necessary and proper to protect the public to enact the Regulations attached hereto as Exhibit "A" to govern the practice of respiratory care by licensed respiratory care practitioners in the State of Delaware.

The difference between the version of the proposed Regulations published in the Register of Regulations on February 1, 1998 and the version adopted by the Council and recommended for approval to the Board of Medical Practice is limited to the non-substantial clarification of the definition in Section 1.5 as discussed and set forth above.

## ORDER

NOW, THEREFORE, the Respiratory Care Practice Advisory Council, by the affirmative vote of the undersigned members, hereby adopts the Rules and Regulations attached hereto as Exhibit "A" and recommends approval of such Rules and Regulation to the Board of Medical Practice.

These Rules and Regulations shall be published in the Delaware Register of Regulations after approval by the Board of Medical Practice and shall be effective ten (10) days after such publication.

BY ORDER OF THE RESPIRATORY CARE PRACTICE  
ADVISORY COUNCIL this 24<sup>th</sup> day of March, 1998.

---

## FINAL REGULATIONS

### TABLE OF CONTENTS

SECTION 1 DEFINITIONS	1
SECTION 2 PURPOSE	1
SECTION 3 STANDARDS OF PRACTICE FOR THE RESPIRATORY PRACTITIONER	2
SECTION 4 STANDARDS RELATED TO THE RESPIRATORY CARE PRACTITIONER'S COMPETENCE AND RESPONSIBILITIES	2
SECTION 5 ADMINISTRATION OF MEDICATIONS	3
SECTION 6 DISCIPLINARY PROCEEDINGS	4
SECTION 7 WORKING STUDENT RESPIRATORY CARE PRACTITIONER	6

SECTION 8 CONTINUING EDUCATION	7
8.1 Contact hours required for renewal	7
8.2 Exemptions	7
8.3 Criteria for Qualification of Continuing Education	8
8.3.1 Definition of Contact Hours	8
8.3.2 Learner Objectives	8
8.3.3 Subject Matter	8
8.3.4 Description	9
8.3.5 Types of Activities/Programs	9
8.4 Educational Providers	10
8.5 Accumulation of Continuing Education	10
8.6 Review/Approval of Continuing Education Contact Hours	11
SECTION 9 RENEWAL OF LICENSE	11
SECTION 10 APPLICATION FOR A LICENSE	12

Chapter 17. Medical Practices Act, § 1770B(a)(2).

1.8 “Respiratory Care Practitioner (RCP)” - means an individual who practices respiratory care under Title 24, Delaware Code, Chapter 17. Medical Practices Act, § 1770B(a)(1) and (7).

1.9 “Student Respiratory Care Practitioner (Student-RCP)” - means an individual enrolled in an accredited Respiratory Care Program recognized and approved by the Board.

1.10 “Working Student Respiratory Care Practitioner” - means a student respiratory care practitioner who is employed to perform respiratory care under a limited scope of practice established by the Board.

1.11 “General Supervision” - means whether by direct observation and monitoring, protocols approved by physicians, or orders written or verbally given by physicians.

1.12 “Direct Supervision” - means supervising licensee or supervising physician will be present and immediately available within the treatment area.

**\* PLEASE NOTE THAT THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT, NOT TO PAGES IN THE REGISTER.**

**STANDARDS OF RESPIRATORY CARE PRACTICE  
SECTION 1: DEFINITIONS**

1.1 “Board” - means Delaware Board of Medical Practice.

1.2 “Certified Respiratory Therapy Technician (CRTT)” - means the credential awarded by the NBRC to individuals who pass the certification examination for entry level respiratory therapy practitioners.

1.3 “Council” - means the Respiratory Care Practice Advisory Council of the Board of Medical Practice.

1.4 “NBRC” means the National Board for Respiratory Care, Inc.

1.5 “Programs Approved by the Board” - means [initial cause of study] programs accredited by the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or its successor organization[s] which have been approved by the Board.

1.6 “Registered Respiratory Therapist (RRT)” - means the credential awarded by the NBRC to individuals who pass the registry examination for advanced respiratory therapy practitioners.

1.7 “Respiratory Care” - means treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under the direction of a physician. Respiratory care includes inhalation therapy and respiratory therapy under Title 24, Delaware Code,

**SECTION 2: PURPOSE**

2.1 The purpose of the standards is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Board to evaluate safe and effective practice of respiratory care.

**SECTION 3: STANDARDS OF PRACTICE FOR THE RESPIRATORY CARE PRACTITIONER**

3.1:a. The respiratory care practitioner shall conduct and document respiratory care assessments of individuals and groups by various appropriate means including but not limited to the following:

1. Collecting objective and subjective data from observations, examinations, physiologic tests, interviews and written records in an accurate and timely manner.
2. Sorting, selecting, reporting, and recording the data.
3. Analyzing data.
4. Validating, refining and modifying the data by using available resources including interactions with the patient, family, and health team members.
5. Evaluating data.
6. Respiratory care practitioners shall establish and document data that serves as the basis for the strategy of care.

3.1:b. Respiratory care practitioners may develop

strategies of care such as a treatment plan.

3.1:c. Respiratory care practitioners may participate under the direction and supervision of a physician in the implementation of patient care.

#### SECTION 4: STANDARDS RELATED TO THE RESPIRATORY CARE PRACTITIONER'S COMPETENCE AND RESPONSIBILITIES

4.1 Respiratory care practitioners shall:

- a. Have knowledge of the statutes and regulations governing the practice of respiratory care.
- b. Accept responsibility for competent practice of respiratory care.
- c. Obtain instructions and supervision from physicians.
- d. Function as a member of a health care team by collaborating with other members of the team to provide appropriate care.
- e. Consult with respiratory care practitioners and others and seek guidance as necessary.
- f. Obtain instruction and supervision as necessary when implementing respiratory care techniques.
- g. Contribute to the formulation, interpretation, implementation and evaluation of objectives and policies related to the practice of respiratory care within the employment setting.
- h. Report unsafe respiratory care practice and conditions to the Respiratory Care Practice Advisory Council, (Council), or other authorities as appropriate.
- i. Practice without unlawful discrimination as to age, race, religion, sex, national origin or disability.
- j. Respect the dignity and rights of patients regardless of social or economic status, personal attributes or nature of health problems.
- k. Respect patients' right-to-privacy by protecting confidentiality unless obligated by law to disclose the information.
- l. Respect the property of patients and their families.
- m. Teach safe respiratory care practice to other health care workers as appropriate.

#### SECTION 5: ADMINISTRATION OF MEDICATIONS

5.1 Respiratory care practitioners may administer pharmacological agents, aerosols, or medical gases via the respiratory route. Administration of medication by routes other than the respiratory route require the direct supervision of a physician.

5.2 A respiratory care practitioner shall not deliver any medication unless the order, written or oral by a physician or other person authorized by the Board of Medical Practice, to prescribe that class of medication includes:

- a. Patient identification
- b. Date of the order
- c. Time of the order
- d. Name of medication
- e. Dosage
- f. Frequency of administration
- g. Route of administration
- h. Method of administration

No respiratory care practitioner holding a permit or a license in the state of Delaware may administer medications for the testing or treatment of cardiopulmonary impairment for which the respiratory care provider is untrained or incompetent.

5.3 Respiratory care practitioners must be able to document appropriate training and proficiency on the route of medication delivery, drug pharmacology, and dosage calculations for any cardiopulmonary medications for which they are responsible to administer. Appropriate training includes but is not limited to the following components:

- a. Pharmacology. Subject matter shall include terminology, drug standards, applicable laws and legal aspects, identification of drugs by name and classification, and the principles of pharmacodynamics of medications used in the treatment and testing of cardiopulmonary impairment.
- b. Techniques of drug administration. Subject matter shall include principles of asepsis, safety and accuracy in drug administration, applicable anatomy and physiology, and techniques of administration and any route of administration for cardiopulmonary medications that fall within the legal scope of practice of a respiratory care practitioner.
- c. Dosage calculations. Subject matter shall include a review of arithmetic and methods of calculation required in the administration of drug dosages.
- d. Clinical experience. Subject matter shall include clinical experience in administration of the cardiopulmonary medication(s), planned under the direction of a qualified respiratory care practitioner or other qualified health care provider responsible for teaching cardiopulmonary medication administration.
- e. Role of the respiratory care practitioner in administration of cardio-pulmonary medications. Subject matter shall include constraints of medication administration under the legal scope of practice for respiratory care practitioners, the rationale for specific respiratory care in relation to drug administration;

observations and actions associated with desired drug effects, side effects and toxic effects; communication between respiratory care practitioners and other health care teams; respiratory care practitioner - client interactions; and the documentation of cardiopulmonary medication administration.

5.4 Each respiratory care practitioner shall maintain a record that documents training and proficiency and medications that each practitioner is authorized to administer. At the request of the Council such records may be audited, reviewed, or copied.

5.5 Documentation of medication administration by the respiratory care practitioner shall include at a minimum:

- a. Patient identification
- b. Date of the order
- c. Time of the order
- d. Name of medication
- e. Dosage
- f. Frequency of administration
- g. Route of administration
- h. Method of administration
- i. Respiratory care practitioner's name
- j. Date and time of administration
- k. Documentation of effectiveness
- l. Documentation of adverse reactions and notifications if any

## SECTION 6: DISCIPLINARY PROCEEDINGS

6.1:a. The license or permit of a respiratory care practitioner or student found to have committed unprofessional conduct may be subject to revocation, suspension, or non-renewal. The practitioner or student may be placed on probation subject to reasonable terms and conditions, or reprimanded.

6.1:b. Any licensed respiratory care practitioner found, after notice and hearing, to have engaged in behavior in his or her professional activity which is likely to endanger the public health, safety or welfare or who is unable to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol may have his or her license revoked, suspended, not renewed or may be placed on probation.

### 6.2 Unprofessional Conduct

Unprofessional conduct includes any act of fraud, deceit, incompetence, negligence, or dishonesty and shall include, without limitation, the following:

a. Performing acts beyond the scope of authorized practice by a respiratory care practitioner to include

violations of Title 24, Delaware Code, § 1770B or of these regulations.

b. Assuming duties and responsibilities within the practice of respiratory care without adequate preparation or supervision or when competency has not been maintained.

c. Performing new respiratory care techniques and/or procedures without adequate education and practice or without proper supervision.

d. Failing to take appropriate action or follow policies and procedures in to practice situation designed to safeguard the patient from incompetent, unethical or illegal health care practices.

e. Inaccurately recording on, falsifying or altering a patient or agency record.

f. Committing verbal, physical or sexual abuse or harassment of patients or co- employees.

g. Assigning unqualified persons to perform the practice of licensed respiratory care practitioners.

h. Delegating respiratory care responsibilities to unqualified persons.

i. Failing to supervise persons to whom respiratory care responsibilities have been properly delegated.

j. Leaving a patient assignment in circumstances which endangers the patient except in documented emergency situations.

k. Failing to safeguard a patient's dignity and right to privacy in providing respiratory care services which shall be provided without regard to race, color, creed or status.

l. Violating the confidentiality of information concerning a patient except where disclosure is required by law.

m. Practicing respiratory care when unfit to perform procedures and make decisions when physically, psychologically, or mentally impaired.

n. Diverting drugs, supplies, or property of a patient or agency or attempting to do so.

o. Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs or attempting to do so.

p. Providing respiratory care in this state without a currently valid license or permit and without other lawful authority to do so.

q. Allowing another person to use his/her license or temporary permit to provide respiratory care for any purpose.

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

s. Resorting to, or aiding in any fraud, misrepresentation or deceit directly or indirectly in connection with acquiring or maintaining a license to

practice respiratory care.

t. Failing to report unprofessional conduct by another respiratory care practitioner licensee or permit holder or as specified in 4.1:h.

u. Failing to provide respiratory care to a patient in accordance with the orders of the responsible physician without just cause.

### 6.3 Disciplinary Investigations And Hearings

6.3:a. Upon receipt of a written complaint against a respiratory care practitioner or upon its own motion, the Council may request the Division of Professional Regulation to investigate the complaint or a charge against a respiratory care practitioner and the process established by Title 29, Delaware Code, § 8807 shall be followed with respect to any such matter.

6.3:b. Where feasible, within sixty (60) days of receiving a complaint from the Attorney General's Office after an investigation pursuant to Title 29, Delaware Code, § 8807(h), the Council shall conduct an evidentiary hearing upon notice to the licensee. Written findings of fact and conclusions of law shall be sent to the Board of Medical Practice along with any recommendation to revoke, to suspend, to refuse to renew a license, to place a licensee on probation, or to otherwise reprimand a licensee found guilty of unprofessional conduct in the licensee's professional activity which is likely to endanger the public health, safety or welfare, or the inability to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol.

## SECTION 7: WORKING STUDENT RESPIRATORY CARE PRACTITIONER

7.1 A working student respiratory care practitioner may only practice under the direct supervision of a licensed respiratory care practitioner. The scope of practice is limited to those activities for which there is documented evidence of competency.

7.2 Direct supervision means that a licensed respiratory care practitioner will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed respiratory care practitioner.

7.3 A student may apply for a student temporary permit. If approved by the Board, such permit may be issued by the

Division of Professional Regulation and may not be renewed. An application will be considered by the Council provided that the applicant meets the following criteria:

a. Applicant is matriculated in an approved Respiratory Care Program.

b. Application is submitted no more than 20 weeks prior to the program's announced graduation date.

c. Applicant shall submit to the Council a certified list of respiratory care services which have been successfully completed as a part of the respiratory care curriculum.

7.4 A student temporary permit shall automatically cease upon graduation or on the date that the holder is no longer matriculated in and not a graduate of a Respiratory Care Program. Any holder of a temporary student permit which ceases for any of the reasons stated above shall within five (5) working days surrender the permit to the Division of Professional Regulation.

7.5 Subject to Rule 7.4, a student temporary permit shall be valid for 16 weeks.

7.6 Respiratory care services which may be performed by the holder of a student temporary permit are limited to only those services which have been successfully completed by the student as part of a respiratory care program. Successful completion of these services must be certified by the program director on the Verification of Respiratory Care Education Form and submitted to the Council along with an attached competency check list. The holder of the student temporary permit must also meet the employer's standards for those procedures in specified patient care situations.

## SECTION 8: CONTINUING EDUCATION

### 8.1 Contact Hours Required for Renewal

8.1:a. The respiratory care practitioner shall be required to complete (20) twenty contact hours biennially and to retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes. All contact hours must be completed at least sixty (60) days prior to the end of the renewal year.

8.1:b. Contact hours shall be prorated for new licensees in accordance with the following schedule:  
Two years remaining in the licensing

cycle requires -	20 hours
One year remaining in the licensing cycle requires -	10 hours
Less than one year remaining in the licensing cycle -	exempt

## 8.2 Exemptions

8.2:a. A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2:b. A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

## 8.3 Criteria for Qualification of Continuing Education Program Offerings

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

### 8.3.1 Definition of Contact Hours

8.3.1:a. Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1:b. Recredentialing examination for certified respiratory therapy technician, (CRTT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

8.3.1:c. Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.

8.3.1:d. One (1) semester hour shall be equal to fifteen (15) contact hours.

8.3.1:e. One (1) quarter hour shall be equal to ten (10) contact hours.

8.3.1:f. Two (2) hours (120 minutes) of clinical educational experience shall be

equal to one (1) contact hour.

8.3.1:g. Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.

8.3.1:h. Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.

8.3.1:i. Performing clinical or laboratory research in health care shall be reviewed and may be granted an appropriate number of contact hour(s) at the Council's discretion.

### 8.3.2 Learner Objectives

8.3.2:a. Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.

8.3.2:b. Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.

### 8.3.3 Subject Matter

Appropriate subject matter for continuing education shall include the following:

8.3.3:a. Respiratory care science and practice and other scientific topics related thereto

8.3.3:b. Respiratory care education

8.3.3:c. Research in respiratory care and health care

8.3.3:d. Management, administration and supervision in health care delivery

8.3.3:e. Social, economic, political, legal aspects of health care

8.3.3:f. Teaching health care and consumer health education

8.3.3:g. Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license

### 8.3.4 Description

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.

### 8.3.5 Types of Activities/Programs

8.3.5:a. An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.

8.3.5:b. A correspondence course contains the

following elements:

1. developed by a professional group, such as an education corporation or professional association.
2. follows a logical sequence.
3. involves the learner by requiring active response to module materials and provides feedback.
4. contains a test to indicate progress and to verify completion of module.
5. supplies a bibliography for continued study.

8.3.5:c. A workshop contains the following elements:

1. developed by a knowledgeable individual or group in the subject matter.
2. follows a logical sequence.
3. involves the learner by requiring active response, demonstration and feedback.
4. requires hands-on experience.
5. supplies a bibliography for continued study.

8.3.5:d. Advanced and specialty examinations offered by the NBRC or other examinations as approved by the Council including:

1. Recredential exam.
2. Pediatric/perinatal specialty exam.
3. Pulmonary function credentialing exams
4. Advanced practitioner exam

8.3.5:e. Course preparation

8.3.5:f. Clinical education experience must be:

1. Planned and supervised.
2. Extended beyond the basic level of preparation of the individual who is licensed.
3. Based on a planned program of study.
4. Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.
5. Conducted in a clinical setting.

8.4 Educational Providers

8.4:a. Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

1. American Association for Respiratory Care.
2. American Medical Association under Physician Category I.
3. American Thoracic Society
4. American Association of Cardiovascular and Pulmonary Rehabilitation
5. American Heart Association
6. American Nurses Association
7. American College of Chest Physicians
8. American Society of Anesthesiologists
9. American Sleep Disorders Association
10. Other professional or educational organizations as approved periodically by the Council.

8.5 Accumulation of Continuing Education

8.5:a. When a licensee applies for license renewal, a minimum of twenty (20) contact hours in activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours biennially shall include the following categories:

8.5:a.1. A minimum of 12 contact hours of required continuing education contact hours required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, a, b, or c.

8.5:a.2. The remaining 8 contact hours of the required continuing education contact hours required for renewal may be selected from Subsection 8.3.3, Subject Matter.

8.5:b. Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours a year as follows:

1. Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.
2. Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.
3. Preparation and publication of respiratory care theory, practice or science, to a maximum of four contact hours.
4. Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.
5. Infection control programs from facility or agency to a maximum of one contact hour.
6. Correspondence courses that are not within the curriculum that leads to an academic degree beyond that required for the original license to a maximum of four contact hours.
7. Presentation or participation in review or recertification in American Heart Association or Red Cross provider or instructor programs, such as Advanced Cardiac Life Support, Basic Life Support, Pediatric Advanced Life Support, or CPR, to a maximum of two contact hours per program.
8. Academic course work, related to health care or health care administration, to a maximum of four contact hours.

8.6 Review/Approval of Continuing Education Contact Hours

8.6:a. The Council may review the documentation of any respiratory care practitioner's continuing education.

8.6:b. The Council may determine whether the activity/program documentation submitted meets all criteria for continuing education as specified in these regulations.

8.6:c. Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.

8.6:d. Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.

8.6:e. Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

8.6:f. Each license not renewed in accordance with this section shall expire, but may within a period of three years thereafter be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware.

8.6:g. An applicant wishing to reinstate an expired license shall provide documentation establishing completion of the required 20 hours of continuing education during the two-year period preceding the application for renewal.

#### SECTION 9. RENEWAL OF LICENSE

9.1:a To renew a license to practice respiratory care, a licensee must complete a renewal form provided by the Division of Professional Regulation certifying completion of continuing education.

9.2:b Renewal notices will be mailed by the Division of Professional Regulation sixty (60) days prior to the expiration of the license.

#### SECTION 10. APPLICATION FOR A LICENSE

##### 10.1 Application

10.1:a An application for a license to practice respiratory care must be completed on a form provided by the Board of Medical Practice and returned to the Board Office with the required, non-refundable fee.

##### 10.2 Completed Application

10.2:a An application for a license to practice respiratory care shall be considered completed when the Board has received the following documentation:

- a. Non-refundable application fee
- b. Completed application for licensure
- c. Verification of education form
- d. Verification of national examination score
- e. Letter(s) of good standing from other states where the applicant may hold a license, if applicable.
- f. Any other information requested in the

application.

##### 10.3 Appeals Process

10.3:a When the Council determines that an applicant does not meet the qualifications for licensure as prescribed under Title 24, Delaware Code, § 1770B and the Rules and Regulations governing the practice of respiratory care, the Council shall make such recommendation to the Board proposing to deny the application. The Council shall notify the applicant of its intended action and reasons thereof. The Council shall inform the applicant of an appeals process prescribed under Title 29, Delaware Code, § 10131.

---

## **DEPARTMENT OF ADMINISTRATIVE SERVICES**

### **DIVISION OF PROFESSIONAL REGULATION DELAWARE REAL ESTATE COMMISSION**

Statutory Authority: 24 Delaware Code,  
Section 2905 (24 Del.C. 2905)

BEFORE THE DELAWARE REAL ESTATE COMMISSION

IN RE: |  
ADOPTION OF REGULATIONS |

#### ORDER

WHEREAS, pursuant to 24 Del. C. §2905, the Delaware Real Estate Commission (the "Commission") proposed to adopt amendments to its rules and regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, pursuant to 29 Del. C. §10115, notice was given to the public that a hearing would be held on March 12, 1998 at 9:00 a.m in Dover, Delaware to consider the proposed amendments; and

WHEREAS, the notice invited the public to submit comments orally or in writing regarding the proposed amendments; and

WHEREAS, a hearing was held on March 12, 1998 at which a quorum of the Commission was present; and

WHEREAS, the Commission heard oral comments at the hearing and received several written comments, documents and other submissions which were made part of the record (and identified as Exhibits 1-7); and

WHEREAS, the Commission finds the proposed amendments serve to clarify its rules and regulations and to ensure that its rules and regulations are in compliance with 24 Del. C. Ch. 29.

NOW, THEREFORE, based on the Commission's authority to adopt and revise rules and regulations pursuant to 24 Del. C. §2905, it is the decision of the Commission to adopt the proposed amendment to its rules and regulations, with the exception of proposed Rule XV.B. The Commission defers action on proposed Rule XV.B. in order to further consider the public comments on that rule. The other rules and regulations as amended, a copy of which are attached hereto as Exhibit "B" and incorporated herein, are to be effective thirty (30) days from the date of this Order.

IT IS SO ORDERED this 14<sup>th</sup> day of April, 1998.

#### DELAWARE REAL ESTATE COMMISSION

H. James Kelleher, Jr., Chairman  
Ann K. Baker  
Judy L. Bennett  
Taube R. Carpenter  
Herbert W. Dayton  
H. Hunter Lott, III  
James D. McGinnis  
Mary B. Parker

#### Summary of Changes to the Rules and Regulations

I.C.3 (Responsibility) - reworded to include "civil penalty" in the list of possible disciplinary actions which may be taken by the Commission and to clarify that brokers as well as salespersons may be held responsible for violations by a salesperson.

II. (Requirements for Obtaining a Salesperson's License) - non-substantive revision to clarify the application process for the salesperson and to update reference to the statute in II.D.1.

III. (Requirements for Obtaining a Real Estate Broker's License) - non-substantive revision to clarify the application process for the broker and to update reference to the statute in III.F.1.

V.C. (Escrow Accounts) - revised to clarify the language regarding the amount of the broker's own funds which may be maintained in the escrow account to \$100 maximum in order to avoid the account being closed.

V.E. (Escrow Accounts) - previous wording required that broker open an escrow account in a "Delaware bank" now

states "a bank with an office in Delaware".

V.F. (Escrow Accounts) - reword for clarity.

VI.A. (Transfer of Broker or Salesperson) - revised to include the requirement that a current certificate of licensure be provided by all nonresident brokers who are transferring a license.

VI.C. (Transfer of Broker or Salesperson) - Added to require that a broker moving an office report the move to the Commission in writing by filing a new office application 30 days prior to opening the new office.

VII. (Discipline of a Real Estate Broker or Salesperson) was struck in its entirety.

VIII. (Refund of Fees) was struck in its entirety.

IX.A. (Written Listing Agreements) - Non-substantive correction to "Listing agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner."

IX.B (Copy of Agreements) - Non-substantive correction adding the word "the" to the last sentence which now reads: "It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution."

IX.C.3. (Advertising) - Non-substantive correction, was revised to replace "he/she" with "the licensee".

IX.C.4. (Advertising) - Non-substantive revision to replace the capital "C" in "Company" with a lower case "c" and to add the word "the" for readability as follows: "All advertisements for personal promotion of licensees must include the name of the company under whom the licensee is licensed.

IX.C.5 (Advertising) was struck in its entirety.

IX.D.2 (Separate Office) - revised by adding the word "permanent" to enforce the requirement of the statute regarding office signs in private home offices: "Where the office is located in a private home, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed, in a conspicuous location."

Add New Rule IX.E. (Compensation) - Clarifies the need for the licensee to disclose to all parties any compensation from more than one party to a transaction that the licensee intends

to accept, and prohibits the licensee from accepting any commission, rebate or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

Add New Rule IX.F (Duty to Cooperate) - Identifies the need for licensees to cooperate with other licensees involved in a transaction except when such cooperation is not in the best interest of a client. Further this obligation does not imply any obligation to share commissions or otherwise compensate another licensee.

X.A. (Renewal Required by Expiration Date on License) - revised to include credit certification procedure for renewal, add 15 hours as the number of required continuing education credits for the license renewal, and to accommodate change of expiration date.

X.B.1. (Delinquency Fee) - Revised to accommodate a change of expiration date and to clarify the late fee payment process.

X.C.1. (Reinstatement of License) - Revised for readability and to accommodate a change of expiration date.

X.C.2. (Reinstatement of License) - Deleted requirement of three (3) letters of character reference, stating that the applicant is of good moral character in compliance with 24 Del.C. §2907(a)(2).

X.D. (Certification of Continuing Education) - Rewritten into Rule X.A.

XI. (Inactive Status) - Deleted in its entirety.

XII.A. (Fee Charge for Primers) - Rerword to clarify that the Division of Professional Regulation sets fee for Primer.

XIII.A. (Disclosure) - Revised for readability.

XIII.B. (Disclosure) - Non-substantive change.

XIII.C. (Disclosure) - Was revised for clarity.

XIV.A. (Hearings) - Was revised for clarity.

XV. (Inducements) - Add language to prohibit payment of commission by a licensee to another licensed person with the knowledge that all or a portion of the payment will in turn be paid out or given to an unlicensed person.

XVI. (Necessity of License) - Non-substantive change.

XVI.B. (Necessity of License) - Non-substantive change.

Add New Rule Regarding Out of State Land Sales Applications - Outlines requirements for initial applications and subsequent addition of units, lots, etc.

Renumber all Rules and Subsections as necessary.

## TABLE OF CONTENTS Section II

SECTIONS:	PAGE
Introduction	1
Requirements for Obtaining a Salesperson's License	3
Requirements for Obtaining a Real Estate Broker's License	4
Reciprocal Licenses	6
Escrow Accounts	7
Transfer of Broker or Salesperson Discipline of a Real Estate Broker or Salesperson	8
Refund of Fees	9
Business Transactions and Practices	11
Renewal of Licenses	13
Inactive Status	14
Availability of Rules and Regulations	15
Disclosure	16
Hearings	18
Inducements	19
Necessity of License	20
<u>Out of State Land Sales Applications</u>	

**\* Please note that the above page numbers refer to the original document, not to pages in the Register.**

For Revision Effective May 13, 1998

## DELAWARE REAL ESTATE COMMISSION RULES AND REGULATIONS

### I. INTRODUCTION

#### A. Authority

1. Pursuant to 24 Del. C. Section 2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

2. The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

3. The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 Del. C. Chapter 29.

### B. Applicability

The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

### C. Responsibility

1. It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees.

2. Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

3. The failure of any licensee to comply with the Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's the and/or salesperson's individual's license.

## II. REQUIREMENTS FOR OBTAINING A SALESPERSON'S LICENSE

The Commission shall consider any applicant who has successfully completed the following:

### A. Course

1. The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2. Effective May 1, 1978, all real estate courses shall be limited to thirty-five (35) students in each class. This applies to both day and night courses. All other regu-

lations regarding real estate courses are issued under "Guidelines for Fulfilling the Delaware Real Estate Continuing Education Requirements Schools". The Commission reserves the right to grant exception to this limitation.

### B. Examination

1. Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must and forward all necessary documentation to the Commission to be considered for licensure.

2. An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

### C. Ability to conduct business

1. The Commission reserves the right to reject an applicant based on his or her inability to transact real estate business in a competent manner or if it determines that the applicant lacks a reputation for honesty, truthfulness and fair dealings.

2. The minimum age at which a salesperson's license can be issued is eighteen (18).

### D. Fees

The Commission shall not consider an application for a salesperson's license unless such application is submitted with evidence of payment of the following fees:

1. Salesperson's application license fee established by the Division of Professional Regulation pursuant to 29 Del. C. Section 8807(d)+0(d).

~~2. Processing fee established by the Division of Professional Regulation pursuant to 29 Del. C. Section 8810(d).~~

~~3. Guaranty Fund fee established pursuant to 24 Del. C. Sec. 2921(b).~~

## III. REQUIREMENTS FOR OBTAINING A REAL ESTATE BROKER'S LICENSE

The Commission shall consider the application of any person for a broker's license upon completion of the following:

### A. Course

1. The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

2. Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

### BA. Experience

1. A salesperson must hold an active license be

actively working in the real estate profession for five (5) continuous years immediately preceding application continuously before he or she can apply for a broker's license.

2. The applicant shall submit to the Commission a list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. ~~Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license.~~ These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3. The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

**B. Course**

~~1. The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.~~

~~2. Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.~~

**C. Examination**

Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by Paragraph E of this rule to the Commission to be considered for licensure.

**D. Ability to conduct business**

1. The Commission reserves the right to reject an applicant based on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience, a reputation for honesty, truthfulness and fair dealings.

2. The minimum age at which a person can be issued a broker's license is twenty-three (23).

**E. Credit Report**

Each applicant shall submit a credit report from an approved credit reporting agency, which report shall be made directly to the Commission.

**F. Fees**

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

1. Broker's application license fee established by the Division of Professional Regulation pursuant to 29 Del. C. Sec. ~~8807+0(d)~~.

2. ~~Processing fee established by the Division of Professional Regulation pursuant to 29 Del. C. Sec. 8810(d).~~

3. ~~Guaranty Fund fee unless paid previously pursuant to 24 Del. C. Sec. 2921(b).~~

**IV. RECIPROCAL LICENSES**

**A. Requirements**

1. A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident broker's license under 24 Del. C. Sec. 2909(a).

2. A non-resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a broker's license issued by the Commission.

3. The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules II.B. or III.C. provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.

**V. ESCROW ACCOUNTS**

A. All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

B. All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker.

C. A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in a specific amount of his own funds from \$25.00 to \$100.00 in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

D. A broker shall maintain in his office a complete record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

E. An escrow account must be opened by the broker

in a Delaware bank with an office located in Delaware in order to receive, maintain or renew a valid license.

F. The Commission may summarily suspend (upon hearing) the license of any broker who fails to comply with Paragraph D, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension ~~may be immediate and~~ shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

G. Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

#### VI. TRANSFER OF BROKER OR SALESPERSON

A. All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

B. The Commission reserves the right to waive this requirement upon a determination of good cause.

C. All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

#### VII. DISCIPLINE OF A REAL ESTATE BROKER OR SALESPERSON

~~A. In such circumstances, when it becomes necessary to discipline a licensee, the Commission shall follow the procedures set forth in these Rules and Regulations and the Administrative Procedures Act under Title 29, Section 6401-6434.~~

#### VIII. REFUND OF FEES

~~No refund of fees shall be made to any applicant who fails to qualify for a license or who requests a change in status after a renewal has been issued.~~

#### IX. BUSINESS TRANSACTIONS AND PRACTICES

##### A. Written Listing Agreements

Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

##### B. Copy of agreements

Every party to a listing agreement, agreement of purchase and sale, or lease shall be furnished with an executed

copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

##### C. Advertising

1. Any licensee who advertises, on signs, newspapers or any other media, property personally owned and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee.

2. Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs.

3. Any licensee who advertises, by signs, newspaper, or any other media, any property for sale, lease, exchange, or transfer that is listed with a broker must include in the advertisement the name of the broker under whom the licensee he/she is licensed.

4. All advertisements for personal promotion of licensees must include the name of the Company under whom the licensee is licensed.

~~5. Size, dimension, proportion, and prominence of licensee's name and company's and/or broker's name referred to in paragraph 2, 3, and 4 of this subsection shall be subject to the Broker-of-Record approval.~~

##### D. Separate Office

1. Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. Nothing contained herein, however, shall preclude said persons from sharing facilities with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

2. Where the office is located in a private home, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed, in a conspicuous location.

##### E. Compensation

1. Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

2. When acting as agent, a licensee shall not accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

##### F. Duty to Cooperate

Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions or to otherwise compensate another broker or salesperson.

## X. RENEWAL OF LICENSES

### A. Renewal Required by Expiration Date on License July 1

In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon July 1, shall not list, sell, lease or negotiate for others after such date.

### B. Delinquency Fee

1. If a licensee fails to renew his or her license prior to the expiration date shown thereon July 1, he or she shall be required to pay the full license fee and an additional delinquency fee (amount equal to one half of the yearly license fee) delinquency fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon before September 1, the license shall be cancelled.

2. Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.

### C. Reinstatement of License

1. A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date by March 1 of the next year, the licensee shall be required to take the state portion of the examination. ~~to be reinstated.~~ If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

2. No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the

following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission.; ~~including the submission of three (3) letters of character reference, stating that such individual is of good moral character.~~ Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

### ~~D. Certification of Continuing Education~~

~~The broker of record shall certify to the Commission, on a form supplied by the Commission, at the time of license renewal that all licensees in his/her office have complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with their renewal application and fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement.~~

## XI. INACTIVE STATUS

~~Upon the payment of a fee established by the Division of Professional Regulation, the Commission may place any licensee on inactive status for a period not to exceed two (2) years.~~

## XII. AVAILABILITY OF RULES AND REGULATIONS

### A. Fee Charge for Primers

Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may shall be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material. ~~or such fee as stipulated by the Commission.~~

## XIII. DISCLOSURE

A. A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to ALL persons with whom he or she is transacting such business, ~~prior previous~~ to the execution of any agreements and shall include on the agreement such status. ~~as a licensee on the agreement.~~

### B. Buy-In-Disclosure

Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will BUY your home", or words to that effect, shall disclose in

the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

C. A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. ~~The Such disclosure as to whom the licensee represents should shall~~ be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made ~~whom licensee does not represent, but, in any event,~~ prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

The written confirmation of disclosure in the contract shall be worded as follows:

With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

D. If a property is the subject of an agreement of sale

but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

#### XIV. HEARINGS

A. ~~When~~ If a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not ~~cannot~~ change. ~~the status of his or her license until the pending case is settled.~~

B. There shall be a maximum of one (1) postponement for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission reserves the right to act based upon the evidence presented.

#### XV. INDUCEMENTS

A. Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to NON-LICENSED PERSONS, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

~~**FB. No licensee shall knowingly pay a commission, or other compensation to a licensed person knowing that licensee will in turn pay a portion or all of that which is received to a person who does not hold a real estate license.**~~

#### XVI. NECESSITY OF LICENSE

A. For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a licensee is on site. This subsection shall not prohibit a seller from showing their own house.

B. For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

#### XIV. OUT OF STATE LAND SALES APPLICATIONS

A. All applications for registration of an out of state land sale must include the following:

1. A completed license application on the form provided by the Commission.
2. A \$100 filing fee made payable to the State of Delaware.
3. A valid Business License issued by the State of Delaware, Division of Revenue.

4. A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of State and a letter identifying the applicant's registered agent in the State of Delaware.

5. The name and address of the applicant's resident broker in Delaware and a completed Consent of Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.

6. A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.

7. Copies of any agreements or contracts to be utilized in transactions completed pursuant to the registration.

B. Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 2 through 4 of Section A above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

C. If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must, within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

---

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

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

**BEFORE THE DELAWARE STATE LOTTERY OFFICE  
IN RE: PROPOSED RULES AND REGULATIONS**

**ORDER**

Pursuant to 29 Del. C. section 4805(a), the Delaware

State Lottery Office hereby issues this Order regarding proposed amendments to the existing Lottery Regulations. Following notice and a request for public comments, the Lottery makes the following findings and conclusions:

**SUMMARY OF EVIDENCE AND INFORMATION  
SUBMITTED**

1. The Lottery posted public notice of the proposed Amended Regulations in the Register of Regulations and in the News-Journal and Delaware State News. On March 17, 1998, the Lottery received a letter from Robert Osgood commenting on the proposed regulations. Mr. Osgood is the Chairperson for the Delaware State Council for Persons with Disabilities. Mr. Osgood requested that section (1)(j) of the Regulations be revised to mandate that surveys of retailers be completed by a "qualified individual." He also suggested that section (3)(c) provide that retailer locations must comply with current ADA Accessibility Guidelines "and/or any future amendments to ADAAG." Finally, Mr. Osgood recommended that section 6(e) be revised to clarify that "the 25% threshold is additive over the years when modifications are required to ensure accessibility of a location."

**FINDINGS OF FACT**

2. The public was given notice and an opportunity to provide the Lottery with comments in writing on the proposed Regulations. The written evidence received by the Lottery is summarized in paragraph #1. The Lottery has considered the written comments submitted to the Lottery.

3. The Lottery finds that the comments submitted by Mr. Osgood were made in a good faith effort to clarify the existing proposed regulations. The Lottery does find the recommended changes are not needed as the current regulations adequately address the agency's guidelines and procedures. First, under section (1)(j), the Lottery finds it is implied that the Lottery would only use persons who are qualified to conduct surveys of retailer sights. Under section (3)(c), the Lottery will review retailer locations to determine compliance with ADA Accessibility Guidelines (ADAAG) published in the Federal Register on July 26, 1991. These guidelines are the federal requirements that are currently in place and define the term "accessible" as contained in section 1(a) of the proposed Regulations. The Lottery does not believe an amendment is needed to reflect the fact that the Lottery will follow the currently effective federal statutes and requirements. The Lottery is legally required to do so by the federal law and it does not believe the regulations need to be specifically amended to reflect this fact.

4. The Lottery has reviewed Mr. Osgood's proposed revision of section (6)(e). Mr. Osgood requests language be

added stating that the 25% limit for an exemption is “additive over the years.” The Lottery is not exactly clear on what is being requested by this proposal. The regulations already specify that the exemption for undue hardship applies if the cost of making changes to the premises exceeds 25% of the retailer’s annual lottery compensation. Section (6)(e). These regulations also clearly provide, that under this exemption, the retailer is required to make annual improvements toward compliance in an amount not to exceed 25% of the retailer commissions. The regulations provide that this requirement to make improvements continues “on a year-to year basis until all the improvements and modifications required by this rule have been completed.” The Lottery finds the existing regulation in its proposed form is clear and adequately spells out the retailer’s obligations. The Lottery will adopt this regulations in its proposed form.

### CONCLUSIONS

5. The proposed Regulations were promulgated by the Lottery Office in accord with its statutory duties and authority as set forth in 29 Del. C. section 4805(a). The Lottery deems the proposed Regulations necessary for the effective enforcement of 29 Del. C. section 4805 and for the full and efficient performance of the Lottery’s duties thereunder. The Lottery concludes that the adoption of the proposed Regulations would be in the best interests of the citizens of the State of Delaware and consonant with the dignity of the State and the general welfare of the people under section 4805(a).

6. The Lottery will adopt the proposed Amended Regulations pursuant to 29 Del. C. section 4805 and 29 Del. C. section 10118. The Lottery has considered the written comments of the public prior to issuance of this Order. A copy of the adopted regulations are attached as exhibit #1 and incorporated as part of this Order.

7. The effective date of this Order shall be ten (10) days from the date of publication of this Order in the Register of Regulations on May 1, 1998.

It is so ordered this 14<sup>th</sup> day of April, 1998.

Vernon Kirk  
Hearing Officer  
Delaware State Lottery Office

---

Delaware Lottery Final Regulation

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

#### (1) Definitions

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

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

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

d) “Director” means the Director of the State Lottery Office.

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

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

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

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

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

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

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

**(2) Purpose**

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

b) In defining the scope or extent of any duty imposed by these regulations including compliance with the standard of accessibility defined in paragraph 3(b), higher or more comprehensive obligations established by otherwise applicable federal, state or local enactment may be considered.

**(3) General Requirements**

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

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

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

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

3) Entrance;

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

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

**(4) New License Applicants**

a) License applicants. The State Lottery Office shall inspect the site of applicants for compliance with

this regulation prior to granting a license. The State Lottery Office will not grant a license to an applicant who is not in compliance with this regulation.

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

**(5) Current Retailers**

a) The State Lottery Office shall inspect the site of each lottery retailer for compliance with this regulation.

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

c) Extensions. The Director may grant an extension of up to 90 days to allow a current retailer to complete barrier removal actions identified in the Inspection Report.

(i) Any request for an extension must be in writing, and shall include specific reasons for an extension and supporting documentation.

(ii) The Director shall grant an extension only upon showing of good cause.

**(6) Permitted exemptions**

a) The following exemptions to the requirements of this rule may be granted by the Director. The Director shall review the circumstances and supporting documentation provided by the retailer to determine if the retailer's request for an exemption should be granted. The Director shall determine the type and scope of documentation to be required for each exemption classification. All decisions made by the Director shall be final; any retailer whose request for an exemption is denied by the Director shall be required to satisfy the requirements of this rule as a condition for maintaining its eligibility for a Lottery retailer contract.

b) Historic properties. To the extent a historic building is exempt under federal law, and if barrier removal would threaten or destroy the historic significance of the structure, this rule shall not apply to a

qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

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

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

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

f) Alternative methods. Where an exemption is granted in accordance with the provisions of this subchapter, the lottery retailer shall make the lottery related goods and services available through alternative methods. Examples of alternative methods include, but are not limited to:

1) Providing curb service;

2) Directing by signage to the nearest accessible lottery retailer.

#### (7) Complaints Relating to Non-Accessibility

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

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

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

d) If a retailer fails to submit a plan within 30 days of issuance of the letter of noncompliance and has not

requested an extension of time to submit a plan, the Lottery may proceed to initiate termination proceedings.

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

f) If the corrective action taken by the lottery retailer corrects the deficiencies specified in the letter of noncompliance as originally issued or as later revised or reissued or if the onsite inspection of the lottery retailer facility reveals compliance with this regulation, the Lottery will issue a notice of compliance. Until this notice is issued, a complaint will be considered pending.

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

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

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

#### (8) Request for Hearings

a) If the Lottery proposes the denial of an application for a license or the suspension or revocation of a lottery retailer's license pursuant to this regulation, the agency shall give the applicant or lottery retailer written notice of the time and place of the administrative

hearing not later than 30 days before the date of the hearing.

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

#### (9) Non-Exclusivity of Remedies

a) Remedies established by these regulations are not intended to supplant, restrict or otherwise impair resort to remedies otherwise available under law, including those authorized by the ADA and Del. Code Ann., title 6, ch. 45 (1993).

---

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

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

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

Order No. [98-F-0012](#)

#### ORDER

#### SUMMARY OF EVIDENCE AND INFORMATION

Pursuant to due notice, 1:9 Del. R. 1351-1357 (March 1, 1998), the Department of Natural Resources and Environmental Control proposed to enact amendments to tidal finfish regulations to reduce the recreational harvest of summer flounder; maintain the current commercial fishery for weakfish; reduce the harvest of tautog and reduce the fishing mortality on black sea bass to be consistent with the Fishery Management Plans for summer flounder, weakfish, tautog, and black sea bass. These plans have been approved by the Atlantic States Marine Fisheries Commission. The requirements in these plans must be complied with by the states according to the provisions of the Atlantic Coastal Fisheries Cooperative Management Plan.

A public hearing was held on March 26, 1998 in Dover, Delaware in front of Charles A. Lesser, Fisheries Administrator for the Department and the Department's designee to receive testimony and evidence. His report is attached to this order.

#### FINDINGS OF FACT

The FMP for weakfish requires Delaware to continue

its reduced commercial fishing effort in 1998 by closing 34 days to gill netting in the Delaware Bay and Ocean.

The FMP for summer flounder requires Delaware to reduce the recreational creel limit in 1998 from 10 to 8 and to increase the minimum recreational size limit from 14.5 inches to 15 inches.

The FMP for black sea bass requires Delaware to close the recreational fishery on August 1 through August 15. It also requires Delaware to impose trip limits on commercial fishermen and close the commercial fishery if a federal quarterly quota is reached.

The FMP for tautog requires Delaware to reduce its annual exploitation rate to 20% in 1998. This requires a 35.5% reduction in the landings relative to 1997 landings. This can be accomplished by a reduction in the creel limit and/or a seasonal closure.

No significant testimony or evidence was submitted contrary to the requirements of the FMP's for summer flounder, black sea bass, or weakfish. Testimony was given on the six options presented by staff that would reduce the tautog exploitation to 20%. Most of this testimony supported larger creel limits and the shortest seasonal closure.

#### CONCLUSIONS

The appropriate amendments to Tidal Finfish Regulation Nos. 4, 10, 22 and 23 should be implemented to bring Delaware into compliance with fishery management plans for summer flounder, weakfish, tautog and black sea bass.

Future considerations should be given to collecting effort and harvest data relative to recreational spear fishing for tautog in order for that segment of the recreational fishery to be addressed independently. Until this data is collected, spear fishing creel limits and seasons have to coincide with recreational fishing creel limits and seasonal closures to remain in compliance with the tautog FMP.

#### ORDER

It is hereby ordered, this 7th day of April, 1998 that amendments to tidal finfish regulations Nos. 4, 10, 22 and 23, copies of which are attached hereto, are adopted pursuant to 7 Del. C. §903 (e)(2)(a) and are supported by the Department's findings on the evidence and testimony received. This order shall become effective on May 11, 1998.

Christophe A.G. Tulou, Secretary,  
Department of Natural Resources and  
Environmental Control.

Be it adopted by the Department of Natural Resources and Environmental Control the following amendments:

Section 1. Amend Tidal Finfish Regulation No. 4, SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS; in subsections (b) and (j) by striking the words "ten (10)" and substituting in lieu thereof the words "eight (8)";

Further amend Tidal Finfish Regulation No. 4 in subsections (c) and (d) by striking the words "fourteen and one-half (14.5)" and substitute in lieu thereof the words "fifteen (15)."

Section 2. Amend Tidal Finfish Regulation No. 10, WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS; by striking subsection (e) in its entirety and substitute in lieu thereof the following:

"(e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Beginning at 12:01 a.m. on May 1, 1998 and ending at midnight on May 10, 1998:

beginning at 12:01 a.m. on May 15, 1998 and ending at midnight on May 17, 1998;

beginning at 12:01 a.m. on May 22, 1998 and ending at midnight on May 24, 1998;

beginning at 12:01 a.m. on May 29, 1998 and ending at midnight on May 31, 1998;

beginning at 12:01 a.m. on June 5, 1998 and ending at midnight on June 7, 1998;

beginning at 12:01 a.m. on June 12, 1998 and ending at midnight on June 14, 1998;

beginning at 12:01 a.m. on June 19, 1998 and ending at midnight on June 21, 1998;

and beginning 12:01 a.m. on June 25, 1998 and ending at midnight on June 30, 1998."

Section 3. Amend Tidal Finfish Regulation No. 22, TAUTOG SIZE LIMITS; POSSESSION LIMITS, by striking it in its entirety and substitute in lieu thereof the following:

"TIDAL FINFISH REGULATION NO. 22 TAUTOG SIZE LIMITS; POSSESSION LIMITS; SEASONS

(a) It shall be unlawful for any person to possess any tautog Tautoga onitis, less than fourteen (14) inches in total length during the period beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing.

(b) It shall be unlawful for any person to possess any tautog less than fifteen (15) inches in total length during the period beginning at 12:01 a.m. on April 1 and ending at 12:00 p.m. on June 30, next ensuing.

(c) Notwithstanding the provisions of 7 Del. C. §938 and §939, it shall be unlawful for any person to possess more than three (3) tautog during the period beginning at 12:01 on April 1 and ending at 12:00 p.m. on June 30, next ensuing, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

(d) It shall be unlawful for any person to possess more than ten (10) tautog during the period beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

(e) Notwithstanding the provisions of subsections (a) and (d) of this regulation, it shall be unlawful for any person to possess any tautog during the period beginning at 12:01 a.m. on September 8 and ending at 12:00 p.m. on September 18, next ensuing, except in said person's personal abode or temporary or transient place of lodging."

Section 4. Amend Tidal Finfish Regulation No. 23, **BLACK SEA BASS SIZE LIMIT**, by adding the words "TRIP LIMITS; SEASONS; QUOTAS" after the word "LIMIT" in the title.

Further amend Tidal Finfish Regulation No. 23 in subsection (a) by striking the words "nine (9)" as they appear therein and substitute in lieu thereof the words "ten (10)."

Further amend Tidal Finfish Regulation No. 23 in subsection (b) by striking subsection (b) in its entirety and substitute in lieu thereof the following:

"(b) It shall be unlawful for any recreational fisherman to take and reduce to possession any black sea bass or to land any black sea bass during the period beginning at 12:01 a.m. on August 1 and ending at midnight on August 15."

Further amend Tidal Finfish Regulation No. 23 by adding a new subsection (c) to read as follows:

"(c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the following quantities of black sea bass during the quarter listed:

First Quarter (January, February and March) - 11,000 lbs.

Second Quarter (April, May and June) - 7,000 lbs.

Third Quarter (July, August and September) - 3,000 lbs.

Fourth Quarter (October, November and December) - 4,000 lbs.

"One trip" shall mean the time between a vessel leaving

its home port and the next time said vessel returns to any port in Delaware."

Further amend Tidal Finfish Regulation No. 23 by adding a new subsection (d) to read as follows:

"(d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter indicated in subsection (c) after the date in said quarter that the National Marine Fisheries Services determines that quarter's quota is filled."

Section 5. Amendments to Tidal Finfish Regulation Nos. 4, 10, 22 and 23 will have a significant impact upon the conservation of the summer flounder fishery, the weakfish fishery, the tautog fishery and the black sea bass fishery.

Section 6. These amendments to Tidal Finfish Regulation Nos. 4, 10, 22 and 23 shall become effective on May 11, 1998.

---

Final Regulations

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

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

b) It shall be unlawful for any recreational fisherman to have in possession more than ten ~~(10)~~ **(8)** summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than ~~fourteen and one-half (14.5)~~ **fifteen (15)** inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, other than a licensed commercial finfisherman with a gill net permit, while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~fourteen and one-half (14.5)~~ **fifteen (15)** inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) It shall be unlawful for any licensed commercial finfisherman with a gill net permit to have in possession any part of a summer flounder that measures less than fourteen (14) inches between said part's two most distant points unless

said person also has in possession the head, backbone and tail intact from which said part was removed.

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

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

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

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

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

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

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

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

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

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

---

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

a) It shall be unlawful for any person to possess weakfish *Cynoscion regalis* taken with a hook and line, that measure

less than thirteen (13) inches, total length.

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

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

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

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Beginning at 12:01 AM on May 3, 1997 and ending at midnight on May 11, 1997;

beginning at 12:01 AM on May 16, 1997 and ending at midnight on May 18, 1997;

beginning at 12:01 AM on May 23, 1997 and ending at midnight on May 26, 1997;

beginning at 12:01 AM on May 30, 1997 and ending at midnight on June 1, 1997;

beginning at 12:01 AM on June 6, 1997 and ending at midnight on June 8, 1997;

beginning at 12:01 AM on June 13, 1997 and ending at midnight on June 15, 1997;

and beginning at 12:01 AM on June 20, 1997 and ending at midnight on June 28, 1997.

Beginning at 12:01 AM on May 1, 1998 and ending at midnight on May 10, 1998;

beginning at 12:01 AM on May 15, 1998 and ending at midnight on May 17, 1998;

beginning at 12:01 AM on May 22, 1998 and ending at midnight on May 24, 1998;

beginning at 12:01 AM on May 29, 1998 and ending at

midnight on May 31, 1998;

beginning at 12:01 AM on June 5, 1998 and ending at midnight on June 7, 1998;

beginning at 12:01 AM on June 12, 1998 and ending at midnight on June 14, 1998;

beginning at 12:01 AM on June 19, 1998 and ending at midnight on June 21, 1998;

and beginning at 12:01 AM on June 25, 1998 and ending at midnight on June 30, 1998.”

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

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

---

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

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

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

Also in effect are §938, 7 Delaware Code and §939, 7 Delaware Code:

§938. Creel limits on finfish; exceptions:

(a) Unless otherwise provided in this chapter, or by regulations promulgated by the Department, or permit issued by the Division, a fisher shall not have in possession at or between the place caught and the fisher’s personal abode or temporary or transient place of lodging more finfish than exceed the following numbers for the species listed:

10 for tautog (*Tautoga onitis*) or blackfish.

§939. Fishing seasons; exception:

(a) Notwithstanding §938 of this title, it shall be unlawful for any person to possess or retain more than 3 tautog (*Tautoga onitis*) during the period beginning at 12:01 a.m. on April 1 through and including midnight on June 30 next ensuing except that an individual who free dives without the aid of an underwater mechanical breathing device may take by spear and possess not more than 10 tautog per day during this period:

Notwithstanding §929(b) (7) of this title, it shall be unlawful to possess any tautog during the period beginning at 12:01 a.m. on April 1 through and including midnight on June 30, next ensuing, which measures less than 15 inches long in total length:

(b) Each tautog taken and retained in violation of the provisions in subsection (a) of this section shall constitute a separate violation:

(a) It shall be unlawful for any person to possess any tautog *Tautoga onitis*, less than fourteen (14) inches in total length during the period beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing.

(b) It shall be unlawful for any person to possess any tautog less than fifteen (15) inches in total length during the period beginning at 12:01 a.m. on April 1 and ending at 12:00 p.m. on June 30, next ensuing.

(c) Notwithstanding the provisions of 7 Del. C. §938 and §939, it shall be unlawful for any person to possess more than three (3) tautog during the period beginning at 12:01 on April 1 and ending at 12:00 p.m. on June 30, next ensuing, at or between the place where said tautog were caught and said person’s personal abode or temporary or transient place of lodging.

(d) It shall be unlawful for any person to possess more than ten (10) tautog during the period beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing, at or between the place where said tautog were caught and said person’s personal abode or temporary or transient place of lodging.

(e) Notwithstanding the provisions of subsections (a) and (d) of this regulation, it shall be unlawful for any person to possess any tautog during the period beginning at 12:01 a.m. on September 8 and ending at 12:00 p.m. on September 18, next ensuing, except in said person’s personal abode or temporary or transient place of lodging.

**TIDAL FINFISH REGULATION NO.23 BLACK SEA BASS  
SIZE LIMIT; TRIP LIMITS; SEASONS; [QUOTAS.]**

a) It shall be unlawful for any person to have in possession any black sea bass (*Centropristis striata*) that measures less than ~~nine (9)~~ ten (10) inches, total length.

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

It shall be unlawful for any recreational fisherman to take and reduce to possession any black sea bass or to land any black sea bass during the period beginning at 12:01 a.m. on August 1 and ending at midnight on August 15.

(c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the following quantities of black sea bass during the quarter listed:

First Quarter (January, February and March) - 11,000 lbs.

Second Quarter (April, May and June) - 7,000 lbs.

Third Quarter (July, August and September) - 3,000 lbs.

Fourth Quarter (October, November and December) - 4,000 lbs.

[~~A~~ One] trip shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware.

---

**DEPARTMENT OF NATURAL  
RESOURCES & ENVIRONMENTAL  
CONTROL**

**DIVISION OF FISH & WILDLIFE  
ENFORCEMENT SECTION**

Statutory Authority: 23 Delaware Code,  
Section 2114 (23 Del.C. 2114)

Order No. 98-F-0015

ORDER

SUMMARY OF EVIDENCE AND INFORMATION

Pursuant to due notice, 1:9 Del. R. 1357-1373 (March 1, 1998), the Department of Natural Resources and Environmental Control proposed to enact regulations with respect to: the registration of undocumented vessels; accident reporting; safety standards for vessels and associated equipment; operating requirements; and the administration of State-maintained boat ramps and parking lots.

A public hearing was held on March 24, 1998, in Dover, Delaware in front of James H. Graybeal, Boating Law Administrator for the Department and the Department's designee to receive testimony and evidence. His report is attached to this order.

FINDINGS OF FACT

The Coast Guard promulgates regulations affecting the operation of vessels on the waters of this State. The operators of such vessels are required to be in compliance with both Coast Guard and Department regulations. With the Department's regulations having gone without revision since 1975, they had become obsolete and in need of significant updating to conform with what is now required by the Coast Guard.

CONCLUSIONS

The proposed Boating Regulations, as modified, should be enacted to: eliminate conflicts with Coast Guard safety and equipment requirements; reduce the likelihood of injuries or accidents; and improve the administration of State-maintained boat ramps and parking lots. The modifications are "not substantive" within the meaning of § 10118(c) of Title 29 of the Delaware Code. Future consideration should be given to the Coast Guard's equipment requirements for documented vessels.

ORDER

It is hereby ordered, this 14<sup>th</sup> day of April, 1998, that Boating Regulations BR-1 through BR-12, copies of which are attached hereto, are adopted pursuant to 23 Del. C. § 2114 and are supported by the Department's findings on the evidence and testimony received. This order shall become effective on May 11, 1998.

Christophe A. G. Tulou, Secretary  
Department of Natural Resources  
and Environmental Control

FINAL BOATING REGULATIONS

**BR-1. GENERAL.**

**Section 1. Code of Federal Regulations.**

These regulations reference provisions from the Code of Federal Regulations (CFR), revised as of July 1, 1997, and October 1, 1996, for U.S.C. Titles 33 and 46, respectively.

**Section 2. Application of Regulations.**

Unless otherwise specified, these regulations shall apply to all vessels used on the waters of **[the this]** State.

**[Section 3. Obedience to Orders by Enforcement Officers.]**

**It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce these regulations.]**

**BR-2. DEFINITIONS.**

For purposes of BR-3 through BR-12, the following words and phrases shall have the meaning ascribed to them unless the context clearly indicates otherwise:

(1) "All-round light" shall mean a light showing an unbroken light over an arc of the horizon of 360 degrees.

(2) "Boat" shall mean any vessel manufactured or used primarily for non-commercial use; leased, rented, or chartered to another for the latter's non-commercial use; or engaged in the carrying of 6 or fewer passengers.

(3) "Coast Guard approved" shall mean that the equipment has been determined to be in compliance with Coast Guard specifications and regulations relating to the materials, construction, and performance.

(4) "Commercial hybrid PFD" shall mean a hybrid PFD approved for use on commercial vessels identified on the PFD label.

(5) "Division" shall mean the Division of Fish and Wildlife.

(6) "Enforcement officer" shall mean a sworn member of a police force or other law-enforcement agency of this State or of any county or municipality who is responsible for the prevention and the detection of crime and the enforcement of the laws of this State or other governmental units within the State.

(7) "Especially hazardous condition" shall mean a condition which endangers the life of a person on board a vessel.

(8) "First aid" shall mean emergency care and treatment of an injured person before definitive medical and surgical management can be secured.

(9) "Grossly negligent" shall mean the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness.

(10) "Issuing authority" shall mean a state where a numbering system for vessels has been approved by the Coast Guard or the Coast Guard where a numbering system has not been approved. Issuing authorities are listed in Appendix A.

(11) "Licensing agent" shall mean a qualified person authorized by the Division to ~~register vessels distribute~~ **boat registrations** pursuant to § 2113(d) of Title 23.

(12) "Masthead light" shall mean a white light placed over the fore and aft centerline of a vessel showing an unbroken light over an arc of the horizon of 225 degrees and

so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on either side of the vessel, except that on a vessel of less than 12 meters (39.4 ft.) in length the masthead light shall be placed as nearly as practicable to the fore and aft centerline of the vessel.

(13) "Motorboat" shall mean any vessel 65 feet **[(19.8 m)]** in length or less equipped with propulsion machinery, including steam.

(14) "Motor vessel" shall mean any vessel more than 65 feet **[(19.8 m)]** in length propelled by machinery other than steam.

(15) "Navigable channel" shall mean a channel plotted on a National Oceanic and Atmospheric Administration nautical chart or a channel marked with buoys, lights, beacons, ranges, or other markers by the Coast Guard or with Coast Guard approval.

(16) "Negligent" shall mean the omission to do something which a reasonable person, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent person would not do.

(17) "Open boat" shall mean a motorboat or motor vessel with all engine and fuel tank compartments, and other spaces to which explosive or flammable gases and vapors from these compartments may flow, open to the atmosphere and so arranged as to prevent the entrapment of such gases and vapors within the vessel.

(18) "Operator" shall mean that person in control or in charge of the vessel while the vessel is in use.

(19) "Owner" shall mean a person who claims lawful possession of a vessel by virtue of legal title or equitable interest therein which entitles him/her to such possession.

(20) "Passenger" shall mean every person carried on board a vessel other than:

(a) The owner or the owner's representative;

(b) The operator;

(c) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his/her carriage.

(21) "Personal flotation device" shall mean a device that is approved by the Commandant of the Coast Guard pursuant to 46 CFR Part 160.

(22) "PFD" shall mean personal flotation device.

(23) "Racing shell", "rowing scull", "racing canoe" or "racing kayak" shall mean a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.

(24) "Recreational vessel" shall mean any vessel being manufactured or operated primarily for pleasure; or leased,

rented, or chartered to another for the latter's pleasure. It does not include a vessel engaged in the carrying of six or fewer passengers.

(25) "Restricted visibility" shall mean any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, or any other similar causes.

(26) "Sidelights" shall mean a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side. On a vessel of less than 20 meters (65.6 ft.) in length, the sidelights may be combined in one lantern carried on the fore and aft centerline of the vessel, except that on a vessel of less than 12 meters (39.4 ft.) in length the sidelights when combined in one lantern shall be placed as nearly as practicable to the fore and aft centerline of the vessel.

(27) "Slow-No-Wake" shall mean as slow as possible without losing steerage way and so as to make the least possible wake. (This almost always means speeds of less than 5 miles per hour.)

(28) "Special flashing light" shall mean a yellow light flashing at regular intervals at a frequency of 50 to 70 flashes per minute, placed as far forward and as nearly as practicable on the fore and aft centerline of the tow and showing an unbroken light over an arc of the horizon of not less than 180 degrees nor more than 225 degrees and so fixed as to show the light from right ahead to abeam and no more than 22.5 degrees abaft the beam on either side of the vessel.

(29) "State of principal use" shall mean a state on whose waters a vessel is used or to be used most during a calendar year. It shall mean this State if the vessel is to be used, docked, or stowed on the waters of **[the this]** State for over 60 consecutive days.

(30) "Sternlight" shall mean a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67.5 degrees from right aft on each side of the vessel.

(31) "Towing light" shall mean a yellow light having the same characteristics as the sternlight.

(32) "Type I PFD" shall mean any Coast Guard approved wearable device designed to turn most unconscious wearers in the water from a face down position to a vertical and slightly backward position. The Type I PFD has the greatest required buoyancy: the adult size provides at least 22 pounds buoyancy, and the child size provides at least 11 pounds buoyancy.

(33) "Type II PFD" shall mean any Coast Guard approved wearable device designed to turn some unconscious wearers from a face-down position to a vertical and slightly backward position. An adult size device provides at least ~~152~~ **15.5** pounds buoyancy, the medium child size provides at least 11 pounds, and the infant and small child sizes provide at least 7 pounds buoyancy.

(34) "Type III PFD" shall mean any Coast Guard approved wearable device designed to maintain conscious wearers in a vertical and slightly backward position. While the Type III PFD has the same minimum buoyancy as the Type II PFD, it has little or no turning ability.

(35) "Type IV PFD" shall mean any Coast Guard approved device designed to be thrown to a person in the water and grasped and held by such person until rescued. It is not designed to be worn. Type IV devices, which include buoyant cushions, ring buoys, and horseshoe buoys, are designed to have at least 16.5 pounds buoyancy.

(36) "Type V PFD" **[is shall mean]** any Coast Guard approved wearable device designed for a specific and restricted use. The label on the PFD indicates the kinds of activities for which the PFD may be used and whether there are limitations on how it may be used.

(37) "Type V hybrid PFD" **[is shall mean]** any Coast Guard approved wearable device designed to give additional buoyancy by inflating an air chamber. When inflated it turns the wearer similar to the action provided by a Type I, II, or III PFD (the type of performance is indicated on the label). The exact specification and performance of the PFD will vary somewhat with each device.

(38) "Use" shall mean to operate, navigate, or employ.

(39) "Water ~~ski~~ **or water** skiing" shall include ~~all forms of water skiing, skiing on an aquaplane, knee board or other contrivances, parasailing or~~ **[all forms of water skiing, skiing on an aquaplane, knee board or other contrivances, parasailing or]** any activity ~~where whereby~~ **[where whereby]** a person is towed behind or alongside a ~~boat vessel~~ **[boat vessel]**.

### BR-3. REGISTRATION, NUMBERING, AND MARKING OF VESSELS.

#### Section 1. Applicability.

This regulation shall apply to all vessels propelled by any form of mechanical power, including electric trolling motors, used or placed on the waters of **[the this]** State, except the following:

- (1) Foreign vessels temporarily using such waters;
- (2) Military or public vessels of the United States, except recreational-type public vessels;
- (3) A vessel whose owner is a state or subdivision thereof, other than this State, which is used principally for governmental purposes, and which is clearly identifiable as such;
- (4) A vessel used exclusively as a ship's lifeboat; and
- (5) Vessels which have been issued valid marine documents by the Coast Guard.

#### Section 2. Vessel Number Required.

(a) Except as provided in Section 3 of this regulation, no person shall use or place on the waters of **[the this]** State a vessel to which this regulation applies unless:

- (1) It has a number issued on a certificate of number

by this State; and

(2) The number is displayed as described in Section 8 of this regulation.

(b) This regulation shall not apply to a vessel for which a valid temporary certificate has been issued to its owner by the issuing authority in the state in which the vessel is principally used.

### **Section 3. Reciprocity.**

(a) When the state of principal use is a state other than this State and the vessel is properly numbered by that state, the vessel shall be deemed in compliance with the numbering system requirements of this State in which it is temporarily used.

(b) When this State becomes the state of principal use for a vessel numbered by another state, the vessel's current number shall be recognized as valid for a period of 60 consecutive days before numbering is required by this State.

### **Section 4. Other Numbers and Letters Prohibited.**

No person shall use a vessel to which this regulation applies that has any letters or numbers that are not issued by an issuing authority for that vessel on its forward half.

### **Section 5. Certificate of Number Required (Registration Card).**

(a) Except as provided in Section 3 of this regulation, no person shall use a vessel to which this regulation applies unless it has on board:

(1) A valid certificate of number or temporary certificate for that vessel issued by this State; or

(2) For rental vessels described in subsection (b) of this section, a copy of the lease or rental agreement, signed by the owner or the owner's authorized representative and by the person leasing or renting the vessel, that contains at least:

(a) The vessel number that appears on the certificate of number; and

(b) The period of time for which the vessel is leased or rented.

(b) The certificate of number for vessels less than 26 feet in length and leased or rented to another for the latter's non-commercial use for less than 24 hours may be retained on shore by the vessel's owner or representative at the place from which the vessel departs or returns to the possession of the owner or the owner's representative.

### **Section 6. Inspection of Certificate.**

Each person using a vessel to which this regulation applies shall present the certificate of number, lease, or rental agreement required by Section 5 of this regulation to any enforcement officer for inspection at the officer's request.

### **Section 7. Location of Certificate of Number.**

No person shall use a vessel to which this regulation applies unless the certificate of number, lease, or rental agreement required by Section 5 of this regulation is carried on board in such a manner that it can be handed to a person authorized under Section 6 of this regulation to inspect it.

### **Section 8. Numbers: Display; Size; Color.**

(a) Each number required by Section 2 of this regulation shall:

(1) Be painted on or permanently attached to each side of the forward half of the vessel,

except as allowed by subsection (b) or required by subsection (c) of this section;

(2) Be in plain vertical block characters of not less than 3 inches in height;

(3) Contrast with the color of the background and be distinctly visible and legible;

(4) Have spaces or hyphens that are equal to the width of a letter other than "I" or a number other than "1" between the letter and number groupings (example: DL 5678 D or DL-5678-D); and

(5) Read from left to right.

(b) When a vessel is used by a manufacturer or by a dealer for testing or demonstrating, the number may be painted on or attached to removable plates that are temporarily but firmly attached to each side of the forward half of the vessel.

(c) On vessels so configured that a number on the hull or superstructure would not be easily visible, the number shall be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number is visible from each side of the vessel.

(d) Expired validation decals shall be removed and only effective decals shall be displayed.

### **Section 9. Notification of Issuing Authority.**

The person whose name appears as the owner of a vessel on a certificate of number shall, within 15 days, notify the Division of:

(1) Any change in said person's address;

(2) The theft or recovery of the vessel;

(3) The loss or destruction of a valid certificate of number;

(4) The transfer of all or part of said person's interest in the vessel; and

(5) The destruction or abandonment of the vessel.

### **Section 10. Surrender of Certificate of Number.**

The person whose name appears as the owner of a vessel on a certificate of number shall surrender the certificate to the Division or a licensing agent within 15 days after it becomes invalid under subsections (b), (c), (d) or (e) of Section 14 of this regulation.

### **Section 11. Removal of Number and Validation Decal.**

The person whose name appears on a certificate of number as the owner of a vessel shall remove the number and validation sticker from the vessel when:

- (1) The vessel is documented by the Coast Guard;
- (2) The certificate of number is invalid under Section 14(c) of this regulation; or
- (3) This State is no longer the state of principal use.

#### **Section 12. Application for Certificate of Number.**

Any person who is the owner of a vessel to which Section 1 of this regulation applies may apply for a certificate of number for that vessel by submitting the following to the Division or **[the nearest a]** licensing agent:

- (1) The application prescribed by the Division;
- (2) The fee required by § 2113(a) of Title 23; and
- (3) Proof of ownership as required by Section 22

of this regulation.

#### **Section 13. Duplicate Certificate of Number.**

If a certificate of number is lost or destroyed, the person whose name appears on the certificate as the owner may apply for a duplicate certificate by submitting the following to the Division **[or a licensing agent]**:

- (1) The application prescribed by the Division; and
- (2) The fee required by § 2113(b) of Title 23.

#### **Section 14. Validity of Certificate of Number.**

(a) Except as provided in subsections (b), (c), (d) and (e) of this section, a certificate of number is valid until the date of expiration prescribed by this State.

(b) A certificate of number issued by this State is invalid after the date upon which:

- (1) The vessel is documented or required to be documented;
- (2) The person whose name appears on the certificate of number as owner of the vessel transfers all of his/her ownership in the vessel; or
- (3) The vessel is destroyed or abandoned.

(c) A certificate of number issued by this State is invalid if:

- (1) The application for the certificate of number contains a false or fraudulent statement; or
- (2) The fees for the issuance of the certificate of number are not paid.

(d) A certificate of number is invalid 60 days after the day on which another state becomes the state of principal use.

(e) A certificate of number is invalid when the person whose name appears on the certificate involuntarily loses his/her interest in the numbered vessel by legal process.

#### **Section 15. Validation Stickers.**

(a) No person shall use a vessel that has a number issued by this State unless a validation sticker was issued with the

certificate of number and the sticker:

- (1) Is displayed within 6 inches of the number; and
- (2) Meets the requirements in subsections (b) and (c) of this section.

(b) Validation stickers shall be approximately 3 inches square.

(c) The year in which each validation sticker expires shall be indicated by the colors, blue, international orange, green, and red, in rotation beginning with green for stickers that expired in 1975 (see Appendix B).

#### **Section 16. Contents of Application for Certificate of Number.**

(a) Each application for a certificate of number shall contain the following information:

- (1) Name of each owner;
- (2) Address of at least one owner, or the address of the principle place of business of an owner that is not an individual, including zip code;
- (3) Mailing address, if different from the address required by paragraph (a)(2) of this section;
- (4) Date of birth of the owner;
- (5) Citizenship of the owner;
- (6) State in which vessel is or will be principally used;
- (7) The number previously issued by an issuing authority for the vessel, if any;
- (8) Expiration date of certificate of number issued by the issuing authority;
- (9) Official number assigned by the Coast Guard, if applicable;
- (10) Whether the application is for a new number, renewal of a number, or transfer of ownership;
- (11) Whether the vessel is used for pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing, or other commercial use;
- (12) Make of vessel or name of vessel builder, if known;
- (13) Year vessel was manufactured or built, or model year, if known;
- (14) Manufacturer's hull identification number, if any;
- (15) Overall length of vessel;
- (16) Whether the hull is wood, steel, aluminum, fiberglass, plastic, or other;
- (17) Type of vessel (open, cabin, house, etc.);
- (18) Whether the propulsion is inboard, outboard, inboard-outdrive, jet, or sail with auxiliary engine;
- (19) Whether the fuel is gasoline, diesel, or other;
- (20) Social security number, or, if that number is not available, the owner's driver's license number (if the owner is other than an individual, the owner's taxpayer identification number, social security number, or driver's license number);

(21) The signature of the owner.

(b) An application made by a manufacturer or dealer for a number that is to be temporarily affixed to a vessel for demonstration or test purposes may omit items 13 through 20 of subsection (a) of this section.

**Section 17. Contents of a Certificate of Number.**

(a) Except as allowed in subsection (b) of this section, each certificate of number shall contain the following information:

- (1) Number issued to the vessel;
- (2) Expiration date of the certificate;
- (3) State of principal use;
- (4) Name of the owner;
- (5) Address of the owner, including zip code;
- (6) Whether the vessel is used for pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing, or other commercial use;
- (7) Manufacturer's hull identification number (or the hull identification number issued by the Department), if any;
- (8) Make of vessel;
- (9) Year vessel was manufactured;
- (10) Overall length of vessel;
- (11) Whether the vessel is an open boat, cabin cruiser, houseboat, etc.;
- (12) Whether the hull is wood, steel, aluminum, fiberglass, plastic, or other;
- (13) Whether the propulsion is inboard, outboard, inboard-outdrive, jet, or sail with auxiliary engine;
- (14) Whether the fuel is gasoline, diesel, or other;
- (15) A quotation of the State regulations pertaining to change of ownership or address, documentation, loss, destruction, abandonment, theft or recovery of vessel, carriage of the certificate of number on board when the vessel is in use, rendering aid in a boat accident, and reporting of vessel casualties and accidents.

(b) A certificate of number issued to a manufacturer or dealer to be used on a vessel for test or demonstration purposes may omit items 7 through 14 of subsection (a) of this section if the word "manufacturer" or "dealer" is plainly marked on the certificate.

**Section 18. Contents of Temporary Certificate.**

A temporary certificate issued pending the issuance of a certificate of number shall contain the following information:

- (1) Make of vessel;
- (2) Length of vessel;
- (3) Type of propulsion;
- (4) State in which vessel is principally used;
- (5) Name of owner;
- (6) Address of owner, including zip code;

(7) Signature of owner;

(8) Date of issuance; and

(9) Notice to the owner that the temporary certificate is invalid after 60 days from the date of issuance.

**Section 19. Form of Number.**

(a) Each number shall consist of the two capital letters "DL" denoting this State as the issuing authority, followed by:

- (1) Not more than four numerals followed by not more than two capital letters (example: DL 1234 BD); or
- (2) Not more than three numerals followed by not more than three capital letters (example: DL 567 EFG).

(b) A number suffix shall not include the letters "I", "O", or "Q," which may be mistaken for numerals.

**Section 20. Size of Certificate of Number.**

Each certificate of number shall be 2½ by 3½ inches.

**Section 21. Terms and Conditions for Vessel Numbering.**

Except for a recreational-type public vessel of the United States, the State shall condition the issuance of a certificate of number on title to, the original manufacturer's or importer's statement or certificate of origin, copy of notarized bill of sale, or other proof of ownership of a vessel.

**Section 22. Boat Registration Records.**

(a) All valid records shall be filed alphabetically by the last names of owners and numerically by "DL" registration numbers;

(b) Invalid records shall be maintained for three years at which time they shall be destroyed.

**BR-4. CASUALTY REPORTING SYSTEM REQUIREMENTS.**

**Section 1. Administration.**

The casualty reporting system of this State shall be administered by the Boating Law Administrator who shall:

- (1) Provide for the reporting of all casualties and accidents required by Section 2 of this regulation;
- (2) Receive reports of vessel casualties or accidents prescribed by Section 3 of this regulation;
- (3) Review accident and casualty reports to assure accuracy and completeness of reporting; and
- (4) Determine the cause of casualties and accidents reported.

**Section 2. Report of Casualty or Accident.**

(a) The operator of a vessel shall submit the casualty or accident report prescribed in 33 CFR § 173.57 to the reporting authority prescribed in Section 4 of this regulation when, as a result of an occurrence that involves the vessel or its equipment:

(1) A person dies;

(2) A person ~~[loses consciousness or receives is injured and requires]~~ medical treatment beyond first aid ~~[or is disabled for more than 24 hours];~~

(3) Damage to the vessel and other property totals more than \$500.00; or

(4) A person disappears from the vessel under circumstances that indicate death or injury.

(b) A report required by this section shall be made:

(1) Immediately if a person dies within 24 hours of the occurrence;

(2) Immediately if a person ~~[loses consciousness or receives is injured and requires]~~ medical treatment beyond first aid, or ~~[is disabled for more than 24 hours or]~~ disappears from a vessel; and

(3) Within 5 days of the occurrence or death if an earlier report is not required by this subsection.

(c) When the operator of a vessel cannot submit the casualty or accident report required by subsection (a) of this section, the owner shall submit the casualty or accident report.

(d) The accident or casualty report completed by a Fish and Wildlife Agent may be substituted to meet the requirements of this section.

### Section 3. Casualty or Accident Report.

Each report required by Section 2 of this regulation shall be in writing, dated upon completion, and signed by the person who prepared it and shall contain, if available, the information about the casualty or accident required by the Coast Guard pursuant to 33 CFR § 173.57.

### Section 4. Where to Report.

The report required by Section 2 of this regulation shall be submitted to the Boating Law Administrator, Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901.

### Section 5. Immediate Notification of Death, Disappearance, or Physical Injury.

(a) When, as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel or sustains an injury requiring more than first aid, the operator shall, without delay, by the quickest means available, notify the Division of Fish and Wildlife Enforcement Section, Telephone: 302-739-4580 or 1-800-523-3336, of:

(1) The date, time, and exact location of the occurrence;

(2) The name of each person who died, disappeared, or sustained an injury;

(3) The number and name of the vessel; and

(4) The names and addresses of the owner and operator.

(b) When the operator of a vessel cannot give the notice required by subsection (a) of this section, at least one of the persons on board shall notify the Division of Fish and Wildlife Enforcement Section, Telephone: 302-739-4580 or 1-800-523 3336, or determine that the notice has been given.

### Section 6. Rendering of Assistance in Accidents.

~~[(a)]~~ The operator of a vessel involved in an accident shall:

(1) Render necessary assistance to each individual affected to save that affected individual from danger caused by the accident, so far as the operator can do so without serious danger to the operator's or individual's vessel or to individuals on board; and

(2) Give the operator's name and address and identification of the vessel to the operator or individual in charge of any other vessel involved in the accident, to any individual injured, and to the owner of any property damaged.

~~[(b) An individual complying with subsection (a) of this section or gratuitously and in good faith rendering assistance at the scene of a casualty without objection by an individual assisted, is not liable for damages as a result of rendering assistance or for an act or omission in providing or arranging salvage, towage, medical treatment, or other assistance when the individual acts as an ordinary, reasonable, and prudent individual would have acted under the circumstances.]~~

### BR-5. WATER SKIING.

#### Section 1. Water Skiing.

(a) No person shall operate a vessel on any waters of this State for purposes of towing a person on water skis unless there is in such vessel a competent person, in addition to the operator, in a position to observe the progress of the person being towed. The observer shall be considered competent if he/she can, in fact, observe the person being towed and relay any signals from the person being towed to the operator. This subsection shall not apply to Class A vessels operated by the person being towed and designed to be incapable of carrying the operator in or on the vessel.

(b) No person shall engage in water skiing unless such person is wearing a Type I, Type II, Type III, or Type V PFD. This provision shall not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in an official regatta, boat race, marine parade, tournament, or exhibition.

(c) No person shall engage in water skiing and no person shall operate a vessel towing a person so engaged on any waters of ~~[the this]~~ State with a tow line that exceeds 75 feet.

(d) No person shall engage in water skiing and no person shall operate a vessel towing a person so engaged on any

waters of [~~the this~~] State on which water skiing is prohibited.

(e) No person shall engage in water skiing and no person shall operate a vessel towing a person so engaged between sunset and sunrise.

(f) The operator of a vessel towing a water skier shall comply with all laws and regulations as they pertain to the individual's class of vessel and shall maneuver the vessel in a careful and prudent manner, so as not to interfere with other vessels or obstruct any channel or normal shipping lane, and maintain reasonable distance from persons and property, so as not to endanger the life or property of any person.

(g) No person shall engage in water skiing in such a manner as to strike or threaten to strike any person, vessel, or property, and no person shall operate a vessel or manipulate a tow line or other towing device in such a manner as to cause a water skier to strike or threaten to strike another person, vessel, or property.

(h) No person shall engage in water skiing and no person shall operate a vessel towing a person so engaged within one hundred (100) feet of any person in the water, a pier, dock, float, wharf, or vessel anchored or adrift, or in any direction of boat launching ramps, both public and private.

## Section 2. Prohibited Water Skiing Areas.

Water skiing shall be prohibited in the following areas:

- (1) The Rehoboth-Lewes Canal, in its entirety;
- (2) The channel through Masseys Landing from Buoy No. 12 off Bluff Point to Buoy No. 19A;
- (3) The Assawoman Canal, in its entirety;
- (4) The Indian River Inlet between Buoy No. 1 and the Coast Guard Station;
- (5) Roosevelt Inlet from 100 yards off jetty entrance to the Canal;
- (6) White Creek south of Marker No. 9A; and
- (7) Any [~~designated public marked~~] swimming areas, unless authorized by a special permit issued by the Department.

~~[Section 3. Obedience to Orders by Enforcement Officers.~~

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.]~~

## BR-6. VESSEL SPEED.

### Section 1. Safe Boat Speed.

(a) Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

(b) The speed of all vessels on the waters of this State shall be limited to a Slow-No-Wake speed when within 100 feet of:

- (1) Any shoreline where "Slow-No-Wake" signs have been erected by the Department;
- (2) Floats;
- (3) Docks;
- (4) Launching ramps;
- (5) [~~Congested beaches~~ **Marked swimming areas**];
- (6) Swimmers; or
- (7) Anchored, moored, or drifting vessels.

(c) No person shall operate a vessel at a rate of speed greater than is reasonable having regard to conditions and circumstances such as the closeness of the shore and shore installations, anchored or moored vessels in the vicinity, width of the channel, and if applicable, vessel traffic and water use.

## Section 2. Responsibility of Operator.

The operator of any vessel on the waters of this State shall be legally responsible for injuries, damages to life, limb, or property caused by his/her vessel or vessel wake.

~~[Section 3. Obedience to Orders by Enforcement Officers.~~

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.]~~

## BR-7. NEGLIGENT AND GROSSLY NEGLIGENT OPERATION OF A VESSEL.

### Section 1. Negligent or Grossly Negligent Operation.

- (a) No person shall operate any vessel on the waters of [~~the this~~] State in a negligent manner.
- (b) No person shall operate any vessel on the waters of [~~the this~~] State in a grossly negligent manner.
- (c) Depending upon the degree of negligence, the following shall constitute a violation of subsection (a) or (b) of this section:
  - (1) Failure to reduce speed in areas where boating is concentrated, endangering life, limb, and/or property;
  - (2) Operating at excessive speed [~~under storm conditions, in fog or other low-visibility conditions at times of restricted visibility~~];
  - (3) Operating at excessive speed when maneuvering room is restricted by narrow channels or when vision is obstructed by such things as jetties, land, or other vessels;
  - (4) Impeding the right-of-way of a stand-on or privileged vessel so as to endanger risk of collision;
  - (5) Towing a water skier in a restricted area or where an obstruction exists;
  - (6) Operating a vessel within swimming areas when bathers are present;
  - (7) Operating a vessel in areas posted as closed to vessels due to hazardous conditions;

(8) Operating a vessel through an area where a regatta or marine parade is in progress in a way that could present a hazard to participants or spectators and interfere with the safe conduct of the event;

(9) Operating a vessel with any person sitting on the bow, gunwales, or stern with legs hanging over the side [, **except a sailboat equipped with lifelines while engaged in a race for which a permit has been secured under § 2120 of Title 23**];

(10) Operating a vessel or use any water skis while under the influence of alcohol, any narcotic drug, barbiturate, marijuana, or hallucinogen;

(11) Loading a vessel with passengers or cargo beyond its safe carrying capacity;

(12) Operating a vessel with an engine of a higher horsepower rating than the rating noted on the vessel's capacity plate or in the manufacturer's specifications; and

(13) Other actions deemed by an enforcement officer to be in violation of subsection (a) or (b) of this regulation.

~~[Section 2. Obedience to Orders by Enforcement Officers.~~

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.]~~

**BR-8. TERMINATION OF UNSAFE USE OF A VESSEL.**

**Section 1. Especially Hazardous Conditions.**

Especially hazardous conditions warranting termination of voyage shall include, but not be limited to.:

(1) Insufficient [~~life-saving devices~~ **number of Coast Guard approved PFDs**];

(2) Insufficient fire-~~[fighting — devices extinguishing equipment]~~;

(3) Overloaded [~~beyond manufacturer's recommended safe loading capacity~~];

(4) Failure to display required navigation lights;

(5) Fuel leakage [~~from either the~~] fuel system or engine;

(6) Fuel accumulation [~~other than fuel tank~~] **in the bilges**];

(7) Failure to meet ventilation requirements [~~for tank and engine spaces~~];

(8) [~~Failure to meet~~ **Improper**] backfire flame control [~~requirement~~];

(9) Excessive leakage or accumulation of water in bilges;

(10) Deteriorated condition of vessel; or

(11) Any other condition deemed hazardous by an enforcement officer.

**Section 2. Enforcement.**

(a) Enforcement officers shall, if a violation of this regulation is observed, and in their judgment such a deficiency creates an especially hazardous condition to the occupants of the vessel, direct the operator to take specific steps to correct the unsafe condition.

(b) *Compliance by operator.* Immediate compliance by the operator is required for safety purposes. Failure to comply with the directives of an enforcement officer shall result in a citation under Section 3 of [~~this regulation BR-1~~] as well as for the specific violation which created the unsafe condition.

~~[Section 3. Obedience to Orders by Enforcement Officers.~~

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.]~~

**BR-9. MINIMUM REQUIRED EQUIPMENT FOR VESSELS USING STATE WATERS.**

**PART A - General.**

**Section 1. Applicability.**

(a) This regulation does not apply to:

(1) Military or public vessels of the United States, other than recreational-type public vessels; and

(2) A vessel used exclusively as a ship's lifeboat.

(b) Part B of this regulation prescribes general provisions applicable to all vessels covered by this regulation. Part C prescribes minimum required equipment for recreational vessels used on the waters of [~~the this~~] State. Part D prescribes minimum required equipment for vessels other than recreational vessels that are not required to be documented.

~~[Section 2. Compliance with Coast Guard Regulations.~~

~~Pursuant to § 2114 of Title 23, every vessel shall be provided with the equipment prescribed by Coast Guard regulations, and any amendments or changes thereto, even if such amendments or changes thereto have not been enacted into law by this State or promulgated as regulations by the Division.]~~

**PART B - Provisions Applicable to All Vessels Covered by this Regulation.**

**Section 1. Fire-Extinguishing Equipment.**

(a) All hand portable fire extinguishers, semiportable fire extinguishing systems, and fixed fire extinguishing systems shall be Coast Guard approved pursuant to 46 CFR § 25.30-5.

(b) All required hand portable fire extinguishers and semiportable fire extinguishing systems shall be of the "B" type; i.e., suitable for extinguishing fires involving flammable

liquids such as gasoline, oil, etc., where a blanketing or smothering effect is essential. The number designations for size will start with "I" for the smallest to "V" for the largest. For the purpose of this regulation, only sizes I through III will be considered. Sizes I and II are considered hand portable fire extinguishers and sizes III, IV, and V are considered semiportable fire extinguishing systems which shall be fitted with suitable hose and nozzle or other practicable means so that all portions of the space concerned may be covered. Examples of size graduations for some of the typical hand portable fire extinguishers and semiportable fire extinguishing systems are set forth in the following table:

TYPE	SIZE	FOAM (GALLONS)	CO2 (POUNDS)	DRY CHEMICAL (POUNDS)	HALON (POUNDS)
B	I	1¼	4	2	2½
B	II	2½	15	10	10
B	III	12	35	20	-

**(c)** All hand portable fire extinguishers and semiportable fire extinguishing systems shall have permanently attached thereto a metallic name plate giving the name of the item, the rated capacity in gallons, quarts, or pounds, the name and address of the person or firm for whom approved, and the identifying mark of the actual manufacturer.

**(d)** Vaporizing-liquid type fire extinguishers containing carbon tetrachloride or chlorobromomethane or other toxic vaporizing liquids are not acceptable as equipment required by this part.

**(e)** Hand portable or semiportable extinguishers which are required on their name plates to be protected from freezing shall not be located where freezing temperatures may be expected.

**(f)** The use of dry chemical, stored pressure, fire extinguishers not fitted with pressure gauges or indicating devices, manufactured prior to January 1, 1965, may be permitted on motorboats and other vessels so long as such extinguishers are maintained in good and serviceable condition. The following maintenance and inspections are required for such extinguishers:

(1) When the date on the inspection record tag on the extinguisher shows that 6 months have elapsed since last weight check ashore, then such extinguisher is no longer accepted as meeting required maintenance conditions until reweighed ashore and found to be in a serviceable condition and within required weight conditions;

(2) If the weight of the container is  $3 \frac{1}{4}$  ounce less than that stamped on the container, it shall be serviced;

(3) If the outer seal or seals (which indicate tampering or use when broken) are not intact, an enforcement officer may inspect such extinguisher to see that the frangible disc in **the** neck of the container is intact; and if such disc is not intact, the container shall be serviced; and

(4) If there is evidence of damage, use, or leakage, such as dry chemical powder observed in the nozzle or

elsewhere on the extinguisher, the container shall be replaced with a new one and the **container extinguisher shall be** properly serviced or the extinguisher **shall be** replaced with another approved extinguisher.

**(g)** Fire extinguishers shall be at all times kept in a condition for immediate and effective use, and shall be so placed as to be readily accessible.

## Section 2. Backfire Flame Control.

(a) *Applicability.* This section applies to every gasoline engine installed in a motorboat or motor vessel after April 25, 1940, except outboard motors.

(b) Installations made before November 19, 1952, need not meet the detailed requirements of this section and may be continued in use as long as they are serviceable and in good condition. Replacements shall meet the applicable requirements of this section.

(c) Installations consisting of backfire flame arrestors or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.042, may be continued in use as long as they are serviceable and in good condition. New installations or replacements shall meet the applicable requirements of this section.

(d) No person may use a vessel to which this section applies unless each engine is provided with an acceptable means of backfire flame control. The following are acceptable means of backfire flame control:

(1) A backfire flame arrester complying with Society of Automotive Engineers (SAE) Standard J-1928 or Underwriters Laboratories (UL) Standard 1111 and marked accordingly. The flame arrester shall be suitably secured to the air intake with a flame tight connection;

(2) An engine air and fuel induction system which provides adequate protection from propagation of backfire flame to the atmosphere equivalent to that provided by an approved backfire flame arrester. A gasoline engine utilizing an air and fuel induction system, and operated without an approved backfire flame arrester, shall either include a reed valve assembly or be installed in accordance with SAE Standard J-1928; and

(3) An arrangement of the carburetor or engine air induction system that will disperse any flames caused by engine backfire. The flames must be dispersed to the atmosphere outside the vessel in such a manner that the flames will not endanger the vessel, persons on board, or nearby vessels and structures. Flame dispersion may be achieved by attachments to the carburetor or location of the engine air induction system. All attachments shall be of metallic construction with flamtight connections and firmly secured to withstand vibration, shock, and engine backfire.

(e) No person may use a vessel to which this section applies unless the backfire flame arrester is serviceable and

in good condition.

### Section 3. Ventilation.

(a) *Applicability.* This section applies to motorboats, motor vessels, and boats used on the waters of [the this] State and subject to this regulation.

(b) No person shall operate a motorboat or motor vessel, except an open boat, built after April 25, 1940, and before August 1, 1980, which uses fuel having a flashpoint of 110 F., or less, without every engine and fuel tank compartment being equipped with a natural ventilation system. A natural ventilation system consists of:

(1) At least two ventilator ducts, fitted with cowls or their equivalent, for the efficient removal of explosive or flammable gases from the bilges of every engine and fuel tank compartment;

(2) At least one exhaust duct installed so as to extend from the open atmosphere to the lower portion of the bilge and at least one intake duct that is installed to extend to a point at least midway to the bilge or at least below the level of the carburetor air intake; and

(3) The cowls shall be located and trimmed for maximum effectiveness and in such a manner so as to prevent displaced fumes from being recirculated.

(c) Boats built after July 31, 1978, shall be exempt from the requirements of subsection (a) of this section for fuel tank compartments that:

(1) Contain a permanently installed fuel tank if each electrical component is ignition protected in accordance with 33 CFR § 183.410(a); and

(2) Contain fuel tanks that vent to the outside of the motorboat or motor vessel.

(d) Boats built after July 31, 1980, or which are in compliance with the Coast Guard Ventilation Standard, a manufacturer requirement (33 CFR §§ 183.610 and 183.620), shall be exempt from the requirements of subsections (b) and (d) of this section.

(e) No person shall operate a boat after July 31, 1980, that has a gasoline engine for electrical generation, mechanical power or propulsion unless it is equipped with an operable ventilation system that meets the requirements of 33 CFR § 183.610(a), (b), (d), (e) and (f) and 183.6209(a).

(f) Boat owners shall maintain their boats' ventilation systems in good operating condition (regardless of the boat's date of manufacture).

### Section 4. Whistles and Bells.

(a) A vessel of 12 meters (39.4 ft.) or more in length shall be equipped with a whistle and a bell. The whistle and bell shall comply with the specifications in Annex III to the Inland Navigation Rules (33 CFR Part 86). The bell may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the prescribed signals shall always be possible.

(b) A vessel of less than 12 meters (39.4 ft.) in length shall be equipped with a whistle or horn, or some other sounding device capable of making an efficient sound signal.

### Section 5. Visual Distress Signals.

(a) *Applicability.* This section applies to all boats operated on the coastal waters of this State and those waters connected directly to them (i.e., bays, sounds, harbors, rivers, inlets, etc.) where any entrance exceeds 2 nautical miles between opposite shorelines to the first point where the largest distance between shorelines narrows to 2 miles.

(b) *Prohibition.* Unless exempted by subsection (c) of this section, no person may use a boat to which this section applies unless visual distress signals, approved by the Commandant of the Coast Guard under 46 CFR Part 160 or certified by the manufacturer under 46 CFR Parts 160 and 161, in the number required, are on board. Devices suitable for day use and devices suitable for night use, or devices suitable for both day and night use, shall be carried.

(c) *Exemptions.* The following boats shall be exempt from the carriage requirements of subsection (b) of this section between sunrise and sunset, but between sunset and sunrise, visual distress signals suitable for night use, in the number required, shall be on board:

(1) Boats less than 16 feet in length;

(2) Boats participating in organized events such as races, regattas, or marine parades;

(3) Open sailboats less than 26 feet in length not equipped with propulsion machinery; and

(4) Manually propelled boats.

(d) *Launchers.* When a visual distress signal carried to meet the requirements of this section requires a launcher to activate, then a launcher approved by the Coast Guard under 46 CFR § 160.028 shall also be carried. Launchers manufactured before January 1, 1981, which do not have approval numbers are acceptable for use with meteor or parachute signals as long as they remain in serviceable condition.

(e) *Visual distress signals accepted.* Any of the following signals when carried in the number required, can be used to meet the requirements of this section:

(1) An electric distress light meeting the standards of 46 CFR § 161.013. One is required to meet the night only requirement;

(2) An orange flag meeting the standards of 46 CFR § 160.072. One is required to meet the day only requirement;

(3) Pyrotechnics meeting the standards noted in the following table:

APPROVAL NO. UNDER 46 CFR	DEVICE DESCRIPTION	MEETS REQUIREMENTS FOR	NO. REQUIRED
§ 160.021	Hand-Held Red Flares <sup>1</sup>	Day and Night	3
§ 160.022	Floating Orange Smoke	Day Only	3
§ 160.024	Parachute Red Flare <sup>2</sup>	Day and Night	3
§ 160.036	Hand-Held Rocket-Propelled Parachute Red Flare	Day and Night	3
§ 160.037	Hand-Held Orange Smoke	Day Only	3
§ 160.057	Floating Orange Smoke	Day Only	3
§ 160.066	Red Aerial Pyrotechnic Flare <sup>3</sup>	Day and Night	3

(f) Any combination of signal devices selected from the types noted in paragraphs (e)(1), (2) and (3) of this section, when carried in the number required, may be used to meet both day and night requirements. ~~[(Examples: the combination of two hand-held red flares, and one parachute red flare meets both day and night requirements; and three hand-held orange smoke with one electric distress light meet both day and night requirements.)]~~ (The following illustrates the variety and combination of devices which can be carried to meet both day and night requirements: three hand-held red flares; one hand-held red flare and two parachute flares; or three hand-held orange smoke signals with one electric distress light.)]

(g) *Stowage, serviceability, approval and marking.* No person may use a boat unless the visual distress signals required by this section are:

- (1) Readily accessible;
- (2) In serviceable condition and the service life of the signal, if indicated by a date marked on the signal, has not expired;
- (3) Legibly marked with the approval number or certification statement as specified in 46 CFR Parts 160 and 161; and
- (4) In sufficient quantity as required by the Coast Guard.

(h) *Prohibited use.* No person in a boat shall display a visual distress signal on waters to which this section applies under any circumstance except a situation where assistance is needed because of immediate or potential danger to the persons on board.

## PART C - Minimum Required Equipment for Recreational-Type Vessels.

### Section 1. Personal Flotation Devices.

(a) Except as provided in Section 2 of this part, no person may use a recreational vessel unless at least one PFD of the following types is on board for each person:

- (1) Type I PFD;
- (2) Type II PFD; or
- (3) Type III PFD.

(b) No person may use a recreational vessel 16 feet or more in length unless one Type IV PFD is on board in addition to the total number of PFD's required in subsection (a) of

this section.

(c) A Type V PFD may be carried in lieu of any PFD required under subsections (a) and (b) of this section, provided:

(1) The approval label on the Type V PFD indicates that the device is approved:

(a) For the activity in which the vessel is being used; or

(b) As a substitute for a PFD of the Type required in the vessel in use;

(2) The PFD is used in accordance with any requirements on the approval label; and

(3) The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual.

(d) A Type V hybrid PFD may satisfy the carriage requirements provided it is worn except when the boat is not underway or when the user is below deck.

### Section 2. Exceptions.

(a) Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV PFD required under Section 1(b) of this part.

(b) Racing shells, rowing sculls, racing canoes and racing kayaks are exempted from the requirements for carriage of any Type PFD required under Section 1 of this part.

(c) Sailboards are exempted from the requirements for carriage of any Type PFD required under Section 1 of this part.

### Section 3. Stowage, Condition, and Marking of PFDs.

(a) No person may use a recreational vessel unless each Type I, II, or III PFD required by Section 1(a) of this part, or equivalent Type allowed by Section 1(c) of this part, is readily accessible.

(b) No person may use a recreational vessel unless each Type IV PFD required by Section ~~[(e) 1(b)]~~ of this part, or equivalent Type allowed by Section 1(c) of this part, is immediately available.

(c) No person may use a recreational vessel unless each PFD required by Section 2(c) of this part or allowed by Section 1(b) of this part is:

- (1) In serviceable condition, as defined by 33 CFR § 175.23;
- (2) Of an appropriate size and fit for the intended wearer, as marked on the approval label; and
- (3) Legibly marked with its Coast Guard approval number, as specified in 46 CFR Part 160.

### Section 4. Fire-Extinguishing Equipment Required.

(a) Motorboats less than 26 feet in length with no fixed fire extinguishing system installed in machinery spaces shall carry at least one Type B-I approved hand portable fire

extinguisher. When an approved fixed fire extinguishing system is installed in machinery spaces, a portable extinguisher is not required. If the construction of the motorboat does not permit the entrapment of explosive or flammable gases or vapors, no fire extinguisher is required.

(b) Motorboats 26 feet to less than 40 feet in length shall carry at least two Type B-I approved hand portable fire extinguishers or at least one Type B-II approved portable fire extinguisher. When an approved fixed fire extinguishing system is installed, one less Type B-I extinguisher is required.

(c) Motorboats 40 feet to not more than 65 feet in length shall carry at least three Type B-I approved hand portable fire extinguishers or at least one Type B-I and one Type B-II approved portable fire extinguisher. When an approved fixed fire extinguishing system is installed, one less Type B-I extinguisher is required.

(d) Motorboats 65 feet and over used for recreational purposes shall carry fire extinguishing equipment as prescribed under Section 3(b) of Part D of this regulation.

(e) Motorboats are required to carry fire extinguishers if any one of the following conditions exist:

- (1) Inboard engines;
- (2) Closed compartments and compartments under seats wherein portable fuel tanks may be stored;
- (3) Double bottoms not sealed to the hull or which are not completely filled with flotation material;
- (4) Closed living spaces;
- (5) Closed stowage compartments in which combustible or flammable materials are stowed; or
- (6) Permanently installed fuel tanks. (Fuel tanks secured so they cannot be moved in case of fire or other emergency are considered permanently installed.)

(f) Motorboats contracted for prior to November 19, 1952, shall meet the applicable provisions of this section insofar as the number and general type of equipment is concerned. Existing items of equipment and installations previously approved but not meeting the applicable requirements for type approval may be continued in service so long as they are in good condition. All new installations and replacements shall meet the requirements of this section.

#### **PART D - Life-Saving Equipment for Commercial Vessels not Documented.**

##### **Section 1. Applicability.**

This part applies to each vessel to which this regulation applies except:

- (1) Vessels used for non-commercial use;
- (2) Vessels leased, rented, or chartered to another for the latter's non-commercial use; or
- (3) Commercial vessels propelled by sail not carrying passengers for hire; or
- (4) Commercial barges not carrying passengers for hire.

##### **Section 2. Life Preservers and Other Life-Saving Equipment Required.**

(a) No person may operate a vessel to which Section 1 of this part applies unless it meets the requirements of this section.

(b) Each vessel not carrying passengers for hire, less than 40 feet in length, shall have at least one life preserver (Type I PFD), buoyant vest (Type II PFD), or marine buoyant device intended to be worn (Type III PFD), of a suitable size for each person on board. Kapok and fibrous glass life preservers which do not have plastic-covered pad inserts as required by 46 CFR §§ 160.062 and 160.005 are not acceptable as equipment required by this subsection.

(c) Each vessel carrying passengers for hire and each vessel 40 feet in length or longer not carrying passengers for hire shall have at least one life preserver (Type I PFD) of a suitable size for each person on board. Kapok and fibrous glass life preservers which do not have plastic-covered pad inserts as required by 46 CFR §§ 160.062 and 160.005 are not acceptable as equipment required by this subsection.

(d) In addition to the equipment required by subsection (b) or (c) of this section, each vessel 26 feet in length or longer shall have at least one Coast Guard approved ring life buoy.

(e) Each vessel not carrying passengers for hire may substitute an exposure suit (or immersion suit) for a life preserver, buoyant vest, or marine buoyant device required under subsection (b) or (c) of this section. Each exposure suit carried in accordance with this paragraph shall be Coast Guard approved.

(f) On each vessel, regardless of length and regardless of whether carrying passengers for hire, a commercial hybrid PFD may be substituted for a life preserver, buoyant vest, or marine buoyant device required under subsection (b) or (c) of this section if it is:

- (1) In the case of a Type V commercial hybrid PFD, worn when the vessel is underway and the intended wearer is not within an enclosed space;
- (2) Used in accordance with the conditions marked on the PFD and in the owner's manual; and
- (3) Labeled for use on uninspected commercial vessels.

(g) The life-saving equipment required by this section shall be legibly marked.

(h) The life-saving equipment designed to be worn required in subsections (b), (c), and (e) of this section shall be readily accessible.

(i) The life-saving equipment designed to be thrown required by subsection (d) of this section shall be immediately available.

(j) The life-saving equipment required by this section shall be in serviceable condition.

**Section 3. Fire-Extinguishing Equipment Required.**

## (a) Motorboats.

(1) Motorboats less than 26 feet in length shall abide by Section 4(a) of Part C of this regulation.

(2) Motorboats 26 feet in length to less than 40 feet in length shall abide by Section 4(b) of Part C of this regulation.

(3) Motorboats 40 feet in length to less than 65 feet in length shall abide by Section 4(c) of Part C of this regulation.

## (b) Motor Vessels.

(1) Motor vessels less than 50 gross tonnage shall carry one Type B-II approved hand portable fire extinguisher.

(2) Motor vessels 50 and not over 100 gross tonnage shall carry two Type B-II approved hand portable fire extinguishers.

(3) Motor vessels 100 and not over 500 gross tonnage shall carry three Type B-II approved hand portable fire extinguishers.

(4) Motor vessels 500 but not over 1,000 gross tonnage shall carry six Type B-II approved hand portable fire extinguishers.

(5) Motor vessels over 1,000 gross tonnage shall carry eight Type B-II approved hand portable fire extinguishers.

(c) In addition to the hand portable fire extinguishers required by subsection (b) of this section, the following fire-extinguishing equipment shall be fitted in the machinery space:

(1) One Type B-II hand portable fire extinguisher shall be carried for each 1,000 B. H. P. of the main engines or fraction thereof. However, not more than six such extinguishers need be carried.

(2) On motor vessels over 300 gross tons, either one Type B-III semiportable fire-extinguishing system shall be fitted, or alternatively, a fixed fire-extinguishing system shall be fitted in the machinery space.

## (d) Barges carrying passengers.

(1) Every barge 65 feet in length or less while carrying passengers when towed or pushed by a motorboat, motor vessel or steam vessel shall be fitted with hand portable fire extinguishers as required by this Section 4 of Part C of this regulation, depending upon the length of the barge.

(2) Every barge over 65 feet in length while carrying passengers when towed or pushed by a motorboat, motor vessel or steam vessel shall be fitted with hand portable fire extinguishers as required by this section, depending upon the gross tonnage of the barge.

**[Section 2. Obedience to orders by enforcement officers.**

**It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.]**

**BR-10. BOAT RAMPS AND PARKING LOTS ADMINISTERED BY DIVISION.****Section 1. Applicability.**

This regulation applies to boat ramps, parking lots, and seawalls or other mooring facilities administered by the Division.

**Section 2. Boat Ramps and Mooring Facilities.**

(a) Whoever uses a boat ramp, seawall, or other mooring facility shall do so on a first-come, first-serve basis.

(b) No person shall leave a vessel unattended at any seawall or other mooring facility. Disabled vessels shall clear the area as soon as possible.

(c) No person shall use any seawall or other mooring facility except for vessels loading and unloading and as a holding area for vessels waiting to use boat ramps.

(d) No person shall moor or conduct repairs to a vessel in any area which interferes with vessel traffic at a boat ramp. Ramp space shall be kept clear at all times for usage of vessels being launched or recovered.

(e) Vessels left abandoned at any seawall or other mooring facility or found adrift shall be removed at the owner's expense. Vessels left unattended at any seawall or other mooring facility in excess of 48 hours without contacting the Division or a Fish and Wildlife Agent shall be deemed abandoned.

**Section 3. Parking Lots.**

(a) No person shall park a vehicle or boat trailer in an undesignated parking space.

(b) No person shall park, stop, or stand a vehicle or boat trailer in front of a boat ramp except in designated areas.

(c) No person shall park a vehicle or boat trailer in such a manner as to impede traffic.

(d) No person shall camp overnight in a parking lot.

(e) No person shall abandon a vehicle or boat trailer in a parking lot. If a vehicle or boat trailer is abandoned, it will be removed at the owner's expense. Vehicles or boat trailers left unattended in a parking lot for in excess of 48 hours without contacting the Division or a Fish and Wildlife Agent shall be deemed abandoned.

(f) Operators of emergency vehicles shall have priority over all other vehicles. Vessel operators shall clear passage for emergency vehicles on their approach or when directed by an enforcement officer.

**[Section 4. Obedience to Orders by Enforcement Officers.**

**It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.]**

**BR-11. NAVIGATION LIGHTS.****Section 1. Applicability.**

(a) Except for vessels used by enforcement officers for law enforcement purposes, this regulation applies to all vessels used on the waters of this State.

(b) Vessels over 20 meters (65.6 ft.) in length and vessels listed below shall display lights and exhibit shapes in accordance with the International or Inland Navigation Rules and Annexes (Commandant Instruction M16672.2C):

- (1) Vessels towing, pushing, or being towed or pushed;
- (2) Vessels engaged in fishing;
- (3) Vessels not under command;
- (4) Vessels restricted in their ability to maneuver;
- (5) Pilot vessels; or
- (6) Air-cushion vessels.

**Section 2. Visibility of lights.**

~~(a)~~ The lights required by this section shall have an intensity so as to be visible at the following ranges:

(1) In a vessel of 12 meters (39.4 ft.) or more in length but less than 50 meters (164 ft.) in length:

(a) a masthead light, 5 miles; except that where the length of the vessel is less than 20 meters (65.6 ft.), 3 miles;

- (b) a sidelight, 2 miles;
- (c) a sternlight, 2 miles;
- (d) a towing light, 2 miles;
- (e) a white, red, green or yellow all-round light,

2 miles; and

(f) a special flashing light, 2 miles.

(2) In a vessel of less than 12 meters (39.4 ft.) in length:

- (a) a masthead light, 2 miles;
- (b) a sidelight, 1 mile;
- (c) a sternlight, 2 miles;
- (d) a towing light, 2 miles;
- (e) a white, red, green or yellow all-round light,

2 miles; and

(f) a special flashing light, 2 miles.

**Section 3. Prohibition.**

(a) No person may use a vessel to which this regulation applies without carrying and exhibiting the lights required in Section 4 of this regulation and of the intensity required in Section 2 of this regulation:

- (1) When underway or at anchor;
- (2) In all weathers from sunset to sunrise; and
- (3) During times of restricted visibility.

(b) No person may use a vessel to which this regulation applies which exhibits other lights which may be mistaken for those required in Section 4 of this regulation during such time as navigation lights are required.

(c) No person may use a vessel to which this regulation applies unless it carries and exhibits the light or day shapes required in the International or Inland Navigational Rules and Annexes (Commandant Instruction M16672.2C) for vessels used under special circumstances defined therein.

**Section 4. Navigation Lights Required.**

(a) Power-driven vessels underway in international and inland waters shall exhibit:

- (1) A masthead light forward;
- (2) A second masthead light abaft of and higher than the forward one; except that in inland waters a vessel of less than 50 meters (164 ft.) in length shall not be obliged to exhibit such light but may do so;
- (3) Sidelights; and
- (4) A sternlight.

(b) Power-driven vessels underway in international waters:

(1) Power-driven vessels of less than 12 meters (39.4 ft.) in length may in lieu of the lights prescribed in subsection (a) of this section exhibit an all-round white light and sidelights;

(2) Power-driven vessels of less than 7 meters (23 ft.) in length whose maximum speed does not exceed 7 knots may in lieu of the lights prescribed in subsection (a) of this section exhibit an all-round white light and shall, if practicable, also exhibit sidelights; and

(3) The masthead light or all-round white light on a power-driven vessel of less than 12 meters (39.4 ft.) in length may be displaced from the fore and aft centerline of the vessel if centerline fitting is not practicable, provided that the sidelights are combined in one lantern which shall be carried on the fore and aft centerline of the vessel or located as nearly as practicable in the same fore and aft line as the masthead light or the all-round white light.

(c) Power-driven vessels underway in inland waters shall exhibit the same light for vessels in subsection (a) of this section except:

(1) A vessel of less than 12 meters (39.4 ft.) in length may, in lieu of the lights prescribed in subsection (a) of this section, exhibit an all-round white light and sidelights.

(2) A vessel of less than 20 meters (65.6 ft.) in length need not exhibit the masthead light forward of amidships but shall exhibit it as far forward as practicable.

(d) Sailing vessels underway and vessels under oars in international and inland waters:

- (1) A sailing vessel underway shall exhibit:
  - (a) Sidelights; and
  - (b) A sternlight;

(2) In a sailing vessel of less than 20 meters (65.6 ft.) in length, the lights prescribed in paragraph (d)(1) of this section may be combined in one lantern carried at or near the top of the mast where it can best be seen.

(3) A sailing vessel underway may, in addition to

the lights prescribed in paragraph (d)(1) of this section, exhibit at or near the top of the mast, where they can best be seen, two all-round lights in a vertical line, the upper being red and the lower being green, but these lights shall not be exhibited in conjunction with the combined lantern permitted in paragraph (d)(2) of this section.

(4) A sailing vessel of less than 7 meters (23 ft.) in length shall, if practicable, exhibit the lights prescribed in paragraph (d)(1) or (2) of this section, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.

(5) A vessel under oars may exhibit the lights prescribed in this section for sailing vessels, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.

(6) A vessel proceeding under sail when also being propelled by machinery shall exhibit forward where it can best be seen a conical shape, apex downward. When upon inland waters, a vessel of less than 12 meters (39.4 ft.) in length is not required to exhibit this shape.

(e) Anchored vessels:

(1) *International and Inland.* Vessels at permanent moorings are not required to display an anchor light.

(2) *International and Inland.* A vessel of less than 50 meters (164 ft.) in length at anchor shall exhibit an all-round white light where it can best be seen or:

(a) In the fore part, an all-round white light or one ball; and

(b) At or near the stern and at a lower level than the light prescribed in subparagraph (2)(a) of this subsection, an all-round white light.

(3) *Inland.* A vessel of less than 7 meters (23 ft.) in length, when at anchor, not in or near a narrow channel, fairway, anchorage, or where other vessels normally navigate, shall not be required to exhibit the lights or shapes prescribed in paragraph (d)(2) of this section.

~~Section 5. Obedience to Orders by Enforcement Officers.~~

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.]~~

**BR-12. ANCHORING AND OBSTRUCTING NAVIGATION.**

**Section 1. Applicability.**

This regulation applies to all vessels or other objects used or placed on the waters of this State.

**Section 2. Anchoring.**

(a) No person shall anchor a vessel or other object in a navigable channel or allow any equipment from an anchored vessel to extend into the channel and subsequently interfere with passage of any other vessel.

(b) No person shall anchor a vessel in such a manner as to obstruct or otherwise obscure navigation aids.

(c) No person shall anchor a vessel or allow any equipment from an anchored vessel to obstruct or otherwise interfere with passage or any other vessel near:

- (1) A boat launching facility;
- (2) A marina entrance;
- (3) The entrance to any canal or waterway;
- (4) A permanent mooring facility; or
- (5) A vessel docking facility.

(d) No person shall place any item or equipment in a navigable channel so as to obstruct or otherwise impede or interfere with the passage of a vessel.

~~Section 3. Obedience to Orders by Enforcement Officers.~~

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.]~~

<sup>1</sup> Must have manufacture date of October 1980 or later.  
<sup>2</sup> These signals require use in combination with a suitable launching device.  
<sup>3</sup> These devices may be either meteor or parachute assisted type. Some of these signals may require use in combination with a suitable launching device.

**APPENDIX A  
ISSUING AUTHORITIES**

(a) The state is the issuing authority and reporting authority in:

Alabama	(AL)	Montana	(MT)
American Samoa	(AS)	Nebraska	(NB)
Arizona	(AZ)	Nevada	(NV)
Arkansas	(AR)	New Hampshire	(NH)
California	(CF)	New Jersey	(NJ)
Colorado	(CL)	New Mexico	(NM)
Connecticut	(CT)	New York	(NY)
Delaware	(DL)	North Carolina	(NC)
District of Columbia	(DC)	North Dakota	(ND)
Florida	(FL)	Ohio	(OH)
Georgia	(GA)	Oklahoma	(OK)
Guam	(GM)	Oregon	(OR)
Hawaii	(HA)	Pennsylvania	(PA)
Idaho	(ID)	Puerto Rico	(PR)
Illinois	(IL)	Rhode Island	(RI)

Indiana	(IN)	South Carolina	(SC)
Iowa	(IA)	South Dakota	(SD)
Kansas	(KA)	Tennessee	(TN)
Kentucky	(KY)	Texas	(TX)
Louisiana	(LA)	Utah	(UT)
Maine	(ME)	Vermont	(VT)
Maryland	(MD)	Virginia	(VA)
Massachusetts	(MS)	Virgin Islands	(VI)
Michigan	(MC)	Washington	(WN)
Minnesota	(MN)	West Virginia	(WV)
Mississippi	(MI)	Wisconsin	(WS)
Missouri	(MO)	Wyoming	(WY)

(b) The Coast Guard is the issuing authority and reporting authority in:

Alaska (AK)

(c) The abbreviations following the names of the states listed in the paragraphs (a) and (b) are the two capital letters that must be used in the number format to denote the state of principal use.

#### APPENDIX B ONE YEAR CYCLE

COLOR	YEAR ISSUED	YEAR EXPIRES
Blue	1997	1997
Orange	1998	1998
Green	1999	1999
Red	2000	2000
Blue	2001	2001
Orange	2002	2002

#### [TWO YEAR CYCLE

COLOR	YEAR ISSUED	YEAR EXPIRES
<b>Red</b>	<b>1996</b>	<b>1997</b>
<b>Blue</b>	<b>1997</b>	<b>1998</b>
<b>Orange</b>	<b>1998</b>	<b>1999</b>
<b>Green</b>	<b>1999</b>	<b>2000</b>
<b>Red</b>	<b>2000</b>	<b>2001</b>
<b>Blue</b>	<b>2001</b>	<b>2002</b>

#### THREE YEAR CYCLE

COLOR	YEAR ISSUED	YEAR EXPIRES
Green	1995	1997
Red	1996	1998
Blue	1997	1999
Orange	1998	2000
Green	1999	2001
Red	2000	2002

## DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

### DIVISION OF AIR & WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code,  
Chapter 60

Secretary's Order No. 98-A-0014

Re: Proposed Regulation No. 38 "Emission Standards for Hazardous Air Pollutants for Source Categories" of the Regulations Governing the Control of Air Pollution

Date of Issuance: April 14, 1998

Effective Date of Regulatory Amendments: May 11, 1998

#### I. Background

On Wednesday, April 8, 1998, a public hearing was held in the DNREC Auditorium of the Richardson and Robbins Building at 89 Kings Highway, Dover, Delaware, beginning at approximately 6:00 p.m. The public hearing concerned the proposed new Regulation No. 38 "Emission Standards for Hazardous Air Pollutants for Source Categories" of the Regulations Governing the Control of Air Pollution. This is the first of several anticipated regulatory actions to adopt federal requirements from 40 CFR Part 63 concerning hazardous air pollutants into the Delaware Regulations Governing the Control of Air Pollution.

#### II. Findings

1. Proper notice of the hearing was provided as required by law, including publication in the Delaware Register of Regulations.

2. No members of the public testified or offered written comments at the public hearing concerning adoption of the proposed regulation.

3. Only minor changes were made to this proposal after it was put out to public notice. These changes were made for the sake of clarification and do not substantially affect the proposed regulation.

4. This regulation adopts federal requirements concerning emission standards for hazardous air pollutants for source categories. The regulation of these pollutants should further the policies and purposes of 7 Del. C. Chapter 60.

#### III. Order

In view of the above findings, it is hereby ordered that the proposed Regulation No. 38 "Emission Standards for

Hazardous Air Pollutants for Source Categories” be adopted and incorporated into the Regulations Governing the Control of Air Pollution according to the Administrative Procedures Act and that the amendments be effective on the date stated hereinabove.

IV. Reasons

Promulgation of this regulation will adopt state emission standards for hazardous air pollutants for source categories. The regulation of these pollutants should further the policies and purposes of 7 Del. C. Chapter 60.

Christophe A. G. Tulou, Secretary

FINAL REGULATION NO. 38

EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

~~2/3/~~ 4/4/98  
OVERVIEW

Title III of the Clean Air Act Amendments of November 15, 1990 revised Section 112 of the 1970 Clean Air Act that addressed hazardous air pollutants (HAPs) and changed the way that these pollutants were to be regulated. Title III identified the specific HAPs and established the regulatory approach that the U.S. Environmental Protection Agency (EPA) would take to control their emissions from stationary sources.

The EPA is initially required to promulgate emission standards that are based on the maximum achievable control technology (MACT) for categories or subcategories of sources according to a Congress-mandated schedule. Within eight years of promulgating these MACT-based standards, the EPA is required to address the remaining or residual risk by promulgating, if needed, standards necessary to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. The initial MACT-based regulations are at 40 CFR Part 63.

The Department is adopting these regulations in response to 7 Del. C., Chapter 60.

~~2/3/~~ 4/4/98  
Subpart A General Provisions

The provisions of Subpart A - General Provisions, of Title 40, Part 63 of the Code of Federal Regulations, [~~dated July 1, 1997, as set forth in Vol. 59 of the Federal Register, page 12430 et seq, dated March 16, 1994, as amended in Vol. 59, page 19453 et seq, dated April 22,~~

~~1994; Vol. 59, page 62589 et seq, dated December 6, 1994; Vol. 60, page 4963 et seq, dated January 25, 1995; Vol. 60, page 33122, dated June 27, 1995; Vol. 60, page 45980 et seq, dated September 1, 1995; Vol. 61, page 25399 et seq, dated May 21, 1996; and Vol. 61, page 66227 et seq, dated December 17, 1996]~~, are hereby adopted by reference with the following changes:

(a) The provisions of Subpart A of this regulation (Regulation 38) apply to owners or operators who are or may be subject to a subsequent subpart(s) of this regulation, except when otherwise specified in that subsequent subpart(s).

(b) Except as shown in Table A-1 of this subpart, “Department” shall replace each of the following:

- (1) “Administrator”;
- (2) “Administrator or by a State with an approved permit program”;
- (3) “Administrator (or a State with an approved permit program)”;
- (4) “Administrator (or the State with an approved permit program)”;
- (5) “Administrator (or a State)”;
- (6) “Administrator (or the State)”.

(c) Paragraph 63.1(b)(2) shall be replaced with the following language: “In addition to complying with the provisions of this part, the owner or operator of any such source may be required to obtain, revise or amend permits issued to stationary sources by ~~[an authorized State air pollution control agency or an operating permit by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Act (42 U.S.C. 7661) the Department]~~. For more information about obtaining permits, see Regulations 2, 25 and 30 of the State of Delaware “Regulations Governing the Control of Air Pollution” ~~[or part 70 of this chapter, whichever is applicable.]~~”]

**[(d) Paragraph 63.1(c)(2)(iii) shall be replaced with the following language: “Area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title V permit. If a standard fails to specify what the permitting requirements will be for area sources affected by that standard, then area sources that are subject to the standard will be subject to the requirement to obtain a title V permit without deferral. If the owner or operator is required to obtain a title V permit, he or she shall apply for such permit in accordance with Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution.”]**

**[(e) Paragraph 63.1(e) shall be replaced with the following language: “After January 3, 1996, the owner or operator of such source may be required to obtain a title V permit from the permitting authority (or revise such a permit if one has already been issued to the source) before a relevant standard is established under this part. If the owner or operator is required to obtain (or revise) a title V permit, he/she shall apply to obtain (or revise) such permit in accordance with Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution.”]**

**[(f) The definition of Act found in Section 63.2 shall be replaced with the following language: “Act means the Clean Air Act (42 U.S.C. 7401 et seq., dated November 15, 1990).”]**

**[(d g)]** The definition of Administrator found in Section 63.2 shall be replaced with the following language: “*Administrator* means the Administrator of the United States Environmental Protection Agency.”

**[(e h)]** The last sentence in the definition of Affected source found in Section 63.2 shall be deleted.

**[(i) The definition of Approved permit program found in Section 63.2 shall be replaced with the following language: “Approved permit program means the permit program established under Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution.”]**

**[(f j)]** The definition of Department is added to list of definitions found in Section 63.2 with the following language: “*Department* means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended.”

**[(k) The last sentence in the number 2 definition of Effective date found in Section 63.2 shall be replaced with the following language: “(3) With regards to the permit program, the effective date is January 3, 1996.”]**

**[(g l)]** The definition of Part 70 permit found in Section 63.2 shall be replaced with the following language: “*Part 70 permit* means any permit issued, renewed, or revised pursuant to Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution.”

**[(h m)]** The definition of Permit **[M m]**odification found in Section 63.2 shall be replaced with the following language: “*Permit modification* means a change to a title V permit as defined in **[regulations codified in this chapter to implement title V of the Act (42 U.S.C. 7661) or]**

Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution”~~], whichever is applicable.”]~~

**[(n) The definition of Permit program found in Section 63.2 shall be replaced with the following language: “Permit program means the comprehensive State operating permit system established under Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution.”]**

**[(i o)]** The definition of Permit **[R r]**evision found in Section 63.2 shall be replaced with the following language: “*Permit revision* means any permit modification or administrative permit amendment to a title V permit as defined in **[regulations codified in this chapter to implement title V of the Act (42 U.S.C. 7661) or]** Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution”~~], whichever is applicable.”]~~

**[(p) The definition of Permitting authority found in Section 63.2 shall be replaced with the following language: “Permitting authority means the Department.”]**

**[(j q)]** The Responsible Official definition (4) found in Section 63.2 shall be replaced with the following language: “For affected sources (as defined in this part) applying for or subject to a title V permit: “responsible official” shall have the same meaning as defined in Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution”~~]-or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.”]~~

**[(k r)]** Paragraph 63.4(a)(1)(ii) shall be replaced with the following language: “An extension of compliance granted under this part by the Department; or”

**[(s) Paragraph 63.4(a)(3) shall be replaced with the following language: “After January 3, 1996, no owner or operator of an affected source who is required under this part to obtain a Regulation 30 permit shall operate such source except in compliance with the provisions of this part and the applicable requirements of the permit program.”]**

**[(t)]** Paragraph 63.5(b)(3) shall be replaced with the following language: “After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new major affected source or reconstruct a major affected source subject to such standard, or reconstruct a source such that the source becomes a major

affected source subject to the standard, without obtaining written approval, in advance, from the Department in accordance with the procedures specified in paragraphs (d) and (e) of this section.”

**([m u])** The last sentence in paragraphs 63.5(b)(4) and 63.9(b)(5) shall be replaced with the following language: “The application for approval of construction or reconstruction required in Sec. 63.5(b)(3) may be used to fulfill the notification requirements of this paragraph.”

**([n v])** The first sentence in paragraph 63.5(d)(1)(i) shall be replaced with the following language: “An owner or operator who is subject to the requirements of paragraph (b)(3) of this section shall submit to the Department an application for approval of the construction of a new major affected source, the reconstruction of a major affected source, or the reconstruction of a source such that the source becomes a major affected source subject to the standard.”

**([o w])** Paragraph 63.5(e)(5)(i) shall be replaced with the following language: “Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement, including, but not limited to the requirement to obtain construction permits under Regulation 2 or 25 of the State of Delaware “Regulations Governing the Control of Air Pollution”, before commencing construction or reconstruction; or ”

**([p x])** Paragraphs 63.5(e)(5)(ii), 63.7(c)(3)(iii)(B) and 63.8(e)(3)(vi)(B) shall be replaced with the following language: “Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act or Department from implementing or enforcing this regulation or taking any other action under 7 Del. C., Chapter 60.”

**([q y])** Paragraph 63.6(g)(2) shall be replaced with the following language: “An owner or operator requesting permission under this paragraph shall, unless otherwise specified in an applicable subpart, submit to the Administrator and Department a proposed test plan or the results of testing and monitoring in accordance with Sec. 63.7 and Sec. 63.8, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring. Any testing or monitoring conducted to request permission to use an alternative nonopacity emission standard shall be appropriately quality assured and quality controlled, as specified in Sec. 63.7 and Sec. 63.8.”

**([r z])** Paragraph 63.6(h)(9)(i) shall be replaced with the following language: “If the Department finds under paragraph (h)(8) of this section that an affected source is in

compliance with all relevant standards for which initial performance tests were conducted under Sec. 63.7, but during the time such performance tests were conducted fails to meet any relevant opacity emission standard, the owner or operator of such source may petition the Administrator (with copy to the Department) to make appropriate adjustment to the opacity emission standard for the affected source. Until the Administrator notifies the owner or operator of the appropriate adjustment, the relevant opacity emission standard remains applicable.”

**([s aa])** Paragraph 63.6(i)(4)(i)(A) shall be replaced with the following language: “The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Department grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 1-year extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. The owner or operator of an affected source who has requested an extension of compliance under this paragraph and who is otherwise required to obtain a title V permit shall apply for such permit or apply to have the source’s title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph will be incorporated into the affected source’s title V permit according to the provisions of Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution” ~~or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.~~”]

**([t bb])** Paragraph 63.6(i)(16) shall be replaced with the following language: “The granting of an extension under this section shall not abrogate the Administrator’s authority under section 114 of the Act or Department’s authority under 7 Del. C., Chapter 60.”

**([u cc])** Paragraph 63.7(a)(3) shall be replaced with the following language: “The Administrator or Department may require an owner or operator to conduct performance tests at the affected source at any other time when the action is authorized by section 114 of the Act or by Regulation 17 of the State of Delaware “Regulations Governing the Control of Air Pollutants”, respectively.”

**([v dd])** Paragraph 63.7(b)(2) shall be replaced with the following language: “In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in paragraph (b)(1) of this section, due to unforeseeable circumstances beyond

his or her control, the owner or operator shall notify the Department within 5 days prior to the scheduled performance test date and specify the date when the performance test is rescheduled. This notification of delay in conducting the performance test shall not relieve the owner or operator of legal responsibility for compliance with any other applicable provisions of this part or with any other applicable Federal, State, or local requirement, nor will it prevent the Administrator from implementing or enforcing this part or taking any other action under the Act or Department from implementing or enforcing this regulation or taking any other action under 7 Del. C., Chapter 60.”

**([w ee])** Paragraph 63.7(c)(3)(ii)(B) shall be replaced with the following language: “If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator shall refrain from conducting the performance test until the Department approves the site-specific test plan (if review of the site-specific test plan is requested) following the Administrator’s approval of the use of the alternative method. If the Department does not approve the site-specific test plan (if review is requested) within 30 days before the test is scheduled to begin, the performance test dates specified in paragraph (a) of this section may be extended such that the owner or operator shall conduct the performance test within 60 calendar days after the Department approves the site-specific test plan. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Department’s prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.”

**([x ff])** Paragraph 63.7(e)(2) shall be replaced with the following language: “Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this section, in each relevant standard, and, if required, in applicable appendices of parts 51, 60, 61, and 63 of this chapter unless —

(i) The Department specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(ii) The Administrator approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or

(iii) The Department approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(iv) The Department waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the

Department’s satisfaction that the affected source is in compliance with the relevant standard.”

**([y gg])** Paragraph 63.7(e)(4) shall be replaced with the following language: “Nothing in paragraphs (e)(1) through (e)(3) of this section shall be construed to abrogate the Administrator’s authority to require testing under section 114 of the Act or Department’s authority under Regulation 17 of the State of Delaware “Regulations Governing the Control of Air Pollution.”

**([z hh])** Paragraph 63.7(f)(2)(iii) shall be replaced with the following language: “Submits the results of the Method 301 validation process to the Administrator (with copy to the Department) along with the notification of intention and the justification for not using the specified test method. The owner or operator may submit the information required in this paragraph well in advance of the deadline specified in paragraph (f)(2)(i) of this section to ensure a timely review by the Administrator in order to meet the performance test date specified in this section or the relevant standard.”

**([aa ii])** Paragraph 63.7(f)(3) shall be replaced with the following language: “The Administrator will determine whether the owner or operator’s validation of the proposed alternative test method is adequate when the Administrator approves or disapproves the use of the alternative test method required under paragraph (c) of this section. If the Administrator finds reasonable grounds to dispute the results obtained by the Method 301 validation process, the Administrator may require the use of a test method specified in a relevant standard.”

**([bb jj])** Paragraphs 63.8(b)(1) shall be replaced with the following language: “Monitoring shall be conducted as set forth in this section and the relevant standard(s) unless —

(i) The Department specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) The Administrator approves the use of alternatives to any monitoring requirements or procedures.

(iii) Owners or operators with flares subject to Sec. 63.11(b) are not subject to the requirements of this section unless otherwise specified in the relevant standard.”

**([cc kk])** Paragraph 63.8(e)(1) shall be replaced with the following language: “When required by a relevant standard, and at any other time the Administrator may require under section 114 of the Act or Department may require under Regulation 17 of the State of Delaware “Regulations Governing the Control of Air Pollution”, the owner or operator of an affected source being monitored shall conduct a performance evaluation of the CMS. Such performance evaluation shall be conducted according to the applicable

specifications and procedures described in this section or in the relevant standard.”

**([dd ll])** Paragraph 63.8(e)(3)(v)(B) shall be replaced with the following language: “If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Department approves the site-specific performance evaluation test plan (if requested) once the Administrator approves the use of the alternative method. If the Administrator does not approve the use of the alternative method within 30 days before the performance evaluation is scheduled to begin, the performance evaluation deadlines specified in paragraph (e)(4) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 60 calendar days after the Department approves the site-specific performance evaluation test plan. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Department’s prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the specified monitoring method(s) instead of an alternative.”

**([ee mm])** Paragraph 63.8(f)(4)(i) shall be replaced with the following language: “An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator (with copy to the Department) as described in paragraph (f)(4)(ii) of this section, below. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard, the application shall be submitted not later than with the site-specific test plan required in Sec. 63.7(c) (if requested) or with the site-specific performance evaluation plan (if requested) or at least 60 days before the performance evaluation is scheduled to begin.”

**([ff nn])** Paragraph 63.8(f)(6)(i) shall be replaced with the following language: “An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator (with copy to the Department) under paragraph (f)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements in Sec. 63.7, or other tests performed following the criteria in Sec. 63.7, demonstrate that the

emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator (with copy to the Department) to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the CEMS is used continuously to determine compliance with the relevant standard.”

**([gg oo])** Paragraph 63.9(b)(4) shall be replaced with the following language: “The owner or operator of a new or reconstructed major affected source, or of a source that has been reconstructed such that the source becomes a major affected source, that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is required under Sec. 63.5(d) shall provide the following information in writing to the Department:”

**([hh pp])** Paragraph 63.9(b)(4)(i) shall be replaced with the following language: “A notification of intention to construct a new major affected source, reconstruct a major affected source, or reconstruct a source such that the source becomes a major affected source with the application for approval of construction or reconstruction as specified in Sec. 63.5(d)(1)(i);”

**([ii qq])** Paragraph 63.10(b)(3) shall be replaced with the following language: “If an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants is not subject to a relevant standard or other requirement established under this part, the owner or operator shall keep a record of the applicability determination on site at the source for the life of the source or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination shall include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) shall be sufficiently detailed to allow the Department to make a finding about the source’s applicability status with regard to the relevant standard or other requirement. If relevant, the analysis shall be performed in accordance with requirements established in subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any.”

**[(rr)]** The last two sentences of Paragraph 63.10(d)(5)(ii) shall be replaced with the following language: “Notwithstanding the requirements of the previous sentence, after January 3, 1996, the owner or operator may make alternative reporting arrangements, in advance, with the Department. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in Sec. 63.9(i).”

**[(jj ss)]** Paragraph 63.10(f)(6) shall be replaced with the following language: “Approval of any waiver granted under this section shall not abrogate the Administrator’s authority under the Act or Department’s authority under 7 Del. C., Chapter 60 or in any way prohibit the Department from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.”

**[(kk tt)]** Paragraph 63.15(b)(3) shall be added with the following language: “(3) Any information provided to or otherwise obtained by the Department shall be made available to the public unless it is determined to be confidential under 7 Del. C., Chapter 60, Section 6014 or 29 Del. C., Chapter 100, Section 10002(d).”

**\* PLEASE SEE TABLE A-1 OF SUBPART A AT THE END OF THE REGULATION.**

~~2/3/~~ 4/4/98

Subpart Q Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

The provisions of Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers, of Title 40, Part 63 of the Code of Federal Regulations, **[dated July 1, 1997, as set forth in Vol. 59, page 46350 et seq, dated September 8, 1994,]** are hereby adopted by reference with the following changes:

(a) Except as shown in Table Q-1 of this subpart, “Department” shall replace “Administrator”.

(b) The Responsible Official definition (4) found in Section 63.401 shall be replaced with the following language: “ For affected sources (as defined in this part) applying for or subject to a title V permit: “responsible official” shall have the same meaning as defined in Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution” **[-or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.]**”

**[(c) Paragraph 63.403(a) shall be replaced with the following language: “For existing IPCT’s, the compliance date shall be May 11, 1998.”]**

**[(d) Paragraph 63.403(b) shall be replaced with the following language: “For new IPCT’s that have an initial startup before September 8, 1994, the compliance date shall be May 11, 1998.”]**

**[(e) Paragraph 63.403(c) shall be replaced with the following language: “For new IPCT’s that have an initial startup on or after September 8, 1994, the compliance date shall be May 11, 1998 or the date of the initial startup, whichever is later.”]**

**[(e f)]** The opening paragraph of Section 63.404 shall be replaced with the following language: “No routine monitoring, sampling, or analysis is required. In accordance with section 114 of the Act, the Administrator can require cooling water sample analysis of an IPCT if there is information to indicate that the IPCT is not in compliance with the requirements of Sec. 63.402 of this subpart. In accordance with Regulation 17 of the State of Delaware “Regulations Governing the Control of Air Pollution”, the Department can require cooling water sample analysis of an IPCT to indicate that the IPCT is not in compliance with the requirements of Sec. 63.402 of this subpart. If cooling water sample analysis is required:”

**[(g) Paragraph 63.405(a)(1) shall be replaced with the following language: “In accordance with Sec. 63.9(b) of subpart A, owners or operators of all affected IPCT’s that have an initial startup before September 8, 1994, shall notify the Department in writing. The notification, which shall be submitted not later than May 11, 1998, shall provide the following information:”]**

**[(h) Paragraph 63.405(a)(2) shall be replaced with the following language: “In accordance with Sec. 63.9(b) of subpart A, owners or operators of all affected IPCT’s that have an initial startup on or after September 8, 1994, shall notify the Department in writing that the source is subject to the relevant standard no later than May 11, 1998 or 12 months after initial startup, whichever is later. The notification shall provide all the information required in paragraphs (a)(1)(i) through (a)(1)(iv) of this section.”]**

**[(i) Paragraph 63.405(b)(1) shall be replaced with the following language: “In accordance with Sec. 63.9(h) of subpart A, owners or operators of affected IPCT’s shall submit to the Department a notification of compliance status by May 11, 1998.”]**

**[(fd j)]** Table 1 of Subpart Q, which is being adopted by reference, is modified by the following additions or deletions:

(1) Paragraph 63.9(i) is added in the listing of

**FINAL REGULATIONS**

General Provisions that are applicable to Subpart Q;

(2) Subparagraph 63.9(b)(6) is deleted from the listing of General Provisions that are not applicable to Subpart Q; and

(3) Item 63.10(b)(2)(xiii) is added in the listing of General Provisions that are not applicable to Subpart Q.

Table Q-1 of Subpart Q - Exceptions to "Department" as replacement of "Administrator" under Subpart Q (a)

Reference	"Administrator" means "Administrator"	Comment
63.401 "Responsible official"	Yes	In definition (3)
63.404	Yes	As replaced

Table A-1 of Subpart A - Exceptions to "Department" as replacement of "Administrator et al" under Subpart A (b)(1) to (6)

Reference	"Administrator" means "Administrator"	"Administrator et al" is replaced by "Administrator or Department"	"Administrator et al" is replaced by "Administrator and Department"	Comments
63.1(a)(2) & (3)	Yes			
63.1(a)(11)			Yes	
63.1(a)(12)		Yes		
63.1(b)(2)	Yes			As replaced
63.1(c)	Yes			
63.2 "Administrator"	Yes			As replaced
63.2 "Alternative Emission Standard"	Yes			
63.2 "Alternative test method"	Yes			
63.2 "Approved permit program"	Yes			
63.2 "Compliance date"		Yes		
63.2 "Equivalent emission limitation"	Yes			For last use in definition
63.2 "Federally enforceable"	Yes			
63.2 "Lesser quantity"	Yes			
63.2 "Major source"	Yes			
63.2 "New source"	Yes			
63.2 "Performance audit"	Yes			
63.2 "Permitting authority"	Yes			
63.2 "Reconstruction"		Yes		

63.2	Yes		
"Regulation promulgation schedule"			
63.2		Yes	
"Relevant Standard"			
63.2	Yes		In definition (3)
"Responsible official"			
63.4(a)(1)(i)	Yes		
63.5(b)(3)	Yes		As replaced
63.5(b)(4)	Yes		1 <sup>st</sup> occurrence
63.5(b)(5) & (6)	Yes		
63.5(e)(5)(ii)	Yes		As replaced
63.6(c)(1)	Yes		
63.6(g)(1)	Yes		
63.6(g)(2)	Yes		As replaced
63.6(g)(3)	Yes		
63.6(h)(9)(i)	Yes		As replaced
63.6(h)(9)(ii, iii & iv)	Yes		
63.6(i)(16)	Yes		As replaced
63.7(a)(3)	Yes		As replaced
63.7(b)(2)	Yes		As replaced
63.7(c)(2)(iii)	Yes		1 <sup>st</sup> occurrence
63.7(c)(3)(ii)(B)	Yes		As replaced
63.7(c)(3)(iii)(B)	Yes		As replaced
63.7(c)(4)(iii)	Yes		
63.7(e)(2)	Yes		As replaced
63.7(e)(4)	Yes		As replaced
63.7(f)(1)	Yes		
63.7(f)(2)(i)		Yes	1 <sup>st</sup> occurrence
63.7(f)(2)(iii)	Yes		As replaced
63.7(f)(3)	Yes		As replaced
63.7(f)(4) & (5)	Yes		
63.8(a)(2)	Yes		
63.8(b)(1)	Yes		As replaced
63.8(e)(1)	Yes		As replaced
63.8(e)(3)(v)(B)	Yes		As replaced
63.8(e)(3)(vi)(B)	Yes		As replaced
63.8(f)(1), (2) & (3)	Yes		
63.8(f)(4)(i)	Yes		As replaced
63.8(f)(4)(iii) & (5)	Yes		
63.8(f)(6)(i)	Yes		As replaced
63.8(f)(6)(ii)	Yes		
63.8(f)(6)(iii)	Yes		1 <sup>st</sup> & 3 <sup>rd</sup> occurrence
63.8(f)(6)(iii)		Yes	2 <sup>nd</sup> occurrence
63.9(a)(3)	Yes		
63.9(b)(5)	Yes		1 <sup>st</sup> occurrence
63.10(a)(3)	Yes		
63.10(f)(6)	Yes		As replaced
63.12	Yes		
63.13	Yes		
63.15	Yes		

**DEPARTMENT OF EDUCATION**

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

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

**VISION SCREENING****I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED**

The regulation on Vision Screening found on pages 43 to 48 in The School Nurse, A Guide to Responsibilities must be amended. This regulation lists the grades where vision screening must occur as well as requiring screenings for new students, special education students and driver education students. Requirements to notify parents or guardians and to enter the results in the school health record are also included. The amendment is necessary in order to isolate the regulatory responsibilities of the school nurse from the technical assistance information and to use the word "shall" in the regulatory statements.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

**II. FINDINGS OF FACT**

The Secretary and the State Board of Education find that it is necessary to amend the regulation because of the need to clarify the regulatory responsibilities of the school nurse.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. TEXT AND CITATION**

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended

regulation shall be cited in The School Nurse, A Guide to Responsibilities.

**V. EFFECTIVE DATE OF ORDER**

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

**EXHIBIT B****Vision Screening**

1. All children in kindergarten or grade 1 and in grades 3, 5, 8, and 10 shall receive a vision screening by December 15th of the current school year.
2. Students new to the school system, teacher referrals, those students considered for special education placement and driver education students shall have a vision screening.
3. The school nurse shall record the results on the School [Health] Record.
4. The school nurse shall notify parents/guardians if the child has a suspected vision problem.

---

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

**HEARING SCREENING PROCEDURES****I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED**

The regulation on Hearing Screening Procedures found on pages 28 to 35 in The School Nurse, A Guide to Responsibilities must be amended. This regulation lists the grade levels where hearing screenings must occur, requires re-screenings and new student screenings. Notification of the parent or guardian of the screening results and the recording of the results in the school health record are also regulated. The amendment is necessary in order to isolate the regulatory responsibilities of the school nurse from the technical assistance information and to use the word "shall" in the regulatory statements.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

## II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because of the need to clarify the regulatory responsibilities of the school nurse.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

## V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16<sup>th</sup> day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16<sup>th</sup> day of April, 1998.  
STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

## EXHIBIT B

### Hearing Screening

1. All children in kindergarten or grade 1 and in grades 3, 5, 8 and in grade 10 or 11 shall receive a hearing screening by December 15th of the current school year.
2. Students new to the school system and those students considered for special education placement shall have a hearing screening.
3. Should any child again fail the screening, a repeat screening shall be done within two (2) weeks of the initial screening.
4. The school nurse shall record the test results on the School Health Record.
5. The school nurse shall notify the parents/guardian that the child has failed the hearing screening and may have a hearing loss.

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

### DELAWARE SCHOOL HEALTH RECORD CARD

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulation on the Delaware School Health Record Card found on page 22 in The School Nurse, A Guide to Responsibilities must be amended. This regulation defines the school nurse's responsibilities in keeping school health records. The amendment is necessary to eliminate the reference to a "card" since most record keeping will be done electronically and to separate the regulatory aspects of the policy from those that were included for technical assistance purposes.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

## II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because of the need to clarify the regulatory responsibilities of the school nurse.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

## V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

## EXHIBIT B

### Delaware School Health Record

1. The "School Health Record" is confidential and shall be stored so that only duly authorized persons have access to it.
2. A "School Health Record" shall be prepared for each school child. When a child is promoted to another school in the district or transfers to another school in or out of state this shall accompany the other school records.
3. The health record will serve for the duration of the child's schooling. The school nurse shall use the "Student Health History Update" to keep health records current.
4. The "School Health Record" shall remain in the general school file or nurse's file during the pupil's attendance in school. The school nurse should destroy any duplicate or partial health record after entries have been transferred to the official record so that there is only one correct and up-to-date record.
5. No health or psychological data shall be filmed with school academic records.
6. All student health records shall be retained at the school for two years after termination (graduation, drop-out).
7. All health records shall be transferred to the State Records Center which will retain the records for a total of 25 years.

---

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

### DELAWARE EMERGENCY TREATMENT CARD

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulation the Delaware Emergency Treatment Card found on page 99 of The School Nurse, A Guide to Responsibilities must be amended. The existing regulation is in the form of a card that parents or guardians must fill out and sign and a list of school emergency procedures are attached to the card. The amendment puts into regulation the language that states that the card must be used and what information must be on the card.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News

on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

## II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because the regulatory requirement must be in the form of a written statement and not in the form of a card.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

## V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.  
Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.  
STATE BOARD OF EDUCATION  
Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

## EXHIBIT B

### THE DELAWARE EMERGENCY TREATMENT CARD

A Delaware Emergency Treatment Card shall be on file for every child enrolled in the Delaware Public Education system and the card must contain at a minimum, requests for the following information: student's name, birth date, school district, school, grade, homeroom or teacher, home address, home phone, mother/guardian's name and/or father/guardian's name, their place of employment and work phone, two other names, addresses and phone numbers for times when the parent or guardian can not be reached, family physician, name and phone, family dentist, name and phone, student's medical problems and allergies, the student's medical insurance and ~~if possible~~ the parent/guardian's signature. This information may be shared on a need to know basis.

### BEFORE THE DEPARTMENT OF EDUCATION OF THE STATE OF DELAWARE REGULATORY IMPLEMENTING ORDER

### DAILY LOG

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary seeks the consent of the State Board of Education to amend the regulation Daily Log found on page 93 in The School Nurse, A Guide to Responsibilities. This regulation mandates the keeping of a daily log and identifies the types of information that must be included. The amendment is necessary in order to require that the school nurse keep a daily log and it clearly states what information must be in the log.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

## II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because of the need to clarify the regulatory responsibilities of the school nurse.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section

122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

#### V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

#### STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

#### EXHIBIT B

Daily Log

1. The school nurse shall maintain a daily log which includes at a minimum:

- a. School Name
  - b. Three point date
  - c. Student's first and last name
  - d. Time of arrival and departure
  - e. Presenting complaint
  - f. Nurse's assessment and plan
  - g. Disposition (return to class, sent home, etc.)
  - h. Parent contact, if appropriate
  - i. Complete nurse's signature
- 

#### BEFORE THE DEPARTMENT OF EDUCATION OF THE STATE OF DELAWARE REGULATORY IMPLEMENTING ORDER

#### ACCIDENT REPORTING

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulation Accident Reporting found on page 125 in The School Nurse, A Guide to Responsibilities identifies when the school nurse must file an accident report and how it should be done. The amendment is necessary in order to isolate the regulatory responsibilities of the school nurse from the technical assistance and to use the word "shall" in the regulatory statements.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

#### II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because of the need to clarify the regulatory responsibilities of the school nurse.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

#### V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register

of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

## STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

## EXHIBIT B

## Accident Reporting

1. In addition to entering an accident incident in daily log, the school nurse shall make a written report on the appropriate form to the district office in the following circumstances:

a. The school nurse has referred the student for medical evaluation, regardless of whether the parent/guardian followed through on that request.

b. The student has missed more than one-half day due to the accident.

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

**PARENTAL REQUEST TO HAVE PRESCRIPTION  
MEDICATIONS ADMINISTERED AT SCHOOL**

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulation Parental Request to Have Prescription Medications Administered in School found on page 105 b in The School Nurse, A Guide to Responsibilities must be amended. This regulation identifies the information that the school nurse must get from the parent or guardian and the records that must be kept. The amendment is necessary in order to isolate the regulatory responsibilities of the school nurse from the technical assistance information and to use the word "shall" in the regulatory statements.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News

on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

## II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because of the need to clarify the regulatory responsibilities of the school nurse.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

## V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

## STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

## EXHIBIT B

### Administration of Prescription Medications

1. Medications prescribed by a licensed healthcare provider may be administered to students by the school nurse under the following conditions:

- a. Request received from the parent/guardian.
- b. The medication is brought/sent to school in the original container that is properly labeled with the student's name; the name of the medication; time; dosage; how it is to be administered; the physician's name; name of pharmacy and phone number; and a current date of the prescription.
- c. Any allergies are noted.
- d. All controlled substances are counted and reconciled at least once a month and kept under double lock.
- e. The daily log or special medication record shows the student's name, time, and date of administration.
- f. All long term medications shall be reauthorized each year.

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

### GUIDELINES FOR THE ADMINISTRATION OF NONPRESCRIPTION DRUGS

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulation Guidelines for Administration of Nonprescription Drugs found on page 104 in The School Nurse, A Guide to Responsibilities must be amended. This regulation identifies the responsibilities of the school nurse in the administration of nonprescription drugs. The amendment is necessary in order to isolate the regulatory responsibilities of the school nurse from the technical assistance information and to use the word "shall" in the regulatory statements.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

#### II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because of the need to clarify the regulatory responsibilities of the school nurse.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

## V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION  
Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

## EXHIBIT B

### Administration of Nonprescription Medications

1. Nonprescription medications may be administered by the school nurse to students. The school nurse shall do the following:

- a. Assess the particular complaint and symptoms to determine if other measures can be used before medication is administered.
- b. Look for a record of all allergies, especially to medications, on the student's school health record.

c. Have the permission of the parent or guardian to administer any medications.

d. Seek medical attention if the symptoms or conditions persist.

e. Record the student's name, name of medicine, dosage and time on the daily log.

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

**POLICY ON THE SCHOOL NURSE AND THE  
HANDICAPPED CHILD AND POLICY FOR PROVIDING  
CARE TO THE CHILD WITH SPECIAL HEALTH NEEDS**

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The policies entitled, Policy Statement on the School Nurse and the Handicapped Child, and Policy for Providing Care to the Child with Special Needs found on pages 175 and 181 respectively in The School Nurse, A Guide to Responsibilities must be amended. These regulations list the responsibilities of the school nurse as a member of the IEP team and the requirements for ministering to the special health needs of children. The amendment is necessary in order to combine the two policies in to one policy entitled, The School Nurse and the Child with Special Health Needs. The amended policy removes the technical assistance language and includes only those areas that are regulated and uses the word "shall" in the regulatory language.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because the two policies need to be combined and the regulatory responsibilities of the school nurse need to be clarified.

III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall

be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

EXHIBIT B

The School Nurse and the Child with Special Health Needs

1. The school nurse, as a member of the evaluation team shall:

a. Assist in identifying candidates for placement in a special program.

b. Conduct the initial health evaluation and parent conference.

c. Assist in obtaining an in-depth health and developmental history and home environment assessment.

d. Provide and interpret all pertinent information including results of recent physical assessments.

e. Develop the individual health maintenance plan with the student/parent if possible.

f. Provide the evaluation team with [the health information necessary to develop] the health component of the individual education plan, IEP.

g. Periodically confer with the student, parent and

faculty to revise the health maintenance plan.

h. Help the student or the student's parent or guardian to use appropriate community resources.

**[i. Follow up on medical recommendations and report to teachers and appropriate personnel.]**

j. Provide and/or supervise nursing treatment, medications, and specialized health procedures which allow the students to remain in the least restrictive environment with the following conditions:

(1) A written request shall be obtained from the parent for the procedure.

(2) A written authorization from the child's physician **[must shall]** be on file.

(3) Each change in the **[procedure request]** from the parent or physician requires reauthorization. All **[procedures requests]** shall be reauthorized **[every six months each year]**.

(4) A daily treatment log that includes child's name, date and time shall be kept on all medications and treatment administered with any reactions or comments noted.

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

**FIRE AND EMERGENCY PREPAREDNESS**

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The Handbook for K-12 Education contains a section entitled Fire and Emergency Preparedness, I.M.12, page A-54. This regulation should be repealed because the first part of the regulation beginning with the word "All", through the word "session", is from 14 Del. C., Section 4109. The second part beginning with the word "During", and ending with the word "Year", is from the State Fire Prevention Regulations, Part V, Section 1-3, Fire Drills in Educational and Institutional Occupancies. Since this section is simply a restating of the Delaware Code and from another regulation, this does not need to be regulated again by the Department, and thus should be repealed as a regulation of the Department of Education. Notice of the proposed repeal of this regulation was published in the News Journal and the Delaware State News on February 16, 1998, in the form attached as Exhibit A. The notice invited written comments but none were received.

II. FINDINGS OF FACT

The Secretary finds that the regulation should be repealed because it simply conveys information from the Delaware Code and from other regulations and does not need to be

regulated by the Department of Education.

III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Secretary concludes that the proposed regulation should be repealed. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is repealed.

IV. TEXT AND CITATION

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B and shall be removed from the Handbook for K-12 Education, Section I.M.12.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

EXHIBIT B

Repeal of Regulation for Fire and Emergency  
Preparedness

~~I.M.12: FIRE AND EMERGENCY PREPAREDNESS~~

~~a. All Delaware schools are subject to Delaware Code and to State Fire Prevention Regulations which require that every school be equipped with an adequate number of fire extinguishers and shall hold a fire drill at least once every month while the school is in session. (14 Del. C. §4109) Fire drills shall include complete evacuation of all persons from the building. During severe weather, fire drills may be postponed. A record of all fire drills shall be kept and persons~~

~~in charge of each school shall maintain a written record on site of all such fire drills held, giving the time and date of each drill held. This record of fire drills shall be made available to a representative of the State Fire Marshal, upon request. The record shall be maintained for a period of three years, not including the current year. (State Board Approved December 1993)~~

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

**TITLE IX OF THE EDUCATIONAL AMENDMENTS OF  
1972 CONCERNING PHYSICAL EDUCATION**

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The Handbook for K-12 Education contains a section entitled Title IX of the Educational Amendments of 1972 Concerning Physical Education, I.C.2., pages A-3 and A-4. This regulation needs to be repealed because it simply presents information for technical assistance purposes from the federal regulations for Title IX and is not a Department of Education regulation. Notice of the proposed repeal of this regulation was published in the News Journal and the Delaware State News on February 16, 1998, in the form attached as Exhibit A. No comments were received regarding the proposed repeal of the regulation.

II. FINDINGS OF FACT

The Secretary finds that the regulation should be repealed because it simply provides technical assistance about an existing federal regulation and is not a Department of Education regulation.

III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to repeal this regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is repealed.

IV. TEXT AND CITATION

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be removed from the Handbook for K-12 Education.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the

Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

EXHIBIT B

Repeal of Regulation for Title IX of the Educational  
Amendments of 1972 Concerning Physical Education

~~I.C.2. TITLE IX OF EDUCATIONAL AMENDMENTS OF  
1972 CONCERNING PHYSICAL EDUCATION~~

~~In 1976 and 1978 "girls physical education" and "boys physical education" became "student physical education" under Title IX of the Educational Amendments of 1972:~~

- ~~a. Section 86.34 of Title IX states that~~
- ~~(1) Physical education units of instruction required for one sex must be required for everyone.~~
  - ~~(2) Elective units must be scheduled on an open enrollment basis.~~
  - ~~(3) Grouping by ability is permitted as long as objective standards of individual performance related to the unit studies are applied without regard to sex.~~
- ~~b. Section 86.33 of Title IX states that~~
- ~~(1) Students may be separated by sex for participation in contact sports.~~
  - ~~(2) Evaluation outcomes may not adversely affect members of one sex.~~
  - ~~(3) Students may be separated for instruction which deals exclusively with human sexuality.~~

---

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

**SMOKING REGULATIONS**

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The Smoking Regulation found in the Handbook for K-12 Education section I.M.11, page A-53 was made a regulation in 1987. It forbids the use, dispensing and sale of tobacco products by students K-12 during school hours in school buildings, on school grounds or on school buses. This regulation did away with "smoking courts" in high schools and generally put students on notice that smoking in or around schools was totally forbidden. Since this state regulation was passed a federal law entitled the Pro-Children Act of 1994, has also been enacted which says "no person shall permit smoking within any indoor facility owned or leased or contracted for and utilized by such person for provision of routine or regular kindergarten, elementary or secondary education or library services to children." Children are defined as "individuals who have not attained the age of 18." This law applies to agencies and organizations that receive federal funds and it covers public schools and numerous other agencies serving children. This federal law effects adult behavior concerning smoking which the Department of Education regulation does not address. The federal law does not mention tobacco products such as snuff and chewing tobacco and does not cover the school grounds and the school buses which are both part of the Department of Education regulation. The regulation is recommended for readoption because in concert with the federal statute, most aspects of the problem are covered and the important emphasis on student behavior is sustained. Notice of the proposed readoption was published in the News Journal and Delaware State News on February 16, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received.

II. FINDINGS OF FACT

The Secretary finds that in order to continue to support the concept of tobacco free schools and to protect children from the negative effects of the use of tobacco and tobacco products this regulation should be readopted. This regulation is complimentary to and extends the intent of the federal law.

III. DECISION TO READOPT THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to readopt the existing regulation. Therefore,

pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby readopted. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the regulation hereby readopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation readopted hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the Handbook for K-12 Education, section I.M.11.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

EXHIBIT B

I.M.11. SMOKING REGULATIONS

Each school district in Delaware is required to have a policy which, at a minimum, prohibits smoking and the use, dispensing or selling of tobacco products such as snuff and chewing tobacco by students in kindergarten through grade 12 during school hours in school buildings, on school grounds, or on school buses.

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

of this order as set forth in Section V. below.

**IMMUNIZATION RULES AND REGULATIONS OF THE  
STATE BOARD OF EDUCATION**

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The regulation on Immunization Rules and Regulations of the State Board of Education found on pages 71 and 72 in The School Nurse, A Guide to Responsibilities must be amended. This regulation defines a school "enterer" and lists all required immunizations students must have. The regulation defines "certification of immunization" and "conditional school admission". It also provides direction on how to deal with lost or destroyed medical records and how to seek exemptions from immunization. The amendment is necessary to add a new section B.1.d. which requires students to receive three doses of Hepatitis B beginning in the 1999-2000 school year with kindergarten and grade seven. This change was recommended by the Department of Public Health and the School Health Advisory Committee. The existing sections d. and e. become e. and f. The amendment also removes section H, Implementation, which is no longer necessary because the previously existing parts of the regulation have been implemented.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation to add the Hepatitis B immunization to the required immunizations because the Department of Public Health and the School Health Advisory Committee feel that it is necessary due to the long term and recurring negative effects of contracting the Hepatitis B infection.

III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

EXHIBIT B

~~Immunizations Rules and Regulations of the State Board of  
Education~~

A. Definition of School Enterer

A school enterer is any child between the ages of two months and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from non-public schools.

B. Immunization Requirements for School Admission

The following minimum immunizations will be required for all school enterers:

1. Vaccine

a. Four or more doses of diphtheria, tetanus, pertussis (DTP) or diphtheria, tetanus (DT) vaccine or a

combination of these vaccines with the following exceptions: (1) a child who received a fourth dose prior to the fourth birthday must have a fifth dose; (2) a child who received the first dose of Td (adult) at or after age seven may meet this requirement with only three doses of Td (adult).

b. Four doses of oral polio vaccine (OPV) or four doses of inactivated polio virus (IPV) or a combination of these vaccines with the following exception: If the third primary dose of OPV or IPV is administered on or after the fourth birth date, a fourth dose is not required.

c. Two doses of measles vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. The combination vaccines of measles, mumps, rubella (MMR) can be used to meet this requirement.

d. Three doses of Hepatitis B vaccine beginning in the 1999-2000 school year with kindergarten and grade seven. (By adding a grade at each of the levels, by the year 2004-2005 all students will be required to have the vaccine.)

~~d. e.~~ One dose of rubella vaccine administered after the age of 12 months.

e. ~~f.~~ One dose of mumps vaccine administered after the age of 12 months.

2. Disease histories for measles, rubella and mumps will not be accepted unless serologically confirmed.

3. A booster dose of Td (adult) is recommended at ten year intervals for all students after the last DTP or DT dose was administered.

#### C. Certification of Immunization

All parents or legal guardians of school enterers must present a certificate specifying the month, day, and year that the immunizations were administered by the physician or public health agency.

~~(Passed by the State Board of Education on December 19, 1990.)~~

#### D. Admission

##### 1. Notice

According to Delaware Code, Title 14, Section 131, Paragraph C, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent or legal guardian shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.

##### 2. Conditional

A school enterer may be conditionally admitted to a Delaware school district by presenting a statement from a

physician or public health agency which specifies that the school enterer:

a. has received at least one dose of DTP or DT and

b. has received at least one dose of OPV or IPV and

c. has received at least one dose of measles, mumps and rubella (MMR) vaccine.

d. Children entering school without documentation for the first or second dose of measles should be admitted after the first dose. A second dose is required between 30 and 90 days after the first dose. (MMR can be used to meet this requirement.)

##### 3. Denial

If the school enterer fails to complete the series of required immunizations according to the Division of Public Health's recommended schedule, the parent or legal guardian will be notified the child will be excluded.

#### E. Lost or Destroyed Medical Records

When an immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent must sign a written statement to this effect and must obtain at least one dose of DTP or DT, one dose of OPV or IPV and immunization against measles, mumps and rubella. Evidence that the vaccines were administered must be presented to the superintendent or designated person. An exemption to this requirement would be a statement from a physician demonstrating serological evidence of immunity to measles, mumps or rubella.

#### F. Exemption from Immunization

Exemption from this requirement may be granted in accordance with Delaware Code, Title 14, Section 131.

#### G. Verification of School Records

The Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

#### H. Implementation

~~Effective September 1, 1991 and thereafter, these revised regulations will be enforced 12/19/90~~

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

**POLICY FOR PROVIDING EDUCATION FOR  
STUDENTS WITH HIV INFECTION**

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The regulation Policy for Providing Education to Students with HIV Infection found on page 81 in The School Nurse, A Guide to Responsibilities and on pages A-52 - A-53 in the Handbook for K-12 Education must be amended. This regulation affirms the rights of students in K-12 and adult education programs with HIV infection to attend the public schools of Delaware and affirms their right to privacy concerning the existence of the infection. The amendment is necessary to remove the procedural references and focus only on the regulatory sections. Sections 2, 3, 4, and 8 are removed and sections 5, 6, and 7 become 2, 3, and 4. In section 4, the words "established by the State Department of Public Instruction and Division of Public Health and approved by the Delaware State Board of Education on December 19, 1985" and the last sentence "These procedures will be found in the School Nurse Handbook, School Bus Drivers Handbook, Handbook for School Food Services, and K-12 Handbook" are removed.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation because of the need to remove the procedural sections and focus only on the regulatory sections.

III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

EXHIBIT B

Providing Education To Students with HIV Infection

~~Policy for~~ Providing Education To Students with HIV  
Infection

1. A student enrolled or entering a Delaware public school/program, or in an adult or apprenticeship program, with HIV infection shall be permitted to attend school unless the student, in the opinion of his/her physician, is at risk from communicable diseases (e.g. measles, chicken pox) present in the school or has other medically related problems.

~~2. Any conflict regarding attendance of the HIV infected student by the school district will be reviewed on a case by case basis by the State Advisory Panel appointed by the State Department of Public Instruction and consisting of the State Health Officer, State Epidemiologist, a representative from the Medical Society of Delaware, a representative from the State Department of Public Instruction, a school nurse, and a school superintendent. The local district will submit to the panel: (a) evidence that the student exhibits or~~

~~manifests symptoms which justify exclusion; (b) a current report from the student's personal physician. If recommended by the student's physician, the student will remain in the school until a determination is made by the panel.~~

~~3. The student shall be readmitted to the school or program when the student's physician verifies to the State Advisory Panel that the condition for which removal occurred has been corrected or has abated, and the Panel determines the student can return to school.~~

~~4. The school nurse, in cooperation with the building principal, shall function as: (a) the liaison with the student's physician and the State Advisory Panel; (b) the advocate for the HIV infected student in the school (i.e., assist in problem resolution, answer questions); (c) the coordinator of services provided by other staff.~~

~~5. 2. A student entitled to a free public education pursuant to 14 Del. C. ch. 2 and/or ch. 31, with HIV infection who is removed for reasons stated in Paragraph 1, shall be provided with an appropriate alternative education according to already established procedures.~~

~~6. 3. Dissemination of the knowledge that a student has HIV infection is subject to State and Federal privacy laws and regulations.~~

~~7. 4. Routine and standard procedures (i.e. universal precautions) for handling all body fluids established by the State Department of Public Instruction and Division of Public Health and approved by the Delaware State Board of Education on December 19, 1985 shall be utilized in every school and program. These procedures will be found in the School Nurse Handbook, School Bus Drivers Handbook, Handbook for School Food Services, and K-12 Handbook.~~

~~8. Educational programs about HIV infection, mode of transmission, care of body fluids, and good hand washing techniques shall be offered to all school personnel. The Department of Public Instruction shall coordinate training programs for school nurses and other designated personnel who will be responsible for school district programs.~~

~~Passed by the State Board of Education on May 17, 1990.~~

---

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

**PHYSICAL EXAMINATIONS**

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The regulation on Physical Examinations found on pages 15 and 16 in The School Nurse, A Guide to Responsibilities must be amended. This regulation requires that all students have a physical examination before entering school, lists one exception and requires school nurses to record all findings on the school record. The amendment is necessary in order to isolate the regulatory responsibilities of the school nurse from the technical assistance information and to use the word "shall" in the regulatory statements.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form attached as Exhibit A. There were no comments received concerning the amendment.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend this regulation because of the need to clarify the regulatory responsibilities of the school nurse.

III. DECISION TO AMEND REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend this regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days

from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

#### EXHIBIT B

##### Physical Examinations

1. All pupils upon entrance to the Delaware school system shall have had a physical examination by a licensed medical physician, nurse practitioner or physician's assistant. The Physical Examination form can be given to the parent or guardian if requested. ~~[All other new enterers must have a physical examination form on file in their health records.]~~

~~[2. All students who participate in sports must have a physical examination.]~~

**[2. New enterers have 14 school days to comply with the regulation before being excluded from school. A documented appointment with a licensed provider as stated above will defer exclusion.]**

**[3. All students shall have a physical examination each year before participating in interscholastic sports (see Rule 8A of the Delaware Secondary School Athletic Association [DSSAA] Annual Official Handbook).]**

[3: 4.] Those selected pupils whose health status suggests further follow-up as a result of observations and/or conferences by the teacher and school nurse shall have an additional physical examination or medical consultation.

[4: 5.] Children of Christian Scientist parents may request exemption from physical exams by having their parents obtain the proper form from the "Committee on Publication for Delaware" which is responsible for such matters. The school should not furnish these forms.

[5: 6.] The school nurse shall record all findings on the School Health Record.

**[6. New enterers have ten school days to comply with the regulation before being excluded from school. A documented appointment with a licensed provider as stated above will defer exclusion.]**

#### BEFORE THE DEPARTMENT OF EDUCATION OF THE STATE OF DELAWARE REGULATORY IMPLEMENTING ORDER

### ORTHOPEDIC SCREENING

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulation on Orthopedic Screening found on pages 51 and 52 in The School Nurse, A Guide to Responsibilities must be amended. This regulation lists the grades when students must receive orthopedic screenings both Phase I and Phase II and requires the school nurse to record the information in the school health record. The amendment is necessary in order to isolate the regulatory responsibilities from the technical assistance information and to use the word "shall" in the regulatory statements.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form attached as Exhibit A. There were no comments received concerning the amendment.

#### II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend this regulation because of the need to clarify the regulatory responsibilities of the school nurse.

#### III. DECISION TO AMEND REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend this regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended

regulation shall be cited in The School Nurse, A Guide to Responsibilities.

## V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

## EXHIBIT B

Orthopedic Screening

~~**1. All pupils in grades 4 through 9 must be screened annually. The school nurse is responsible for follow-up and general supervision of the program. Two phases constitute the screening. Phase I is performed by the school nurse and physical education teacher by October 15; Phase II by physical therapists. Both phases should be completed by January 31 in order to permit adequate time for follow-up. The Department of Education will coordinate the program through the office of the Supervisor of School Health Services.**~~

~~**2. The school nurse must record the test findings on the School Health Record and notify the parents/guardian that a suspected deviation has been detected.]**~~

- 1. All pupils in grades 5 through 9 shall have an orthopedic screening by December 15th of each year.**
- 2. The school nurse shall notify the parents/guardian if a suspected deviation has been detected.**
- 3. The school nurse shall record the findings on the school health record.]**

BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF DELAWARE  
REGULATORY IMPLEMENTING ORDER

## REPEAL OF MINIMUM-MAXIMUM PROGRAM ASSIGNMENT AND EXPERIMENTATION AND MODIFICATION OF STUDIES

### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

These two regulations from the Handbook for K-12 Education are recommended for repeal because they are technical assistance statements and should not be made regulatory. They are IV.A.5, page D-6, Minimum-Maximum Program Assignment, and IV.B, page D-6, Experimentation and Modification of Studies.

Notice of the proposed repeal of these regulations was published in the News Journal and the Delaware State News on January 12, 1998, in the form attached as Exhibit A. No comments were received regarding the proposed repeal of these regulations.

### II. FINDINGS OF FACT

The Secretary and the State Board of Education find that these regulations should be repealed. It is necessary to clearly differentiate between what is regulation and what is technical assistance and Minimum and Maximum Program Assignment and Experimentation and Modification of Studies are technical assistance statements and not designed to specifically regulate behavior.

### III. DECISION TO REPEAL REGULATIONS

For the foregoing reasons, the Secretary with the consent of the State Board of Education concludes that these regulations should be repealed. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby repealed.

### IV. TEXT AND CITATION

The text of the regulations repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be removed from the Handbook for K-12 Education, section IV.

### V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary with the consent of the State Board of Education pursuant to 14 Del. C., Section 122, in open session at the

State Board's regularly scheduled meeting on April 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of April, 1998.

Dr. Iris T. Metts, Secretary of Education

Consented to this 16th day of April, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pike

Dennis J. Savage

Dr. Claibourne D. Smith

#### EXHIBIT B

#### REPEAL OF MINIMUM-MAXIMUM PROGRAM ASSIGNMENT AND EXPERIMENTATION AND MODIFICATION OF STUDIES

##### 1. Handbook for K-12 Education - Page D-6

##### 5: ~~MINIMUM-MAXIMUM~~ PROGRAM ASSIGNMENT

a. ~~There is no mandated minimum or maximum program assignment for any particular student. It should be anticipated that through appropriate guidance counseling and proper scheduling, all students would be assigned a program schedule to make the most profitable use of their educational time while in school.~~

b. ~~The requirements for graduation would indicate that a student should normally be scheduled for not less than three full credits per year. It is understandable that certain capable and talented students might be scheduled for as many as 6 full credits plus health and physical education.~~

##### 2. Handbook for K-12 Education - Page D-6

##### B: ~~EXPERIMENTATION AND MODIFICATION IN PROGRAM OF STUDIES~~

~~The State Department of Public Instruction strongly encourages administrative and instructional staff at the local school district to go beyond the minimum requirements established in this Handbook and either implement experimental programs or else modify the organization of program of studies to provide the best possible teacher-learning situation for all students.~~

## PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE  
IMPLEMENTATION OF  
THE UNIVERSAL SERVICE  
PROVISIONS OF THE  
TELECOMMUNICATIONS  
ACT OF 1996  
(OPENED AUGUST 12, 1997)

PSC REGULATION  
DOCKET NO. 48

IN THE MATTER OF THE  
APPLICATION OF BELL  
ATLANTIC-DELAWARE, INC.  
FOR CERTIFICATION AS AN  
ELIGIBLE TELECOMMUNI-  
CATIONS CARRIER  
(FILED DECEMBER 3, 1997)

PSC DOCKET  
NO. 97-028

ORDER NO. 4763

The Commission, on this 14th day of April, 1998, determines and orders:

1. Under the federal Universal Service Support ("USF") programs, as adopted in 1997, a telecommunications carrier seeking designation as an "eligible telecommunications carrier" (47 U.S.C. § 214(e)) must provide "toll limitation" services for qualifying low-income consumers. 47 C. F. R. §§ 54.101 (a) (9), 54.210 (c), (d). Once designated, an eligible telecommunications carrier ("ETC") must provide Lifeline service to qualifying low-income subscribers. 47 C.F.R. § 54.405. As part of such Lifeline service, the ETC must provide to requesting eligible subscribers, without charge, "toll limitation." 47 C.F.R. § 54.401(a)(3). In its original May, 1997 USF Order, the Federal Communications Commission ("FCC") defined "toll limitation" to include both "toll blocking" (which allows a subscriber to block outgoing toll calls) and "toll-control" (which allows a subscriber to limit in advance toll usage per billing cycle). The ETC was to allow the subscriber a choice between "toll blocking" and "toll control."

2. In PSC Order No. 4679 (Dec. 16, 1997), this Commission set forth the criteria it would use, on a provisional basis, for designating a telecommunications carrier as an ETC. The same day, in PSC Order No. 4684 (Dec. 16, 1997), the Commission determined that this State would participate in the federal Lifeline program to allow ETCs to receive federal support in the amount of \$5.25, plus the cost of toll limitation. In PSC Order No. 4680 (Dec. 17, 1997), the Commission designated Bell Atlantic Delaware, Inc. ("BA-Del"), as an ETC to serve the entire State. In that Order, the Commission waived the requirement that BA-Del provide the "toll control" service component of toll limitation until the FCC decided a then-pending motion for

reconsideration.

4. On December 30, 1997, the FCC, in its Fourth Order on Reconsideration of its USF Order, redefined "toll limitation" to be either "toll blocking" or "toll control" and obligated ETCs to provide only one, and not necessarily both, of these services, unless the carrier is technically capable of providing both services. In the latter case, the carrier must provide the consumer the choice between "toll blocking" and "toll control., See In the Matter of Federal-State Joint Board on Universal service, CCB Docket No. 96-45, Fourth Order on Reconsideration at 112-115, FCC 97-420 (rel. Dec. 30, 1997).

5. BA-Del has indicated that, at the present time, it cannot provide "toll control" services. In light of the FCC's Fourth Reconsideration Order, the Commission now amends any requirements that it may have imposed in PSC Orders Nos. 4679, 4680, and 4684 relating to "toll limitation" to conform to the new federal definition. For purposes of those orders, "toll limitation" shall mean either toll blocking or toll control for ETCs that are incapable of providing both services. For ETCs that are capable of providing both services, "toll limitation" shall denote both toll blocking and toll control.

Now, therefore, IT IS ORDERED:

1. That, for purposes of PSC Orders Nos. 4679 (Dec. 16, 1997), 4684 (Dec. 16, 1997), and 4680 (Dec. 17, 1997), as well as for any further Orders related to eligible, telecommunications carriers under 47 U.S.C. § 214(e) or the federal Lifeline program, the term "toll limitation" shall, consistent with 47 C.F.R. § 54.400(d), denote either toll blocking or toll control for these eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, "toll limitation" shall denote both toll blocking and toll control.

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this proceeding as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

ATTEST:

Acting Secretary

IN THE MATTER OF THE	
IMPLEMENTATION OF THE	PSC REGULATION
UNIVERSAL SERVICE	DOCKET NO. 48
PROVISIONS OF THE	
TELECOMMUNICATIONS ACT	
OF 1996	
(OPENED AUGUST 12, 1997)	

ORDER NO. 4772

On this 14th day of April, 1998, the Commission determines and orders the following:

1. In the Telecommunications Act of 1996 ("the Act"),<sup>1</sup> Congress directed the Federal Communications Commission ("FCC") and the state utility commissions to take various steps to establish explicit support mechanisms to ensure the delivery of affordable telecommunications service to all Americans. 47 U.S.C. § 254. Specifically, Congress directed the FCC, in conjunction with the states, to devise methods to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas..... have access to telecommunications and information services..... at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3). To provide funding for such services, Congress directed the creation of federal universal service mechanisms. 47 U.S.C. § 254(b)(5),(d). At the same time, Congress also recognized the ability of the States to create complementary state universal service programs funded by state support mechanisms. 47 U.S.C. § 254(f).

2. In May, 1997, the FCC released its Universal Service Order ("USF Order") implementing the various universal service directives under section 254. In the Matter of Federal-State Joint Board on Universal Service, CC Dckt. No. 96-45, Report & Order, FCC 97-157 (rel. May 8, 1997). In that USF Order, the FCC determined that, beginning in 1999, non-rural carriers should receive federal universal service support based on the forward-looking cost of providing designated supported services. The amount of federal support would be a portion (25 percent)<sup>2</sup> of the difference after subtracting national revenue per line benchmarks<sup>3</sup> from the forward looking economic cost of providing designated supported services. USF Order at §§ 199-201, 223-26, 269. The FCC is currently in the process of attempting to adopt or construct a specific cost model platform to be used to determine the forward-looking cost of supported services on a nationwide basis. However, in the USF Order, the FCC concluded that a state could submit its own forward looking economic cost study which, if approved, would be used as the basis for calculating federal universal service support for local exchange carriers in that state. If approved, the state specific cost study would govern both federal universal high cost support and any complementary

state support mechanism. USF Order at §§ 206, 246, 248-54. If a state chooses not to submit a cost study or if the state-specific cost study is not approved, the FCC will determine federal support levels for carriers in that state by use of the FCC's nationwide methodology.

3. To meet a deadline imposed by the FCC, the Commission directed the Executive Director to notify the FCC that this Commission had tentatively elected to submit a state-specific cost study, but reserving the ability to withdraw such election, if, upon later consideration, the Commission determined a statespecific study to be neither necessary nor appropriate. At the same time the Commission directed Staff to conduct an investigation into whether the Commission should submit a state-specific cost study to the FCC and, if so, what should be the content of the underlying cost methodology or model. PSC Order No. 4571 (Aug. 12, 1997).

4. Staff conducted such an investigation holding a workshop and soliciting comments from interested carriers and the Division of the Public Advocate. In addition, Staff has reviewed estimates of the amount of possible federal high cost support to be paid to carriers in this State under several of the various methodologies now being considered by the FCC.

5. Staff has reported that none of the entities responding to its investigation urge the Commission to develop and submit a state-specific cost study. Moreover, based on its investigation, Staff recommends that the Commission not pursue submission of a state-specific cost study. As Staff reports, in most areas in Delaware, any cost study, whether developed here or at the FCC, will probably not result in calculated costs for supported services significantly in excess of the national revenue benchmarks currently under consideration. Accordingly, as Staff sees it, carriers in Delaware will not receive significant dollar amounts in federal high cost support under any current forward looking cost methodology.<sup>4</sup> Staff notes that, at the same time, the development of a state-specific cost study via a process open to all interested carriers would likely become a contentious, highly litigated proceeding. Staff thus concludes and recommends, that after weighing the unlikely benefits, if any, of a state-specific cost study against the potential drain on Commission time and resources to formulate such a study, the most appropriate course would be to not develop a state-specific cost study. Without such a study, federal universal support would be determined under the methodology adopted by the FCC.

6. The Commission concurs in the recommendation of Staff for the reasons expressed in Staff's memoranda submitted October 17, 1997 and April 13, 1998. Delaware is a "low-cost" state for providing the designated supported local services. As such, it appears that this State will be a "net payor" in the federal universal service game - the universal service contributions derived from Delaware will

likely exceed the federal universal support amounts returned. In light of the small amount of federal support which can be expected under the USF Order's federal regime and the heavy cost to the Commission of conducting a proceeding to determine forward-looking costs, the balance tips in favor of simply allowing the relatively small amount of federal high cost support for this State to be calculated by use of the default federal methodology.

7. The Commission is aware that the FCC, in its USF Order, encouraged the States to coordinate the costing methodologies they might use for setting permanent prices for unbundled network elements with those used to calculate universal service support. This coordination would, in the FCC's view, reduce duplication and diminish inefficient arbitrage opportunities. USF Order at ¶¶ 247, 251. This State has previously completed a proceeding setting prices for unbundled network elements. See PSC Orders Nos. 4542 (July 8, 1997) and 4577 (Aug. 19, 1997) ("the SGAT Orders") It is possible that the costing methodologies and inputs underlying those SGAT Orders may well turn out to be different than those finally adopted by the FCC as the basis for calculating federal universal service support. However, the Commission does not believe that any such divergence in cost calculations compels the Commission to develop a statespecific cost study to be submitted to the FCC. First, it is not apparent that the costing results derived from any differing methodologies or inputs will be so great so as to encourage arbitrage. Second, in this small state, even if cost differences do arise, arbitrage opportunities will be limited to that relatively small number of lines which will receive federal support.

8. The Commission emphasizes that its decision here does not mean that carriers in Delaware will not be eligible to receive federal universal support. It only means that the amount of such support shall be determined under a federally developed costing methodology, not one constructed by this Commission. Moreover, the Commission emphasizes that if the FCC alters the mechanisms for calculating universal service support, by moving to state grants or changing the manner of calculation, the Commission will be ready to re-examine its position. In particular, if the anticipated revenue benchmarks change, or the anticipated level of federal support flowing to this State increases, then the Commission will again evaluate the appropriate action.

Now, therefore, IT IS ORDERED:

1. That the Executive Director shall, on or before April 24, 1998, notify the Federal Communications Commission that this Commission will not file a state-specific cost study for the calculation of federal high cost support for Delaware. Such notification shall indicate that the Commission reserves the right to modify its position should changes ensue in the manner of calculating or distributing federal high cost

universal support.

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

ATTEST:

Acting Secretary

<sup>1</sup> Pub.L. No. 104-104, 110 Stat. 56 to be codified at various parts of 47 U.S.C.

<sup>2</sup> The FCC has recently indicated it will reconsider this percentage and possibly the entire manner of providing federal high cost support. See: In the Matter of Federal-State Joint Board on Universal Service, Report to Congress, FCC 98-67 (rel. April 10, 1998).

<sup>3</sup> The FCC tentatively set the benchmarks in the amounts of \$31 for residential services and \$51 for supported single-line business services.

4 Staff reviewed the results run on two models under construction by the FCC: HA1 ver. 5.0a and BCPM ver. 3.1. Those models were run with various inputs, including the model's sponsor's inputs, a series of inputs specified by the FCC for the BCPM, and the inputs adopted by this Commission in its unbundled elements pricing proceeding ("the SGAT proceeding").

The approximate amount of anticipated federal dollars for high cost support using the Hatfield model and various inputs ranged from \$500,000 to \$700,000. The approximate amount of anticipated federal dollars utilizing the BCPM model varied from \$4.35 million (using the sponsor's inputs) to \$1.5 to \$1.8 million using the SGAT and FCC suggested inputs.

---

**DEPARTMENT OF FINANCE****DIVISION OF REVENUE**

Statutory Authority: 30 Delaware Code, Section 563 (30 **Del.C.** § 563)

**TECHNICAL INFORMATION MEMORANDUM 98-1**

SUBJECT: FINAL "CHECK THE BOX" REGULATIONS

Purpose of Regulation -- The purpose of this regulation is to explain the relationship between the classification of organizations for federal and state tax purposes and the procedures for electing entity classification.

Authority to make regulations; general information --

(i) The Director of Revenue is charged with the administration and enforcement of all state tax laws unless such duties are expressly conferred upon another agency. Title 30 Delaware Code §563

(ii) Published regulations are made and promulgated pursuant to authority vested in the Director. 30 Del.C. §563

(iii) As used in published regulations, references to a section (§) number refer to a section of the Delaware Code. References to a section (§) number preceded by a "1", as in §~~1.1900-1~~ **1.502.1**], refer to sections of regulations published by the Division of Revenue of this State.

**REGULATION:**

§ ~~1.1900-1~~ **1.502.1** In general; Classification of organizations for federal and state tax purposes; election of entity classification.

(a) Meaning of terms -- Any term used in these regulations shall have the same meaning as when used in a comparable context in the laws and income tax regulations of the United States referring to federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States or to the Internal Revenue Code shall mean the Internal Revenue Code of 1986 [26 U.S.C. § 1 et seq.] as amended and regulations and amendments thereto and other laws of the United States relating to federal income taxes, as the same may be or become effective, for the taxable year.

(b) Classification of entities -- The classification of entities for Delaware tax purposes shall be as prescribed for federal tax purposes. Unless inconsistent with Delaware law, the provisions of Sections 301.7701-1; 301.7701-2; and 301.7701-3 of the Regulations to the Internal Revenue Code of 1986 are hereby adopted for Delaware purposes.

~~[(e) Election of corporation classification by certain business entities -- A business entity that is not classified as a corporation for federal tax purposes but which elects to be classified as a corporation pursuant to §301.7701-3 of the Regulations to the Internal Revenue Code of 1986 shall be classified as a corporation for Delaware tax purposes.]~~

~~[(d c)] Notice of election to be classified as a corporation - [A B b]business entiti[es y]electing to be classified as a corporation for federal tax purposes shall attach a copy of Internal Revenue Service Form 8832, "Entity Classification Election" to their Delaware Corporate Income Tax Return, Form 1100 [for its first taxable year ending after the date of this Regulation].~~

~~[(e d)] Tax return requirements --~~

~~(1) In general -- Members or partners of a business entity which has not elected to be classified as a corporation and which does business in this State shall [file income tax returns for all such tax years be subject to the filing requirements of Title 30 of the Delaware Code for all such years in which the business entity does business in this state].~~

~~(2) Special rules for non-electing, single member limited liability companies doing business in Delaware and their [corporate] members -- Notwithstanding other provisions of these regulations or regulations of the Internal Revenue Code to the contrary,~~

~~(A) [a limited liability company (LLC) that has only a single, individual member and (i) does not elect to be classified as a corporation pursuant to these rules, and (ii) derives any income from sources in this State (determined in accordance with Title 30 Delaware Code §1124 as in the case of a nonresident individual), or (iii) has a member residing in this State, shall file partnership income tax information and business license and gross receipts tax returns for all such tax years An individual who is the single member of a non-electing limited liability company (LLC) conducting business in this State shall be subject to the filing requirements of Title 30 of the Delaware Code for all years in which the LLC conducts business within this State].~~

~~(B) A corporation which is a single member of a non-electing limited liability company (LLC) [and which is not exempt under Title 30 Delaware Code §1902(b), shall file corporation income tax and business license and gross receipts tax returns for all such tax years conducting business in this state shall file corporation income tax and business license and gross receipts tax returns for all such years in which the LLC does business in this state].~~

~~(3) The attached flow charts illustrate these principles.~~

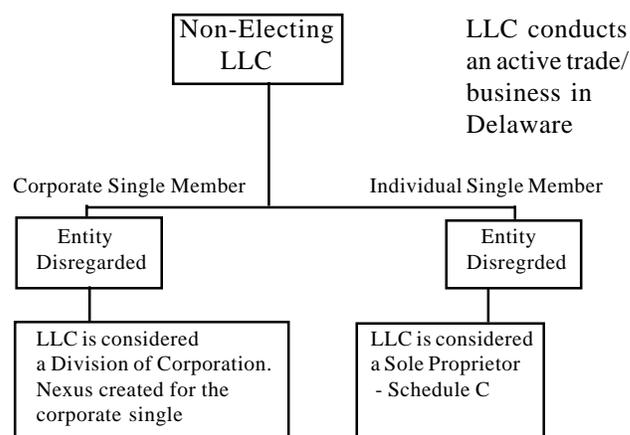
~~[(f) Effective date of election -- An election made under this regulation shall be effective on the effective date determined under §301.7701-3(e)(1)(iii) of the Regulations to the Internal Revenue Code of 1986.]~~

~~[(g e)] Effective date of this regulation -- This regulation is effective as of January 1, 1997.~~

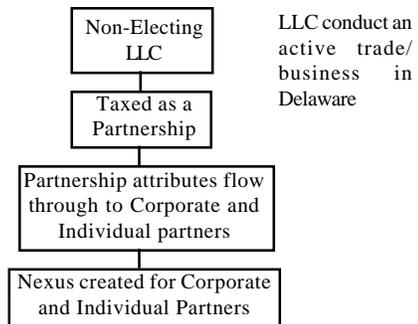
~~[(h f)] Contact Person -- For more information about these regulations or the classification of entities, contact John J. Maciejewski, Jr., Assistant Director, Office of Business Taxes, State of Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801 or phone (302) 577-8450.~~

**SPECIAL NOTE: The 1997 Delaware Corporate Income Tax Returns and instructions were prepared and mailed erroneously identifying the "Check the Box" regulations as Technical Information Memorandum 97-9. The correct number is Technical Information Memorandum 98-1.**

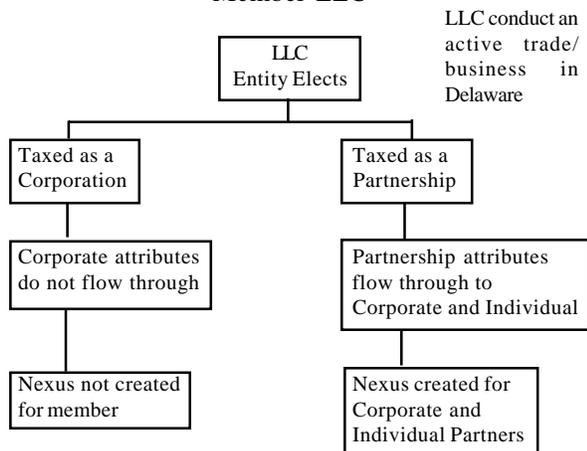
"Check the Box" Diagram  
Non-Electing  
Single Member LLC



“Check the Box” Diagram  
Non-Electing  
Multiple Member LLC



“Check the Box” Diagram  
Electing Single/Multiple  
Member LLC



**DELAWARE RIVER BASIN  
COMMISSION**

The Delaware River Basin Commission will meet on Wednesday, May 27, 1998, in Avondale, PA. For information contact Susan M. Weisman at (609) 883-9500 ext 203.

**DELAWARE STATE HOUSING  
AUTHORITY****Comprehensive Plan Notice**

The U.S. Department of Housing and Urban Development (HUD) is providing modernization funding on a formula basis to Public Housing Agencies (PHAs) to enable them to improve the physical condition and to upgrade the management and operations of existing public housing developments to assure their continued availability for low-income families. Delaware State Housing Authority (DSHA), a public body corporate and politic of the State of Delaware (Subsection 4053(4), Title 31, Delaware Code), having its principal office at 18 The Green, Dover, Delaware 19901, is the authorized administrator of HUD's Comprehensive Grant Program (CGP) for the State of Delaware and is a PHA with more than 250 PHA-owned units. The 1998 CGP from HUD is expected to be approximately \$525,000.

For CGP funding, DSHA is required to develop a Comprehensive Plan through deliberation with the residents, local government, and the public. The contents of the Comprehensive Plan include the Executive Summary, Physical and Management Needs Assessments, a Five-Year Action Plan, Local Government Statements, PHA Resolution and the Annual Statement. The Comprehensive Plan must be submitted to the HUD Philadelphia field office by July 15, 1998.

As required by the State's Registrar of Regulations and HUD, a public hearing must be held to ensure an opportunity for residents, local government officials and other interested parties to express their priorities and concerns regarding CGP expenditures. The hearing will be held in the Community Building of the Liberty Court Apartment complex at 6:00 p.m., EDT, on Thursday, May 21, 1998. Liberty Court is located at 1289 West Walker Road, Dover, Delaware. Public comments concerning issues of the CGP submittal by DSHA will be accepted in writing to DSHA, 18 The Green, Dover, Delaware 19901, Attention: Steve Gherke until May 31, 1998. DSHA's phone number is 302-739-4263 and fax number is

739-3178.

Delaware State Housing Authority Comprehensive Plan Executive Summary 1998

Issues Related to PHMAP (Public Housing Management Assessment Program)

Delaware State Housing Authority (DSHA) is a high performing PHA. No significant PHMAP issues need to be addressed. In order to retain its high-performer status, DSHA plans to make a significant investment in staff training. This includes training designed to implement HUD's requirements for project-based budgeting, and other training programs designed to improve staff management skills. DSHA plans to continue its program of staff training with CGP funds.

**Partnership Process**

A partnership process has been established with our residents, governmental agencies, and the community to develop and implement the goals, strategies, and priorities identified in the Comprehensive Plan.

**Resident Participation Process**

Resident meetings were held at each of the sites during April 1998, at which time the residents were given the opportunity to ask questions and to identify their modernization needs. The meetings were lightly attended, and the issues raised have already been addressed in this year's CGP submittal.

Records of attendance and the comments received are kept as part of DSHA's CGP files.

**Public Hearing**

A public hearing will be held at 6:00 p.m. on May 21, 1998 in Dover. The meeting will be advertised for two weeks in all editions of the Delaware State News and the News Journal, daily newspapers of general circulation throughout the State.

**Briefing of Community Leaders**

During March 1998, DSHA notified community leaders by mail concerning its intention to submit an application to HUD for CGP funds and requested each of them to sign Form HUD-52835. Each official had previously been invited to attend a briefing session concerning the program.



# GOVERNOR'S APPOINTMENTS

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Alliance for Adolescent Pregnancy Prevention Advisory Board	Rev. B. Leslie James	Pleasure of the Governor
Committee on Employment of People with Disabilities	Mr. Griff Campbell	04/01/01
	Ms. Gina Edwards	04/01/01
	Ms. Maureen Gleckner	04/01/01
	Mr. James Kristof	05/31/98
	Ms. Laura McCann	04/01/01
	Mr. Spiros Mantzavinos	04/01/01
	Ms. Ann Stewart	04/01/01
Council on Alcoholism, Drug Abuse and Mental Health	Ms. Janet E. Leitch	06/30/98
Council on Forestry	Ms. Grace Lowe	03/06/01
Council on Hispanic Affairs	Ms. Maria Matos	01/09/01
	Ms. Sharon Saez	03/06/01
Council on Long Term Care Facilities	Mr. William I. Taylor, Sr.	04/01/01
Deferred Compensation Council	Mr. Oliver J. Gumbs	03/06/01
Delaware Economic & Financial Advisory Council	Hon. Deborah H. Capano	Pleasure of the Governor
Delaware Gaming Control Board	Ms. Kathy D. Harron	03/06/03
Delaware Health Resources Board	Mr. Richard D. Pack	03/12/01
Delaware Workforce Development Council	Dr. Orlando George	Pleasure of the Governor
	Mr. Frederick Janeka	Pleasure of the Governor
	Mr. Ralph Kuebler	Pleasure of the Governor
	Mr. Michael Sheehy	Pleasure of the Governor

---

---

**GOVERNOR'S APPOINTMENTS**

---

1823

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Delmarva Advisory Council	Mr. Frank B. Calio	Pleasure of the Governor
	Mr. George J. Collins	Pleasure of the Governor
	Ms. Thelma D. Monroe	Pleasure of the Governor
Dental Hygiene Advisory Committee	Ms. Elizabeth Garey	03/12/01
Department's Corridor Capacity Preservation Program	Jeffrey W. Bullock, Chief of Staff The Honorable Anne P. Canby The Honorable Robert W. Coy, Jr. The Honorable John F. Tarburton	
Department's Corridor Capacity Preservation Program	The Honorable Christophe A.G. Tulou	
Diamond State Port Corporation Advisory Board	Mr. Michael Ciabattoni	03/19/00
	Mr. Michael E. Harkins	03/19/00
Foster Care Review Board	Mr. Joseph M. Asher	03/06/00
	Ms. Gail B. Begatto	04/08/00
	Ms. Alexis V. Ciconte	03/06/00
	Ms. Elaine I. Keating	03/06/00
	Ms. Michele C. Gott	03/06/00
	Ms. Margaret T. Gralowski	03/06/00
	Ms. Vicky K. Kleinman	03/06/00
	Ms. Marie Wallop	03/06/00
Justice of the Peace for Sussex County	The Honorable William J. Hopkins, Jr.	03/25/04
	The Honorable John W. O'Bier	03/25/04
Newark Housing Authority	Mr. David Hill	04/10/04
	Ms. Pauline Lathem	04/01/04
Non-Emergency Number Review Committee	Mr. S. Bernard Ableman	Pleasure of the Governor
Sentencing Accountability Commission	Mr. Thomas P. McGonigle	03/06/02

---

**GOVERNOR'S APPOINTMENTS**


---

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
State Board of Examiners of Optometry	Mr. Mark Metzelaar	03/06/01
State Board of Plumbing Examiners	Mr. Lawrence R. Carson	03/12/01
	Mr. Bruce F. Collins	03/12/01
	Mr. Robert R. Frederick, Jr.	03/25/01
	Ms. Willa Gains	03/25/00
	Ms. Lynn S. Mangene	03/12/99
	Mr. Richard B. Millar, Jr.	03/12/99
	Mr. Wayne R. Reed	03/12/00
	Mr. Carey G. Saddler, III	03/12/00
	Mr. Dean W. Sherman	03/12/99
State Examining Board of Physical Therapists	Ms. Danna L. Levy	03/06/01 Worker's
Worker's Compensation Advisory Council	Mr. Frederick C. Janeka	04/01/01

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE  
ATTORNEY GENERAL OPINION  
NO. 98-IB01

January 21, 1998

Ms. Shirley M. Tarrant  
37 Old Oak Road  
Newark, DE 19711

RE: Freedom of Information Act Complaint Against City of Newark

Dear Ms. Tarrant:

This letter is the Attorney General's written determination in response to your complaint alleging that the City of Newark (the "City") violated the Freedom of Information Act, 29 Del. C. Sections 10001-10005 ("FOIA").

Your letter of complaint dated December 12, 1997 was received by this Office on December 15, 1997. By letter dated December 16, 1997, we asked the City to respond to your allegations within ten days. By letter dated December 24, 1997, we received the City's response.

Initially, this Office lacks jurisdiction over, and expresses no opinion regarding, the merits of your alleged ethical violations by a member of the City Council. Our focus is strictly on your claim that, in connection with a hearing on those alleged ethical violations, the City's Board of Ethics violated FOIA. In your letter of complaint you identify two FOIA violations: first, the City did not timely provide you with a transcript of an executive session held on June 19, 1997; and second, the City's Board of Ethics did not go into executive session on June 19, 1997 for a purpose authorized by statute. The City denies that it violated FOIA in either regard.

FOIA does not require a public body to tape record its meetings or executive sessions, or have a stenographer present to transcribe the proceedings. The statute only requires that "[e]ach public body shall maintain minutes of all meetings, including executive sessions, conducted pursuant to this section, and shall make such minutes available for public inspection and copying as a public record." 29 Del. C. Section 10004(f). This Office has previously determined that the duty to maintain written minutes of public meetings does not require a public body to tape record the meeting. See Att'y Gen. Op. 94-IO23 (June 21, 1994).

Since FOIA does not require a public body to tape record its meetings, FOIA cannot require that public body to prepare a verbatim transcript of any meeting. In this case, the City elected to prepare a verbatim transcript of its June 19, 1997 meeting, including the executive session. Public bodies are

required by law to prepare minutes of their meetings in a timely fashion, consistent with the purposes of FOIA. The City prepared a verbatim transcript in lieu of minutes at your request, which required a longer time. Any reasonable delay encountered thereby would not give rise to a FOIA violation.

The second issue is whether the City's Board of Ethics went into executive session for a purpose authorized by statute. Section 10004(b)(4) of FOIA permits a public body to go into executive session for: "Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only where an open meeting would have an adverse effect on the bargaining or litigation position of the public body; . . ."

The minutes of the meeting of the Board of Ethics on June 19, 1997 show that at 5:32 p.m. the Board voted unanimously to go "Into executive session with the assistance of legal counsel." The Board came out of executive session at 6:47 p.m., approximately one hour and fifteen minutes later.

The City's response to the alleged impropriety of the executive session is as follows:

The motion to move into such a session was apparently driven by the fact that the Board of Ethics was confronted by various legal arguments during the hearing and was being called upon to interpret and rule upon heretofore unconstrued Ethics Code provisions. The request to meet with legal counsel was entirely in order. Since Ms. Tarrant has provided you with a verbatim transcript of the executive session discussion, you are of course free to review it and to assess the interaction between the Board and City staff.

We have reviewed the seventeen-page transcript of the executive session on June 19, 1997. Although there is some discussion of legal issues between members of the Board and the City Solicitor, most of the discussion is about the merits of the ethics charges. There is no discussion with counsel of pending or potential litigation. The only litigation discussed was litigation that occurred in 1981 involving one of the City Council members now charged with ethical violations.

Rather than a legal strategy session with counsel, the executive session was clearly to allow the Board to deliberate the merits of the ethical charges considered in the public hearing. Indeed, at one point the City Solicitor remarked: "If you're not ready, if you're not comfortable taking a vote on each and every one of these questions, then I think we ought to adjourn and continue our deliberations another day." (Emphasis added.) The Board continued deliberating, and by the end of the executive session the Board members had reached a consensus on how they would vote on each of the charges after the Board came out of executive session. In Chemical Industry Council of Delaware, Inc. v. State Coastal

Zone Industrial Control Board, Del. Ch., C.A. No. 1216-K, 1994 WL 274295 (May 19, 1994) (Jacobs, V.C.), the Chancery Court observed that the “legal advice” exception to the open meeting law must be given “[a] narrow, limited interpretation” consistent “with the legislative history of the act, which the General Assembly had amended in 1985 to narrow its scope to prevent potential abuse.” 1994 WL 274295, at p. 11. In CIC, the State Coastal Zone Industrial Control Board met in private with counsel to discuss proposed regulations. Even if the Board’s regulations were likely to be the subject of litigation, the wholesale use of executive sessions ... to debate, discuss, and share views concerning the evolving revisions of the Regulations . . . went far beyond strategizing with its counsel about potential litigation” Id.

Public bodies are not permitted to evade the requirements of the open meeting law by nominally invoking one of the statutory exceptions for executive session. See Att’y Gen. Op., 9611332 (Oct. 10, 1996) (“consensus votes in executive session are prohibited”) (citing Levy v. Board of Education of Cape Henlopen School District, Del. Ch., C.A. No. 1447 (Oct. 1, 1990) (Chandler, V.C.)). The whole executive session on June 19, 1997 was to deliberate the merits, which in turn led to a consensus vote.

The discussion at the executive session extended well beyond legal advice regarding pending or potential litigation. A legitimate argument may be made that the Board of Ethics should be entitled to deliberate in private because of the sensitive nature of the subjects before it. If the Board, however, believes that the requirements of the open meeting law “unreasonably infringe[s] upon their deliberative processes, such grievances must be directed to the General Assembly which has made the policy decision to enact the sunshine law in its present form.” Levy, 1990 WL 154147, at p. 6. Indeed, the General Assembly has excepted, by statute, certain public bodies from the requirement of the open meeting law to deliberate in public. See, e.g., 29 Del. C. Section 10004(h); House Bill 205 (effective July 1997) (Industrial Accident Board, Human Relations Commission, Tax Appeals Board).

That leaves us with the issue of remedy. You have asked our Office to invalidate the decision made by the Board of Ethics in violation of FOIA. The City responds that holding the hearing again would not change the result. “The Board of Ethics has rejected Ms. Tarrant’s claims of ethical violations by Councilman Godwin. That rejection has been accepted by the City Council. The Council has further elected not to rescind that acceptance based on any alleged impropriety by its staff.”

We do not believe, however, that the City committed a mere “technical” violation of FOIA for which no remedy might be necessary. We find that the Board’s closed deliberations affected “substantial public rights” by depriving “members of the public with an intense interest in the subject

of the Board’s action” an opportunity to view a critical step in the process of adjudicating ethics charges against a City councilman. Ianni v. Department of Elections of New Castle County, Del. Ch., 1986 WL 9610 (Aug. 29, 1986) (Allen, C.).

Even though the City Council accepted the Board of Ethics’ recommendation to dismiss the ethical charges, that acceptance does not cure the FOIA violation. In Leyy, Vice Chancellor Chandler rejected the school district’s argument that a later public vote validated any action taken at a meeting in violation of FOIA. The court, however, declined to enjoin the implementation of the student reassignment plan, which had already been fully implemented, because of the toll on the students involved.

In this case, no similar hardship would be involved if the Board of Ethics were to hold a new hearing and this time deliberate in public as required by law. We direct the Board to do so within sixty days of the date of this letter, and to report back to us in writing to confirm that this remedial action has been taken.

#### Conclusion

Based on your complaint, the City’s response, and the documents provided to us, we determine that the City did not violate the public records provisions of FOIA. Further, we determine that the City’s Board of Ethics went into executive session on June 19, 1997 for a purpose not authorized by statute. To remedy that FOIA violation, we direct the City to notice another hearing on the ethics charges filed against City Councilman Godwin which shall be open to the public. Further, if the Board of Ethics votes to go into executive session at any time during that hearing, it must be for a purpose authorized by FOIA, and any discussion during executive session shall be limited to that authorized purpose.

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. 98-IB02

January 30, 1998

Ms. Patricia McCune  
P.O. Box 102  
1 1 82 Levels Road  
Middletown, DE 19709

RE: Freedom of Information Act Complaint Against Town  
of Middletown

Dear Ms. McCune:

This letter is our written determination in response to your complaint alleging that the Town of Middletown (the "Town") violated the Freedom of Information Act, 29 Del.C. Sections 10001- 10005 ("FOIA").

Your letter of complaint dated October 14, 1997 was received by this Office on October 27, 1997. By letter dated October 30, 1997, we asked the Town to respond within ten days to your allegations that the City had violated the open meeting requirements of FOIA. By letter dated November 10, 1997, the Town responded, denying any violations of FOIA.

By letter dated November 18, 1997, we asked the Town to provide us with copies of notices and agenda for various meetings, which were sent to us under cover of letter dated November 2 1, 1997.

In your letter, you allege that the Town violated FOIA by failing to give notice to the public of meetings to discuss the development and eventual adoption of the Town's Comprehensive Plan. You also allege that the Town did not hold a public meeting to review comments on the Draft Comprehensive Plan from the Cabinet Committee on State Planning Issues and the Office of State Planning Coordination.

As for your second allegation, the Town responds that it "merely submitted plans, as required by law to these State agencies. What happened, as far as they are concerned, is unknown to the Town, and certainly there was no Town involvement either official or unofficial with regard to the proceedings before the State committees after submission of the proposed plan."

The submission of local land use plans to state agencies is required by the Land Use Planning Act ("LUPA"), 29 Del. C. Chapter 92. To the extent you are complaining about whether the Town complied with LUPA, that is outside the jurisdiction of this Office and will not be addressed further. We will focus, instead, on your allegations that the Town failed to give the required notice to the public when it held meetings

during 1997 to discuss and finally adopt its Comprehensive Plan for land use.

#### Summary of the Law

Section 10004 of Title 29 of the Delaware Code provides that "[e]very meeting of all public bodies shall be open to the public" except as authorized by statute for executive session. A "public body" is defined to include any "board, commission, department, agency, committee, ad hoc committee, special committee, temporary committee, advisory board and committee, [or] subcommittee" appointed by any body which is "impliedly or specifically charged" by another public body "to advise or to make reports, investigations or recommendations." 29 Del.C. Section 10002(a).

Section 10004(e)(2) provides: "All 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(e)(4) requires that notice "shall include, but not be limited to, conspicuous posting of said notice at the principal place of the public body holding the meeting..."

"Agenda" is defined to "include but is not limited to a general statement of the major issues expected to be discussed at a public meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefor 29 Del. C. Section 10002(f).

#### Discussion and Findings

The Town's Draft Comprehensive Plan was initially prepared by the Institute for Public Administration of the College of Human Resources, Education and Public Policy of the University of Delaware. On January 9 and March 13, 1997, members of the Institute staff, the Town Planning Commission, the Mayor, and members of the Town Council held workshops to provide direction for the development of the plan. According to the Town, "[t]hese were not advertised meetings and were merely meetings to discuss generally the proposed form of the comprehensive plan, as well as the status of the study. Additionally, a quorum of the Council members were not in attendance at the meeting."

These two meetings "were followed by an advertised public workshop which was held on April 23, 1997, the purpose of which was to secure citizen input to the proposed plan." According to the Town, "[t]his meeting was actually called by personnel of Wilmapco [Wilmington Area Planning Council], and was not in any way called by Council of the Town of Middletown, nor any of its functioning boards." The Town claims that notice of this meeting was published in The News Journal. The copy of the notice provided to us

advertised that there would be a “Mobility Friendly Design Standards Workshop” from 4:00-8:00 p.m. on Wednesday, April 23, 1997 at the Middletown Public Works Building.

The Town states that there was another “advertised public meeting on May 21, 1997 which was held in the Public Works Building of the Town of Middletown ... to secure citizen input.” Again, the only notice of this meeting was published in The News Journal, and it advertised a “Mobility Friendly Design Standards Public Workshop.”

At a meeting on August 4, 1997, the Town Council reviewed the status of the Comprehensive Plan and invited people from the University of Delaware to answer questions about the plan. Notice of this meeting was published in the Middletown Transcript on July 31, 1997, as well as posted in the Town Hall (but on what date is not certain). The Comprehensive Plan was included as an item on the agenda for that meeting.

The Town Council again considered the Comprehensive Plan at its meeting on September 8, 1997. The Town claims that notice was given to the public in the newspaper as well as by posting in the Town Hall, but it is not clear when this was done since the Town did not provide us with copies of the notices which we requested. The Town states that “[a]ction on the plan was deferred until the Council meeting in October of 1997.”

At a meeting on October 6, 1997, the Town Council voted to adopt the Comprehensive Plan. Notice of that meeting was published in the Middletown Transcript on October 2, 1997 as well as posted in the Town Hall (on what date, it is not clear). Approval of the Comprehensive Plan was included as an agenda item.

#### A. The Institute Workshops

The Town admits that the two workshops held on January 9 and March 13, 1997 “were not advertised.” Apparently, the Town believes that since “a quorum of the Council was not in attendance at the meeting,” the open meeting law did not apply. This Office has previously determined that meetings of less than a quorum of a public body may still be subject to FOIA if they appear to be a deliberate attempt to circumvent the requirements of the law. See Att’y Gen. Op. 96IB02 (Jan. 2, 1996). Moreover, just calling a meeting a “workshop” does not take it outside the requirements of the open meeting law. See Att’y Gen. Op. 96-IB I I (Mar. 20, 1996).

Even if less than a quorum of the Town Council was present at the Institute workshops, we find that they constituted an ad hoc committee of the Council and therefore their meeting, without notice to the public, violated FOIA. Since it would be counter-productive to turn the clock back to the beginning of the Comprehensive Plan process, we do not think that any remedial action for these violations of FOIA is required. This conclusion, however, is limited to the specific

facts of this case, and our Office does not consider this aspect of our determination to be binding with respect to any similar complaint in the future.

#### B. The April-May Public Workshops

The Town describes the meetings on April 23 and May 21, 1997 as designed “to secure citizen input to the proposed plan.” As such, they were crucial to the public’s opportunity to be heard and to influence the process by which local land use decisions would be made. The only documents supplied to us by the Town evidencing notice given of those meetings were published in The News Journal, not by the Town, but by Wilmapco. Further, those notices did not mention the Town’s Comprehensive Plan, but rather a “Mobility Friendly Design Standards Public Workshop.” The Town did not submit any evidence as to whether any members of the public attended the workshops, or whether the Comprehensive Plan is what was really discussed. In any event, the Wilmapco notice in the newspaper -- buried deep in the legal notices section -- would hardly give a citizen of the Town adequate notice that his or her input into the Comprehensive Plan was being invited. The Town suggests that it was not incumbent on it to provide the required notice under FOIA, because Wilmapco arranged the public workshops. This Office has previously determined that it is irrelevant who is the formal sponsor of a public meeting. “[A] meeting as defined in Section 10002(e) does not cease to be a meeting because the Council gathers as a result of an invitation of another public official or body.” Att’y Gen. Op. 94-IO36 (Dec. 15, 1994). We find that the Town violated the public notice provisions of FOIA by failing to post notices with agenda so as to inform the citizens of the Town that their input was being sought regarding the proposed Comprehensive Plan.

#### C. The Town Council Meetings

With regard to the August 4, 1997 meeting, the Town published notice and the agenda (which included “Middletown Comprehensive Plan”) in the newspaper five days before (on July 31, 1997). The Town did not provide us with copies of the notices for the September 8, 1997 meeting, but the minutes show that the comprehensive plan was not discussed; the Mayor merely indicated that had copies for anyone’s review. The notice and agenda for the October 6, 1997 meeting was published in the news paper four days before (on October 2, 1997). The agenda included “Comprehensive Plan approval.”

Unless there are special circumstances, FOIA requires public bodies to post notice of their meetings at least seven days in advance. The Town Council did not, for either the August 4 or the October 6, 1997 meetings, and therefore violated FOIA. The violation is all the more serious since the

Council was preparing to vote on a land use plan that would have considerable impact on the lives of all of the Town's citizens.

The Town takes the position that it made every effort to involve the public in the decision making process leading up to the adoption of the Comprehensive Plan. The Town points out that there was a third public workshop on June 5, 1997, for which notice was "personally delivered to all the residents of the Town." In addition to the three public workshops, "there were presentations made to civic associations, the [Middletown] Chamber of Commerce, and the Appoquinimink School District." The Town maintains that "ample opportunity [was] given to each and every citizen of the area as to the proposed plan and opportunities to have input."

We do not perceive any conscious intent by the Town to keep the public in the dark about the Comprehensive Plan. Nevertheless, a series of FOIA violations did occur, and they may have deprived some members of the public of timely and complete information about several crucial steps in the process that led to the Council's adoption of the Plan on October 6, 1997. Accordingly, we believe that the action taken by the Council adopting the Plan is void because it was done in violation of FOIA.

To remedy these FOIA violations, we direct the Town to call a special meeting to consider anew whether to adopt (not simply ratify) the Comprehensive Plan. Alternatively, the Town may include the issue of adoption of the Comprehensive Plan as an agenda item at a regular meeting, provided that the notice of the regular meeting adequately provides notice that the issue of the Comprehensive Plan will be considered at such regular meeting. Notice of that meeting must be given at least seven days in advance, and the notice and agenda must be posted conspicuously in the Town Hall as required by FOIA. While not required by FOIA nor imposed by this office as a condition of FOIA compliance, the Town should also consider additional means (eg., newspaper, personal mail) of giving the public notice so that all interested citizens can attend to voice their views.

The courts of this state and the Department of Justice have been consistent in requiring strict compliance with FOIA. The Town should be vigilant to assure that all future meeting notices and agenda meet that standard of strict compliance irrespective of the matter of public concern under consideration.

#### Conclusion

Based on the complaint, and the Town's written responses and documents provided to us, we determine that the Town violated the open meeting requirements of FOIA by failing to post the required notices and agendas for the public workshops on April 23 and May 21, 1997, and for failing to provide the

required notice for the Town Council meetings on August 4 and October 6, 1997. We direct the Town to take the remedial measures outlined above as soon as practicable, and to provide us with satisfactory proof that such measures have been taken in accordance with FOIA.

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. 98-IB01A

February 20, 1998

AG Opinion- 1130la-98 Supplemental

Roger A. Akin, Esquire  
City Solicitor  
220 Elkton Road  
Newark, DE 19711

Re: City of Newark FOIA

Dear Roger:

By your letter of February 19, 1998, The City of Newark has asked whether the Department of Justice will reconsider its opinion dated January 21, 1998 when it found that the Newark Board of Ethics had violated the Freedom of Information Act ("FOIA"). We found that the Board violated the restrictions governing the type of business which can be conducted during an executive session. As a result, we concluded that the Board would be required to conduct a new hearing on the complaint. You have indicated that the Board is meeting on February 20, 1998 to determine how to proceed as a result of the finding contained in our opinion of January 21, 1998.

After failing to reach either Ms. or Mr. Tarrant on the 19th I was able to talk with both of them this morning. I faxed a copy of your letter to Mr. Tarrant at his office this morning. Mr. and Ms. Tarrant objected to any reconsideration of the opinion on two grounds: first that the City has instituted new procedures which allow for subpoenas which was not the case at the time of the original hearing and second that to

merely require that the Board deliberate again would not be a sufficient sanction to act as deterrent toward future FOIA violations by the city.

While I understand your desire to have the Board meet expeditiously to resolve this issue consistent with our decision, the Department of Justice is concerned that both parties have a full opportunity to be heard. Since you have told me that you want to advise the Board on the 20th in anticipation of a proceeding to be noticed for a later date, I will consider your request under 29 Del. reconsideration so long as it brings to our attention relevant information which is germane to the FOIA issue as opposed to the merits of the case or non-FOIA issues relating to the Board's procedures.

As discussed in the opinion of January 21st, the only FOIA violation which occurred related to the improper use of the executive session for purposes of deliberation. As pointed out in your letter, the remedial action should be tailored to meet the violation. While we recognize that remedial action may create a burden, the city should not be required to repeat any process which did not give rise to a FOIA violation. Since there is a verbatim transcript of the hearing and since the Board which will reconsider the case will be comprised of the same persons who originally heard the complaint, we will modify our opinion of January 21, 1998 in the following manner:

The deliberations and vote taken by the Board of Ethics were in violation of 29 *Del. C.* §10004(b)(4). The Board shall reconvene in order to conduct deliberations based on the verbatim transcript of the hearing provided that the members of the Board meeting in the reconvening session are identical to the members who originally heard the complaint on June 19, 1997. The deliberations shall be conducted on the record in open session consistent with the findings set forth in our opinion dated January 21, 1998. It shall not be necessary to hold a full evidentiary hearing merely to take evidence or introduce documents already of record. On the other hand, the Board is free to expand the proceeding for purposes which it deems proper and appropriate so long as the proceeding otherwise complies with FOIA requirements.

In all other respects, we restate and reaffirm all of the findings and conclusions set forth in our opinion of January 21, 1998 which are not inconsistent with this letter.

Very truly yours,  
Michael J. Rich  
State Solicitor

---

**DELAWARE STATE FIRE  
PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code,  
Section 6603 (16 **Del.C.** 6603)

**NOTICE OF PUBLIC HEARING**

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 Del. C. §6603 and 29 Del. C. Ch., 101 on May 26, 1998 at 7:00 p.m. in Room 5 of the Delaware State Fire School at the Delaware Fire Service Center, 1461 Chestnut Grove Road, Dover, Delaware. The Commission is proposing to adopt the following:

Minimum Requirements for Dispatch Centers to include utilities, fire protection, emergency lighting power, staffing, qualifications, operating practices, records, equipment and operations, dispatching system and radio devices and computer aided dispatching systems.

Persons may view the proposed Requirements between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904.

Persons may present their views in writing by mailing their views to the Commission at the above address prior to the hearing, and the Commission will consider those responses received before 7:00 p.m. on May 26, 1998, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charged for copies of the proposed changes.

---

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

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

The proposed regulations are amendments to the Lottery's existing Video Lottery Regulations. The Lottery proposes these amendments pursuant to 29 Del. C. section 4805(a).

The Lottery will accept written public comments from May 1, 1998 to May 31, 1998. A public hearing will also be conducted at the DNREC Building, Main Auditorium, 89

Kings Highway, Dover, on May 20, 1998 at 3:00 p.m. The Lottery's phone number is (302)739-5291.

---

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 **Del.C.** 512)

Delaware Health and Social Services is considering revising certain regulations contained in DSSM section 3002.7. The Department will receive comments and consider whether or not to adopt or modify the proposed regulations.

The proposed regulations:

- Remove the possibility that an employable caretaker whose 48-month *A Better Chance* time limit has expired may re-apply for benefits after a family has not received assistance for 96 consecutive months.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by May 31, 1998.

---

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 **Del.C.** 512)

**PUBLIC NOTICE**

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its durable medical equipment, EPSDT, and practitioner provider manuals.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than June 1, 1998,

at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

---

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Sections 311, 2304(16) & 2312  
(18 Del.C. 311, 2304(16), 2312)

**INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS** hereby gives notice that a PUBLIC HEARING will be held on Thursday, May 28, 1998 at 10:00 a.m. in the Main Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. This Hearing is to consider implementation of Regulation No. 80 (Proposed) entitled "STANDARDS FOR PROMPT, FAIR AND EQUITABLE SETTLEMENT OF CLAIMS FOR HEALTH CARE SERVICES".

The purpose of the Regulation is to establish standards that will ensure that health insurers pay claims to policyholders and providers in a timely manner.

The Hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited by any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Friday, May 22, 1998, and should be addressed to Michael W. Teichman, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael W. Teichman at (302)739-4251, Ext. 171 no later than Friday, May 22, 1998.

## DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

### DIVISION OF AIR & WASTE MANAGEMENT

### AIR QUALITY MANAGEMENT SECTION

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

#### 1. TITLE OF THE REGULATIONS:

Motor Vehicle Inspection and Maintenance -Regulation 26, 31, and 33

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

Regulation 26 is proposed to be changed by elimination of those requirements pertaining only to New Castle and Kent Counties, with the resulting regulation after changes pertaining only to Sussex County. Additions to Regulation 26 are underlined and deletions are in ~~strikeout~~. For completeness, new Regulation No. 31 (proposed as part of this package) will entirely replace the New Castle and Kent County requirements of current Regulations No.26 and No.33, with the latter being eliminated completely. The proposed Regulation 31 adds various administrative and operational requirements contained in the federal regulation.

#### 3. POSSIBLE TERMS OF THE AGENCY ACTION: N/A

#### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

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

#### 5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL: None

#### 6. NOTICE OF PUBLIC COMMENT:

Public Hearing: May 21, 1998, 6 PM, Richardson and Robbins Building, 89 Kings Highway, Dover Delaware,

#### 7. PREPARED BY:

Philip Wheeler 739-4791  
April 9, 1998

---

**DEPARTMENT OF EDUCATION**

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

**THE REGULARLY SCHEDULED MEETING OF THE  
STATE BOARD OF EDUCATION WILL BE HELD ON  
THURSDAY, MAY 21, 1998, AT 11:00 A.M.**

---

A public hearing will be held at 6:00 p.m. on May 21, 1998 in Dover. The meeting will be advertised for two weeks in all editions of the Delaware State News and the News Journal, daily newspapers of general circulation throughout the State.

---

**DELAWARE RIVER BASIN  
COMMISSION**

The Delaware River Basin Commission will meet on Wednesday, May 27, 1998, in Avondale, PA. For information contact Susan M. Weisman at (609) 883-9500 ext 203.

---

**DELAWARE STATE HOUSING  
AUTHORITY****Comprehensive Plan Notice**

The U.S. Department of Housing and Urban Development (HUD) is providing modernization funding on a formula basis to Public Housing Agencies (PHAs) to enable them to improve the physical condition and to upgrade the management and operations of existing public housing developments to assure their continued availability for low-income families. Delaware State Housing Authority (DSHA), a public body corporate and politic of the State of Delaware (Subsection 4053(4), Title 31, Delaware Code), having its principal office at 18 The Green, Dover, Delaware 19901, is the authorized administrator of HUD's Comprehensive Grant Program (CGP) for the State of Delaware and is a PHA with more than 250 PHA-owned units. The 1998 CGP from HUD is expected to be approximately \$525,000.

For CGP funding, DSHA is required to develop a Comprehensive Plan through deliberation with the residents, local government, and the public. The contents of the Comprehensive Plan include the Executive Summary, Physical and Management Needs Assessments, a Five-Year Action Plan, Local Government Statements, PHA Resolution and the Annual Statement. The Comprehensive Plan must be submitted to the HUD Philadelphia field office by July 15, 1998.

---

---

# SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

## THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public hearings and open meetings of state agencies.

**PUBLISHED MONTHLY - \$100.00 PER YEAR**

---

YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER FOR \_\_\_\_ AT \$100/YEAR

**You will be billed upon receipt of your order.** Subscription fees are not refundable.

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please clip and return to: **REGISTRAR OF REGULATIONS**  
**LEGISLATIVE HALL, DOVER, DELAWARE 19903**



# LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_ FAX \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
<b>One copy of all legislation introduced:</b>	
<input type="checkbox"/> Picked up by subscriber *.....	\$100
<input type="checkbox"/> Mailed daily via First Class postage.....	\$775
<b>One copy of all legislation signed by the Governor:</b>	
<input type="checkbox"/> Mailed via First Class postage .....	\$195
<b>One copy of House and Senate calendars:</b>	
<input type="checkbox"/> 1st Session set (Required for <i>new</i> subscribers).....	\$75
<input type="checkbox"/> Picked up by subscriber *.....	\$100
<input type="checkbox"/> Mailed daily via First Class postage.....	\$775
<b>One copy of all Governor's Advisories:</b>	
<input type="checkbox"/> Mailed via First Class postage .....	\$25
<b>Daily Legislative Agendas and weekly Standing Committee Notices:</b>	
<input type="checkbox"/> ViaFax .....	\$150

\* *Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.*

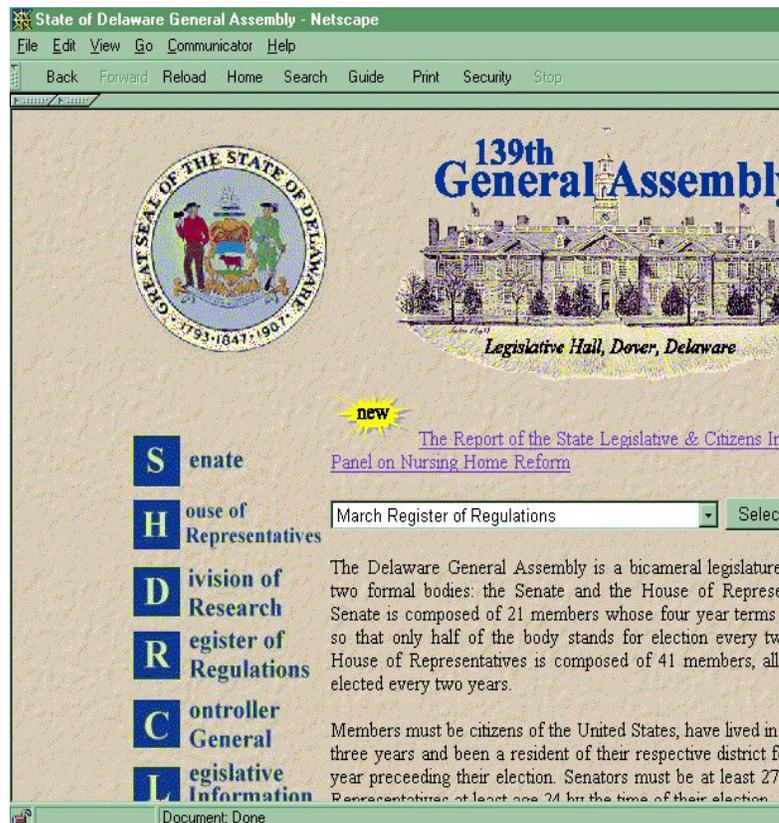
If you have any questions about our subscription services, please contact Ms. Marlynn Hedgecock in the Division of Research by dialing, toll-free, **(800) 282-8545** (in state). Ms. Hedgecock may also be reached via E-Mail at **mhedgecock@state.de.us**. Please dial **(302) 739-5801** if you are calling from outside Delaware.

Please return this order form to Ms. Hedgecock at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to **(302) 739-3895** as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.

---

---

# Visit the Delaware General Assembly on the World Wide Web!



## The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

**<http://www.state.de.us/research/assembly.htm>**