
Delaware Register of Regulations

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before April 15, 2006.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
- Governor's Appointments
- 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:

9 DE Reg. 1036-1040 (01/01/06)

Refers to Volume 9, pages 1036-1040 of the *Delaware Register* issued on January 1, 2006.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written 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 17	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.

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3507 Black Sea Bass Size Limit; Trip Limits; Seasons' Quotas..... 9 DE Reg. 1139 (Prop.)

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7414 TMDL's for the Marshyhope Creek..... 9 DE Reg. 529 (Prop.)

9 DE Reg. 1002 (Final)

7415 TMDL's for the Pocomoke River Watersheds..... 9 DE Reg. 529 (Prop.)

9 DE Reg. 1002 (Final)

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300 Board of Architecture..... 9 DE Reg. 1142 (Prop.)

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1770 Respiratory Care Advisory Council..... 9 DE Reg. 1524 (Prop.)

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2000 Board of Occupational Therapists..... 9 DE Reg. 598 (Final)

9 DE Reg. 1143 (Prop.)

2500 Board of Pharmacy..... 9 DE Reg. 85 (Final)

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9 DE Reg. 1377 (Final)

3000 Board of Mental Health and Chemical Dependency Professionals..... 9 DE Reg. 231 (Prop.)

9 DE Reg. 1106 (Final)

3100 Board of Funeral Services..... 9 DE Reg. 262 (Final)

3500 Board of Examiners of Psychologists..... 9 DE Reg. 373 (Prop.)

9 DE Reg. 452 (Final)

9 DE Reg. 487 (Errata)

9 DE Reg. 1107 (Final)

3600 Board of Registration of Geologists..... 9 DE Reg. 456 (Final)

3700 Board of Examiners of Speech/Language Pathologists, Audiologists and
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3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.....	9 DE Reg. 1267 (Final)
3900 Board of Clinical Social Work Examiners.....	9 DE Reg. 265 (Final)
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2207 Suspension of Permanent Licenses.....	9 DE Reg. 1545 (Prop.)
2208 Concerning Driver Improvement Problem Driver Program.....	9 DE Reg. 1545 (Prop.)
2210 Issuance of a Conditional License as the Result of a Suspension Due to a Conviction for Passing a Stopped School Bus.....	9 DE Reg. 1550 (Prop.)
2211 The Issuance of Restricted Driving Privileges as the Result of a Suspension or Revocation Order Received from Family Court Relative to a Juvenile Being in Violation of 21 Del.C. 4177.....	9 DE Reg. 1551 (Prop.)
2212 Issuance of Occupation Driver's License After Conviction of No Insurance on a Vehicle.....	9 DE Reg. 1552 (Prop.)
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	9 DE Reg. 268
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	9 DE Reg. 620
	9 DE Reg. 1008
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66, Establishing the Veterans Home Oversight Committee.....	9 DE Reg. 1395
68, Establishing the Health Disparities Task Force.....	9 DE Reg. 144
69, Establishing a Committee to Recommend Options for Providing Additional Funding to, and Accelerating the Construction of, Needed Improvements Overseen by the Delaware Department of Transportation	9 DE Reg. 145
70, State Employees and the Right to Organization and Effective Union Representation.....	9 DE Reg. 458
71, Directing the Delaware Emergency Management Agency to Organize Volunteers for Response Efforts Involving Hurricane Katrina and its Aftermath	9 DE Reg. 620
72, Declaring a State of Emergency Due to Hurricane Katrina and its Aftermath...	9 DE Reg. 821
73, Establishing a Delaware Healthy Mother and Infant Consortium.....	9 DE Reg. 821
74, Directing the Delaware Emergency Management Agency to Organize Volunteers for Response Efforts Involving Hurricane Rita and Its Aftermath ..	9 DE Reg. 822
75, Establishing the Governor's Mentoring Initiative.....	9 DE Reg. 822
76, Regarding Management of Labor Relations and Administrative Proceedings in State Government.....	9 DE Reg. 1006
77, Regarding State Employee Obligations and Compensation During Severe Weather Conditions and Emergencies.....	9 DE Reg. 1269
78, Regarding Implementation of Financial Management Measures for the Department of Transportation and the Transportation Trust Fund.....	9 DE Reg. 1271
79, Establishing a Governance Structure for the Delaware Veterans' Home.....	9 DE Reg. 1272
80, Reallocation of State Private Activity Bond Volume Cap for Calendar Year 2005 and Initial Suballocation of State Private Activity Bond Volume Cap for Calendar Year 2006.....	9 DE Reg. 1395
81, Continuing Equal Opportunity Hiring Standards and Practices for Delaware Government.....	9 DE Reg. 1396
82, Implementing Strategies to Address Energy Restructuring.....	9 DE Reg. 1593
83, Creating an Advisory Council on Walkability and Pedestrian Awareness...	9 DE Reg. 1597

ERRATA

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT Emergency Prevention and Response Branch

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

**Under Secretary's Order 2004-A-0033
Published July 1, 2004**

1203 Reporting of a Discharge of a Pollutant or Air Contaminant

* **Please Note:** In paragraph 2.4 the incorrect notation 2.3 is replaced with 2.4 and containing has been corrected to contain. In paragraph 3.4 the (B) has been removed from 2.5 (B) and in the Section 3 Table A Delaware List of Chemicals and Reportable Quantities in Alphabetical Order, sulfur dioxide Delaware Reportable Quantity (DRQ) should have been listed as 100 pounds under the Secretary's Order.

As the rest of the final regulation was not affected it is not being reproduced here. The final regulation is available at:

<http://www.state.de.us/research/AdminCode/title7/1000/1200%20Emergency%20Preparation%20and%20Response/1203.shtml#TopOfPage>

2.4 For the purpose of this regulation, notification of any reportable incident under Sections 2.1 or ~~2.3~~ 2.4 by a person to the Department can be in person to Department staff or by telephone communication to the Department's Environmental Emergency Notification and Complaint Number. The notification must contain the following information which details the facts and circumstances of the discharge to the maximum extent practicable at the time of notice:

(Break in Continuity of Sections)

3.4 In all cases, discharges of infectious waste, as defined in Title 7 Chapter 64 §6402, of any quantity or of any type occurring outside of a medical or health care facility are subject to the notification requirements of Section 2.4 of this regulation and the written requirements of Section 2.5 ~~(B)~~.

SECTION 3 TABLE A DELAWARE LIST OF CHEMICALS AND REPORTABLE QUANTITIES IN POUNDS IN ALPHABETICAL ORDER

CAS		NAME	DRQ
7446095	DE	Sulfur dioxide	100

Symbol Key

Arial 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)

PUBLIC NOTICE**Proposed Changes to the 2006 Delaware State Fire Prevention Regulations**

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** 101 on Tuesday, June 20, 2006, at 1:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following *State Fire Prevention Regulations*:

PART I, CHAPTER 2 & 5
PART I, ANNEX A, B & C
PART II, CHAPTER 5, 6 & 7
PART III, CHAPTER 3
PART V, CHAPTERS 1
PART VI, CHAPTER 7
APPENDIX D

Persons may view the proposed changes to the Regulations 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, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947.

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10:00 a.m. on June 19, 2006, 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 charge for copies of the proposed changes.

Summary of 2006 proposed changes to the Delaware State Fire Prevention Regulations

Enclosed are the changes proposed on April 18, 2006 to the State Fire Prevention Commission for consideration. Throughout the document, words that are shown as "struck through" (~~Example~~) represent text that will be deleted. Words that are "underlined" (Example) represent text that will be added. The following is a summary of the changes.

1. Part I, Chapter 2 (Definitions) has minor changes including rewrite of some definitions and 6 additional definitions.
2. Part I, Chapter 5 has been rewritten for better clarity.
3. Part I, ANNEX A is mostly an update to the more recent editions of NFPA Codes and Standards that are presently adopted by the Regulation. Part I, ANNEX A now also includes the Uniform Fire Prevention Code.
4. Part I, ANNEX B is mostly an update of the proper section and paragraph numbers from the adopted NFPA Codes and Standards that are presently amended by the Regulation. It also contains a few additional amendments to the adopted NFPA Codes and Standards.
5. Part I, ANNEX C has been added to provide a separate location to show the amendments made to the Uniform Fire Prevention Code adopted by the Regulation.
6. A new section has been added to address the use of Vertical Platform Lifts.
7. Part II, Chapter 5 deletes requirements that were stated elsewhere and added the number of stories to the present height criteria for high rise buildings.
8. Part II, Chapter 6 modified to address how to calculate the hydrant spacing requirement.
9. Part II, Chapter 7 has text added to have Water Suppliers coordinate with the local fire companies regarding the threads on hydrant connections and regarding hydrant operation.
10. Part III, Chapter 3 modified to require annual fire hydrant inspection.
11. Part V, Chapter 1 modified to prohibit all live Christmas trees in certain occupancies.
12. Part V, Chapter 1 modified to further clarify the intent of the minimum elevator cab size.
13. Part VI Chapter 7 added to address "haunted houses" used on a temporary basis.
14. APPENDIX D is an update to the more recent editions of NFPA Guides and Recommended Practices that are not adopted as requirements by the Regulation.

PART – I; Chapter- 2

Paragraph: 2-1

Revise Definitions, as follows:

~~Dwelling, One and Two Family.~~ A single unit providing complete and independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

High Rise Building. Any building which is over ~~four (4) stories or forty feet~~ five (5) stories or fifty feet in height.

PART – I; Chapter- 2

Paragraph: 2-1

Add the following definitions:

Garage. A building or a portion of a building in which one or more self-propelled vehicles carrying volatile flammable liquid for fuel or power are kept for use, sale, storage, rental, repair, exhibition, or demonstrating purposes, and all that portion of a building that is on or below the floor or floors in which such vehicles are kept and that is not separated as required elsewhere by the Regulation.

Inimicable Hazard. A condition or practice in an occupancy or structure that poses a danger that could reasonably be expected to cause death, serious physical harm, or serious property loss.

Inclined Wheel Chair Lift. A powered hoisting and lowering mechanism to transport mobility-impaired persons on a guided platform that travels on an incline.

Mini-Storage Building. A storage occupancy partitioned into areas that are rented or leased for the purposes of storing personal or business items where all of the following apply: (1) the storage areas are separated from each other by less than a 1-hour fire resistance rated barrier, (2) the owner of the facility does not have unrestricted access, and (3) the items being stored are concealed from view from outside the unit.

Townhouse. A single-family unit in a row of attached units (3 or more) separated by walls, between units, constructed as a Two Hour Rated (Class C) Fire Barrier Walls, separated by property lines, and with open space on at least two sides. Additionally, each unit of a townhouse shall be served by an exit directly to the exterior at grade level. When the specifications for fire rated assemblies as called for in the classification of TOWNHOUSE, ROWHOUSE, etc. are not met, then the occupancy shall be classified as a MULTI-FAMILY RESIDENTIAL or APARTMENT occupancy and shall meet all the specifications for that occupancy.

Vertical Platform Lift. A powered hoisting and lowering mechanism designed to transport mobility-impaired persons on a guided platform that travels vertically.

PART – I; Chapter- 2

Paragraph: 2-1

Revise definition as follows:

One-And Two-Family Dwellings. ~~Includes buildings in which each living unit containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with ~~no~~ not more than three outsiders, if any, accommodated in rented rooms.~~

For the purposes of these Regulations, a one-and two family dwelling or a single family dwelling is defined as:

1. An individual, detached, stand alone dwelling unit, or;
2. ~~When attached in units of not more than two, commonly referred to as a DUPLEX, the following criteria must be met:~~
 - ~~(a) Separation walls between units shall be constructed of a two hour rated design wall beginning at the foundation and extending to the under side of the roof deck, effectively creating a two hour rated fire barrier wall, and/or shall have a one hour rated floor/ceiling assembly, completely separating the two units, and;~~
 - ~~(b) Each unit shall be served by an exit directly to the exterior at grade level, or;~~
2. Attached units of not more than two, commonly referred to as a DUPLEX and separated by walls between units constructed as a Two Hour Rated (Class C) Fire Barrier Wall, or shall have a one hour rated floor/ceiling assembly, completely separating the two units. Additionally each unit of a DUPLEX shall be served by an exit directly to the exterior at grade level, or;
3. ~~When attached in units of three (3) or more, commonly referred to as TOWNHOUSE, ROWHOUSE, ETC., the following criteria must be met:~~
 - ~~(a) Separation walls between all units shall be constructed of a two hour rated design wall beginning at the foundation and extending to the under side of a flat roof deck, effectively creating a two hour rated fire barrier wall, completely separating each unit. A four foot fire rated assembly shall extend on each side of the two hour rated design wall at the roof deck, and;~~
 - ~~(b) Each unit shall be served by an exit directly to the exterior at grade level.~~
 - ~~(c) When the specifications for fire rated assemblies as called for in the classification of TOWNHOUSE, ROWHOUSE, ETC., are not met, then the occupancy shall be classified as a MULTI-FAMILY RESIDENTIAL OR APARTMENT and shall meet all of the specifications for that occupancy.~~

3. A TOWNHOUSE, as defined in these Regulations.
4. All rated fire barrier walls and all fire-rated roof assemblies required under these definitions shall be listed by a testing laboratory meeting the requirements of Part I, Chapter 5 of these Regulations.

PART – I; Chapter- 5

5-3 Listing Approval And Accreditation.

~~5-3.1*~~ Under this regulation listing, approval, and laboratory accreditation can be achieved as follows:

- (a) Accreditation through the American Association for Laboratory Accreditation.
- (b) Approval as a Nationally Recognized Testing Laboratory by the Federal Occupational Safety and Health Administration pursuant to criteria prescribed at 29 C.F.R. 1910.7 or any amendment to or substitution for these criteria.

~~A-5-3.1.3~~ It is the express intent of this proposed change to provide for the expertise and necessary criteria for any testing laboratory to achieve an approved status within the State of Delaware. Accreditation through the American Association for Laboratory Accreditation provides that mechanism and removes the Office of the State Fire Marshal from the practice of accreditation that raises more concerns than it resolves.

~~5-3.2~~ Underwriters Laboratory, Inc., Factory Mutual, Inc., and Canadian Standards Association are accepted under this regulation as nationally recognized testing laboratories.

5-3 Listing, Approval, and Accreditation. Under this regulation listing, approval, and laboratory accreditation can be achieved as follows:

5-3.1 Listing

5-3.1.1 Listing refers to equipment, materials, or services included in a list published by an organization that is acceptable to the authority having jurisdiction and concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

5-3.1.2 Underwriters Laboratory, Inc., Factory Mutual, Inc., and Canadian Standards Association are accepted under this regulation as nationally recognized testing laboratories.

5-3.2 Accreditation

5-3.2.1 *Accreditation through the American Association for Laboratory Accreditation

5-3.2.2 Accreditation through approval as a Nationally Recognized Testing Laboratory by the Federal Occupational Safety and Health Administration pursuant to criteria prescribed at 29 C.F.R. 1910.7 or any amendment to or substitution for these criteria.

~~A-5-3.2.1~~ It is the express intent of this proposed change to provide for the expertise and necessary criteria for any testing laboratory to achieve an approved status within the ~~State~~ State of Delaware. Accreditation through the American Association for Laboratory Accreditation provides that mechanism and removes the Office of the State Fire Marshal from the practice of accreditation that raises more concerns than it resolves.

The list of laboratories accredited by American Association for Laboratory Accreditation can be found through their website at www.a2la.org

5-3.3 Approval

5-3.3.1 Approved shall denote, "Acceptable to the State Fire Marshal"

5-3.3.2 It shall be unlawful for any person, directly or indirectly through an agent or otherwise to sell or offer for sale in the State of Delaware any electrical equipment, device or component or any fire protection or fire safety equipment or product, either new or used, unless listed and labeled or marked by a nationally recognized, third party, independent testing laboratory, such as, but not limited to Underwriters Laboratories or some other testing agency approved by the State Fire Marshal.

PART I- ; ANNEX A**Adopted NFPA Codes and Standards
Numerical Listing**

Each of the following Codes and Standards, published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, are hereby adopted in their entirety with the exception of any changes, additions or deletions as listed in Annex B of these Regulations as a supplement and addition to the *Delaware State Fire Prevention Regulations*. The text of these adopted Codes and Standards shall be fully enforceable as provisions of these Regulations as if the same were incorporated and set forth at length herein. If a newer Code or Standard has been adopted and issued by the National Fire Protection Association, the State Fire Marshal may accept the newer Code or Standard as an alternative, provided that such Code or Standard affords an equivalent level of safety in the opinion of the State Fire Marshal. Where the Codes or Standards as listed herein, are updated versions of adopted Codes or Standards, the updated versions will replace the existing versions in these Regulations.

NFPA NO.	DATE OF PUBLICATION	TITLE
1 ^{2,3}	2006	Uniform Fire Code
10	2002	Portable Fire Extinguishers
11 ¹	2005	Low-, Medium-, and High-Expansion Foam
44A ⁴	1999	Medium-, and High-Expansion Foam Systems
12 ¹	2005	Carbon Dioxide Extinguishing Systems
12A ¹	2004	Halon 1301 Fire Extinguishing Systems
13 ³	2002	Installation of Sprinkler Systems
13D ³	2002	Installation of Sprinkler Systems in One- and Two- Family Dwellings and Manufactured Homes
13R ³	2002	Installation of Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height
14 ^{1,3}	2003	Installation of Standpipe and Hose Systems
15	2001	Water Spray Fixed Systems for Fire Protection
16 ¹	2003	Installation of FoamWater Sprinkler and FoamWater Spray Systems
17	2002	Dry Chemical Extinguishing Systems
17A	2002	Wet Chemical Extinguishing Systems
18 ¹	2006	Wetting Agents
20 ¹	2003	Installation of Stationary Pumps for Fire Protection
22 ¹	2003	Water Tanks for Private Fire Protection
24	2002	Installation of Private Fire Service Mains and Their Appurtenances
25	2002	Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems

PROPOSED REGULATIONS

30 ^{1,3}	2003	Flammable and Combustible Liquids Code
30A ^{1,3}	2003	Motor Fuel Dispensing Facilities and Repair Garages
30B	2002	Manufacture and Storage of Aerosol Products
31	2001	Installation of Oil-Burning Equipment
32 ¹	2004	Drycleaning Plants
33 ¹	2003	Spray Application Using Flammable and Combustible Materials
34 ¹	2003	Dipping and Coating Processes Using Flammable or Combustible Liquids
35 ¹	2005	Manufacture of Organic Coatings
36 ¹	2004	Solvent Extraction Plants
37	2002	Installation and Use of Stationary Combustion Engines and Gas Turbines
40	2001	Storage and Handling of Cellulose Nitrate Film
42	2002	Storage of Pyroxylin Plastic
45 ¹	2004	Fire Protection for Laboratories Using Chemicals
50 ⁴	2004	Standard for Bulk Oxygen Systems at Consumer Sites
50A ⁴	1999	Standard for Gaseous Hydrogen Systems at Consumer Sites
50B ⁴	1999	Standard for Liquefied Hydrogen Systems at Consumer Sites
51	2002	Design and Installation of OxygenFuel Gas Systems for Welding, Cutting, and Allied Processes
51A	2001	Acetylene Cylinder Charging Plants
51B ¹	2003	Fire Prevention During Welding, Cutting, and other Hot Work
52 ¹	2006	Vehicular Fuel Systems
54 ^{1,3}	2006	National Fuel Gas
55 ¹	2005	Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders and Tanks
57 ⁴	2002	Standard for Liquefied Natural Gas (LNG) Vehicular Fuel Systems
58 ^{1,3}	2004	Liquefied Petroleum Gas Code
59 ¹	2004	Utility LP-Gas Plant
59A ¹	2006	Production, Storage and Handling of Liquefied Natural Gas (LNG)
61	2002	Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities
68	2002	Venting of Deflagrations
69	2002	Explosion Prevention Systems
70 ^{1,3}	2005	National Electrical Code
72	2002	National Fire Alarm Code
73 ¹	2006	Electrical Inspection Code for Existing Dwellings
75 ¹	2003	Protection of Information Technology Equipment
76 ¹	2005	Fire Protection for Telecommunications Facilities
79	2002	Electrical Standard for Industrial Machinery
80	1999	Fire Doors and Fire Windows
82 ¹	2004	Incinerators and Waste and Linen Handling Systems and Equipment

PROPOSED REGULATIONS

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86 ¹	2003	Ovens and Furnaces
86C	1999	Standard for Industrial Furnaces Using a Specialist Processing Atmosphere
88A	2002	Parking Structures
88B	1997	Standard for Repair Garages
90A	2002	Installation of Air Conditioning and Ventilating Systems
90B ¹	2006	Installation of Warm Air Heating and Air Conditioning Systems
91 ¹	2004	Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids
92A ¹	2006	Smoke Control Systems Utilizing Barriers and Pressure Differences
92B ¹	2005	Smoke Management Systems in Malls, Atria and Large Spaces
96 ¹	2004	Ventilation Control and Fire Protection of Commercial Cooking Operations
99 ^{1,3}	2005	Health Care Facilities
101 ^{1,3}	2006	Life Safety Code
102	1995	Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures
110 ¹	2005	Emergency and Standby Power Systems
111 ¹	2005	Stored Electrical Energy Emergency and Standby Power Systems
120 ¹	2004	Fire Prevention and Control in Coal Mines
150	2000	Fire Safety in Racetrack Stables
170 ¹	2006	Fire Safety and Emergency Symbols
211 ¹	2003	Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances
214 ¹	2005	Water Cooling Towers
220 ¹	2006	Types of Building Construction
221 ¹	2006	High Challenge Fire Walls, Fire Walls, and Fire Barrier Walls
230	1999	Fire Protection of Storage
232	2000	Protection of Records
241 ¹	2004	Safeguarding Construction, Alteration, and Demolition Operations
302 ¹	2004	Fire Protection Standard for Pleasure and Commercial Motor Craft
303 ¹	2006	Fire Protection Standard for Marinas and Boatyards
306 ¹	2003	Control of Gas Hazards on Vessels
307 ¹	2006	Construction and Fire Protection of Marine Terminals, Piers and Wharves
312 ¹	2006	Fire Protection of Vessels During Construction, Conversion, Repair and Layup
326 ¹	2005	Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair
395³	1993	Standard for Storage of Flammable and Combustible Liquids on Farms and Isolated Sites
407	2001	Aircraft Fuel Servicing

PROPOSED REGULATIONS

408 ¹	2004	Aircraft Hand Portable Fire Extinguishers
409 ¹	2004	Aircraft Hangars
410 ¹	2004	Aircraft Maintenance
415	2002	Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways
418	2001	Heliports
430 ¹	2004	Storage of Liquid and Solid Oxidizers
434	2002	Storage of Pesticides
484 ¹	2006	Combustible Metals
490	2002	Storage of Ammonium Nitrate
495 ¹	2006	Explosive Materials
496 ¹	2003	Purged and Pressurized Enclosures for Electrical Equipment
498 ¹	2006	Safe Havens and Interchange Lots for Vehicles Transporting Explosives
501 ¹	2005	Manufactured Housing
501A ¹	2005	Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities
502 ¹	2004	Road Tunnels, Bridges, and Other Limited Access Highways
505 ¹	2006	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operations
560	2002	Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation
654 ¹	2006	Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids
655	2001	Prevention of Sulfur Fires and Explosions
664	2002	Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities
703 ¹	2006	Fire Retardant-Treated Wood and Fire Retardant Coatings for Building Materials
704	2001	Identification of the Hazards of Materials for Emergency Response
750 ¹	2003	Water Mist Fire Protection Systems
780 ¹	2004	Installation of Lightning Protection Systems
804	2001	Fire Protection for Advanced Light Water Reactor Electric Generating Plants
909 ¹	2005	Protection of Cultural Resources Properties – Museums, Libraries, and Places of Worship
1122	2002	Model Rocketry
1123 ¹	2006	Fireworks Display
1124 ¹	2006	Manufacturer, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles
1125	2001	Manufacture of Model Rocket and High Power Rocket Motors
1126 ¹	2006	Use of Pyrotechnics before a Proximate Audience
1127	2002	High Power Rocketry
1142	2001	Water Supplies for Suburban and Rural Fire Fighting

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1221	2002	Installation, Maintenance, and Use of Emergency Services Communication s Systems
1961	2002	Fire Hose
1962 ¹	2003	Inspection, Care, and Use of Fire Hose, Couplings, and Nozzles and the Service Testing of Fire Hose
1963 ¹	2003	Fire Hose Connections
2001 ¹	2004	Clean Agent Fire Extinguishing Systems

(1) Updated Document; (2) New Document; (3) Amended Document, See Annex B.

Part I Part I
Annex A
Adopted NFPA Codes and Standards
Alphabetical Listing

Each of the following Codes and Standards, published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, are hereby adopted in their entirety with the exception of any changes, additions or deletions as listed in Annex B of these Regulations as a supplement and addition to the *Delaware State Fire Prevention Regulations*. The text of these adopted Codes and Standards shall be fully enforceable as provisions of these Regulations as if the same were incorporated and set forth at length herein. If a newer Code or Standard has been adopted and issued by the National Fire Protection Association, the State Fire Marshal may accept the newer Code or Standard as an alternative, provided that such Code or Standard affords an equivalent level of safety in the opinion of the State Fire Marshal. Where the Codes or Standards as listed herein, are updated versions of adopted Codes or Standards, the updated versions will replace the existing versions in these Regulations.

NFPA NO.	DATE OF PUBLICATION	TITLE
51A	2001	Acetylene Cylinder Charging Plants
407	2001	Aircraft Fuel Servicing
408 ¹	2004	Aircraft Hand Portable Fire Extinguishers
409 ¹	2004	Aircraft Hangars
410 ¹	2004	Aircraft Maintenance
415	2002	Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways
50 ⁴	2004	Bulk Oxygen Systems at Consumer Sites
12 ¹	2005	Carbon Dioxide Extinguishing Systems
211 ¹	2003	Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances
2001 ¹	2004	Clean Agent Fire Extinguishing Systems
484 ¹	2006	Combustible Metals
307 ¹	2006	Construction and Fire Protection of Marine Terminals, Piers and Wharves
306 ¹	2003	Control of Gas Hazards on Vessels
51	2002	Design and Installation of OxygenFuel Gas Systems for Welding, Cutting, and Allied Processes

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34 ¹	2003	Dipping and Coating Processes Using Flammable or Combustible Liquids
17	2002	Dry Chemical Extinguishing Systems
32 ¹	2004	Drycleaning Plants
73 ¹	2006	Electrical Inspection Code for Existing Dwellings
79	2002	Electrical Standard for Industrial Machinery
110 ¹	2005	Emergency and Standby Power Systems
91 ¹	2004	Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids
495 ¹	2006	Explosive Materials
69	2002	Explosion Prevention Systems
80	1999	Fire Doors and Fire Windows
1961	2002	Fire Hose
1963 ¹	2003	Fire Hose Connections
1123 ¹	2006	Fireworks Display
120 ¹	2004	Fire Prevention and Control in Coal Mines
51B ¹	2003	Fire Prevention During Welding, Cutting, and other Hot Work
804	2001	Fire Protection for Advanced Light Water Reactor Electric Generating Plants
45 ¹	2004	Fire Protection for Laboratories Using Chemicals
303 ¹	2006	Fire Protection Standard for Marinas and Boatyards
302 ¹	2004	Fire Protection Standard for Pleasure and Commercial Motor Craft
230	1999	Fire Protection of Storage
76 ¹	2005	Fire Protection for Telecommunications Facilities
312 ¹	2006	Fire Protection of Vessels During Construction, Conversion, Repair and Layup
703 ¹	2006	Fire Retardant-Treated Wood and Fire Retardant Coatings for Building Materials
501A ¹	2005	Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities
150	2000	Fire Safety in Racetrack Stables
505 ¹	2006	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operations
30 ^{1,3}	2003	Flammable and Combustible Liquids Code
50A ⁴	1999	Gaseous Hydrogen Systems at Consumer Sites
102	1995	Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures
99 ^{1,3}	2005	Health Care Facilities
418	2001	Heliports
12A ¹	2004	Halon 1301 Fire Extinguishing Systems
221 ¹	2006	High Challenge Fire Walls, Fire Walls, and Fire Barrier Walls
1127	2002	High Power Rocketry
704	2001	Identification of the Hazards of Materials for Emergency Response

PROPOSED REGULATIONS

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82 ¹	2004	Incinerators and Waste and Linen Handling Systems and Equipment
86C	1999	Industrial Furnaces Using a Specialist Processing Atmosphere
1962 ¹	2003	Inspection, Care, and Use of Fire Hose, Couplings, and Nozzles and the Service Testing of Fire Hose
25	2002	Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems
90A	2002	Installation of Air Conditioning and Ventilating Systems
16 ¹	2003	Installation of FoamWater Sprinkler and FoamWater Spray Systems
780 ¹	2004	Installation of Lightning Protection Systems
1221	2002	Installation, Maintenance, and Use of Emergency Services Communication s Systems
31	2001	Installation of Oil-Burning Equipment
24	2002	Installation of Private Fire Service Mains and Their Appurtenances
13 ³	2002	Installation of Sprinkler Systems
13D ³	2002	Installation of Sprinkler Systems in One- and Two- Family Dwellings and Manufactured Homes
13R ³	2002	Installation of Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height
14 ^{1,3}	2003	Installation of Standpipe and Hose Systems
20 ¹	2003	Installation of Stationary Pumps for Fire Protection
37	2002	Installation and Use of Stationary Combustion Engines and Gas Turbines
90B ¹	2006	Installation of Warm Air Heating and Air Conditioning Systems
101 ^{1,3}	2006	Life Safety Code
50B⁴	1999	Liquefied Hydrogen Systems at Consumer Sites
57⁴	2002	Liquefied Natural Gas (LNG) Vehicular Fuel Systems
58 ^{1,3}	2004	Liquefied Petroleum Gas Code
11 ¹	2005	Low-, Medium-, and High-Expansion Foam
501 ¹	2005	Manufactured Housing
1125	2001	Manufacture of Model Rocket and High Power Rocket Motors
35 ¹	2005	Manufacture of Organic Coatings
30B	2002	Manufacture and Storage of Aerosol Products
1124 ¹	2006	Manufacturer, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles
44A⁴	1999	Medium-, and High-Expansion Foam Systems
1122	2002	Model Rocketry
30A ^{1,3}	2003	Motor Fuel Dispensing Facilities and Repair Garages
70 ^{1,3}	2005	National Electrical Code
72	2002	National Fire Alarm Code
54 ^{1,3}	2006	National Fuel Gas
86 ¹	2003	Ovens and Furnaces
88A	2002	Parking Structures
10	2002	Portable Fire Extinguishers

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654 ¹	2006	Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids
664	2002	Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities
61	2002	Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities
655	2001	Prevention of Sulfur Fires and Explosions
59A ¹	2006	Production, Storage and Handling of Liquefied Natural Gas (LNG)
909 ¹	2005	Protection of Cultural Resources Properties – Museums, Libraries, and Places of Worship
75 ¹	2003	Protection of Information Technology Equipment
232	2000	Protection of Records
496 ¹	2003	Purged and Pressurized Enclosures for Electrical Equipment
88B	1997	Repair Garages
502 ¹	2004	Road Tunnels, Bridges, and Other Limited Access Highways
498 ¹	2006	Safe Havens and Interchange Lots for Vehicles Transporting Explosives
241 ¹	2004	Safeguarding Construction, Alteration, and Demolition Operations
326 ¹	2005	Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair
92A ¹	2006	Smoke Control Systems Utilizing Barriers and Pressure Differences
92B ¹	2005	Smoke Management Systems in Malls, Atria and Large Spaces
36 ¹	2004	Solvent Extraction Plants
33 ¹	2003	Spray Application Using Flammable and Combustible Materials
40	2001	Storage and Handling of Cellulose Nitrate Film
560	2002	Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation
490	2002	Storage of Ammonium Nitrate
395³	1993	Storage of Flammable and Combustible Liquids on Farms and Isolated Sites
430 ¹	2004	Storage of Liquid and Solid Oxidizers
434	2002	Storage of Pesticides
42	2002	Storage of Pyroxylin Plastic
55 ¹	2005	Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders and Tanks
111 ¹	2005	Stored Electrical Energy Emergency and Standby Power Systems
220 ¹	2006	Types of Building Construction
1 ^{2,3}	2006	Uniform Fire Code
1126 ¹	2006	Use of Pyrotechnics before a Proximate Audience
59 ¹	2004	Utility LP-Gas Plant
52 ¹	2006	Vehicular Fuel Systems

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96 ¹	2004	Ventilation Control and Fire Protection of Commercial Cooking Operations
68	2002	Venting of Deflagrations
214 ¹	2005	Water Cooling Towers
750 ¹	2003	Water Mist Fire Protection Systems
15	2001	Water Spray Fixed Systems for Fire Protection
1142	2001	Water Supplies for Suburban and Rural Fire Fighting
22 ¹	2003	Water Tanks for Private Fire Protection
17A	2002	Wet Chemical Extinguishing Systems
18 ¹	2006	Wetting Agents

(1) Updated Document; (2) New Document; (3) Amended Document, See Annex B.

PART – I ; Annex B

MODIFY NFPA 1, 2006, Uniform Fire Code

as noted in Annex C of these Regulations.

MODIFY NFPA 13, 2002, Standard for the Installation of Sprinkler Systems

Chapter 7, System Requirements

AMEND §7-3.2.1 (3) by adding a sentence and an appendix section to read as follows:

7.3.2 Preaction Systems.

7.3.2.1 Preaction systems shall be one of the following types:

- (1) A single interlock system, which admits water to sprinkler piping upon operation of detection devices
- (2) A non-interlock system, which admits water to sprinkler piping upon operation of detection devices or automatic sprinklers
- (3) A double interlock system, which admits water to sprinkler piping upon operation of both detection devices and automatic sprinklers. A double interlock preaction system shall not be used except where specifically acceptable to the State Fire Marshal Office.

A-7-3.2.1 (3) The design of double interlock preaction systems was intended for only specific applications, such as cold warehouse buildings, where the presence of water into cold pipe may result in ice plugs. These type systems are not intended for use in applications where single interlock preaction systems adequately reduce inadvertent filling of the piping.

MODIFY NFPA 13, 2002, Standard for the Installation of Sprinkler Systems

8-14 Special Situations

AMEND §18-4.7 by adding §18-4.7.1.1 as follows:

18-4.7.1.1 Sprinklers shall be required on porches, balconies, corridors, and stairs regardless of whether or not they are open to outside air.

MODIFY NFPA 13R, 2002, Standard for the Installation of Sprinkler Systems In Residential Occupancies Up To And Including Four Stories.

6.8 Location of Sprinklers

AMEND §6.8.4, and §6.8.6 to read as follows:

6.8.4 Sprinklers shall be required on porches, balconies, corridors, and stairs regardless of whether or not they are open to outside air.

6.8.6 Sprinklers shall be required in closets on exterior balconies regardless of whether or not it opens directly into the dwelling unit.

MODIFY NFPA 14, ~~2000~~ 2003, Standard for the Installation of Standpipe, Private Hydrant and Hose Systems.

Chapter ~~4~~ 6, Installation Requirements.

~~43~~ 6.3 Fire Department Connections.

~~43-5~~ 6.3.5 Location and Identification.

AMEND ~~§43-5-2~~ 6.3.5.2 by deleting the existing ~~§43-5-2~~ 6.3.5.2 and inserting a new section to read as follows:

~~43-5-2~~ 6.3.5.2 Fire Department Connections shall be located or arranged as required by the Chief Officer of the fire department having jurisdiction according to the following:

(a) The Office of State Fire Marshal will give notice to the Chief Officer of a building that is proposed for construction that is to be protected with a standpipe system, and the Chief Officer must respond, in writing, within 5 working days, as to their requirement for the location of the fire department connection.

(b) In the event that the Chief Officer does not respond according to (a) of this Section, the Office of State Fire Marshal will determine the location for the fire department connection. This provision will permit the Office of State Fire Marshal to locate the fire department connection so that hose can be readily and conveniently attached; and the fire department connections will be located in a manner consistent with nationally recognized practices.

(c) Each fire department connection to standpipe systems shall be designated by a sign having raised letters at least 1 in. (25.4 mm) in size cast on the plate or fitting, reading, "STANDPIPE." If automatic sprinklers are also supplied by the fire department connection, the sign or combination of signs shall indicate both designated services, e.g., "STANDPIPE AND AUTOSPRK." or "AUTOSPRK AND STANDPIPE." A sign shall also indicate the pressure required at the inlets to deliver the system demand.

Chapter ~~5~~ 7, Design.

~~53~~ 7.3 Location of Hose Connections.

~~5-3-2~~ 7.3.2 Class I Systems

AMEND ~~§53-2(a)~~ 7.3.2 by deleting the ~~Exception~~ 7.3.2.1

Chapter 7, Design.

7.8* Minimum and Maximum Pressure Limits.

7.8.1 Minimum Design Pressure for Hydraulically Designed Systems.

AMEND §7.8.1 by inserting a new section and a new Appendix section to read as follows:

7.8.1.2 Where the local fire department has the capability of providing the required pressure, hydraulically designed standpipe systems in fully sprinklered, non-highrise buildings shall be designed to provide the waterflow rate required by Section 7.10.

<p>A.7.8.1.2 It is not necessary to install a fire pump merely to provide minimum pressure to standpipe systems when the building is fully sprinklered, the sprinkler system is adequately designed to control a fire, and the responding fire department has the ability to sufficiently charge the standpipe system in a non highrise building. That is, an adequately designed sprinkler system is expected to control a fire and as the fire department arrives to finish extinguishment, they can provide the pressure in the standpipe system as needed.</p>
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MODIFY NFPA 30, ~~2000~~ 2003 Flammable and Combustible Liquids Code.

Chapter ~~2-4~~, Tank Storage.

~~2-3~~ 4.3 Installation of Tank and Tank Appurtenances.

~~2-3.2.4~~ 4.3.2.1 Location with Respect to Property Lines, Public Ways, and Important Buildings on the Same Property.

AMEND ~~§2-3.2.4~~ 4.3.2.1, by adding a new Exception to Subsection ~~2-3.2.4.4~~ 4.3.2.1.1, to read as follows:

Exception: The State Fire Marshal may increase the distances to property lines, public ways and important buildings when in his opinion the increases are justified.

MODIFY NFPA 30A, ~~2000~~ 2003, Motor Fuel Dispensing and Repair Garages Code.

Chapter 5, Piping for Liquids.

5.2 General Requirements for All Piping

AMEND 5.2, General Requirements for All Piping to read as follows:

5.2.5 Each fill pipe shall be identified by color code or other marking to identify the product for which it is used. The color code or marking shall be maintained in legible condition throughout the life of the installation. All underground petroleum storage tank fill pipes shall be marked and maintained with colors and symbols consistent with API Recommended Practice 1637.

Chapter 6, Fuel Dispensing System.

6.2 General Requirements.

AMEND §6.2, General Requirements, by adding new subsections to read as follows:

6.2.3 Dispensing units for kerosene shall not be located within 25' of Class I liquid dispensing units.

6.2.4 Islands with dispensing units for kerosene shall be located a minimum of 10' from islands with Class I liquid dispensing units.

6.2.5 Dispensing units for kerosene shall be provided with a legible sign, bearing the word "KEROSENE" in a minimum 4" high letter, with such letters to be in blue with a contrasting background color.

Chapter 9, Operational Requirements.

9.2 Basic Requirements

9.2.1 Inventory Control

AMEND §9.2.1, Inventory Control by adding new subsections to read as follows:

9.2.1.1 The seasonal exchange of product shall be prohibited in underground storage tanks.

9.2.1.2 No change of class of product within storage tanks shall be made without prior approval of the State Fire Marshal.

9.2.3 Dispensing Into Containers.

RENUMBER Subsection 9.2.3.3 to 9.2.3.4 and insert a new Subsection 9.2.3.3 to read as follows:

9.2.3.3 No sale or purchase of kerosene shall be made in containers unless such containers meet the provisions of this standard and are a color other than red with the word "KEROSENE" marked thereon. (The recommended color is blue with white lettering.)

Chapter 11, Marine Fueling

AMEND Chapter 11, Marine Fueling, by renumbering §11.10.6 to §11.10.6.1 and adding new §11.10.6.2, §11.10.6.3 and §11.10.6.4 to read as follows:

11.10 Operating Requirements.

11.10.6.2 The dispensing of Class I Liquids into the fuel tanks of self-propelled water craft must be accomplished at a designated marine Service Station, and that service station must be in accordance with the applicable provisions of these Regulations.

11.10.6.3* The dispensing of Class I Liquids into the fuel tanks of self-propelled water craft shall be prohibited from a tank truck vehicle.

A-11.10.6.3 It is the express intent of this section to prohibit the transfer of Class I liquids from a tank truck vehicle directly into the fuel tanks of a boat or any other self-propelled water craft.

11.10.6.4* The dispensing of Class II Liquids into the fuel tanks of self-propelled water craft, is permitted provided the tank truck vehicle is equipped with an automatic shut off nozzle.

A-11.10.6.4 This change is based on an appeal filed by the Delaware Captains Association. This appeal was heard by the State Fire Prevention Commission on September 20, 1994 and was subsequently approved by the State Fire Prevention Commission on September 20, 1994.

MODIFY NFPA 54, ~~2002~~ 2006, National Fuel Gas Code.

Chapter-9 10, Installation of Specific Equipment.

~~9.23~~ **10.23** Room Heaters.

AMEND ~~§9.23.4~~ 10.23.1, Prohibited Installations, by deleting the two exceptions, thereby specifically prohibiting the installation of unvented fuel fired room heaters in bathrooms or bedrooms, to read as

follows:

~~9.23.4~~ **10.23.1 Prohibited Installations.** Unvented room heaters shall not be installed in bathrooms and bedrooms.

MODIFY NFPA 58, ~~2004~~ 2004, Liquefied Petroleum Gases Code.

Chapter ~~4~~ 4, General Provisions Requirements.

~~4.4~~ **4.3 Notification Of Installations.**

AMEND ~~§4.4.1~~ 4.3.1 Stationary Installations, by deleting the existing section and inserting two new subsections to read as follows:

~~4.4.1.1*~~ **4.3.1.1*** Plans shall be submitted to the Office of State Fire Marshal for review and approval for the following liquefied petroleum gas (LPG) installations:

- (a) At consumer sites having an aggregate water capacity of 1,000 gallons or more tank storage; and
- (b) For all portable cylinder exchange at consumer sites or dispensing stations, where not connected for use, and in storage for resale or exchange by dealer or reseller.

A.4.4.1.1 A.4.3.1.1 This section still requires the submission of plans for all LP Gas installations with an aggregate capacity of 1,000 gallons or more, and now requires the submission of plans for all portable cylinder exchange installations.
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~~4.4.1.2*~~ **4.3.1.2*** Plans shall be submitted to the Office of State Fire Marshal for review and approval regarding liquefied petroleum gas (LPG) installations for all sites and locations where LPG is dispensed by a retail operation to the public, regardless of tank storage capacity.

A.4.4.1.2 A.4.3.1.2 Submission of plans for all LP Gas Installations where tanks are filled as a retail operation for the public.

Exception to ~~4.4.1 and 4.4.2~~ **4.3.1.1. and 4.3.1.2:** One- and Two-Family Dwellings are not required to comply with these sections.

Chapter ~~3~~ 6, Installation of LP-Gas Systems.

~~3.10~~ **6.23 Fire Protection.**

ADD New ~~§3.10.4~~ 6.23.7:

~~3.10.4~~ **6.23.7 Fire Protection at Bulk Plants.**

~~3.10.4.1~~ **6.23.7.1 Application.** This section regulating bulk plants applies to facilities whose primary purpose is to receive gas by tank car, tank truck, or piping, and distribute the gas to the end user by use of portable container delivery, tank truck, or gas piping.

Exception No. 1: ~~§3.10.4~~ 6.23.7 shall not apply to those facilities that fall within the definition of "REMOTE" with respect to location, as defined in ~~§3.10.4.2~~ 6.23.7.2. Under this exception, the requirements of ~~§3.10.4.5~~ 6.23.7.5, Water Supply for Fire Protection, are retained and required.

3.10.4.2 6.23.7.2 Definitions.

Remote. A location for a facility that is termed to be remote is where a clear distance, with no inhabited or occupied buildings, are within 1,250 feet of any end of any LP-Gas storage tank, and within 1,250 feet of the side of any LP-Gas storage tank that is to be installed on the site; and the property area in question is owned or under the control of the owners of the tanks, and the property may not be built upon, inhabited, or occupied by any such occupancy other than that as may be associated with the operation of the LP-Gas storage facility.

3.10.4.3* 6.23.7.3* Notwithstanding any provisions of this Section to the contrary, all LP-Gas facilities having storage containers with a combined aggregate water capacity of more than 18,000 gallons, where LP-Gas is transferred from railcar to tank storage, from railcar to vehicle, from tank storage to vehicle, from vehicle to vehicle, from tank storage to railcar, or from vehicle to tank storage, shall incorporate the following additional fire protection measures:

(a) If the facility employs a total product containment system with emergency internal and shutoff valves having remote and thermal shutoff capability and pullaway protection, then the facility shall also employ:

(i) Non-automated fixed water monitor nozzle(s) of sufficient number and specification to saturate all areas of the tank which might be exposed to fire from piping, valves and pumps associated with filling or transfer operations (typically referred to as the "Business End" of the tank and including railroad tank car transfer points), or

(ii) Listed open sprinkler heads of sufficient number and specification to saturate all areas of the tank which might be exposed to fire from piping valves and pumps associated with filling or transferring operations (typically referred to as the "Business End" of the tank)

A-6.23.7.3 (a)(i) & (ii) To cool a vessel receiving high-intensity flame impingement ("Business End") and to protect against vessel failure, an application rate of at least 0.25 gpm/sqft should be used to design. An application rate of 0.10 gpm/sqft should be used in the design for the rest of the vessel. API Standard 2510 Design and Construction of LPG Installations (1995 edition)

(iii) Heat sensors and hydro-carbon vapor detectors with off-site monitoring and reporting capability, installed according to the standards of the American Petroleum Institute (API) and applicable NFPA Standards as adopted and/or modified by these Regulations.

(b) If the facility does not employ a total product containment system with emergency internal and shutoff valves having remote and thermal shutoff capability and pullaway protection, then the facility shall employ:

(i) Automated water monitor nozzles of sufficient number and specification to saturate at least seventy-five percent (75%) of the total container surface, including the entire surface of each end of the container; and

A-6.23.7.3 (b)(i) To cool a vessel receiving high-intensity flame impingement ("Business End") and to protect against vessel failure, an application rate of at least 0.25 gpm/sqft should be used to design. An application rate of 0.10 gpm/sqft should be used in the design for the rest of the vessel. API Standard 2510 Design and Construction of LPG Installations (1995 edition)

(ii) Heat sensors and hydrocarbon vapor detectors with off-site monitoring and reporting capability, installed according to the standards of the American Petroleum Institute (API) and applicable NFPA Standards as adopted and/or modified by these Regulations.

(c) For storage containers which are mounded, buried, or insulated, the additional fire protection measures specified in paragraphs (a) and (b) above shall not be required.

(d) Where water monitor nozzles are required, as specified by paragraphs (a) and (b) above, whether automated or non-automated, such water monitor nozzles shall be installed no further than 50 feet from the storage

container serviced by such water monitor nozzles. Furthermore, such water monitor nozzles shall employ a hook-up connection for the use of the local fire department. If no protective barrier exists between the water monitor nozzles and said hook-up connection, then the hook-up connection shall be at least 100 feet from the water monitor nozzles. If a protective barrier exists between the water monitor nozzles and said hook-up connection, then the hook-up connection shall be at least 50 feet from the water monitor nozzles.

(e) Where water monitor nozzles are required, as specified by paragraphs (a) and (b) above, either automated or non-automated, plans and specifications for such water monitor nozzles shall be submitted for review in accordance with Part I, Chapter 4 of these Regulations. During the plan review process, the Office of State Fire Marshal will contact the local fire chief for input as to the location of the hook-up connections for the water monitor nozzles.

~~3.10.4.3~~ 6.23.7.3 **Total Product Containment System.** A total product containment system includes emergency internal and shutoff valves having remote and thermal capability and pullaway protection, such installation in accordance with standards and specifications of both the American Petroleum Institute (API) and NFPA 58.

~~3.10.4.4~~ 6.23.7.4 No persons, other than the plant management or plant employees, shall have access to any bulk LP-Gas storage facility.

~~3.10.4.5~~ 6.23.7.5 **Water Supply For Fire Protection.** Notwithstanding the other provisions of Part II, Chapter 6 of these Regulations, water supply for fire protection shall be provided as follows for all bulk LP-Gas storage facilities:

(a) **Tank/Piping Protection.** A minimum water supply of 1,500 gpm for a minimum duration of 2 hours shall be required, and may be provided from a public water utility, from stored water on site (either in a tank with a hydrant or in a pond with a dry hydrant), or any combination of the foregoing.

(b) The water supply for fire protection as required in this section of this Regulation shall be the minimum water supply required. If the fire protection engineering design indicates an increase in the water supply for fire protection at a site, then the higher capacity water supply shall be the amount so required.

(c) If a detailed fire protection engineering analysis, based upon hydraulic calculations, demonstrates that the additional fire protection measures specified in Section ~~3.10.4.3~~ 6.23.7.3 of this Regulation requires less than the minimum water supply specified by paragraph (a) above, then the lesser capacity water supply shall be the amount so required.

(d) **Water For Fire Department Operations.** In addition to the minimum water supply specified by paragraph (a) above, a water supply of 500 gpm for a minimum duration of 1 hours shall be provided on site for fire department operations.

~~3.10.4.6~~ 6.23.7.6 **Fire Department Chief Officer.**

~~3.10.4.6.1~~ 6.23.7.6.1 The Office of State Fire Marshal shall hand deliver to the Fire Department Chief Officer having jurisdiction a site plan and set of structural or building plans that have been submitted for review and approval by the Office of State Fire Marshal; the Fire Department Chief Officer shall sign when accepting the plans from the Office of State Fire Marshal.

~~3.10.4.6.2~~ 6.23.7.6.2 Within ten working days of the Fire Department Chief Officer having received the plans and specifications as identified in ~~§3.10.4.6.1~~ 6.23.7.6.1 of this Regulation, the Fire Department Chief Officer shall respond in writing to the Office of State Fire Marshal and will provide the following information:

- a) Location of the fire department connections that supply the monitor nozzles, if applicable; and
- b) Location of the fire hydrants or the on-site water supply, if applicable; and
- c) Accessibility pattern on the site to be prepared for fire department operations (fire lanes).

~~3.10.4.6.3~~ 6.23.7.6.3 If the Fire Department Chief Officer does not respond within ten working days as required in

3.10.4.6.2 6.23.7.6.2 of this Regulation, the Office of State Fire Marshal will incorporate the necessary fire protection features consistent with generally accepted fire protection practices.

Chapter ~~4~~ 7, LP-Gas Liquid Transfer.

~~4.2~~ 7.2 Operational Safety.

~~4.2.2~~ 7.2.2 Containers To Be Filled Or Evacuated Filling and Evacuating Containers.

AMEND ~~§4.2.2.4~~ 7.2.2.1 by deleting the existing ~~§4.2.2.4~~ 7.2.2.1 and inserting a new ~~§4.2.2.4~~ 7.2.2.1 to read as follows:

~~4.2.2.4~~* 7.2.2.1* Containers shall be filled only by the owner or upon the owner's authorization.

~~A.4.2.2.4~~ A.7.2.2.1 This modification retains the language of NFPA Pamphlet No. 58, 1989 Standard for the Storage and Handling of LP Gases.

(a) This requirement is in keeping with 16 Del. C. §7202.

Chapter ~~5~~ 8, Storage of Portable Containers Awaiting Use, Resale, or Exchange.

~~5.4.2~~ 8.4.2 Protection of Containers.

AMEND ~~§5.4.2.2~~ 8.4.2.2 by deleting ~~§5.4.2.2~~ 8.4.2.2 and inserting a new ~~§5.4.2.2~~ 8.4.2.2 to read as follows:

~~5.4.2.2~~* 8.4.2.2* Protection against vehicle impact shall be provided by installing traffic/bumper posts, or other protection acceptable to the State Fire Marshal.

~~A.5.4.2.2~~ A.8.4.2.2 The intent of this requirement is to ensure the protection of the portable cylinders from vehicular damage and to emphasize that the standard curbs are not considered adequate protection.

MODIFY NFPA 58, 2004, Liquefied Petroleum Gases Code.

Chapter 5, LP Gas Equipment and Appliances.

5.18 Appliances.

AMEND §5.18.1, by adding a subsection to read as follows:

5.18.1.1 Patio heaters shall be listed and for outdoor use only.

A-5.18.1.1 All gas-fired heaters are to be used only in adequately ventilated areas. In order to support the combustion air requirements of the heater and to minimize the potential for the accumulation of carbon monoxide, ample fresh air ventilation in accordance with the Manufacturer's Installation Instructions and/or Owner's Manual should be provided.

5.18.1.2 When used, they shall be located in an area either outside the confines of a building or an area sheltered from the elements by overhead cover that is open on all exterior sides. Any obstruction of the exterior boundary of the area by any material to any degree shall be prohibited. Walls, part walls or partitions, roll-down see-through curtains or drapes, awnings, or components by any other name shall be considered an obstruction.

A-5.18.1.2 It should be further noted that roll-down and retractable materials are considered "not open". Since they are adjustable, it is expected that they will be less open during inclement weather in order to protect against the exposure

Exception 1: Exterior sides of the area do not include the wall(s) common to the deck/patio and the building to which the deck/patio adjoins.

A-5.18.1.2 Exception 1: Typically, most deck/patios will have three (3) exterior sides and one (1) side adjacent to the building.

5.18.1.3 Hot surfaces of the appliance shall be at least 36 inches in all directions from all other materials. Clearances of less distance shall be permitted if in accordance with the Manufacturer's Installation Instructions and/or Owner's Manual

MODIFY NFPA 70, ~~2002~~ 2005, The National Electrical Code.

Article 210, Branch Circuits

210.12 Arc-Fault Circuit-Interrupter Protection.

AMEND §210.12(B), by adding a second third and fourth sentences to read:

(B) Dwelling Unit Bedrooms. ~~All branch circuits that supply 125-volt, single phase, 15- and 20-ampere outlets installed in dwelling unit bedrooms shall be protected by an arc-fault circuit interrupter listed to provide protection of the entire branch circuit.~~ All 120-volt, single phase, 15- and 20-ampere branch circuits supplying outlets installed in dwelling unit bedrooms shall be protected by a listed arc-fault circuit interrupter, combination type installed to provide protection of the branch circuit. Smoke alarms shall not be placed on branch circuits protected by arc-fault circuit interrupter. All smoke alarms shall be supplied by branch circuits dedicated to smoke alarm equipment. The connection of the smoke alarm branch circuit to the power service shall be mechanically protected by utilizing lock-on devices.

Article 550, Mobile Homes/Manufactured Homes

550.25 Arc-Fault Circuit-Interrupter Protection.

AMEND §550.25(B), by adding a second third and fourth sentences to read:

(B) Dwelling Unit Bedrooms. ~~All branch circuits that supply 125-volt, single phase, 15- and 20-ampere outlets installed in dwelling unit bedrooms shall be protected by an arc-fault circuit interrupter listed to provide protection of the entire branch circuit.~~ Bedrooms of Mobile Homes and Manufactured Homes. All branch circuits that supply 125-volt, single-phase, 15- and 20-ampere outlets installed in bedrooms of mobile homes and manufactured homes shall be protected by arc-fault circuit interrupter(s). Smoke alarms shall not be placed on branch circuits protected by arc-fault circuit interrupter. All smoke alarms shall be supplied by branch circuits dedicated to smoke alarm equipment. The connection of the smoke alarm branch circuit to the power service shall be mechanically protected by utilizing lock-on devices.

MODIFY NFPA 99, ~~2002~~ 2005, Health Care Facilities

Chapter 4, Electrical Systems.

4.4 Essential Electrical System Requirements – Type 1.**4.4.2 Distribution (Type 1 EES)****4.4.2.2 Specific Requirements.**

AMEND §4.4.2.2.2, Life Safety Branch, by adding a new subsection to read as follows:

4.4.2.2.2(9) Electric Fire Pumps

No function other than those listed in items 4.4.2.2.2(1) through 4.4.2.2.2(9) shall be connected to the life safety branch.

MODIFY NFPA 101, ~~2000~~ 2006, The Life Safety Code.

Chapter 9, Building Service and Fire Protection Equipment.**9.2 Heating, Ventilating, and Air Conditioning.**

AMEND §9.2.1, by adding a new §9.2.1.1, Unvented Fuel-Fired Heating Equipment, to read as follows:

9.2.1 Air Conditioning, Heating, Ventilating Ductwork, and Related Equipment.

9.2.1.1 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas of all occupancies. In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and modified by these Regulations shall be permitted.

Chapter 18, New Health Care Occupancies**~~18.3.2 Protection from Hazards.~~**

AMEND ~~§18.3.2, by adding §18.3.2.8, to read as follows:~~

~~**18.3.2.8** Dispensers containing Alcohol-Based Waterless Hand Sanitizing Liquid shall be prohibited from being located in corridors or any area open to a required exit or corridor. Dispensers containing Alcohol-Based Waterless Hand Sanitizing Liquid shall be isolated from possible ignition sources, such as, but not limited to, open flame, electrical equipment, switches or receptacle outlets.~~

Chapter 16, New Day Care Occupancies.**16.2 Means of Egress Requirements.****16.2.2 Means of Egress Components.****16.2.2.2 Doors.**

AMEND §16.2.2.2, Panic Hardware or Fire Exit Hardware, by deleting the existing §16.2.2.2, and inserting a new §16.2.2.2 to read as follows:

16.2.2.2 Panic Hardware or Fire Exit Hardware. Any door in a required means of egress from an area having an occupant load of 13 or more clients shall be permitted to be provided with a latch or lock only if the latch or lock is panic hardware or fire exit hardware.

16.3 Protection.**16.3.4 Detection, Alarm, and Communication Systems.**

AMEND §16.3.4.4, Emergency Forces Notification, by deleting the existing §16.3.4.4 and inserting a new §16.3.4.4 to read as follows:

16.3.4.4 Emergency Forces Notification. Fire department notification shall be accomplished in accordance with §9.6.4.

Exception: Day-care centers with not more than 100 clients.

Chapter 24, One- and Two-Family Dwellings.

24.1.1 Application.

AMEND §24.1.1, Application, by deleting the existing §24.1.1.2 and inserting a new §24.1.1.2 to read as follows:

24.1.1.2 This Chapter shall not be utilized by the Office of State Fire Marshal during the plan review process, except when individual, specified sections are referenced by other Chapters of the Life Safety Code.

Chapter 26, Lodging Or Rooming Houses.

26.3 Protection.

~~26.3.3~~ 26.3.4 Detection, Alarm, And Communication Systems.

AMEND ~~§26.3.3~~ 26.3.4, Detection Alarm, And Communication Systems, by adding a new Subsection to read as follows:

~~26.3.3.4~~ 26.3.4.4 A corridor smoke detection system in accordance with §9.6 shall be installed in all lodging or rooming houses.

Chapter 30, New Apartment Buildings.

30.3.4 Detection, Alarm, and Communication Systems.

AMEND §30.3.4.1, General, by deleting §30.3.4.1 and two exceptions, and inserting a new §30.3.4.1 and exception to read as follows:

30.3.4.1 General. All new apartment buildings shall be provided with a fire alarm system in accordance with §9.6, except as modified by ~~30.3.4.2 through 30.3.4.4~~ by 30.3.4.2 through 30.3.4.5.2.

Exception: Where each dwelling unit is separated from other contiguous dwelling units by fire barriers having a fire resistance rating of not less than one hour, and where each dwelling unit has either its own independent exit or its own independent stairway or ramp discharging at grade.

AMEND §30.3.4.4, Detection, by adding a new Subsection to read as follows:

30.3.4.4.1 A corridor smoke detection system in accordance with §9.6, shall be installed in all apartment buildings.

30.3.5 Extinguishment Requirements.

AMEND ~~§30.3.5.4~~ 30.3.5.4, by revising ~~§30.3.5.4~~ 30.3.5.4 to read as follows:

~~Exception No. 1:~~ In buildings not exceeding 10,000 sq. ft. of aggregate gross floor area and sprinklered in

accordance with NFPA 13, Standard for the Installation of Sprinkler Systems, closets less than 12 ft² (1.1 m²) in area in individual dwelling units shall not be required to be sprinklered. Closets that contain equipment such as washers, dryers, furnaces, or water heaters shall be sprinklered regardless of size.

Chapter 32, New Residential Board and Care Occupancies.

32.2 Small Facilities.

AMEND §32.2, Small Facilities, by adding new Subsections to read as follows:

32.2.2.7 Emergency Lighting. Emergency lighting shall be installed in accordance with §7.9.

32.2.2.8 Marking of Means of Egress. Means of egress shall be marked in accordance with §7.10.

32.2.2.9 Portable Fire Extinguishers. Portable fire extinguishers shall be provided near hazardous areas in accordance with §9.7.

32.2.3.4 Detection, Alarm, and Communication Systems.

AMEND §32.2.3.4, Detection, Alarm, and Communication Systems, by adding §32.2.3.4.4, Emergency Forces Notification, to read as follows:

32.2.3.4.4 Emergency Forces Notification. Fire department notification shall be accomplished in accordance with §9.6.4.

32.3 Large Facilities.

32.3.3.4 Detection, Alarm, and Communication Systems.

AMEND §32.3.3.4.6, ~~Fire Department Notification~~ Emergency Forces Notification, by deleting the existing §32.3.3.4.6 and inserting a new §32.3.3.4.6 to read as follows:

32.3.3.4.6 Fire Department Notification. Fire department notification shall be accomplished in accordance with §9.6.4.

~~**MODIFY NFPA 395, 1993, Standard for the Storage of Flammable and Combustible Liquids on Farms and Isolated Construction Projects.**~~

~~**Chapter 1, General.**~~

~~**1-1 Scope.**~~

~~**AMEND §1-1.1 by deleting the existing §1-1.1(a) and inserting a new §1-1.1(a) to read as follows:**~~

~~**1-1.1 (a)** In rural areas;~~

~~**MODIFY NFPA 30A, 2003, Motor Fuel Dispensing and Repair Garages Code.**~~

~~**Chapter 13, Farms and Remote Sites**~~

~~**13.1 Scope**~~

AMEND §13.1 (1) to read as follows:

- (1) in rural areas

PART I: Annex C**ADD an ANNEX C to read as follows:****Modifications to NFPA 1, 2006, Uniform Fire Code**

NFPA 1, titled Uniform Fire Code is adopted in part and/or as modified by these Regulations. The modification or exclusion of specific sections of this Code within the Regulations is, by no means, an indication of those sections being insignificant. On the contrary, these Regulations are further reinforced by the adoption of the Uniform Fire Code. In order to unify Uniform Fire Code with the Regulations and in order to address the specific goals and needs of the State of Delaware, NFPA 1, entitled Uniform Fire Code is adopted by reference with the following modifications.

When there is a conflict with the Codes and Standards of the National Fire Protection Association, as listed in these Regulations, and any Regulation promulgated specifically by the State Fire Prevention Commission, and such conflict has not been identified in Annex B of these Regulations as an addition, deletion, or change to those Codes and Standards, then the Regulation, as promulgated by the State Fire Prevention Commission, shall be the applicable standard.

Chapter 1 Administration

DELETE entire Chapter 1

Chapter 2 Referenced Publications

DELETE the following documents from the list.

- NFPA 1141, Standard for Fire Protection in Planned Building Groups
- NFPA 1144, Standard for Protection of Life and Property from Wildfire
- NFPA 1600, Standard on Disaster/Emergency Management and Business Continuity Programs

Chapter 3 Definitions

DELETE all Definitions in the Uniform Fire Code.

Modify Chapter 10 – General Fire Safety as noted:**Chapter 10 General Fire Safety**

10.1.1 Every new and existing building or structure shall be arranged, equipped, maintained, and operated in accordance with this Code so as to provide a reasonable level of life safety, property protection, and public welfare from the actual and potential hazards created by fire, explosion, and other hazardous conditions.

10.1.2* Life Safety Code. Every new building shall comply with this Code and NFPA 101, Life Safety Code.

Chapter 10 General Fire Safety**Section 10.4 Maintenance, Inspection, and Testing.**

10-4.3 Existing life safety features obvious to the public, if not required by the Code, shall be either maintained or

removed.

Chapter 10 General Fire Safety

Section 10.7 Reporting of Fires and Other Emergencies.

10.7.1 Notifying the fire department of fires shall comply with the requirements of the *Delaware State Fire Prevention Regulations*.

DELETE 10.7.1.1 through 10.7.1.4 and 10.7.2.

Chapter 10 General Fire Safety

Section 10.9 Emergencies Plans.

DELETE 10.9.2 and 10.9.3.

Chapter 10 General Fire Safety

10.11 Open Fires, Incinerators, and Commercial Fireplaces.

10.11.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

10.11.5* It shall be unlawful to set fires to any brush or forest-covered land during anytime when a burning ban, as declared by the State Fire Marshal, is in effect.

<u>A-10.11.5 Department of Natural Resources Environmental Control (DNREC) should be contacted for their additional burning restrictions at (800) 662-8802 or (302) 739-9401 before performing any outdoor burning.</u>

Chapter 10 General Fire Safety

DELETE 10.12.1 and 10.12.1.1 through 10.12.3

Chapter 10 General Fire Safety

Section 10.14 Combustible Vegetation

DELETE section 10.14.1 and Table 10.14.1

Chapter 10 General Fire Safety

Section 10.15 Special Outdoor Events, Carnivals, and Fairs.

10.15.1 Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

10.15.4 Standby Fire Personnel. Where required by the AHJ, standby fire personnel shall be provided and comply with the requirements established by the State Fire Marshal.

Chapter 10 General Fire Safety

10.15.11 Crop Maze.

10.15.11.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 10 General Fire Safety

10.15.11.13 Fireworks.

10.15.11.13.2 The use of display fireworks shall comply with the *Delaware State Fire Prevention Regulations* in addition to the requirements of 10.15.11.13.

Chapter 10 General Fire Safety**10.17 Parade Floats.**

10.17.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 10 General Fire Safety**10.19* Combustible Materials.**

10.19.2 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 13 Fire Protection Systems

AMEND 13.2.2.1 to read,

Where required by Part II, Chapter 4-2 of the *Delaware State Fire Prevention Regulations*, this code, or the referenced codes and standards in Chapter 2, standpipe systems shall be installed in accordance 13.2.1.

AMEND 13.2.3.3 to read,

A standpipe system installed in accordance with this code shall be inspected, tested, and maintained in accordance with NFPA 25, *Standard for the Inspection, Testing And Maintenance of Water Based Fire Protection Systems* and Part III, Chapter 1-4 of the *Delaware State Fire Prevention Regulations*.

Section 13.3 Automatic Sprinkler

AMEND 13.3.1.1 to read,

Where required by Part II, Chapter 4-1 of the *Delaware State Fire Prevention Regulations*, this code, or the referenced codes and standards in Chapter 2, automatic sprinkler systems shall be installed in accordance 13.3.1”.

AMEND 13.3.2.3 to read,

Where not otherwise required by the *Delaware State Fire Prevention Regulation* to be protected by automatic sprinklers, new fire stations should be protected by an approved automatic fire sprinkler system.

AMEND 13.3.3.2 to read,

A sprinkler system installed in accordance with this code shall be inspected, tested, and maintained in accordance with NFPA 25, *Standard for the Inspection, Testing And Maintenance of Water Based Fire Protection Systems* and Part III, Chapter 1-4 of the *Delaware State Fire Prevention Regulations*.

Section 13.3 Automatic Sprinkler

DELETE 13.3.4 Impairments

Chapter 15 Planned Building Groups

DELETE entire Chapter 15

Chapter 17 Wildland Urban Interface

DELETE entire Chapter 17

Chapter 18 Fire Department Access and Water Supply

DELETE entire Chapter 18

Chapter 19 Combustible Waste and Refuse

DELETE entire Chapter 19

Chapter 20 Occupancy Fire Safety

20.1.1.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

20.1.4.2.4.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

20.1.4.3 Open Flame Devices and Pyrotechnics. No open flame devices or pyrotechnic devices shall be used in any assembly occupancy, unless otherwise permitted by the following:

(1) Pyrotechnic special effect devices shall be permitted to be used on stages before proximate audiences for ceremonial or religious purposes, as part of a demonstration in exhibits, or as part of a performance, provided that both of the following criteria are met:

(a) Precautions satisfactory to the AHJ are taken to prevent ignition of any combustible material.

(b) Use of the pyrotechnic device complies with the *Delaware State Fire Prevention Regulations*.

(2) Flame effects before an audience shall be permitted in accordance with the *Delaware State Fire Prevention Regulations*.

20.1.4.3.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

20.1.4.5.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 21 Airports and Heliports

21.2.2.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 22 Automobile Wrecking Yards

22.7 Tire Storage.

The storage of tires shall be in accordance with Chapter 34 and the *Delaware State Fire Prevention Regulations*.

22.9.1 General. The storage, use, and handling of motor vehicle fluids and hazardous materials shall be in accordance with Chapter 60 and the *Delaware State Fire Prevention Regulations*.

DELETE 22.9.4

Chapter 23 Cleanrooms

23.3 Permits.

Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 24 Drycleaning

24.2 Permits.

Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 25 Grandstands and Bleachers, Folding and Telescopic Seating, Tents, and Membrane Structures

25.1.2 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

25.1.5.5 Fireworks or unauthorized open flames shall be prohibited in any tent or temporary membrane structure.

DELETE the Exception:

Chapter 30 Motor Fuel Dispensing Facilities and Repair Garages

30.1.1.3 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 33 Outside Storage of Tires

DELETE entire Chapter 33

Chapter 34 General Storage

34.1.2 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 40 Dust Explosion Prevention

40.2 Permits.

Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 41 Hot Work Operations

41.1.5 Permits.

41.1.5.1 Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 42 Refueling

42.4.1.2 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

42.5.2.2.4 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

42.5.3.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 44 Solvent Extraction

44.3 Permits.

Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 45 Combustible Fibers

45.1.3 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 50 Commercial Cooking Equipment

50.4.2 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 51 Industrial Ovens and Furnaces

51.1.2 Permits.

51.1.2.1 Permits, where required, shall comply the *Delaware State Fire Prevention Regulations*.

Chapter 52 Stationary Lead–Acid Battery Systems

52.2 Permits.

52.2.1 Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

DELETE 52.2.2.

Chapter 53 Mechanical Refrigeration

53.4 Permits and Plans.

53.4.1 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

DELETE 53.4.2

Chapter 60 Hazardous Material

DELETE entire Chapter 60

Chapter 61 Aerosol Products

61.1.2 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 63 Compressed Gases and Cryogenic Fluids

63.1.2 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 66 Flammable and Combustible Liquids

66.1.5 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 64 Corrosive Solids & Liquids

DELETE entire Chapter 64

Chapter 65 Explosives, Fireworks, & Model Rocketry

DELETE entire Chapter 65

Chapter 67 Flammable Solids

DELETE entire Chapter 67

Chapter 68 Toxic Solids & Liquids

DELETE entire Chapter 68

Chapter 69 Liquefied Petroleum Gases and Liquefied Natural Gases

69.1.2 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 70 Oxidizers and Organic Peroxides

70.1.2 Permits. Permits, where required, shall comply with the *Delaware State Fire Prevention Regulations*.

Chapter 71 Pyrophoric Solids & Liquids

DELETE entire Chapter 71

Chapter 72 Unstable Solids & Liquids

DELETE entire Chapter 72

Chapter 73 Water Reactive Solids & Liquids

DELETE entire Chapter 73

PART II; Chapter 2**Add Section 2-4.2**

2-4.2 The Two-Hour Rated Fire Barrier Wall for use in Duplex, Townhouse, Rowhouse, etc. shall consist of a listed assembly extending from the foundation tight to the underside of the smooth surface of the roof deck. The roof decking, extending four (4) feet to each side of the Two Hour Wall assembly, shall be fire retardant or fire treated lumber or a non combustible material.

PART II; Chapter 3 (Special Fire Safety Provisions for Physically Handicapped People)**3-3 Inclined Wheel Chair Lifts Permitted.****3-3.1 Location.**

~~3-1.4.2~~ 3-3.1.2 For each floor of a building to be served with an inclined wheelchair lift, only one of the two required means of egress as specified in §3-3.1.1(b) of these Regulations, may have an inclined wheelchair lift installed.

PART II; Chapter 2

ADD a new section 3-4 as follows:

3-4 Vertical Platform Lifts Permitted.**3-4.1 Location.**

3-4.1.1 A single vertical platform lift may be installed in Educational occupancies meeting all of the following criteria:

(a) Where permitted, the vertical platform lift shall serve only two (2) floors; the level of exit discharge and either a level above or a level below the level of exit discharge of any building, and;

(b) There are at least two mean of egress from each floor of the building, that are in compliance with the applicable provisions of the *State Fire Prevention Regulations*, and;

(c) The building equipped with the vertical platform lift shall be protected with an automatic sprinkler system or an automatic smoke detection and fire alarm signaling system in accordance with the National Fire Alarm Code, NFPA 72, and;

(d) Where an automatic smoke detection and fire alarm signaling system is provided, there shall be an interface of the controls for the vertical platform lift and the fire alarm signaling system to have the vertical platform lift return to the level of exit discharge, and remain there, if the lift happens to be in use when the fire alarm signaling system is activated, and;

(e) The vertical platform lift shall be provided with an auxiliary power source to ensure operation of the lift in the event of a loss of building power, and;

(f) The vertical platform lift shall be provided with controls that will permit the fire department to control the movement of the lift, and;

(g) Only one installation shall be permitted in a building.

3-4.1.2 The installation of the vertical platform shall not interfere, obstruct or otherwise impede egress capacity of any of the required means of egress.

PART II; Chapter 4**AMEND Part II, Chapter 4 as follows:****4-1 Automatic Sprinkler Systems.**

4-1.1 Installation Required. ~~Automatic fire suppression~~ sprinkler systems shall be installed in accordance with the Standard for the Installation of Sprinkler Systems (NFPA 13) in all areas and occupancies as required in the applicable codes and standards as listed in Part I, Annex A of these Regulations as well as the following:

ADD a Subsection I to Part II, Chapter 4, Section 4-1.1 to read as follows:

I. All buildings used as dormitories, in whole or in part, to house students at a public or private school or public or private institution of higher education. (16 Del.C. Chapter 88). This applies to all such dormitories regardless if new or existing.

PART II; Chapter 4**ADD to Part II, Chapter 4 as follows:****4-2 Standpipes.****4-2.3 Floor Level Identification.**

4-2.3.1 A sign shall be provided at each landing, in all interior stairways, designating the floor level.

PART II; Chapter 5**AMEND Part II, Chapter 5 (High Rise and Large Area Buildings) as follows:**

5-1 General High Rise Fire Protection Features Required.**5-1.1 ~~Automatic Sprinkler Systems Required. (Reserved)~~**

~~5-1.1.1 Every building over forty feet in height shall be protected by a complete automatic sprinkler system installed in accordance with the applicable codes and standards listed in Part I, Annex A of these Regulations.~~

5-1.2 ~~Floor Level Identification.~~

~~5-1.2.1 A sign shall be provided at each landing, in all interior stairways, designating the floor level.~~

5-2 Requirements For Buildings Over Fifty Feet or Five Stories In Height.**5-2.1 Central Control Station.**

5-2.1.1 Every high rise building in excess of fifty feet or five stories in height shall contain a central control station for fire department operations which shall be provided in a location approved by the State Fire Marshal. It shall contain the voice alarm and public address panels; the fire department communications panel; fire detection and alarm system annunciator panels; status indicator for elevator and annunciator indicating which elevators are operational; status indicators and controls for air handling systems; controls for unlocking all stairway doors simultaneously; sprinkler valve and waterflow detector display panels; emergency power, light and system controls; and status indicators and a telephone for fire department use with controlled access to the public telephone system.

5-2.2 Alarm And Emergency Communication Systems.

5-2.2.1 Every high rise building in excess of fifty feet or five stories in height shall be equipped with an alarm and communication system which shall be installed in accordance with the applicable codes and standards listed in Part I, Annex A of these Regulations; and approved by the State Fire Marshal.

5-2.4 Fire Department Communication System.

5-2.4.1 A two way fire department communication system in accordance with the National Fire Alarm Code (NFPA 72) shall be provided for fire department use. ~~It shall operate between the central control station and every elevator, elevator lobby, and entry into an enclosed exit stairway.~~

5-2.6 Elevators.

5-2.6.1 In every high rise building in excess of fifty feet or five stories in height, elevator service shall be provided for fire department emergency access to all floors. Said elevator cab shall be of such size to accommodate an ambulance cot 24 inches by 76 inches in its horizontal open position. Except for the main entrance level, all elevators shall open into a lobby (which may serve additional elevators) separated from the remainder of the building by one hour fire resistance rated lobby construction. Janitor closets, chutes, guest or tenant rooms, and service rooms shall not open into the elevator lobby. In addition, the provisions of ANSI Standard A-17.1 shall apply.

5-2.7 Mechanical Smoke Control.

5-2.7.1 In every high rise building in excess of fifty feet or five stories in height a mechanical smoke control system shall be installed in accordance with sound engineering judgment and approved by the State Fire Marshal. Such a system shall be installed to the "state of the art" utilizing any future design criteria published by an agency approved by the State Fire Marshal as a guideline. The designer of such a system shall be responsible, by calculations, and subsequent field testing to prove the system meets design specifications.

5-2.8 Standby Power, Light, and Emergency Systems.

5-2.8.1 In every high rise building in excess of fifty feet or five stories in height an emergency power supply shall be installed.

PART II; Chapter 6

AMEND Part II, Chapter 6 as follows:

6-5 Fire Hydrants.

6-5.1 Spacing and Location.

6-5.1.1 Hydrant spacing as shown in the Fire Flow Tables shall be used as a general rule. Hydrants shall be located at the direction of the State Fire Marshal so as to minimize friction in fire hose. All hydrant spacing shall be located along available roads or at the direction of the State Fire Marshal. This measurement shall be calculated by way of accessible thoroughfare(s) from the building to be protected to the hydrant and may not necessarily be a radius.

6-5.1.2 Hydrants shall be provided in such a manner that all fire department connections and/or standpipe connections shall be within 300' of a hydrant and shall meet the provisions of the applicable NFPA Regulations as adopted and/or modified by these Regulations. This measurement shall be calculated by way of accessible thoroughfare(s) from the proposed fire department connection to the hydrant and may not necessarily be a radius.

PART II; Chapter 6

AMEND Part II, Chapter 6 Fire Flow Table 2 as follows:

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Fire Flow Table 2

The requirements of Fire Flow Table 2 apply to areas where there is a public, private, or central water system.

Occupancy	Maximum Aggregate Gross Square Footage	Internal Fire Separation	Flow Required	Hydrant Spacing*
One- and Two-Family Detached Dwellings ¹	10,000	n/a	500 GPM 20 PSI Residual Pressure 1 Hour Duration	1,000 feet on center
Other Residential ¹	10,000	n/a	1,000 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center
Rowhouses ¹ & Townhouses ¹	10,000	2-Hr rated wall Part I Chapter 2	1,000 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center
Assembly Health Care Business Education	10,000	n/a	1,000 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center
Storage Industrial Mercantile	10,000	n/a	1,500 GPM 20 PSI Residual Pressure 2 Hour Duration	800 feet on center
Mini-Storage	10,000	n/a	750 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center

¹Sites in New Castle County are subject to the provisions of New Castle County Code Chapter 40 Article 5. See §A-6-1.4.1 and §A-6-1.4.2.

A – Fire Flow Table 2, Hydrant Spacing.

The phrase, “on center” is intended to represent the maximum distance fire hydrants are spaced from each other. Proper application of this intention would generally provide a fire department with a maximum “hose lay” to a hydrant that would not exceed 500 feet for One & Two Family Dwellings, and 400 feet for all other structures.

PART II; Chapter 7

ADD to Part II, Chapter 7 as follows:

7-5 Installation

7-5.2 The Water Supplier shall coordinate with the local Fire Department, to assure that the operation of the fire hydrant, including the direction of force needed to open the hydrant, is consistent with all other hydrants within the fire department's district as approved by the State Fire Marshal.

7-5.3 The Water Supplier shall coordinate with the local Fire Department, to assure that all the characteristics of the hose connections and pumper connections on all new hydrants are consistent with all other hydrants within the fire department's district as approved by the State Fire Marshal. The characteristics of these connections shall include, but not be limited to, the internal diameter of the openings, the outside (thread) diameter of the connections, the number of threads per inch, the configuration of the thread, and the depth of the thread.

7-5.4 As fire hydrants are replaced for whatever reason, including replacement of damaged hydrants, the water supplier shall install only hydrants that meet the operational criteria and thread specifications stated above.

PART III; Chapter 3**Amend Chapter 3**

3-2.1.1 All hydrants shall be inspected and operated ~~every three (3) years~~ annually and after each use within five (5) working days upon notification. Particular attention shall be paid to the general condition of the hydrant to include:

PART III; Chapter 4, 5, 6, and 7**Chapter 4 Licensing Regulations for Fire Alarm Signaling Systems****AMEND Chapter 4 as follows:**

4-3.2.4 Delaware Business License. The Fire Alarm Signaling Systems Company must hold a current Delaware Business License as defined in 30 Del.C. §2301, and must be qualified to do business in the State of Delaware and must be registered with the Secretary of State. ~~The Delaware Business License Number~~ A copy of the current Delaware Business License shall be submitted at the time of application for a license and upon each subsequent renewal request.

4-4.2.5 Class V: Limited to household fire warning equipment in one and two family dwellings (~~typical of NFPA 72, Chapter 2, systems~~).

V(a) Household Fire Warning Systems.

V(b) Single Station Units.

4-4.4.4 Upon separation of the Certificate Holder from the licensed company, the Fire Alarm Signaling Systems Company may complete existing work in progress, which has been submitted, reviewed and approved by the Office of State Fire Marshal, but may not commence any new work or conduct any inspection work until ~~they have hired another Certificate Holder~~ a Certificate Holder is hired.

Chapter 5 Licensing Regulations for Fire Suppression Systems**AMEND Chapter 5 as follows:**

5-3.2.4 Delaware Business License. The Fire Suppression Systems Company shall hold a current Delaware Business License as defined in 30 Del.C. §2301, and must be qualified to do business in the State of Delaware and must be registered with the Secretary of State. ~~The Delaware Business License Number~~ A copy of the current Delaware Business License shall be submitted at the time of application for a license and upon each subsequent

renewal request.

5-4.4.4 Upon separation of the Certificate Holder from the licensed company, the Fire Suppression Systems Company may complete existing work in progress which has been submitted, reviewed and approved by the Office of State Fire Marshal, but may not commence any new work or conduct any inspection work until ~~they have hired another Certificate Holder~~ a Certificate Holder is hired.

Chapter 6 Licensing Regulations for Fire Alarm Signaling System In-House Licensee's

AMEND Chapter 6 as follows:

6-3.2.4 Delaware Business License. The In-House Licensee shall hold a current Delaware Business License as defined in 30 **Del.C.** §2301, and must be qualified to do business in the State of Delaware and must be registered with the Secretary of State. ~~The Delaware Business License Number~~ A copy of the current Delaware Business License shall be submitted at the time of application for a license and upon each subsequent renewal request.

6-4.4.4 Upon separation of the Certificate Holder from the In-House Licensee, the Certificate Holder must be replaced within six (6) months. Existing work in progress which has been submitted, reviewed and approved by the Office of State Fire Marshal may continue, but new work may not commence and inspection work may not be conducted until a Certificate Holder is hired.

Chapter 7 Licensing Regulations for Fire Suppression System In-House Licensee's

AMEND Chapter 7 as follows:

7-3.2.4 Delaware Business License. The In-House Licensee shall hold a current Delaware Business License as defined in 30 **Del.C.** §2301, and must be qualified to do business in the State of Delaware and must be registered with the Secretary of State. ~~The Delaware Business License Number~~ A copy of the current Delaware Business License shall be submitted at the time of application for a license and upon each subsequent renewal request.

7-4.4.4 Upon separation of the Certificate Holder from the In-House Licensee, the Certificate Holder must be replaced within six (6) months. Existing work in progress which has been submitted, reviewed and approved by the Office of State Fire Marshal may continue, but new work may not commence and inspection work may not be conducted until a Certificate Holder is hired.

PART V; Chapter 1

Amend Chapter 1

1-2.6 A lock box containing keys for fire department access shall be provided at the following occupancies:

- (a) Any occupancy ~~greater than 10,000 aggregate gross square footage~~ that contains a fire alarm signaling system that is monitored off-site, or
- (b) Any occupancy that contains an automatic sprinkler system.

Exception No. 1: Where an occupancy has on-site 24 hour guard service or is operating on a manned 24 hour operational cycle.

Exception No. 2: Where the fire department, in whose district the occupancy is located, indicates in writing to the State Fire Marshal that the lock box is not necessary.

Exception No. 3: One- and Two-Family dwellings.

PART V; Chapter 1**AMEND Part 5; Chapter 1 by revising 1-4.4 to read as follows:**

1-4.4 Disposal Of Combustible Waste. ~~Combustible waste or refuse shall be properly stored or disposed of at the end of each working day, before vacating a building or premises, and whenever necessary to prevent creating a fire hazard.~~

(a) ~~The term "properly stored or disposed of" shall mean removed from the building or to within a room or area specifically designed and approved for such storage.~~

1-4.4.1 Combustible waste or refuse shall be properly stored or disposed of at the end of each working day, before vacating a building or premises, and whenever necessary to prevent creating a fire hazard. The term "properly stored or disposed of" shall mean removed from the building or to within a room or area specifically designed and approved for such storage.

1-4.4.2 Rubbish within Dumpsters

1-4.4.2.1* Dumpsters and containers with an individual capacity of 1½ cubic yards or more shall not be stored in buildings; or placed within 10 feet of combustible walls, openings, or combustible roof eave lines.

Exception 1: If areas containing dumpsters or containers are protected by an approved automatic sprinkler system and enclosed with a fire resistance rating of 1 hour.

1-4.4.2.2 Structures of Types I and Type II construction (as defined in NFPA 220) used for dumpster or container storage shall be located not less than 10 ft from openings and other buildings.

PART V; Chapter 1**AMEND Part V, Chapter 1 by deleting Exception #1 as follows:****1-8.4 Christmas Trees.**

(a) ~~Natural cut Christmas trees, including living trees in a balled condition with their roots protected by an earth ball shall not be permitted in Assembly, Educational, Health Care, Residential Board and Care, Detention and Correctional, Mercantile, Hotel, or Dormitory occupancies.~~

~~Exception No. 1: Living trees in a balled condition with their roots protected by an earth ball may be permitted provided they are maintained in a fresh condition and are not allowed to become dry.~~

~~Exception No. 2~~ No. 1: Trees located in areas protected by an approved automatic sprinkler system.

PART V; Chapter 1**AMEND Part V, Chapter 1 as follows:****1-15 Elevators.**

~~1-15.1* All buildings provided with a Passenger Elevator shall have a cab size~~ All Passenger Elevators in a building shall be provided with a cab sized to accommodate an ambulance cot 24 inches by 76 inches in its horizontal open position.

A-1-15.1 The words "to accommodate" in this context is intended to mean the cot is in the horizontal position and shall travel in to the elevator without having to modify the position. Additionally once the cot is in place in the cab, there should be room for at least two (2) EMS attendants.

Exception No. 1: Construction, Freight, and One- and Two-Family Elevators are not required to comply with this Section.

Exception No. 2: Where all occupiable areas of all stories of the building have access to the outside at grade and the grade is accessible to fire department personnel, elevators are not required to comply with this Section.

PART VI; Chapter 1

AMEND, Part VI, Chapter 1 (Intermediate Care Facilities For The Mentally Retarded - ICFMR) as follows:

1-1 General.

1-1.3* Application. The application of this Regulation pertains to those facilities that desire to utilize a type of residential occupancy similar to, if not actually, a one- and two-family dwelling, including new construction and/or conversion of existing dwellings. These occupancies shall be reviewed and approved under the New Residential Board and Care Occupancies, Chapter 22 occupancy chapter of the Life Safety Code, NFPA 101, as adopted and/or modified by these Regulations, and shall include the additional fire protection features required by this Chapter.

A-1-1.3 For purposes of clarification, these occupancies will NOT be considered Limited Care Facilities as found under the New Health Care Occupancies, Chapter 22 occupancy chapter of the Life Safety Code, NFPA 101, except when the issue of "self preservation" can not be affirmatively demonstrated.

PART VI; Chapter 3

AMEND Part VI, Chapter 3 as follows:

3-3.1* Fire Alarm Signaling Systems. All new apartment buildings shall be provided with a fire alarm signaling system in accordance with ~~§7-6 except as modified by 18-3.4.2 through 18-3.4.4,~~ of the Life Safety Code, NFPA 101, as adopted and/or modified by these Regulations.

PART VI; Chapter 7

ADD a new Chapter 7 (Haunted Houses) to Part VI

Part VI

Chapter 7 - Haunted Houses

7-1 General

7-1.1 Purpose. To establish minimum life safety requirements for special amusement buildings known as Haunted Houses when used on a temporary basis.

7-1.2 Scope. This Regulation may be utilized in the application for a permit for occupancies commonly known as

Haunted Houses used on a temporary basis. "Temporary basis" in this Chapter shall mean operating and/or open to the public for not more than 15 days, or portion thereof, within a calendar year.

7-1.3 Permit Required.

7-1.3.1 Any person, partnership, association, organization, or corporation that desires to operate a haunted house shall apply to Office of the State Fire Marshal for a permit at least fifteen (15) days prior to the date of operating the attraction.

7-1.3.2 The State Fire Marshal shall not issue such permit until satisfied that all the following provisions of this Chapter are met.

7-1.4 Electrical Inspection

7-1.4.1 All wiring shall be completed by a licensed electrician.

7-1.4.2 A letter of approval of an electrical inspection as a temporary installation, issued by an electrical inspection agency, approved by the State Board of Electrical Examiners and recognized by the State Fire Marshal shall be filed with the Office of State Fire Marshal. The date of the electrical inspection shall be within the thirty (30) days prior to opening day.

7-2 Construction

7-2.1.1 Haunted Houses shall only be allowed to operate on the level of exit discharge as well as one story above the level of discharge.

7-2.1.2 Occupants shall be prohibited from areas not on the level of exit discharge or the story above it. Provisions shall be made to physically bar occupants from entering areas not on the level of exit discharge and areas not open to the public.

7-2.1.3 Haunted houses shall not be allowed in windowless buildings.

7-2.2.1 Walls and windows may use ¼-inch plywood as covering (minimum standard). Walls are to consist of 3/8 inch plywood and/or drywall.

7-2.2.2 Foam rubber, urethane foam, or any other type of expanded combustible material known to burn readily shall not be permitted in the building. Black plastic (fire resistive only) or fire treated cloth may be used on walls.

7-3 Egress

7-3.1 Occupant Load: The occupancy shall be limited to 25 persons, regardless if an attendant or a patron.

7-3.2 Exits

7-3.2.1 There shall be a minimum of at least two exits from each floor or level. A window that leads to a 4-foot by 4-foot landing with a stairway shall be permitted.

7-3.2.2 All exits doors shall swing in the direction of exit travel.

7-3.2.3 Maximum travel distance from all areas of the building to an exit shall not exceed 75 feet.

7-3.3 Illumination: The State Fire Marshal may require on a case by case basis additional means for normal illumination.

7-3.4 Emergency Lighting: Emergency lighting shall be provided so that the floor level of all areas able to be occupied by the public is provided with minimum lighting in the event of loss of normal power.

7-3.5. Exit Marking: All exits shall be provided with conspicuous, internally or externally illuminated standard EXIT signs. The exit signs shall also be provided to be illuminated in the emergency lighting mode so as to be readily visible even in the event of loss of normal power.

7-4 Protection

7-4.1 Fire Extinguishers: At least one portable multi-purpose fire extinguisher, with a minimal rating of 2A:10BC, shall be provided and properly mounted in each room able to be occupied by the public and at each exit and entrance.

7-4.2 Smoke Alarms: Smoke alarms shall be located in all hallways, corridors, and rooms on all levels.

7-4.3 Public Address System: A public address system shall be provided throughout in order to notify occupants to evacuate.

7-4.4 Fire Company Stand-By

7-4.4.1* Arrangements shall be made with the local fire company to have a stand-by crew provided on location during all hours that the haunted house is operating and/or open to the public.

Exception 1: Fire Company Stand-By shall not be required if building is fully sprinklered.

7-4.4.2 The Stand-By detail shall consist of at least one standard pumper with its water supply being a minimum 1000 gallon, a crew of at least four, and two-way radio communication with the dispatch center.

7-5 Operating Controls

7-5.1 Attendants:

7-5.1.1 Attendants (Operators) of the attraction are responsible for general safety and good fire protection practices. Only individuals at least sixteen (16) years of age are to be attendants. An emergency action plan and critical assignments shall be reviewed with all attendants daily, prior to the hours of operation.

7-5.1.2 At least one attendant shall be located at each exit and in each room larger than 200 square feet and capable of being occupied by the public.

7-5.1.3 Each attendant shall be equipped with a standard battery-powered flashlight. A standard flashlight requires at least two Type-D dry cell batteries.

7-5.1.4. The organization operating a haunted house on a nightly or daily basis shall have a fire drill for their attendants (operators).

7-5.2 Portable Heaters: Portable heaters shall be prohibited in the building.

7-5.3.1 Combustible Materials: Excelsior, straw, hay or other rapid burning materials shall be prohibited in the building.

7-5.3.2 Flammable Materials: No flammable or readily combustible materials shall be used in decorations, sets, props, costumes, etc.

7-5.3.3 No storage shall be permitted beneath stairways. All other unsafe practices are prohibited.

7-5.4 Ignition Sources

7-5.4.1 Open Flames: Open flames shall be prohibited in the building or within 10 feet of the building.

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7-5.4.2 Smoking: Smoking shall be prohibited in the building or within 10 feet of any entrance or exit. Sand or water filled "butt receptacles" shall be provided near each entrance.

AMEND APPENDIX D

NFPA Publications For Guidance Numerical Listing

The following Standards, Recommendations, Recommended Practices, Manuals, Guides, and Model Laws are included here for reference and guidance in the application of the *State of Delaware Fire Prevention Rules and Regulations* when a particular problem is not otherwise covered by a Code, Standard, or Law Provision. The Fire Marshal may use the provisions of these Standards, Recommendations, Recommended Practices, Manuals, Guides, and Model Laws as appropriate criteria for meeting the intent of the *State of Delaware Fire Prevention Rules and Regulations* in those cases.

NFPA NO.	DATE OF PUBLICATION	TITLE
11C	1995	Mobile Foam Apparatus, Standard for
43D	1994	Code for the Storage of Pesticides
46 ¹	1996	Recommended Safe Practice for Storage of Forest Products
49	1994	Hazardous Chemicals Data
53	1994	Guide on Fire Hazards in Oxygen Enriched Atmospheres
53 ¹	2004	Guide on Fire Hazards in Oxygen Enriched Atmospheres
68	1994	Guide for Venting of Deflagrations
68 ¹	<u>2002</u>	<u>Guide for Venting of Deflagrations</u>
70B	1994	Recommended Practice for Electrical Equipment Maintenance
70B ¹	2006	Recommended Practice for Electrical Equipment Maintenance
70E	1995	Standard for Electrical Safety Requirements for Employee Workplaces
70E ¹	2004	Standard for Electrical Safety Requirements for Employee Workplaces
77	1993	Recommended Practice on Static Electricity
77 ¹	2000	Recommended Practice on Static Electricity
80A ⁴	1996	Recommended Practice for Protection of Buildings from Exterior Fire Exposures
80A ¹	<u>2001</u>	<u>Recommended Practice for Protection of Buildings from Exterior Fire Exposures</u>
85 ¹	<u>2004</u>	<u>Boiler and Combustion Systems Hazards Code</u>
86D ⁴	1995	Standard for Industrial Furnaces Using Vacuum as an Atmosphere
97	1996	Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances
99B ⁴	1996	Standard for Hypobaric Facilities
99B ¹	<u>2005</u>	<u>Standard for Hypobaric Facilities</u>
101A	1995	Guide on Alternative Approaches to Life Safety
101A ¹	2004	Guide on Alternative Approaches to Life Safety
105	1993	Recommended Practice for the Installation of Smoke Control

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Reference	Year	Title
		Door Assemblies
<u>105</u> ¹	<u>2003</u>	<u>Standard for the Installation of Smoke Door Assemblies</u>
<u>115</u> ²	1995	Recommended Practice on Laser Fire Protection
<u>115</u> ¹	<u>2003</u>	<u>Standard for Laser Fire Protection</u>
<u>130</u> ⁴	1995	Standard for Fixed Guideway Transit Systems
<u>130</u> ¹	<u>2003</u>	<u>Standard for Fixed Guideway Transit Systems</u>
203	1995	Guide for Roof Coverings and Roof Deck Construction
204M	1994	Guide for Smoke and Heat Venting
<u>204</u> ¹	<u>2002</u>	<u>Standard for Smoke and Heat Venting</u>
231E ¹	1996	Recommended Practice for the Storage of Baled Cotton
<u>232A</u> ²	1995	Guide for Fire Protection for Archives and Record Centers
<u>232</u> ¹	<u>2000</u>	<u>Standard for Protection of Records</u>
<u>254</u> ⁴	1995	Standard Methods of Tests of Fire Endurance of Building Construction and Materials
<u>251</u> ¹	<u>2006</u>	<u>Standard Methods of Tests of Fire Resistance of Building Construction and Materials</u>
<u>252</u> ⁴	1995	Standard Methods of Fire Tests of Door Assemblies
<u>252</u> ¹	<u>2003</u>	<u>Standard Methods of Fire Tests of Door Assemblies</u>
<u>253</u> ⁴	1995	Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source
<u>253</u> ¹	<u>2006</u>	<u>Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source</u>
<u>255</u> ⁴	1996	Standard Method of Test of Surface Burning Characteristics of Building Materials
<u>255</u> ¹	<u>2006</u>	<u>Standard Method of Test of Surface Burning Characteristics of Building Materials</u>
256	1993	Standard Methods of Fire Tests of Roof Coverings
<u>256</u> ¹	<u>2003</u>	<u>Standard Methods of Fire Tests of Roof Coverings</u>
257	1990	Standard on Fire Test for Window and Glass Block Assemblies
<u>257</u> ¹	<u>2000</u>	<u>Standard on Fire Test for Window and Glass Block Assemblies</u>
258	1994	Standard Research Test Method for Determining Smoke Generation of Solid Materials
<u>258</u> ¹	<u>2001</u>	<u>Standard Research Test Method for Determining Smoke Generation of Solid Materials</u>
259	1993	Standard Test Method for Potential Heat of Building Materials
259 ¹	2003	Standard Test Method for Potential Heat of Building Materials
260	1994	Standard Methods of Tests and Classification System for Cigarette Ignition Resistance of Components of Upholstered Furniture
260 ¹	2003	Standard Methods of Tests and Classification System for Cigarette Ignition Resistance of Components of Upholstered Furniture
261	1994	Standard Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes
<u>261</u> ¹	<u>2003</u>	<u>Standard Method of Test for Determining Resistance of Mock-Up</u>

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262	1994	<u>Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes</u> Standard Method of Test for Fire and Smoke Characteristics of Wires and Cables
<u>262</u> ¹	<u>2002</u>	<u>Standard Method of Test for Flame Travel and Smoke of Wires and Cables for Use in Air-Handling Spaces</u>
263	1994	Heat and Visible Smoke Release Rates for Materials and Products, Standard Method of Test for
264	1995	Standard Method of Test of Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter
264A	1994	Method of Test for Heat Release Rates for Upholstered Furniture Components or Composites and Mattresses Using an Oxygen Consumption Calorimeter
265	1994	Standard Methods of Fire Tests Evaluating Room Fire Growth Contribution of Textile Wall Coverings
<u>265</u> ¹	<u>2002</u>	<u>Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile Coverings on Full Height Panels and Walls</u>
<u>268</u> ²	1996	Standard Test Method for Determining Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source
<u>268</u> ¹	<u>2001</u>	<u>Standard Test Method for Determining Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source</u>
<u>269</u> ²	1996	Standard Test Method for Developing Toxic Potency Data for Use in Fire Hazard Modeling
<u>269</u> ¹	<u>2000</u>	<u>Standard Test Method for Developing Toxic Potency Data for Use in Fire Hazard Modeling</u>
<u>291</u> ⁴	1995	Recommended Practice for Fire Flow Testing and Marking of Hydrants
<u>291</u> ¹	<u>2002</u>	<u>Recommended Practice for Fire Flow Testing and Marking of Hydrants</u>
295	1991	Standard for Wild Fire Control
297	1995	Guide on Principles and Practices for Communications Systems
299	1991	Standard for Protection of Life and Property from Wildfire
318	1995	Standard for the Protection of Cleanrooms
<u>318</u> ¹	<u>2006</u>	<u>Standard for the Protection of Semiconductor Fabrication Facilities</u>
325	1994	Guide to Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids
328	1992	Recommended Practice for the Control of Flammable and Combustible Liquids and Gases in Manholes, Sewers, and Similar Underground Structures
329	1992	Recommended Practice for Handling Underground Releases of Flammable and Combustible Liquids
<u>329</u> ¹	<u>2005</u>	<u>Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases</u>
419	1992	Guide for Master Planning Airport Water Supply Systems for Fire Protection
423	1994	Standard for Construction and Protection of Aircraft Engine Test

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		Facilities
<u>423</u> ¹	<u>2004</u>	<u>Standard for Construction and Protection of Aircraft Engine Test Facilities</u>
<u>424</u> ²	1996	Guide for Airport/Community Emergency Planning
<u>424</u> ¹	<u>2004</u>	<u>Guide for Airport/Community Emergency Planning</u>
491M	1991	Manual of Hazardous Chemical Reactions
497A	1992	Recommended Practice for Classification of Class I Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas
<u>497</u> ¹	<u>2004</u>	<u>Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas</u>
497M	1991	Manual for Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations
497B	1991	Recommended Practice for the Classification of Class II Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas
<u>499</u> ¹	<u>2004</u>	<u>Recommended Practice for the Classification of Combustible Dusts and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas</u>
512	1994	Standard for Truck Fire Protection
<u>555</u> ²	1996	Guide on Methods for Evaluating Potential for Room Flashover
<u>555</u> ¹	<u>2004</u>	<u>Guide on Methods for Evaluating Potential for Room Flashover</u>
<u>600</u> [±]	<u>1996</u>	Standard on Industrial Fire Brigades
<u>600</u> ¹	<u>2005</u>	<u>Standard on Industrial Fire Brigades</u>
<u>604</u> ⁺	1996	Standard for Guard Service in Fire Loss Prevention
<u>601</u> ¹	<u>2005</u>	<u>Standard for Security Service in Fire Loss Prevention</u>
<u>704</u> ⁺	1996	Standard Methods of Fire Tests for Flame-Resistant Textiles and Films
<u>701</u> ¹	<u>2004</u>	<u>Standard Methods of Fire Tests for Flame Propagation of Textiles and Films</u>
705	1993	Recommended Practice for a Field Flame Test for Textiles and Films
<u>705</u> ¹	<u>2003</u>	<u>Recommended Practice for a Field Flame Test for Textiles and Films</u>
<u>804</u> ⁺	1995	Standard for Facilities Handling Radioactive Materials
<u>801</u> ¹	<u>2003</u>	<u>Standard for Facilities Handling Radioactive Materials</u>
802	1993	Recommended Practice for Fire Protection for Nuclear Research and Production Reactors
803	1993	Standard for Fire Protection for Light Water Nuclear Power Plants
<u>804</u> ¹	<u>2006</u>	<u>Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants</u>
<u>805</u> ¹	<u>2006</u>	<u>Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants</u>
<u>820</u> ⁺	1995	Standard for Fire Protection in Wastewater Treatment and Collection Facilities

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<u>820</u> ¹	<u>2003</u>	<u>Standard for Fire Protection in Wastewater Treatment and Collection Facilities</u>
850 ⁴	1996	Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations
<u>850</u> ¹	<u>2005</u>	<u>Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations</u>
854 ⁴	1996	Recommended Practice for Fire Protection for Hydroelectric Generating Plants
<u>851</u> ¹	<u>2005</u>	<u>Recommended Practice for Fire Protection for Hydroelectric Generating Plants</u>
904 ⁴	1995	Standard Classifications for Incident Reporting and Fire Protection Data
<u>901</u> ¹	<u>2006</u>	<u>Standard Classifications for Incident Reporting and Fire Protection Data</u>
940	1994	Recommended Practice for the Protection of Libraries and Library Collections
944	1994	Recommended Practice for the Protection of Museums and Museum Collections
942	1993	Recommended Practice for Fire Protection in Places of Worship
944	1994	Recommended Practice for Fire Protection in Historic Structures
<u>914</u> ¹	<u>2001</u>	<u>Code for Fire Protection of Historic Structures</u>
1144	1990	Standard for Fire Protection in Planned Building Groups
<u>1141</u> ¹	<u>2003</u>	<u>Standard for Fire Protection in Planned Building Groups</u>
1600 ²	1995	Recommended Practice for Disaster Management
<u>1600</u> ¹	<u>2004</u>	<u>Standard on Disaster/Emergency Management and Business Continuity Programs</u>
8504	1992	Standard for Single Burner Boiler Operation
8502 ²	1995	Standard for the Prevention of Furnace Explosions/ Implosions in Multiple Burner Boilers
8503	1992	Standard for Pulverized Fuel Systems
8504 ⁴	1996	Standard on Atmospheric Fluidized Bed Boiler Operation
8505	1992	Recommended Practice for Stoker Operation
8506 ⁴	1995	Standard on Heat Recovery Steam Generator Systems

AMEND APPENDIX D

NFPA Publications For Guidance Alphabetical Listing

The following Standards, Recommendations, Recommended Practices, Manuals, Guides and Model Laws are included here for reference and guidance in the application of the *State of Delaware Fire Prevention Rules and Regulations* when a particular problem is not otherwise covered by a Code, Standard, or Law Provision. The Fire Marshal may use the provisions of these Standards, Recommendations, Recommended Practices, Manuals, Guides and Model Laws as appropriate criteria for meeting the intent of the *State of Delaware Fire Prevention Rules and Regulations* in those cases.

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NFPA NO.	DATE OF PUBLICATION	TITLE
423	1994	Aircraft Engine Test Facilities, Standard for Construction and Protection of
<u>423</u> ¹	<u>2004</u>	<u>Aircraft Engine Test Facilities, Standard for Construction and Protection of</u>
424 ²	1996	Airport/Community Emergency Planning, Guide for
<u>424</u> ¹	<u>2004</u>	<u>Airport/Community Emergency Planning, Guide for</u>
419	1992	Airport Water Supply Systems for Fire Protection, Guide for Master Planning
401A	1995	Alternative Approaches to Life Safety, Guide on
<u>101A</u> ¹	<u>2004</u>	<u>Alternative Approaches to Life Safety, Guide on</u>
232A ²	1995	Archives and Record Centers, Guide for Fire Protection for
8504 ⁴	1996	Atmospheric Fluidized-Bed Boiler Operation, Standard on
231E	1996	Baled Cotton, Recommended Practice for the Storage of
8504	1992	Boiler Operation, Single Boiler, Standard for
<u>85</u> ¹	<u>2004</u>	<u>Boiler and Combustion Systems Hazards Code</u>
254 ⁴	1995	Building Construction and Materials, Standard Methods of Tests of Fire Endurance of
<u>251</u> ¹	<u>2006</u>	<u>Building Construction and Materials, Standard Methods of Tests of Fire Resistance of</u>
259	1993	Building Materials, Standard Test Method for Potential Heat of
259 ⁴	2003	Building Materials, Standard Test Method for Potential Heat of
255 ⁴	1996	Building Materials, Standard Method of Test of Surface Burning Characteristics of
<u>255</u> ¹	<u>2006</u>	<u>Building Materials, Standard Method of Test of Surface Burning Characteristics of</u>
491M	1991	Chemical Reactions, Hazardous, Manual of
49	1994	Chemicals Data, Hazardous
97	1996	Chimneys, Vents, and Heat-Producing Appliances, Standard Glossary of Terms Relating to
260	1994	Cigarette Ignition Resistance of Components of Furniture, Standard Methods of Tests and Classification System for
<u>260</u> ⁴	<u>2003</u>	<u>Cigarette Ignition Resistance of Components of Furniture, Standard Methods of Tests and Classification System for</u>
264	1994	Cigarettes, Smoldering, Standard Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by
348	1995	Cleanrooms, Standard for the Protection of
297	1995	Communications Systems, Guide on Principals and Practices for
4600 ²	1995	Disaster Management, Recommended Practice for
<u>1600</u> ¹	<u>2004</u>	<u>Standard on Disaster/Emergency Management and Business Continuity Programs</u>
252 ⁴	1995	Door Assemblies, Standard Methods of Fire Tests of
<u>252</u> ¹	<u>2003</u>	<u>Door Assemblies, Standard Methods of Fire Tests of</u>
497M	1991	Electrical Equipment in Hazardous (Classified) Locations, Manual for Classification of Gases, Vapors, and Dusts for

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70B	1994	Electrical Equipment Maintenance, Recommended Practice for
70B	2006	<u>Electrical Equipment Maintenance, Recommended Practice for</u>
850 ⁴	1996	Electric Generating Plants and High Voltage Direct Current Converter Stations, Recommended Practice for Fire Protection for
850 ¹	2005	<u>Electric Generating Plants and High Voltage Direct Current Converter Stations, Recommended Practice for Fire Protection for</u>
804 ¹	2006	<u>Electric Generating Plants, Standard for Fire Protection for Advanced Light Water Reactor</u>
805 ¹	2006	<u>Reactor Electric Generating Plants, Performance-Based Standard for Fire Protection for Light Water</u>
497A	1992	Electrical Installations in Chemical Process Areas, Recommended Practice for Classification of Class I Hazardous (Classified) Locations for
497 ¹	2004	<u>Electrical Installations in Chemical Process Areas, Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for</u>
497B	1994	Electrical Installations in Chemical Process Areas, Recommended Practice for the Classification of Class II Hazardous (Classified) Locations
499 ¹	2004	<u>Recommended Practice for the Classification of Combustible Dusts and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas</u>
70E	1995	Electrical Safety Requirements for Employee Workplaces, Standard for
70E ¹	2004	<u>Electrical Safety Requirements for Employee Workplaces, Standard for</u>
80A ⁴	1996	Exposures Fires, Recommended Practice for Protection of Buildings from
80A ¹	2001	<u>Exterior Fire Exposures, Recommended Practice for Protection of Buildings from</u>
268 ²	1996	Exterior Wall Assemblies, Standard Test Method for Determining Ignitibility of, Using a Radiant Heat Energy Source
268 ¹	2001	<u>Exterior Wall Assemblies, Standard Test Method for Determining Ignitibility of, Using a Radiant Heat Energy Source</u>
705	1993	Field Flame Test for Textiles and Films, Recommended Practice for a
705 ¹	2003	<u>Field Flame Test for Textiles and Films, Recommended Practice for a</u>
262	1994	Fire and Smoke Characteristics of Wire and Cables, Standard Method of Test for
269 ²	1996	Fire Hazard Modeling, Standard Test Method for Developing Toxic Potency Data for Use in
269 ¹	2000	<u>Fire Hazard Modeling, Standard Test Method for Developing Toxic Potency Data for Use in</u>
329	1992	Flammable and Combustible Liquids, Recommended Practice for

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<u>329</u> ¹	<u>2005</u>	Handling Underground Releases of Flammable and Combustible Liquids and Gases, Recommended Practice for Handling Releases of
328	1992	Flammable and Combustible Liquids and Gases in Manholes, Sewers, and Similar Underground Structures, Recommended Practice for the Control of
325	1994	Flammable Liquids, Gases, Volatile Solids, Guide to Fire Hazard Properties of
<u>555</u> ²	1996	Flashover, Room, Guide on Methods for Evaluating Potential for
<u>555</u> ¹	<u>2004</u>	Flashover, Room, Guide on Methods for Evaluating Potential for
<u>253</u> ⁴	1995	Floor Covering Systems Using a Radiant Heat Energy Source, Standard Method of Test for Critical Radiant Flux of
<u>253</u> ¹	<u>2006</u>	Floor Covering Systems Using a Radiant Heat Energy Source, Standard Method of Test for Critical Radiant Flux of
46	1996	Forest Products, Recommended Safe Practice for Storage of
<u>8502</u> ²	1995	Furnace Explosions/Implosions in Multiple Burner Boilers, Standard for the Prevention of
<u>86D</u> ⁴	1995	Furnaces, Industrial, Using a Vacuum as an Atmosphere, Standard for
<u>604</u> ⁴	1996	Guard Service in Fire Loss Prevention, Standard for
263	1994	Heat and Visible Smoke Release Rates for Materials and Products, Standard Method of Test for
264	1995	Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter, Standard Method of Test for
<u>8506</u> ²	1995	Heat Recovery Steam Generator Systems, Standard on
914	1994	Historic Structures, Recommended Practice for Fire Protection in
<u>914</u> ¹	<u>2001</u>	Historic Structures, Code for Fire Protection of
<u>294</u> ⁴	1995	Hydrants, Recommended Practice for Fire Flow Testing and Marking of
<u>291</u> ¹	<u>2002</u>	Hydrants, Recommended Practice for Fire Flow Testing and Marking of
<u>854</u> ⁴	1996	Hydroelectric Generating Plants, Recommended Practice for Fire Protection for
<u>851</u> ¹	<u>2005</u>	Hydroelectric Generating Plants, Recommended Practice for Fire Protection for
<u>99B</u> ⁴	1996	Hypobaric Facilities, Standard for
<u>99B</u> ¹	<u>2005</u>	Hypobaric Facilities, Standard for
<u>904</u> ⁴	1995	Incident Reporting and Fire Protection Data, Standard Classifications for
<u>901</u> ¹	<u>2006</u>	Incident Reporting and Fire Protection Data, Standard Classifications for
<u>261</u> ¹	<u>2003</u>	Ignition by Smoldering Cigarettes, Standard Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to
<u>600</u> ⁴	1996	Industrial Fire Brigades, Standard on

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<u>600</u> ¹	<u>2005</u>	<u>Industrial Fire Brigades, Standard on</u>
<u>415</u> ²	<u>1995</u>	<u>Laser Fire Protection, Recommended Practice on</u>
<u>115</u> ¹	<u>2003</u>	<u>Laser Fire Protection, Standard for</u>
<u>940</u>	<u>1994</u>	<u>Libraries and Library Collections, Recommended Practice for the Protection of</u>
<u>11C</u>	<u>1995</u>	<u>Mobile Foam Apparatus, Standard for</u>
<u>944</u>	<u>1994</u>	<u>Museums and Museum Collections, Recommended Practice for the Protection of</u>
<u>803</u>	<u>1993</u>	<u>Nuclear Power Plants, Light Water, Standard for Fire Protection for</u>
<u>802</u>	<u>1993</u>	<u>Nuclear Research and Production Reactors, Recommended Practice for Fire Protection for</u>
<u>53</u>	<u>1994</u>	<u>Oxygen-Enriched Atmospheres, Guide on Fire Hazards in</u>
<u>53</u> ¹	<u>2004</u>	<u>Oxygen Enriched Atmospheres, Guide on Fire Hazards in</u>
<u>43D</u>	<u>1994</u>	<u>Pesticides, Code for the Storage of</u>
<u>942</u>	<u>1993</u>	<u>Places of Worship, Recommended Practice for Fire Protection in</u>
<u>4444</u>	<u>1990</u>	<u>Planned Building Groups, Standard for Fire Protection in</u>
<u>1141</u> ¹	<u>2003</u>	<u>Planned Building Groups, Standard for Fire Protection in</u>
<u>8503</u>	<u>1992</u>	<u>Pulverized Fuel Systems, Standard for</u>
<u>801</u> ¹	<u>2003</u>	<u>Radioactive Materials, Standard for Facilities Handling</u>
<u>804</u> ⁴	<u>1995</u>	<u>Radioactive Materials, Standard for Facilities Handling</u>
<u>232</u> ¹	<u>2000</u>	<u>Standard for Protection of Records</u>
<u>203</u>	<u>1995</u>	<u>Roof Coverings and Roof Deck Construction, Guide on</u>
<u>256</u>	<u>1993</u>	<u>Roof Coverings, Standard Methods of Fire Tests of</u>
<u>256</u> ¹	<u>2003</u>	<u>Roof Coverings, Standard Methods of Fire Tests of</u>
<u>601</u> ¹	<u>2005</u>	<u>Security Service in Fire Loss Prevention, Standard for</u>
<u>318</u> ¹	<u>2006</u>	<u>Semiconductor Fabrication Facilities, Standard for the Protection of</u>
<u>405</u>	<u>1993</u>	<u>Smoke Control Door Assemblies, Recommended Practice for the Installation of</u>
<u>105</u> ¹	<u>2003</u>	<u>Smoke Door Assemblies, Standard for the Installation of</u>
<u>204M</u>	<u>1994</u>	<u>Smoke and Heat Venting, Guide for</u>
<u>204</u> ¹	<u>2002</u>	<u>Smoke and Heat Venting, Standard for</u>
<u>258</u>	<u>1994</u>	<u>Smoke Generation of Solid Materials, Standard Research Test for Determining</u>
<u>258</u> ¹	<u>2001</u>	<u>Smoke Generation of Solid Materials, Standard Research Test for Determining</u>
<u>77</u>	<u>1993</u>	<u>Static Electricity, Recommended Practice on</u>
<u>77</u> ¹	<u>2003</u>	<u>Static Electricity, Recommended Practice on</u>
<u>8505</u>	<u>1992</u>	<u>Stoker Operation, Recommended Practice for</u>
<u>265</u>	<u>1994</u>	<u>Textile Wall Coverings, Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of</u>
<u>265</u> ¹	<u>2002</u>	<u>Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile Coverings on Full Height Panels and Walls</u>
<u>704</u> ⁴	<u>1996</u>	<u>Textiles and Films, Standard Methods of Fire Tests for Flame Resistant Test for</u>
<u>701</u> ¹	<u>2004</u>	<u>Textiles and Films, Standard Methods of Fire Tests for Flame</u>

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		<u>Propagation of</u>
130⁺	1995	Transit Systems, Fixed Guideway, Standard for
<u>130¹</u>	<u>2003</u>	<u>Transit Systems, Fixed Guideway, Standard for</u>
512	1994	Truck Fire Protection, Standard for
264A	1994	Upholstered Furniture Components or Composites and Mattresses Heat Release Rates for
68	1994	Venting of Deflagrations, Guide for
<u>68¹</u>	<u>2002</u>	<u>Venting of Deflagrations, Guide for</u>
820⁺	1995	Wastewater Treatment and Collection Facilities, Standard for Fire Protection in
<u>820¹</u>	<u>2003</u>	<u>Wastewater Treatment and Collection Facilities, Standard for Fire Protection in</u>
295	1991	Wild Fire Control, Standard for
299	1991	Wildfire, Standard for Protection of Life and Property from
<u>262¹</u>	<u>2002</u>	<u>Wires and Cables for Use in Air-Handling Spaces, Standard Method of Test for Flame Travel and Smoke of</u>
257	1990	Window and Glass Block Assemblies, Standard on Fire Test for
<u>257¹</u>	<u>2000</u>	<u>Window and Glass Block Assemblies, Standard on Fire Test for</u>

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 1220(a) (14 **Del.C.** §1220(a))
14 **DE Admin. Code** 103

PUBLIC NOTICE

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

103 Accountability for Schools, Districts and the State

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 103 in order to amend sections 3.0, 4.1, 5.0, 6.6, 7.1.1 and 7.1.2. The amendment to 3.0 will enable school districts to choose to either track students back to the school of residence or to make the school that is providing the instruction the accountability school for students in an intradistrict intensive learning center or intradistrict special school or program. The school district is required to notify the Department of Education of its decision by May 15, 2006 and the decision must remain in effect for the second year. The amendment to 4.1 will require schools to use the highest test scores a student receives in the AYP calculation when the student is tested a second time as part of the state mandated summer school program. The amendment to 5.0 allows for the composite score for the State Progress Determination to be a two year average or current year, whichever is higher. The amendment in 6.6 adds the Academic Watch category. The amendments to 7.1.1 and 7.1.2 require that Title I schools provide supplemental services to students in Year 1 of School Improvement and federal school choice and supplemental services in Year 2 of School Improvement. The amendments to 4.1 and 7.1.1 and 7.1.2

are subject to federal approval of amendments made to the State's Accountability Workbook for the federal ESEA Act.

In addition the words vocational technical have been changed to career technical.

C. Impact Criteria

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable opportunity to perform well on the DSTP.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses accountability not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses accountability not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making 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 amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State and to the local school boards for compliance with the regulation.

103 Accountability for Schools, Districts and the State

1.0 Accountability

1.1 Accountability: All public schools, including charter schools, reorganized and ~~vocational technical~~ career technical school districts and the state shall be subject to the calculation and reporting of Adequate Yearly Progress (AYP) as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq. Additionally, public schools, including charter schools, reorganized and ~~vocational technical~~ career technical school districts shall be subject to the applicable rewards, sanctions and other accountability activities as prescribed in this regulation.

7 DE Reg. 57 (7/1/03)

2.0 Adequate Yearly Progress (AYP)

2.1 Adequate Yearly Progress shall be determined by the Department of Education for all public schools, including charter schools, reorganized and ~~vocational technical~~ career technical school districts and the State on an annual basis. In order for a public school, including a charter school, reorganized or career technical school district or the State to meet AYP, the aggregate student population and each subgroup of students as

identified in ESEA, must meet or exceed the target for percent proficient using a confidence interval to be determined by the Department of Education in the state assessments of reading and language arts and mathematics; 95% of the students as an aggregate and within each subgroup must participate in the state assessments of reading and language arts and mathematics, and the respective entity must meet the requirements of the Other Academic Indicator(s) as defined in 2.6. In calculating the percent proficient each year, the state will average the most recent two years of percent proficient (including the current year's percent proficient) and compare the results to the current year percent proficient. The highest percent proficient score will be used to determine the school, district or State AYP status.

2.1.1 Adequate yearly progress shall include three levels: Above Target, Meets Target and Below Target.

2.1.1.1 Above Target shall mean that the school, district or State in the aggregate student population and for each subgroup exceeds the annual target in English language arts and mathematics for percent proficient as defined in 2.3 and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

2.1.1.2 Meets Target shall mean that the school, district or State in the aggregate student population and for each subgroup meets the annual target in English language arts and mathematics with or without the application of a confidence interval for percent proficient as defined in 2.3 or meets the criteria of Safe Harbor defined in 2.5, and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

2.1.1.3 Below Target shall mean that the school, district or State in the aggregate student population and for each subgroup did not meet the annual target in English language arts and mathematics through the application of a confidence interval for percent proficient as defined in 2.3 or does not meet the criteria of Safe Harbor defined in 2.5, or does not meet the criteria for participation as defined in 2.4 or does not meet the criteria of Other Academic Indicator(s) as defined in 2.6.

2.2 Full academic year for accountability:

2.2.1 For school accountability students enrolled continuously in the school from September 30 through May 31 of a school year including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.2 For district accountability students enrolled continuously in the district (but not necessarily the same school), from September 30 through May 31 of a school year, including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.3 For state accountability students enrolled continuously in the state (but not necessarily the same school or district) from September 30 through May 31 of a school year shall be considered enrolled for a full academic year.

2.3 Proficient: For accountability purposes students who score at Performance Level 3 (Meets the Standard) or above and who have met the requirements of a Full Academic Year as defined in 2.2 shall be deemed proficient. Students who score at Performance Level 2 or Level 1 who have met the requirements of a Full Academic Year as defined in 2.2 shall not meet the definition of proficient.

2.4 Participation Rate: For accountability purposes in school years 2002-2003 through 2004-2005, the participation rate for each subgroup, all public schools, including charter schools, districts, and the State, shall be the number of students who participate in the DSTP in grades 3, 5, 8 and 10 divided by the number of students enrolled in these tested grades during the testing period. Beginning with the 2005-2006 school year the participation rate shall include the number of students who participate in the DSTP in grades 3 through 8 inclusive and grade 10 divided by the number of students enrolled in these tested grades during the testing period. Students exempted by 14 **DE Admin. Code** 101.9.0 shall be included in the participation rate calculation unless their medical condition prevents them from being in school during the testing period.

2.5 Safe Harbor: For accountability purposes if a school, district or the State fails to meet the target for percent proficient for a given subgroup or for the entity in aggregate, Safe Harbor provisions shall be examined for that group. When the percentage of students in a subgroup not meeting the definition of proficient decreases by at least 10% when compared to the previous year's data, the participation rate for the population is at least 95%, and the subgroup meets the requirements of the Other Academic Indicator(s) as defined in 2.6. the subgroup will have

met AYP.

2.6 Other Academic Indicator(s):

2.6.1 High School: For AYP purposes, the Other Academic Indicator(s) shall be graduation rate as defined as the number of students in one cohort who started in the school, the district or the state in 9th grade and graduated four years later or in the time frame specified in the Individual Education Program (IEP), excluding students who earn a GED certificate, divided by the same number plus those that have dropped out during the same four year period.

2.6.1.1 The statewide target for the high school Other Academic Indicator shall be a graduation rate of 90% by the school year 2013-2014. The statewide target for 2003-2004 shall be 75% and shall increase by 1.5% each year until 90% is reached in 2013-2014. Beginning with the school year 2002-2003, if the graduation rate is used for Safe Harbor purposes, the high school shall maintain its graduation rate or show positive progress when compared to the previous year or meet or exceed the statewide target for that school year.

2.6.1.2 A school that does not maintain its graduation rate or show positive progress from the previous year or meet or exceed the statewide target for that school year shall be considered as not meeting AYP for that year.

2.6.2 Elementary and Middle School: For AYP purposes, the Other Academic Indicator for elementary and middle schools shall be determined by improvement of the scores of the low achieving students, defined as students performing below Performance Level 3, in reading and mathematics combined or a decrease in the percent of students scoring at Performance Level 1 in reading and mathematics. The average scale score for the students who perform at Performance Level 1 and 2 in reading and mathematics combined shall be determined for the current and previous years. The scores from the current year will be compared to the previous year to determine if the school has shown progress. A confidence interval determined by the Department of Education shall be applied to the average scale scores when making this determination. Students included in this calculation shall have been in the school for a full academic year.

2.6.2.1 The statewide target for the elementary and middle school Other Academic Indicator shall be 0% of students scoring at Performance Level 1 in reading and mathematics by the school year 2013-2014. Beginning with the school year 2003-2004, when compared to the previous year, the school or subgroup, if used for Safe Harbor purposes, shall maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year.

2.6.2.2 An elementary or middle school that does not maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year shall be considered as not meeting AYP for that year.

2.6.3 For state and district accountability purposes, the state or a district shall be expected to meet the requirements in 2.6.1.2 and 2.6.2.2.

2.7 Annual Objective: The annual objectives for reading/language arts and mathematics shall be determined by the Department of Education and published annually. The annual objectives shall be the same for all schools, districts and subgroups of students.

2.8 Intermediate Target: There shall be seven intermediate targets with the first intermediate target occurring in the 2004-2005 school year. The second intermediate target shall occur in 2006-2007; the third in 2008-2009; the fourth in 2009-2010; the fifth in 2010-2011, the sixth in 2011-2012 and the seventh in 2012-2013. By the end of the school year 2013-2014, all students in all subgroups shall be proficient in reading and language arts and mathematics. The intermediate targets shall be calculated using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.

2.9 Starting Point: A single statewide starting point shall be calculated for reading and language arts and a single statewide starting point shall be calculated for mathematics using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.

2.10 Subgroup categories: For AYP purposes, subgroup categories shall be delineated as follows: 1) Children with Disabilities (as per IDEA); 2) Economically Disadvantaged Students, as determined by eligibility for

free and reduced lunch program; 3) Students with Limited English Proficiency, as determined by the language proficiency assessment; and 4) Race and ethnicity, to be further divided into African American and Black, American Indian and Alaska Native, Asian and Pacific Islander, Hispanic, and White. Such subgroup categories shall include all students eligible for the AYP calculation as further defined throughout this Chapter. The "All" categories shall include all students in the entity for which AYP is calculated and who meet all other eligibility criteria for the AYP calculation.

2.11 AYP Determinations

2.11.1 For each public school, including charter schools, reorganized and career technical school districts, and the State, AYP shall be calculated annually.

2.11.2 School AYP: In order to meet AYP, the school shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.

2.11.3 District AYP: In order to meet AYP, the district shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.

2.11.4 State AYP: In order to meet AYP, the state shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.

2.11.5 Under Improvement: A school or district shall be deemed Under Improvement if AYP is not met two consecutive years in the same content area of reading and English language arts or mathematics for percent proficient or for participation rate, or if a school or district in the aggregate does not meet the requirements of the Other Academic Indicator(s) as defined in 2.6.

7 DE Reg. 1692 (6/1/2004)

3.0 Accountability School ~~and/or~~ and Accountability District

For AYP purposes, the school or district to which a student's performance is assigned for a full academic year shall be the Accountability School or District. No student shall have his/her performance assigned to more than one Accountability ~~School/District~~ School or Accountability District in a given school year.

3.1 For a student enrolled in an intradistrict intensive learning center ~~or intradistrict special school or program, intradistrict special school, or intradistrict special school program~~ operating within one or more existing school facilities, ~~the school of residence shall be considered the Accountability School for the student~~ the district has the option of tracking the assessment scores of the students back to the school of residence or to the school or program that is providing the instruction. The school or program shall be the Accountability School. The district shall communicate its decision regarding this option to the State Department of Education by May 15, 2006. The option that the district decides for accountability purposes for one year must remain the same for the second year. For a student enrolled in interdistrict special schools or programs that have an agreement to serve students from multiple school districts, the special school that provides the instructional program shall be considered the Accountability School for that student. For district accountability purposes, the district of residence shall be the district to which these special school students are included for accountability.

3.2 For a student enrolled in an alternative program pursuant to 14 Del.C. Ch.16 or the Delaware Adolescent Program, the Accountability School or District shall be the school/district that assigned such student to the program or the ~~school-district~~ school or district of residence. The time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School or District.

3.3 For a student who participates in a choice program the Accountability ~~School/District~~ School or District shall be the school or district to which the student has chosen.

3.4 For accountability purposes, a school shall be considered a new school if: less than sixty percent of the students would have been enrolled in the same school together without the creation of the new school; or it is the first year of operation of a charter school; or two or more grade levels have been added to the school or to a charter school's charter.

3.5 If a school is determined not to be a new school, the school shall receive the accountability rating and related consequences of the school in which the majority of students would attend in that year.

7 DE Reg. 1692 (6/1/2004)

4.0 Assessment Criteria

4.1 For a student who takes a portion of the assessment more than once during the school year, the first score shall be included in the AYP calculation; however, provided a student takes a portion of the assessment because of state mandated summer school attendance in grades 3, 5, or 8 in reading, or grade 8 in mathematics, the highest of the student's scores shall be used to recalculate the AYP determination.

4.2 A student who tests with ~~non-aggregable~~ non aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have his/her earned performance level included in the calculation of AYP.

4.3 For accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's scoring specifications or otherwise receives an invalid score shall be deemed as not meeting proficiency.

4.4 A student participating in alternate assessments shall have her/his earned performance level included in the AYP calculation consistent with the regulations as prescribed by the federal Elementary and Secondary Education Act (ESEA) 20 U.S. C.A. §6301 et seq. or Individuals with Disabilities Education Act (IDEA).

4.5 Schools with more than one tested grade shall receive a single accountability rating.

4.6 Student performance in a tested grade shall be apportioned in equal weights to each grade in a standards cluster, except that Kindergarten shall be weighted at 10% and grade 10 shall be weighted at 100%. Beginning with the school year 2005-2006 students in grades 4, 5, 6, 7, 8, and 10 will count 100%. Students in grade 3 will continue to be weighted to each grade in the K to 3 standards cluster.

4.7 For AYP purposes the reading and language arts percent proficient shall be based on a combination of the reading and writing DSTP assessments. The reading percent proficient scores shall be weighted to count 90% and the writing percent proficient scores shall be weighted to count 10%.

4.8 For AYP purposes, the mathematics percent proficient shall be based on 100% of the DSTP mathematics assessment.

5.0 State Progress Determinations

Each school and district shall receive a State Progress Determination of Above Target, Meets Target or Below Target. The State Progress shall be determined by improvement in the composite score of the reading, mathematics, science and social studies DSTP assessments combined. The composite score range shall be from 25 to 125 and is determined by the following formula: Composite Score = 25 (reading score x reading weight) + (math score x math weight) + (science score x science weight) + (social studies score x social studies weight) where: Reading score = (5 x % of students in level 5 in reading) + (4 x % of students in level 4 in reading) + (3 x % of students in level 3 in reading) + (2 x % of students in level 2 in reading) + (1 x % of students in level 1 in reading); Math score = (5 x % of students in level 5 in math) + (4 x % of students in level 4 in math) + (3 x % of students in level 3 in math) + (2 x % of students in level 2 in math) + (1 x % of students in level 1 in math)]; Science score = (5 x % of students in level 5 in science) + (4 x % of students in level 4 in science) + (3 x % of students in level 3 in science) + (2 x % of students in level 2 in science) + (1 x % of students in level 1 in science); Social Studies = (5 x % of students in level 5 in social studies) + (4 x % of students in level 4 in social studies) + (3 x % of students in level 3 in social studies) + (2 x % of students in level 2 in social studies) + (1 x % of students in level 1 in social studies). Each of the subject areas shall be weighted equally at 25%. A two year average of the composite score shall be used if it is higher than the current year's composite score.

5.1 Above Target shall mean that the school or district has a minimum composite score of 75.00 for the current year; or the school or district has demonstrated a growth of 6.00 or more points when comparing last

year's composite score to the current year's composite score provided the composite score is 45.00 or more.

5.2 Meets Target shall mean that the school or district with a composite score of 61.00 or less than 75.00 in the current year, shall demonstrate a growth of 1.00 or more points when comparing last year's composite score to the current year's composite score. For a school or district with a composite score of 45.00 but less than 61.00 in the current year, the school or district shall demonstrate a growth of 2.00 or more points when comparing last year's composite score to the current year's composite score.

5.3 Below Target shall mean that the school or district has a composite score of less than 45.00; or the school or district does not meet the criteria of 5.2.

6.0 Performance Classifications

Schools and districts shall receive one of five levels of performance classification annually which shall be based on a combination of AYP determinations and State Progress determinations.

6.1 Superior: A school or district's performance is deemed excellent. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement and is a combination of Above Target for AYP and Above Target for State Progress or Above Target for AYP and Meets Target for State Progress or Meets Target for AYP and Above Target for State Progress.

6.2 Commendable: A school or district's performance is deemed above average. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement. Combinations of Above Target for AYP and Below Target for State Progress or Meets Target for AYP and Meets Target for State Progress shall be rated as Commendable. A school or district with a combination of Meets Target for AYP and Below Target for State Progress shall be determined Commendable for no more than one year; if this same combination exists for the school or district in the following year, the school or district shall be rated Academic Review.

6.3 Academic Review: A school or district's performance is deemed acceptable. Schools or districts in this category are not Under Improvement. Combinations of: Below Target for AYP and Above Target for State Progress; or Below Target for AYP and Meets Target for State Progress shall be rated as Academic Review for no more than one year; if the same combination exists for the school or district in the following year, the school or district shall be rated Academic Progress unless the provisions of 6.5 or 6.6 are met. A school or district with a combination of Below Target for AYP and Below Target for State Progress shall be rated as Academic Review unless the provisions of 6.5 and 6.6 are met.

6.4 Academic Progress: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.

6.5 Academic Progress Under Improvement: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall have met AYP for one year while the school or district is Under Improvement. If a school or district was classified as Academic Watch the prior year, all accountability sanctions from that prior year remain in effect.

6.6 Academic Watch: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.

6.67 Academic Watch Under Improvement: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not have met AYP for two or more consecutive years in the same content area as described in 2.11.5 and shall be Under Improvement.

7.0 Schools and Districts that are classified as Under Improvement

7.1 Accountability sanctions for schools that are classified as Under Improvement:

7.1.1 Under Improvement Year 1, Aa school shall review and modify its current School Improvement Plan outlining additional specific school improvement activities to be implemented beginning in this same year. A school designated as Title I shall implement federal ESEA Choice provide supplemental services to students according to the federal ESEA requirements. The school shall follow the district Federal ESEA Choice Program. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts and mathematics assessments.

7.1.2 Under Improvement Year 2, Aa school shall continue to review and modify the School

Improvement Plan as needed. A school designated as Title I shall ~~continue to~~ offer federal ESEA Choice. In addition a Title I school shall provide supplemental services according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading and language arts ~~and/or~~ and mathematics assessments.

7.1.3 Under Improvement Year 3, Aa school shall continue with the activities as per 7.1.2. In addition, all schools shall be subject to corrective action as outlined by federal ESEA requirements.

7.1.4 Under Improvement Year 4, Aa school shall continue with the activities as per 7.1.3. In addition, the school shall develop a plan for restructuring as outlined by federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the school's performance and shall consult with the State Board of Education prior to making comment.

7.1.5 Under Improvement Year 5, Aa school shall continue with the activities as per 7.1.2. In addition, the school shall implement the restructuring plan as outlined by federal ESEA requirements.

7.2 Accountability sanctions for districts that are classified as Under Improvement:

7.2.1 Under Improvement Year 1, Aa district shall develop and implement a District Improvement Plan.

7.2.2 Under Improvement Year 2, Aa district shall evaluate and modify the District Improvement Plan and shall incorporate such plan into the Consolidated Application.

7.2.3 Under Improvement Year 3, Aa district shall continue with the activities outlined in 7.2.2. In addition the district shall develop a corrective action plan as outlined by Federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the district's performance and shall consult with the State Board of Education prior to making comment.

7.2.4 Under Improvement Year 4, Aa district shall continue with the activities as outlined in 7.2.3. In addition the district and the Department of Education shall evaluate the corrective action plan and make appropriate modifications as needed.

7 DE Reg. 1692 (6/1/2004)

8.0 Review Process

A school or district may review school or district level data, including academic assessment data upon which the proposed classification is based. The school or district shall present statistical evidence or other substantive reasons why the classification should be changed before the final classification will be determined.

8.1 The school or district must file a written notice of review with the Secretary no later than 15 calendar days after receiving preliminary notification of its proposed classification. The request for review shall state with specificity the grounds for the review, and shall be signed by the principal or lead authority of the school, or the signature of the Superintendent of the district. This request for review shall include all supporting evidence and documentation and shall be clear and concise.

8.2 Upon receipt of a written notice of review, the Department of Education shall conduct a review of the evidence or other substantive reasons presented by the school or district.

8.3 The Department of Education shall make a final determination within 30 calendar days from the written notice of review on the proposed classification of the school or district based on the evidence or other substantive reasons presented by the school or district.

7 DE Reg. 1692 (6/1/2004)

PROPOSED REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, §512 (31 **Del.C.**, §512)**PUBLIC NOTICE****Financial Eligibility and Self-Employment Income**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance is proposing to amend several policies in the Division of Social Services Manual (DSSM) to comply with the CMS-approved Medicaid state plan amendment regarding the use of a self-employment standard deduction to determine eligibility.

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 Sharon L. Summers, Policy, Program and Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by May 31, 2006.

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

Summary of Proposed Changes**Citation**

Section 1902(r)(2) of the Social Security Act, *State Plans for Medical Assistance*

Amending the Following Sections

Division of Social Services Manual (DSSM): DSSM 15120.2, 16230.1.2, 17300.3.2.4.1 and 20210.16.

Summary of Proposed Changes

The proposed rule will amend existing rules to allow actual self-employment expenses to be used when the application of the self-employment standard deduction results in a finding of ineligibility.

Financial Eligibility and Self-Employment Income**DMMA PROPOSED REGULATIONS #06-16****REVISIONS:****15120.2 Financial Eligibility**

TANF rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard

allowance for work connected expenses is subtracted.

The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30 plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the \$30 plus 1/3 disregard has been applied for four (4) consecutive months, the 1/3 disregard is removed from the budget. The \$30 disregard continues to be deducted from earned income for eight (8) consecutive months. The \$30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reapplies, the \$30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the \$30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the \$30 disregard is for a specific time period. This time period begins when the \$30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received Medicaid under Section 1931 for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

All earned income is disregarded for 12 months after employment causes ineligibility.

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the gross income test (185% of the applicable standard of need). Standard earned income deductions are then applied to the self-employment income for the net income test (the applicable standard of need).

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

When the application of the standard deduction results in a finding of ineligibility, the applicant or recipient will be given an opportunity to show that actual self-employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self-employment.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

9 DE Reg. 564 (10/01/05)

(Break in Continuity of Sections)

16230.1.2 Self-Employment Income

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the individual's gross income. Standard earned income deductions are then applied to the individual's gross income.

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

9 DE Reg. 564 (10/01/05)

When the application of the standard deduction results in a finding of ineligibility, the applicant or recipient will be given an opportunity to show that actual self-employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self-employment.

(Break in Continuity of Sections)

17300.3.2.4.1 Self-Employment Income

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the individual's gross income. Standard earned income deductions are then applied to the individual's gross income.

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

9 DE Reg. 564 (10/01/05)

When the application of the standard deduction results in a finding of ineligibility, the applicant or recipient will be given an opportunity to show that actual self-employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self-employment.

(Break in Continuity of Sections)

20210.16 Self-Employment

~~The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.~~

~~The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household. See DSSM 20240.3.~~

~~The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify it has business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all its business costs to receive the standard deduction.~~

~~Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.~~

~~The self-employment standard deduction will be reviewed annually to determine if an adjustment in the percentage amount is needed.~~

9 DE Reg. 564 (10/01/05)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, §512 (31 **Del.C.**, §512)

PUBLIC NOTICE

Long Term Care Medicaid

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance to close a potential loophole in excluded resources.

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 Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by May 31, 2006.

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

Summary of Proposed Changes**Statutory Authority**

Social Security Administration Program Operations Manual System (POMS) - POMS Section SI 01130.300, *Life Insurance*

Summary of Proposed Changes

DSSM 20310.7.2: The Deficit Reduction Act of 2005 attempts to close loopholes in the Long Term Care Medicaid Program. Currently, Term Life Insurance, regardless of the amount of the face value, is excluded as a resource for applicants applying for Long Term Care Medicaid. It is a potential pathway by which resources could be placed in order to shelter assets. This allows individuals to become eligible for Long Term Care sooner. DMMA proposes that the State of Delaware become the beneficiary in the first position on all Term Life Insurance policies over \$10,000.00 in face value. Should there be other burial resources, then there will be no \$10,000.00 allowance.

Long Term Care Medicaid**DMMA PROPOSED REGULATIONS #06-15****REVISIONS:****20310 Resource Exclusions****20310.1 Place of Residence/Real Property**

An applicant/recipient's principal place of residence and any land that adjoins is excluded if certain conditions are met.

20310.1.1 Intent to Return

The principal place of residence may be excluded if the individual intends to return home after any length of time.

Temporary Institutionalization - If the attending physician has certified that a recipient is likely to return to his own home within a definite period (not to exceed 2 months) up to \$75.00 per month may be protected for maintenance of the home.

20310.1.2 Spouse and/or Dependent Relative

If the applicant/recipient's home is used by a spouse and/or dependent relative during the individual's absence it may be excluded.

20310.2 Jointly Owned Real Property

Jointly owned real property may be excluded if the sale would cause undue hardship, due to loss of housing, to a co-owner.

20310.3 Attempts to Sell

Real property may be excluded when an individual has made reasonable but unsuccessful efforts to sell throughout a 9-month period of conditional benefits, as long as the individual continues to make reasonable efforts to sell it. (See DSSM 20360)

20310.4 Indian Lands

Any lands that are restricted allotted Indian lands are excluded.

20310.5 Automobiles

One automobile, regardless of value, if, for the individual or a member of the individual's household (member of a household is one who receives food, clothing and shelter at the applicant's residence at time of

institutionalization) if it fits the exclusions listed in Sections 20310.5.1 -20310.5.4.

20310.5.1 Employment

The automobile is excluded if necessary for employment.

20310.5.2 Medical Use

If the automobile is necessary for the medical treatment of a specific or regular medical problem, it may be excluded.

20310.5.3 Modifications

An exclusion may be used if the vehicle is modified for operation by or transportation of a disabled person.

20310.5.4 Essential Daily Activities

The automobile may be excluded if it is necessary because of climate, terrain, distance, or similar factors to provide necessary transportation to perform essential daily activities.

20310.6 Joint Ownership

If the automobile is jointly owned and if a co-owner refuses to sell it may be excluded.

20310.7 Life Insurance

20310.7.1 Face Value

20310.7.2 Death Benefits

20310.7.1 Face Value

Life insurance is excluded if the total face value of the policies is \$1500 or less and the individual has no revocable designated burial funds.

(See Section 20340.1.3 Relation to Burial Allowance for the relationship between life insurance and the burial allowance)

20310.7.2 Death Benefits

The face value of term or death benefit only policies that do not generate a cash surrender value and burial insurance policies are excluded for eligibility. Term, death benefit policies or burial insurance with a face value equal to or greater than \$10,000.00 must designate the State of Delaware as the beneficiary in the first position. The State will retain the amount no greater than the Medicaid expenditures. In situations where there are other burial funds available to cover the burial expenses, there will be no \$10,000.00 allowance. Naming the State of Delaware as the Beneficiary is a condition of eligibility.

20310.8 Burial Exclusions

20310.8.1 Designated Burial Funds

20310.8.2 Burial Spaces for Relatives

20310.8.3 Burial Space Items

20310.8.4 Burial Site Services

20310.8.5 Prepaid Burial Contract

20310.8.1 Designated Burial Funds

Burial funds in the amount of \$1500 that are separately identifiable and are clearly designated for burial expenses will be excluded.

20310.8.2 Burial Spaces for Relatives

A burial space or burial space item is excluded if held for the burial of the applicant/recipient, his/her spouse, or any other member of his/her immediate family. Immediate family includes parents, adoptive parents, minor or adult children (including adoptive and stepchildren) siblings (including adoptive and step) and the spouses of these relatives. If the relative's relationship to the recipient is by marriage only, the marriage must be in effect in order for the burial space exclusion to continue to apply. For example, a burial space held for a sister-in-law is no longer excludable if she and the recipient's brother divorce.

20310.8.3 Burial Space Items

A burial plot, gravesite, crypt, mausoleum, urn, niche, or other repository customarily and traditionally used for the deceased's bodily remains, vaults, headstones, markers, or plaques if pre-paid are excluded.

20310.8.4 Burial Site Services

The opening and closing of the gravesite and the care and maintenance of the gravesite if prepaid are excluded.

20310.8.5 Prepaid Burial Contract

A prepaid burial contract (sometimes funded by a life insurance policy) that cannot be revoked and cannot be sold without significant hardship is excluded.

20310.9 Retroactive Social Security Administration Lump Sum

The unspent portion of retroactive SSI and Title II Retirement, Survivors, and Disability insurance (RSDI) benefits is excluded from resources for the six calendar months following the month of receipt.

20310.10 Reparations

German Reparation payments must not be considered available in the eligibility or post eligibility treatment of income and resources. They can no longer be applied toward the personal needs allowance, community spouse income allowance, family member allowance nor cost of care. If German reparations payments are retained beyond the month of receipt, they must be considered exempt resources whether received while the person was in the community or after becoming institutionalized. These funds should be kept separate from other income and resources. Interest earned on these resources must be considered available income.

9 DE Reg. 239 (8/1/05)

20310.11 Disaster Assistance Funds

Any unspent Federal disaster assistance funds are excluded for 9 to 18 months.

20310.12 Agent Orange Payments

Any unspent Agent Orange settlement payments are excluded.

20310.13 Victims Compensation Payments

Victims compensation payments from a State established fund are excluded from resources for a period of 9 months after the month of receipt.

20310.14 Radiation Exposure Compensation

Any unspent Radiation Exposure Compensation Trust Fund Payments are excluded.

20310.15 Unspent Cash for Medical or Social Services

The unspent cash paid to an individual to help the individual pay for a medical or social service is not a resource for 1 full calendar month following the month of receipt.

20310.16 Netherlands' Act for Victims of Persecution

Any unspent payments from the Netherlands' Act on Benefits for Victims of Persecution 1940-1945 (WUV) are excluded.

20310.17 Earned Income Tax Credit

EITC (Earned Income Tax Credit) payments are excluded from resources in the month following the month of receipt.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WATER RESOURCES**

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

PUBLIC NOTICE**7402 Shellfish Sanitation Regulations****1. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

Regulations establishing the basis for classifying waters as to the suitability of the shellfish therein for human consumption, and sanitation during harvest, transportation, and processing of shellfish (molluscan bivalves), as per Interstate Shellfish Sanitation Conference (ISSC) specifications, as administered under the auspices of the U.S. Food and Drug Administration. The proposed changes would open up more shellfish waters to shellfish harvesting, establish an additional shellfish water classification definition, allowing the possibility of additional Approved shellfish harvest waters, and revising references in the Regulations for consistency with the latest iteration of ISSC specifications and protocols. The latter action primarily entails shellfish processing plant sanitation, and is taken under advice from FDA.

2. POSSIBLE TERMS OF THE AGENCY ACTION:

Increase harvest access to Delaware shellfish resources, particularly oysters, and bring the current 15 year-old iteration of the Regulations into consistency with National / International (current ISSC) standards.

3. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 19

4. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None.

5. NOTICE OF PUBLIC COMMENT:

Notice of proposed changes and notice of public workshop have been sent to Rick Cole and Jim Graybeal, Division of Fish and Wildlife, to all licensed Delaware shellfish harvesters, and to all Delaware shellfish dealer/processors on the Interstate Certified Shellfish Shipper's List. A public workshop was held on 3/31/06 at the R. & R. Auditorium. No one from the public showed up.

6. PREPARED BY:

Jack Pingree (302) 672-1164, April 17, 2006

7402 Shellfish Sanitation Regulations**1.0 Introduction**

International standards for shellfish (molluscan bivalves only) growing area water quality, as well as shellfish growing, harvesting, handling, and processing, are maintained by the Interstate Shellfish Sanitation Conference (ISSC), administrative body of the National Shellfish Sanitation Program (NSSP). Adherence to these standards is a voluntary, cooperative effort by NSSP member states and foreign countries. Member states and countries allow shipment of shellfish into their jurisdictions only from other member states and countries that adhere to ISSC standards and practices. Delaware is an ISSC member, along with 27 other states, the District of Columbia, and nine foreign countries. The NSSP evolved from public health principles and program controls formulated at the original conference on shellfish sanitation called by the Surgeon General of the United States Public Health Service in 1925. Adherence to ISSC standards is administered under the auspices of the U.S. Food and Drug Administration.

The purpose of these Regulations is to ensure that the shellfish harvested for any purpose from Delaware waters, and shellfish shipped to Delaware from beyond its borders, are fit for human consumption - to *protect the public health and safety*. This "*strategic theme*" of Delaware's Shellfish Program is proscribed in the *Environmental Partnership Agreement between Delaware's Department of Natural Resources and Environmental Control and the U.S. Environmental Protection Agency, Region III*. Under this Agreement, key environmental problems and priorities are identified, and key goals established to address them. By protecting the health and safety of shellfish consumers, these Regulations also serve to promote and enhance Delaware's multi-million-dollar shellfish industry, protect the interests of recreational shellfish harvesters, keep as much shellfish ground open to harvesting as environmental conditions allow, and to broadly advocate clean water.

~~Our charge is not easy on the eve of the 21st Century. We humans can not engineer our way out of environmental problems forever. Our success may ultimately be our downfall — almost six billion of us, and counting. Human population pressures overwhelm many environmental gains we have made, such as waste water treatment, and create the need for ever increasing, intrusive, and unpopular environmental management strategies and regulations. Population pressures increase the demand for outdoor recreational opportunities, which are dependent on clean water, clean air, a properly planned landscape, complete with open space, and of course, shellfish to harvest. However, these same population pressures can compromise the very environmental quality needed to satisfy the demand. This represents a quandary for environmental resource managers. As an example, in just four years in the 1990s the hard clam resource off of Cape Henlopen State Park was nearly depleted. On the eve of the 21st Century, let us all work together for a good quality of life here in Delaware, which has always, and must always include shellfish harvesting, both as a recreational opportunity, and a traditional Delaware industry.~~

~~As with almost any food, there is a risk associated with the consumption of raw shellfish. This risk is statistically negligible. However, it is recommended that raw shellfish not be consumed by the very young, very old, those with low stomach acid, liver disease, those with immune system deficiencies, or those with any severe infirmity.~~

Consumer Warning: Certain people may be at risk of serious illness or death as a result of consuming raw molluscan shellfish, including those with liver disease (from hepatitis, cirrhosis, alcoholism, or cancer), Iron Overload Disease (hemochromatosis), diabetes, those with stomach disorders, including; but not limited to those with low stomach acid, those with immune system disorders, or those with any illness or medical treatment that weakens the body's immune system. Physicians recommend that those at risk not eat any clams, mussels, oysters, or scallops, and furthermore recommend that shellfish, if consumed by the at-risk population, be thoroughly cooked.

2.0 Definitions

NOTE: Those definitions primarily relating to the "Policy To Determine Shellfish Growing Area Classification In And Around Wet Slip Basins And Artificial Lagoons" are contained in ~~Appendix 10~~ Appendix 11.

Approved HACCP Plan (see HACCP): An operational plan mandated by Federal law, effective as of December 18, 1997, and defined in the Federal Register in the "Procedures For the Safe and Sanitary Processing

and Importation Of Fish and Fishery Products; Final Rule." which includes Part 123: "Fish and Fishery Products Hazards and Controls Guide," and which is approved by DNREC.

Approved HACCP Training Course: A course approved by DNREC in the instruction of HACCP concepts and operational specifications, mandated by Federal law, effective as of December 18, 1997, and defined in the Federal Register in the "Procedures For the Safe and Sanitary Processing and Importation Of Fish and Fishery Products; Final Rule." which includes Part 123: "Fish and Fishery Products Hazards and Controls Guide."

Approved Depuration Process: The process of reducing bacteria and virus levels to acceptable levels in live shellfish by subjecting them to a strictly controlled aquatic environment, as performed only by a certified depuration processor.

Approved Relaying Operation: The harvesting of shellfish from waters classified as other-than-Approved; however not Prohibited, and their subsequent transference to natural bottom, or in approved containers, to Approved shellfish growing areas; however only with written permission of DNREC.

Approved Source of Shellfish: Shellfish meeting all criteria in these Regulations, including the following:

- Shellfish which have been handled by certified interstate Shellfish Dealer/Processors whose names appear on the *Interstate Shellfish Shippers Certified List*;² OR shellfish harvested from Delaware waters which have been handled by certified Delaware Intrastate Shellfish Dealer/Processors, and which are available for retail sale to the final customer only in Delaware.¹
- Shellfish from Approved waters; OR shellfish from waters classified as other-than-Approved when shellfish harvesting is allowed on a seasonal/conditional basis; OR shellfish subjected to an approved depuration or relay process.

Back Flow/Back Siphonage: Water intended as a potable source; however carrying, or potentially carrying poisonous and/or deleterious substances, because this water flows in the opposite direction of the intended flow due to negative pressure in the potable water supply system.

Business: A shellfish-related business, entity, person, or persons.

Buy Boat/Buy Truck: A boat/truck which is used for the purchasing/shipment of shellfish in the capacity of a certified shellfish dealer/processor.

Certification: The issuance of a numbered license or permit to operate as an intrastate or interstate shellfish dealer/processor.

Certification Number: A number assigned to each certified shellfish dealer/processor by DNREC. The number shall be preceded by the letters "DE" to indicate Delaware, and followed by a two letter symbols designating the type of operation.

Certified Shellfish Dealer/Processor: A person, persons, or business (including buildings, trucks, boats, and other equipment) which engage in one or more of the following: the sale, shucking, packing, repacking, shipping, reshipping, depurating, freezing, or other handling of shellfish on an interstate and/or intrastate basis, as follows:

- **Interstate Shellfish Dealer/Processor:** A certified shellfish dealer/processor permitted to engage in the shellfish trade across state and international borders.
- **Intrastate Shellfish Dealer/Processor:** A certified shellfish dealer/processor permitted to engage in the shellfish trade only within Delaware. This certification is not recognized outside of Delaware.

Commingling: The act of combining different lots of shucked or unshucked shellfish.

Cross Connection: A potable water supply line constructed to allow either back siphonage, or the attachment of a supply line extension which would allow back siphonage.

DNREC: The Delaware Department of Natural Resources and Environmental Control.

1. Sales made to the final consumer are not required to be made by certified shellfish dealer/processors. However, all shellfish must at some time be handled by a certified shellfish dealer/processor prior to sale to the final consumer.

Depuration Plant: A plant certified by the State Shellfish Control Authority as a depuration processor.

Depuration Processor (DP): ~~A shellfish dealer/processor which receives or harvests shellstock from approved sources; or shellfish from waters classified as other than Approved, and which subjects this shellfish to an approved depuration process thereby rendering the shellfish as approved and fit for human consumption; however, only as approved by DNREC.~~ A shellfish dealer/processor which receives or harvests shellstock from approved sources; OR shellfish from waters classified as Seasonally Approved, Conditionally Approved, or Restricted, and which subjects this shellfish to an approved depuration process thereby rendering the shellfish as approved and fit for human consumption; however only as approved by DNREC.

Depuration Process Specifications: The controlled conditions (physical and operational specifications) by which shellfish are subjected to a strictly controlled aquatic environment as a means of reducing the levels of bacteria and viruses in live shellfish to acceptable levels, as approved by DNREC.

Depuration Unit: A tank, trough, or similar vessel in which live shellfish are stored temporarily, and subjected to depuration.

Dry storage: The storage of shellstock out of water.

EPA: The United States Environmental Protection Agency.

FDA: The United States Food and Drug Administration.

Food Contact Surface: Those surfaces of equipment and utensils which normally come in contact with food, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.

Food-Product Zone: The parts of food equipment, including ancillary structures, such as blower pipes and drain valves, which may contact the food being processed, or may drain into the portion of equipment with which food is in contact.

HACCP (Hazard Analysis Critical Control Points): A method of conducting sanitation assessments of shellfish/seafood dealer/processors, mandated by Federal law, effective as of December 18, 1997, and defined in the Federal Register as the "Procedures For the Safe and Sanitary Processing and Importation Of Fish and Fishery Products; Final Rule." which includes Part 123: "Fish and Fishery Products Hazards and Controls Guide."

Harvester Tag: A tag required to be affixed by a commercial shellfish harvester to an individual unit of shellfish, and meeting specifications contained in Appendix-10.

Harvest Lot: Shellfish harvested from one shellfish growing area during a single harvesting operation by a single shellfish harvester (for example: a harvester's daily take from a single growing area).

Internal Temperature: The actual temperature of shucked shellfish in the container (not necessarily the air temperature of the refrigerator in which the product may be stored).

Intrastate Shellfish Retailer: A shellfish dealer/processor which sells shellfish only in Delaware.

Marine Head: A toilet or other human waste catchment device with retention and/or discharge capability. A marine head may or may not be an MSD. MSD is the term for a Coast Guard approved marine head. See Appendix-11 for a more detailed definition.

National Shellfish Sanitation Program (NSSP): The cooperative State-FDA-Industry Program for certification of foreign and domestic interstate shellfish dealer/processors as described in the ~~NSSP manual of Operations, Parts I & II~~ "NSSP Model Ordinance."

Person: A person as defined in Title 1, Chapter 3, Section 302, **Delaware Annotated Code.**

Poisonous or Deleterious Substance: A toxic compound occurring naturally, or which is artificially introduced.

Polluted Waters: Waters which contain human pathogenic organisms and/or indicator organisms and/or other poisonous/deleterious substances at actual or theoretical levels which are determined to render the shellfish growing in the waters unfit for human consumption.

Process Lot: A harvest lot or lots from the same shellfish growing area which are subject to processing.

Process Water: The water in depuration tanks when shellfish are present.

Relay Lot: All shellfish harvested from a single shellfish growing area and transported to another shellfish growing area for natural biological purification.

Relay Operator: A person/business permitted/certified to engage in relaying.

Repacker (RP): A shellfish dealer/processor, other than the original certified shucker-packer, which

repacks and ships shucked shellfish into containers other than the original container.

Sanitary Survey: The collection of valid dilution formula loading factors, all elements of a wet slip basin classification survey, and the evaluation of all other actual and potential pollution sources and environmental factors having a bearing on shellfish growing area water quality.

Sewage: Human body wastes and/or other wastes from toilets and other receptacles intended to receive and discharge and/or retain such wastes.

Shellfish: All edible species of oysters, clams, mussels and scallops* either shucked or in the shell, fresh or frozen, whole or in part. The term "shellfish" may be used interchangeably with "shellstock" unless otherwise specified in these Regulations. Some of the common bivalves included in this definition are:

Common Name	Scientific Name
Cockle	<i>Clinocardium nuttalli</i> <i>Cardium corbis</i> (Pacific)
Geoduck	<i>Panope generosa</i>
Freshwater clam	<i>Rangia cuneata</i>
Soft shell clam	<i>Mya arenaria</i>
Hard or quahog clam	<i>Mercenaria mercenaria</i> <i>Mercenaria campechiensis</i>
Surf clam	<i>Spisula solidissima</i>
Mahogany clam or Ocean quahog	<i>Arctica islandica</i>
Gaper or Horse clam	<i>Tresus nuttalli</i> <i>Tresus capax</i>
Razor clam	<i>Solen resaceus</i> <i>Ensis directus</i> (Atlantic) <i>Solen viridis</i> <i>Tagelus plebeius</i> <i>Siliqua patula</i> (Pacific)
Bent-nose clam	<i>Macoma nasuta</i>
Pismo clam	<i>Tivela stultorum</i>
Butter clam	<i>Saxidomus giganteus</i>
Calico clam	<i>Macrocallista maculata</i>
Sunray venus	<i>Macrocallista nimbose</i>
Pacific littleneck clam	<i>Protothaca tenerrima</i> <i>Protothaca staminea</i>
Manilla clam	<i>Tapes semidecussata</i>
Pacific (Japanese) oyster	<i>Crassostrea gigas</i>
Eastern oyster	<i>Crassostrea virginica</i>
Olympia or yaquina oyster	<i>Ostrea lurida</i>
European oyster	<i>Ostrea edulis</i>
Blue or bay mussel	<i>Mytilus edulis</i>
Ribbed mussel	<i>Geukensia demissa</i>
California sea mussel	<i>Mytilus californianus</i>
Green lipped mussel	<i>Perna canaliculus</i>

*Scallops are excluded if the final product is the shucked adductor muscle only.

Shellfish Growing Areas (Waters): Naturally-occurring subaqueous or intertidal areas which support or could support live shellfish.

Shellfish Growing Area Classification: A designation which reflects the suitability of an area for shellfish harvesting relating to the fitness of the shellfish therein for human consumption. The following are the classifications that Delaware may use:

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- **Approved" Shellfish Growing Area:** An area approved for the harvesting of shellfish for any human food purposes with no seasonal restrictions or conditions.
- **Seasonally Approved" Shellfish Growing Area:** An area where the harvesting of shellfish is allowed conditionally, as per a specified season.
- **Conditionally Approved" Shellfish Growing Area:** An area where the harvesting of shellfish is allowed based on one or more specified conditions.
- **Prohibited" Shellfish Growing Area:** An area where the taking of shellfish is prohibited, except for scientific research purposes with written permission of DNREC.

Shellfish Handling: Any manual, mechanical, chemical manipulation or alteration of shellfish relating to its growing, harvesting, buying, treating, packing, selling, shipping, or other processing.

Shellfish Handler: Any person, persons, or business engaged in the growing, harvesting, buying, treating, packing, selling, shipping or other processing of shellfish.

Shellfish Harvester (Catcher, Taker, Tonger, etc.): A person who removes shellfish from any waters by any means for any purpose.

Shellfish Harvesting (Catching, Taking, Tonging, Raking, etc.): The removal of shellfish by any means from a shellfish growing area for any purpose.

Shellfish Processing: The process undertaken when shellfish are shipped, reshipped, shucked, frozen, packed, repacked, depurated, or otherwise handled.

Shellstock: Shellfish in the shell.

Shellstock-Shipper (SS): A shellfish dealer/processor which grows, and/or harvests, and/or buys, and sells/ships shellstock.

Shellstock Shipper Tag: A tag required to be affixed by a shellstock shipper, repacker, or shucker-packer, to an individual unit of shellfish (as defined in these Regulations), and meeting specifications contained in Appendix 10.

Shucked Shellfish: Shellfish, whole or in part, from which one or both shells have been removed.

Shucker-Packer (SP): A shellfish dealer/processor which shucks and packs shellfish, and may also act as a SS or RS.

State Shellfish Control Authority (SSCA): The State agency or agencies having legal authority to classify shellfish growing areas and issue permits for the interstate shipment of shellfish in accordance with the provisions of the ~~NSSP Manual of Operations, Parts I and II~~ "NSSP Model Ordinance." Foreign shellfish control authorities having effective agreements with the FDA are considered State Shellfish Control Authorities for the purposes of these Regulations. DNREC is the State Shellfish Control Authority for Delaware.

Transaction Record: Forms used to document each purchase or sale of shellfish at the wholesale level.

Wet Storage: The temporary storage of shellfish intended for marketing in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

Wet Slip: A place in the water where a boat may be docked or otherwise moored to a fixed or floating structure, including but not limited to a dock, pier, mooring or anchorage.

Wet Slip Basin: A natural waterway and/or artificial lagoon and/or demarcated portions thereof containing more than ten wet slips.

3.0 General Regulations, Water Quality and Classification, Harvesting, Tracking, Permitting, Handling and Shipping:

3.1 General Regulation Specifications:

3.1.1 DNREC Authority: These Regulations are adopted under authority of Title 7 of the **Delaware Annotated Code**. These Regulations shall be applied and enforced by DNREC in accordance with the specifications contained herein, and based on the interpretation of satisfactory compliance contained in the latest editions of the ~~NSSP Manual of Operations, Parts I and II~~ "NSSP Model Ordinance." Any person who neglects or fails to comply with any provision of these Regulations shall be subject to penalty.

3.1.1.1 These Regulations shall supersede and replace the Regulations Governing the Production, Handling, Processing, Transportation, and Sale Of Shellfish, and shall apply throughout the State of

Delaware.

3.1.2 Unconstitutionality Clause: Should any section, paragraph, sentence, clause, or phrase of these regulations be declared unconstitutional or invalid for any reason the remainder of said regulations shall not be affected thereby.

3.1.3 Seizure of Shellfish: Shellfish which are determined to be adulterated, or which can not be identified as to source or place or origin, shall be seized, confiscated, and destroyed by DNREC. DNREC shall possess the authority to seize, confiscate, and destroy shellfish in the event of significant non-compliance with these regulations which could result in an eminent health hazard, as determined by DNREC.

3.1.4 Certification/Permitting/Sanitary Control: Not all persons/businesses handling shellfish shall necessarily be required to be permitted/certified by DNREC. However, persons/businesses which handle shellfish shall be permitted/certified by DNREC as per these regulations; and all persons or businesses which handle shellfish shall be under the sanitary control of DNREC. Certification, permits or written permission shall be non-transferable.

3.1.5 Emergency Closure of Shellfish Growing Areas: Emergency closure of shellfish growing areas to shellfish harvesting may be implemented by DNREC in response to the introduction of contaminants into shellfish growing waters, or in response to events which could affect the introduction of contaminants into shellfish growing waters, including; but not limited to: storms, flooding, sewage treatment plant failures, spills, boat wastes, or toxin-producing phytoplankton blooms (see Appendix 8).

3.1.6 HACCP (Hazard Analysis Critical Control Point): HACCP shall take effect on December 18, 1996. DNREC shall regulate under HACCP only those shellfish dealer/processors which are listed in the Interstate Certified Shellfish Shippers List, and which fall under HACCP as defined in Section 123.3 (k) (1) of the Federal law mandating HACCP, as interpreted by DNREC, and shall regulate only the portion or portions of said operation / physical facility which is/are utilized in the receipt, handling, processing, and shipping, of said shellfish, as defined herein.

3.2 Shellfish Growing Area Water Quality, Classification, and Harvesting:

3.2.1 Shellfish Growing Area Water Quality and Classification:

3.2.1.1 DNREC shall determine the size, configuration and classification of shellfish growing areas in Delaware.

3.2.1.2 DNREC shall determine the validity of all information which may have a bearing on the determination of the size, configuration, and classification of shellfish growing areas in Delaware.

3.2.1.3 DNREC shall classify Delaware's shellfish growing areas on the basis of the following:

3.2.1.3.1 Theoretical pollution loading including; but not limited to areas determined to be impacted by wet slip basins, as per the specifications contained in Appendix 11, thereby constituting an administrative closure;

3.2.1.3.2 Sanitary survey data constituting the documented presence of actual and potential point-source and non-point pollution sources; and

3.2.1.3.3 Bacteriological monitoring of shellfish growing waters and/or shellfish tissue (see Appendix 4).

3.2.1.4 Delaware's shellfish growing waters shall be classified as Approved, Prohibited, Seasonally Approved, Conditionally Approved, or Restricted.

3.2.1.5 Conformance with bacteriological shellfish water quality standards shall be based on a geometric average of the most recent 30 samples per sample station.

3.2.1.6 Seasonally Approved and Conditionally Approved shellfish growing areas shall meet the following bacteriological standards on a seasonal and/or conditional basis depending upon the specifications of the classification/condition(s); and Approved shellfish growing areas shall meet the following bacteriological standards at all times:

3.2.1.6.1 Total coliform mean MPN levels in shellfish growing waters shall not exceed 70 per 100 ml and not more than 10% of the samples shall exceed an MPN of 230 per 100 ml for a 5-tube decimal dilution test, or an MPN of 330 per 100 ml for a 3-tube decimal dilution test.

AND/OR

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3.2.1.6.2 Fecal coliform mean MPN levels in shellfish growing waters shall not exceed 14 per 100 ml and not more than 10% of the samples shall exceed an MPN of 43 per 100 ml for a 5-tube decimal dilution test, or an MPN of 49 per 100 ml for a 3-tube decimal dilution test.

3.2.1.7 The standard for the Restricted classification of growing areas for purposes of relay or depuration of the shellfish therein shall be a total coliform mean MPN level in said growing waters of 700 per 100 ml. and not more than 10% of the samples shall exceed an MPN of 3,300 per 100 ml. using a 3-tube decimal dilution test. This standard shall apply, and shall be applied, relating to any and all restrictions based on the effects by point or non-point sources of pollution, and/or other conditions as set forth in the latest edition of the NSSP Model Ordinance.

3.2.2 Shellfish Harvesting and Tagging:

3.2.2.1 Shellfish harvesting shall not be allowed in the following areas:

3.2.2.1.1 Shellfish growing areas classified as Prohibited, unless for scientific research purposes, and only with written permission of DNREC;

3.2.2.1.2 Shellfish growing areas classified as Seasonally Approved or Conditionally Approved in accordance with conditions stipulated in Appendix 3.

3.2.2.1.3 Shellfish growing areas not classified, and for which there are insufficient data supporting a harvest.

3.2.2.2 Shellfish may be harvested from the following areas under the conditions listed herein and/or in the Appendices:

3.2.2.2.1 In shellfish growing areas classified as Approved;

3.2.2.2.2 Shellfish growing areas classified as Seasonally Approved in accordance with conditions stipulated in Appendix 3;

~~B.2.b.iii. Shellfish growing areas not classified; however, for which there are adequate data supporting a harvest at the discretion of DNREC, with written permission by DNREC, and in accordance with conditions applied by DNREC, which includes; but is not limited to subjecting said shellfish to an approved depuration or relaying process.~~

3.2.2.2.3 Shellfish growing areas classified as Restricted.

~~B.2.b.iv Other shellfish growing areas on a case by case basis, and only with written permission by DNREC.~~

3.2.2.3 Harvesters shall place tags on individual units of shellstock, recognizing that individual bags or a bulk landing of shellstock may constitute an individual unit of shellstock. All harvester tags shall meet the requirements specified in Appendix 10.

3.3 Permitting of Shellfish Dealer/Processors:

3.3.1 Permit Issuance Parameters:

3.3.1.1 Applications for permits to operate as shellfish dealer/processers shall be made on permit applications provided by DNREC. The following shellfish handlers shall be required to be permitted/certified by DNREC in order to engage in the procurement and sale of shellfish:

3.3.1.1.1 All interstate shellfish dealer/processers;

3.3.1.1.2 Intrastate shellfish dealer/processers;

3.3.1.1.3 Shellfish wholesalers;

3.3.1.1.4 Shellfish retailers which procure shellfish from non-certified sources;

3.3.1.1.5 Shellfish harvesters, engaged in:

3.3.1.1.5.1 Selling/shipping shellfish directly to non-certified shellfish retailers or to final consumers;

3.3.1.1.5.2 Owners of "buy boats" and "buy trucks;" and

3.3.1.1.5.3 Harvesting of shellfish for delivery to a depuration plant

and/or for relaying.¹

¹Persons harvesting shellfish from waters classified as other-than-Approved for delivery to a depuration plant and persons engaged in relaying shall submit operational specifications for said activities to DNREC prior to commencing operations, and shall have received a permit or written permission from DNREC to harvest shellfish from waters classified as other-than-Approved prior to commencing such operations. Additional permits may be required by the DNREC Division of Fish and Wildlife.

3.3.1.2 Shellfish retailers shall not be required to be permitted/certified unless shellfish are procured from a non-certified source.¹

3.3.1.3 Shellfish handlers requiring a permit/certification shall not operate until and unless a permit/certification has been issued by DNREC. Such permits shall expire on the 31st day of March of each year. Permits shall not be transferable. No permit will be issued unless an application is made in writing upon forms supplied by DNREC. Prior to the physical and/or operational alteration of an existing facility and/or prior to initial commencement of shellfish processing operations shellfish dealer/processors shall:

3.3.1.3.1 Submit construction and operational specs. to DNREC;

3.3.1.3.2 Receive approval of the plans and operational specifications from DNREC;

3.3.1.3.3 Submit to an inspection of their plant/operation by DNREC; and

3.3.1.3.4 Shall be found to be in satisfactory compliance with these Regulations, at the discretion of DNREC.

3.3.1.4 DNREC shall have the authority to immediately revoke shellfish dealer/processor permits based on the existence of an eminent health hazard and/or significant and/or chronic non-compliance with these Regulations.

3.3.1.4.1 Delaware Shellfish Dealer/Processors shall be considered to be certified only if a current numbered license or permit to operate as an intrastate or interstate shellfish dealer/processor has been issued by DNREC, and the operation is in significant compliance with these regulations, as determined by DNREC.

3.3.2 Permit Specifications and Inspection Frequency:

3.3.2.1 The permits listed below shall be issued as interstate shellfish dealer/processor permits, OR intrastate shellfish dealer/processor permits; EXCEPT intrastate shellfish retailer permits which are issued as intrastate permits only. This includes all wholesalers, which shall also apply to harvesters which engage in the activities defined below and elsewhere in these Regulations:

3.3.2.1.1 Shellstock Shipper (SS) permit: Such permits may be issued to shellfish dealer/processors which ship shellfish. Said shellfish may be grown and/or harvested by the shipper in accordance with these Regulations and/or procured from another source. ~~Shellstock shippers may procure shellfish from uncertified sources (non-certified shellfish harvesters) and may sell shellfish to other certified shellfish dealer/processors in and outside of Delaware and to the final consumer. Shellstock shippers may procure shellfish directly from licensed Delaware shellfish harvesters, and may sell shellfish to other certified shellfish dealer/processors in and outside of Delaware and to the final consumer.~~ Shellstock shippers shall not act as shucker-packers, repackers, or depuration-processors. Minimum Inspection Frequency: Twice/year.

3.3.2.1.2 Shucker-Packer (SP) permits: Such permits may be issued to shellfish dealer/processors which shuck and pack shellfish. Shucker-packers may act as shellstock-shippers and repackers. Shucker-packers shall not act as depuration-processors. Minimum Inspection Frequency: ~~Once/month during season and at least twice/year.~~ Once/month when operating, and at least four times per year, total, unless the facility is open less than four months per year.

3.3.2.1.3 Repackers (RP) permit: Such permits may be issued to shellfish dealer/processors other than the original certified shucker-packer which repack and ship shucked shellfish into

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other containers. Such permit-holders must generally meet more requirements than shellstock-shippers; however, not generally the equipment requirements of a shucker-packer. Repackers may act as shellstock-shippers. Repackers shall not act as shucker-packers or depuration-processors. Minimum Inspection Frequency: ~~Once/month when operating, and at least four times per year, total, unless the facility is open less than four months per year.~~ Once/month when operating, and at least four times per year, total, unless the facility is open less than four months per year.

3.3.2.1.4 Depuration Processor (DP) permit: Such permits shall be issued to shellfish dealer/processors which receive or harvest shellstock from approved sources, or as per criteria listed in the depuration portions of Section IV of these Regulations, and which subjects said shellfish to an approved depuration process, thereby rendering the shellfish as approved and fit for human consumption. A depuration-processor may act as a shellstock-shipper, or repacker. Minimum Inspection Frequency: ~~Once/month when operating, and at least four times per year, total, unless the facility is open less than four months per year.~~ Once/month when operating, and at least four times per year, total, unless the facility is open less than four months per year. twice/year.

3.3.2.1.5 Intrastate Shellfish Retailer permit: Such permits may be issued to persons/businesses located in Delaware, which may include vehicles registered only in Delaware and/or permanent structures from which shellfish are sold only to the final consumer. The intention of this permit is to provide sanitary control of shellfish not necessarily procured from a certified shellfish dealer/processor. Minimum Inspection Frequency: twice/year.

3.4 Shellfish Handling and Shipping Parameters:

3.4.1 Importation/Exportation:

3.4.1.1 Only shellfish from approved sources shall be imported into Delaware.

3.4.1.2 Only shellfish which have been handled by certified interstate shellfish dealer/processors shall be exported from Delaware.

3.4.1.3 Intrastate Delaware shellfish dealer/processors shall not sell/ship shellfish out of Delaware; and shellfish handled by intrastate Delaware shellfish dealer/processors shall not be made available for sale outside of Delaware.

3.4.1.4 Shellfish requiring depuration or relaying shall be sold/shipped only within Delaware to certified depuration-processors, or shall be shipped out of Delaware only under the provisions of interstate memoranda of agreement (MOAs) relating to a specific harvest/depuration or harvest/relaying operation by persons permitted to harvest shellfish under these restrictions, as established in writing by DNREC and the cooperating state. All other handling of shellfish from Prohibited waters and from Seasonally Approved or Conditionally Approved waters when the direct harvest of said shellfish is prohibited by these Regulations is prohibited.

3.4.2 Marketing to the Final Consumer:¹

3.4.2.1 Only shellfish from approved sources shall be sold/transferred in Delaware to the final consumer.

3.4.2.2 Certified interstate and intrastate shellfish dealer/processors may sell/transfer shellfish directly to the final consumer.

3.4.2.3 Certified interstate and intrastate shellfish dealer/processors may sell/transfer shellfish directly to non-certified shellfish retailers.

3.4.3 Sale/Shipping Between Shellfish Dealer/Processors.

3.4.3.1 Certified intrastate shellfish dealer/processors may sell/transfer shellfish to other intrastate shellfish dealer/processors.

3.4.3.2 Certified interstate shellfish dealer/processors may sell/transfer shellfish to other

1. Sales made to the final consumer are not required to be made by certified shellfish dealer/processors. However, all shellfish must at some time be handled by a certified shellfish dealer/processor prior to being sold/transferred to the final consumer.

certified interstate shellfish dealer/processors or to Delaware intrastate shellfish dealer/processors.

3.4.3.3 Certified interstate and intrastate shellfish dealer/processors shall not sell/transfer shellfish to commercial establishments which are in critical or significant violation of these regulations at the discretion of DNREC.

4.0 HACCP and Sanitation: Harvesting, Handling, Processing, Depuration, and Relaying

4.1 HACCP (Hazard Analysis Critical Control Points): All HACCP specifications are contained in Appendix 12 of these Regulations, and consists of the "Fish and Fishery Products Hazards and Controls Guide, and the accompanying "Training Guide."

4.1.1 The HACCP method of doing sanitation assessments shall take effect on December 18, 1997. Until then, all portions of these Regulations shall be in effect. As of December 18, 1997, all portions of these Regulations superseded by HACCP shall no longer be in effect. However, the remainder of these Regulations shall not be affected thereby.

4.1.2 After December 18, 1996, a representative person from each Delaware shellfish dealer/processor businesses/operation, and which shall include only those shellfish dealer/processors which are listed in the Interstate Certified Shellfish Shippers List, and which fall under HACCP as defined in Section 123.3 (k) (1) of the Federal law mandating HACCP, as interpreted by DNREC, shall be required to:

4.1.2.1 Complete an Approved HACCP Training Course; and

4.1.2.2 Develop and implement an Approved HACCP Plan. DNREC may provide guidance in developing this Plan, and may draft the Plan if the person/business is unable for any reason to do so without assistance.

4.2 General Sanitation:

4.2.1 Sanitary Control: All persons/businesses which handle shellfish shall be required to comply with any or all of Section IV of these Regulations.

4.2.2 Sampling: Representatives of DNREC may secure reasonable samples of shellfish for laboratory and sanitary examination.

4.2.3 Adulterated Product: Shellfish shall not be adulterated. Shellfish shall be considered to be adulterated if they contain poisonous or deleterious substances, and/or based on the following criteria:

4.2.3.1 Only processes approved by DNREC may be used in the handling of shellfish.

4.2.3.2 Only shellfish additives approved by DNREC shall be used in shellfish at concentrations approved by DNREC.

~~4.2.3.3 In addition to other labeling and tagging requirements, shellfish shall be labeled with all pertinent information regarding additives used which are over standard detection limits and/or established tolerance levels. In addition to other labeling and tagging requirements, shellfish shall be labeled with all required information regarding additives.~~

4.2.3.4 Shellfish shall meet the bacteriological standards indicated in ~~the applicable appendices~~ Appendices 6 and 7.

4.3 Harvesting of Shellfish:

4.3.1 Harvesting For Depuration Or Relay Purposes: Shellfish may be harvested for depuration or relay purposes from waters classified as other-than-Approved; however not from Prohibited waters, and only with written permission of DNREC. Shellfish containing poisonous or deleterious substances shall meet FDA tolerance levels prior to sale to the final consumer.

4.3.2 Waste Disposal:

4.3.2.1 All buy boats shall have a non-receiving-waters-discharge-capable marine head (Type III without a Y-valve) on board.

4.3.2.2 No body excretions shall be discharged overboard from a boat used in harvesting shellfish, or from "buy" boats while in areas from which shellfish are harvested.

4.3.2.3 No other poisonous or deleterious substance shall be discharged overboard.

4.3.2.4 All shellfish harvest vessels shall have at a minimum a bucket with a tight-fitting lid designated exclusively for retention of bodily excretions.

4.3.3 Shellstock Contact Surfaces:

PROPOSED REGULATIONS

4.3.3.1 Boat decks, storage bins, and other surfaces that contact shellstock shall be constructed of cleanable material(s). Wood which is smooth and cleanable, without cracks and crevices, and is well maintained, shall be considered a suitable shellstock contact surface.

4.3.3.2 Shellstock contact surfaces shall be kept clean with potable water, or with Approved shellfish growing water, and shall be thoroughly cleaned before they contact the shellstock.

NOTE: Shellstock in this case shall mean only live shellfish still in the shell.

4.3.4 Contamination and Temperature Control: NOTE: Shellstock in this case shall mean only live shellfish still in the shell.

4.3.4.1 Dogs, cats or other animals are not permitted on vessels or in vehicles on which shellstock is held.

4.3.4.2 Shellstock shall be covered when ever possible and as soon after harvest as possible to prevent contamination of the shellstock by bird excrement or other contaminants and to reduce exposure to the sun which may cause spoilage.

4.3.4.3 DNREC shall have the authority to require shellfish harvesters to provide adequate temperature controls for shellstock during any phase of handling based on ambient air temperature and time of exposure.

4.3.4.4 Shellstock shall not come in contact with bilge water or any other polluted water. Shellstock shall be stored after harvest in a location that will prevent the shellfish from contacting bilge water or waters classified as other-than-Approved.

4.3.4.5 Shellstock shall be washed reasonably free of bottom sediments and detritus as soon after harvesting as is practical with Approved shellfish growing area water or potable water. The primary responsibility for washing is with the harvester.

4.3.4.6 Sacks or other containers used for storing shellstock shall be clean and fabricated from safe materials. Such sacks/containers shall have only been used for the conveyance of shellfish, and shall not have been used for the conveyance of other food products since their fabrication.

4.3.5 Records: Harvesters shall place tags on individual units of shellstock, recognizing that individual bags or a bulk landing of shellstock may constitute an individual unit of shellstock. All harvester tags shall meet the requirements specified in Appendix 10.

4.4 Post Harvest Handling, Packing, Shipping, and Shucking of Shellfish:

4.4.1 Plant Location/Flooding: Plants in which shellfish are shucked and packed shall be located so they will not be subject to regular flooding. If plant floors become flooded shucking shall be discontinued until after waters have receded, and the building is cleaned.

4.4.2 Plant Arrangement:

4.4.2.1 The handling of shellfish shall be separated by time and/or distance/partitions from other operations which could cause contamination of the shellfish.

~~D.2.b. Shucking and packing operations shall be conducted in separate rooms.~~

~~D.2.c. A shucked stock delivery window shall be installed in the partition between the two rooms.~~

4.4.2.2 Packing rooms shall be of sufficient size to permit sanitary handling of the product, and thorough cleaning.

4.4.2.3 A separate room, rooms, or lockers shall be provided for storing employees' street clothing, aprons, gloves, and personal articles.

4.4.2.4 Plants/trucks/conveyances shall be used in a manner which is consistent with plant arrangement requirements, and which provide sanitary protection of the shellfish.

4.4.3 Vectors:

4.4.3.1 Plants/trucks/conveyances shall be constructed so that reasonable barriers to entry are provided for insects, rodents, and other vermin.

4.4.3.2 Extermination efforts shall be required when deemed necessary.

4.4.3.3 Plant premises shall be maintained so that no undue harborage or food is provided for vermin.

4.4.3.4 No domestic animals or fowl shall be permitted in the interior of shellfish

processing plants, except guard dogs may be allowed in non-processing portions of plants with no further restrictions, and may be allowed in processing portions of the plant interior when plants are not in use unless the dog's behavior results in chronic unsanitary conditions.

4.4.4 Non-Food Contact Surfaces:

4.4.4.1 Truck floors, storage bins, and other surfaces that contact shellstock shall be constructed of cleanable material(s), shall be kept clean with potable water or Approved shellfish growing water, and shall be thoroughly cleaned before they contact the shellstock.

4.4.4.2 Hardwood in good condition, and smooth and cleanable, shall be considered a suitable shellstock contact surface. NOTE: Shellstock in this case shall mean live shellfish still in the shell.

4.4.4.3 Floors shall be constructed of concrete or other material reasonably impervious to water, shall be graded to drain quickly, shall be free from cracks and uneven surfaces that interfere with proper cleaning or drainage, shall be maintained in good condition, and shall be kept clean.

4.4.4.4 Interior surfaces, including walls, ceilings, refrigeration units, and attached equipment in rooms where shellfish are shucked, packed, or stored, or in which utensils are washed or stored, shall be smooth, washable, light-colored, shall be maintained in good condition, and shall be kept clean.

4.4.4.5 Blow tank air intake filters shall be constructed from approved materials.

4.4.4.6 Surfaces of stands or stalls shall be smooth and cleanable.

4.4.5 General Sanitation:

4.4.5.1 Premises shall be kept clean and free of litter and rubbish. Adequate, covered refuse containers shall be provided throughout the plant. Miscellaneous and unused equipment and articles which are not necessary to plant operations shall not be stored in rooms used for shellstock storage, shucking, packing, or repacking.

4.4.5.2 In addition to being maintained in a generally sanitary condition, non-food contact surfaces, including shucking stools, floors, walls, ceilings, and attached equipment in the shellstock storage rooms, packing, and shucking rooms, shall be cleaned as soon as is practicable after the day's operations have ceased.

4.4.5.3 Adequate cleaning equipment and solutions shall be provided, used, and stored properly.

4.4.5.4 Signs shall be posted in toilet rooms and/or near hand sinks directing employees to wash their hands before starting work and after each interruption.

4.4.5.5 Covered refuse containers shall be provided at each hand sink. Soap and paper towels shall be provided at each hand sink.

4.4.5.6 Windows and skylights (inside and outside surfaces) shall be maintained, and kept in a clean condition.

4.4.6 Lighting: Ample natural and/or artificial light shall be provided in all working and storage rooms. Artificial lighting fixtures shall be shielded.

4.4.7 Heating, Cooling and Ventilation: Working rooms shall be ventilated, and shall be heated or cooled when necessary to prevent condensation.

4.4.8 Water Supply: All Shucker-Packers, Repackers, and Depuration Processors shall have an adequate potable water supply. Shellstock Shippers shall have a potable water supply or access to Approved shellfish growing waters.

4.4.9 Plumbing and Related Facilities:

4.4.9.1 Plumbing shall be installed in compliance with all the *BOCA Southern Plumbing Code* and local plumbing codes.

4.4.9.2 Toilets shall be easily accessible.

4.4.9.3 Sinks with cold running water, and hot running water of at least 100 Degrees-F, shall be provided for employee use after using the lavatory, and shall be located so they are subject to observation by plant personnel responsible for this task.

4.4.9.4 All toilets, toilet rooms, and outhouses, and all surfaces therein, shall be constructed of smooth and cleanable materials, and shall have toilet paper.

4.4.9.5 All toilet rooms and outhouses shall be vented to the outside.

4.4.9.6 A three compartment sink with hot and cold running water available at each

compartment shall be provided on the premises for the purpose of washing, rinsing, and sanitizing equipment which contacts the shellfish, such as knives and shucking buckets.

4.4.9.7 At least one hand sink with hot and cold running water shall be provided in the packing room, and one provided in the shucking room.

4.4.10 Sewage Disposal: Sewage shall be discharged in accordance with the DNREC "Regulations Governing the Design, Installation and Operation of On-Site Waste water Treatment and Disposal Systems." Sewage disposal facilities shall be so constructed and maintained that wastes will be inaccessible to flies.

4.4.11 Food Contact Surfaces:

4.4.11.1 Materials and Construction:

4.4.11.1.1 The tops of shucking benches and tables, and contiguous walls to a height of at least 2 feet above the bench top, shall be of smooth concrete, corrosion-resistant metal, or other durable, non-absorbent material, free from cracks, and so constructed that drainage is complete and rapid, and is directed away from the stored shellfish.

4.4.11.1.2 Equipment and conveyances shall be constructed so shucked shellfish do not become entangled and/or hung up on the equipment during processing operations.

4.4.11.1.3 Shucking blocks shall be smooth and cleanable. Wooden blocks are allowed if smooth and cleanable, and are of solid, one-piece construction, and are easily removable. Shucking blocks of lead and other toxic materials are prohibited.

4.4.11.1.4 Food contact surfaces of refrigeration units, utensils, and other equipment, shall be made of smooth, corrosion-resistant, impervious, nontoxic material which will not readily disintegrate or crack; and utensils and equipment shall be constructed so they are easily cleanable, and shall be kept in good repair.

4.4.11.1.5 Shellstock not shipped in bulk shall be shipped in sacks or other containers approved for storing shellstock, shall be clean, and shall be fabricated from safe materials. NOTE: Shellstock in this case shall mean only live shellfish still in the shell.

4.4.11.1.6 Shucked shellfish shall be packed and shipped in clean, single-service containers made of impervious materials, and which possess tamper resistant qualities, or they shall be stored in clean, properly designed, returnable containers, sealed so that tampering can be detected.

4.4.11.2 Sanitation and Use:

4.4.11.2.1 All food-contact surfaces, including; but not limited to shucking benches, blocks, and other work surfaces, and utensils which come into contact with shucked shellfish, shall all be used in a sanitary manner, stored in a manner which precludes contamination, and shall be washed and rinsed with potable water, and sanitized as soon as is practicable after the day's operations have ceased.

4.4.11.2.2 Returnable shipping containers shall be thoroughly cleaned as soon after emptying as is practical, and shall be washed and rinsed with potable water, and sanitized on the day they are to be used, and shall be protected against contamination, and handled in a sanitary manner.

4.4.11.2.3 All single-service containers shall be stored and handled in a sanitary manner, and where necessary shall be given bactericidal treatment immediately prior to filling.

4.4.11.2.4 Adequate cleaning equipment, solutions, sanitizers, and test kits shall be provided, used, and stored properly.

4.4.11.2.5 Poisonous and Deleterious Substances: Poisonous and deleterious substances shall be properly used, stored, located, and labeled.

4.4.12 Records and Shellstock/Shellfish Labeling:

4.4.12.1 ~~Complete and accurate records of all shellfish received and shipped shall be kept by every shellfish dealer/processor, and shall be made accessible to DNREC. Complete and accurate records of all shellfish received and shipped shall be kept by every shellfish dealer/processor, shall be organized and easily understood pertaining to traceback of shellstock/shellfish to waters of origin, and shall be made accessible to DNREC.~~ Records shall accurately reflect all information required on shellfish tags, as specified in Appendix 10.

4.4.12.2 Shellfish shall not be accepted by shellfish dealer/processors unless the

shellfish is identified and accompanied by the information contained in Appendix 10.

4.4.12.3 All shellfish dealer/processors shall retain records of the procurement and distribution of shellfish/shellstock for a period of at least ~~90 days~~ one year ~~unless otherwise proscribed by DNREC if the product is fresh, and for a period of at least two years if the product is frozen, unless otherwise proscribed by DNREC.~~

4.4.12.4 Shellfish reshipped or distributed by wholesale dealers shall bear shellfish tags. If the package is reshipped as a unit, remaining unchanged since it was received, the tag shall have sufficient blank space for the reshipper to stamp their reshipper number, state designation, and date of reshipment on the tag.

4.4.12.4.1 Shellstock: All shellfish dealer/processors shall identify each bag, container, or other unit of shellstock with a regulation shellfish tag, as per specifications in Appendix 10.

4.4.12.4.2 ~~Shucked Shellfish: Each individual package of fresh or frozen shucked shellfish shall have permanently recorded on the package or label, so as to be easily visible, the packer's, repacker's, or distributor's name and address, and the packer's or repacker's certificate number preceded by the abbreviated name of the State. Containers holding 1 gallon or more shall have the identification on the container wall unless the cover becomes an integral part of the container during the sealing process. Packages of frozen shellfish shall show the date or code of packing.~~ Each individual package of fresh or frozen shucked shellfish shall have permanently recorded on the package or label, so as to be easily visible, the shucker-packer's, repacker's, and distributor's name, address, and Interstate Certified Shellstock Shipper's List (ICSSL) certificate number preceded by the abbreviated name of the State. Containers holding 1 gallon or more shall have the identification on the container wall unless the cover becomes an integral part of the container during the sealing process. Packages of frozen shellfish shall show the date or code of packing.

4.4.12.4.3 Each container or unit of shucked shellfish shall be labeled with the information contained in Appendix 10.

4.4.13 Shellstock Handling (General):

4.4.13.1 All shellstock shall be protected against contamination at all times, and shall be handled in a sanitary manner, and shall be shipped, delivered, and received in a clean and wholesome condition.

4.4.13.2 Dead shellstock shall be culled as often as is practicable. Only live shellfish shall be shucked. Dead shellstock shall not be made available for human consumption, and shall be disposed of in a sanitary manner. The exception to these requirements shall be Post-Harvest Processed shellfish / shellstock, where killing the animal is an accepted result of said process(es).

4.4.13.3 There shall be no commingling of shellfish. ~~Shellfish harvest lots shall be kept separated by shellfish growing area. Each process lot may consist of multiple harvest lots; but shall consist of shellfish only from a single shellfish growing area.~~

4.4.13.4 Shellstock shall be washed reasonably free of bottom sediments and detritus as soon after harvesting as is practicable with Approved shellfish growing water or potable water. Although washing shellstock is the primary responsibility of the harvester, it shall also be the responsibility of the person receiving shellstock to ensure that they are washed.

4.4.13.5 Flume water shall be maintained reasonably free of sediments, shellfish tissue "fines," and other particulate matter, and shall be changed often enough to preclude excessive accumulation of such matter.

4.4.13.6 Shucked shellfish shall not be allowed to become entangled or hung up on equipment for more than 30 minutes during processing operations. Actions shall be taken to dislodge meats from equipment at intervals not to exceed 30 minutes. Such meats may be reintroduced into processing operations. Meats which have become entangled or hung up on equipment for more than 30 minutes shall be dislodged, removed, and discarded.

4.4.13.7 Shells from which meats have been removed shall be removed promptly from the shucking room.

4.4.14 Temperature Control:

4.4.14.1 Adequate refrigeration shall be required, with thermometers and/or

temperature recording devices, as required by DNREC.

4.4.14.2 Shellstock: Shellstock shall be transported in adequately refrigerated trucks if, in the opinion of DNREC, not doing so would subject the product to unacceptable bacterial growth or deterioration due to high ambient outside air temperature and/or an unacceptably long transportation time. ~~As a guideline, Within four hours of receipt/loading of shellstock, said shellstock should~~ shall be in an environment capable of achieving and maintaining a product temperature of ~~50 degrees F or lower~~ 45°F or lower.

4.4.14.3 Shucked Shellfish:

4.4.14.3.1 Shucked shellfish shall be cooled to an internal temperature of 45°F or less within 2 hours after packing. Further cooling to a temperature not exceeding 40°F is recommended.

4.4.14.3.2 ~~Shellfish which will not be packed within 1 hour after delivery to the packing room shall be cooled to an internal temperature of 45 degrees F or less within 2 hours. Shellfish which will not be packed within 1 hour after delivery to the packing room shall be cooled to an internal temperature of~~ 45°F or less within 2 hours, and in all cases shellfish shall be cooled to an internal temperature of 45°F or less within four hours of commencing processing of said shellfish.

4.4.14.3.3 Flume water shall be maintained at 50°F or less during processing operations.

4.4.14.3.4 A temperature of 0°F or less shall be maintained in the frozen-storage rooms.

4.4.14.4 Packing: The temperature of shellfish shall not exceed 50°F during the repacking process. Frozen shellfish shall not be thawed during repacking. Shucked Shellfish Intended For Repacking: Shucked shellfish that is to be repacked by the receiver shall be received at the repacking plant in approved shipping containers at a temperature of 45°F or less. Frozen shellfish which have thawed shall not be repacked or repackaged.

4.4.15 Ice: Ice shall be obtained from a source approved by DNREC, and shall be stored and handled in a sanitary manner.

4.4.16 Wet Storage:

4.4.16.1 Shellfish in wet storage shall be protected from contamination.

4.4.16.2 Wet storage is prohibited unless written approval is given each year by DNREC. This approval shall include a sketch, drawn to scale, and attached to or drawn on the reverse side of the certificate, showing the approved location of the wet storage area, float, or the water intake for the wet storage tanks, and shall further show all the potential hazards to which the shellfish may be exposed. The approval statement rendered by DNREC shall describe the measures taken to protect the shellfish from the potential hazards. The written approval for wet storage shall expire concurrently with the expiration of the shellfish permit.

4.4.17 Supervision and Personnel: Supervision shall be adequate to ensure that personnel adhere to the parameters listed below, shellfish are handled/maintained in a sanitary manner, and the premises are maintained in a sanitary manner.

4.4.17.1 Unauthorized persons shall be excluded from the shellfish processing plant and related operations.

4.4.17.2 Any person known to be infected with any disease in a communicable form, or to be a carrier of any disease which can be transmitted through the handling of shellfish, shall be excluded from handling shellfish. Any person who has an infected wound or open lesion on any exposed portion of his body shall be excluded from shucking or packing shellfish.

4.4.17.3 Personnel shall not eat or use tobacco when engaged in shellfish processing operations. Employees shall not use tobacco in any form in the rooms in which shellfish are shucked or packed.

4.4.17.4 Personnel shall maintain their person and outer garments in a clean condition. Any person who handles shucked shellfish shall wear a clean apron or coat.

4.4.17.5 Personnel shall wear clean hair restraints when engaged in shucking or packing shellfish.

4.4.17.6 Employees shall wash their hands with soap and water before beginning work, and again after each interruption.

4.4.17.7 When manual handling of shucked shellfish becomes necessary personnel shall wear sanitized rubber gloves, or shall wash and disinfect their hands immediately prior to such manual handling. Rubber gloves shall be sanitized as often as necessary, and at least twice daily.

4.5 Depuration of Shellfish: This Section is specific to depuration, and applies to depuration-processors in addition to other applicable portions of Sections III and IV of these Regulations.

4.5.1 General Requirements: On a case-by-case basis, DNREC shall require any and all means deemed necessary to ensure that shellfish required to be depurated are subjected to the depuration process approved by DNREC for each depuration-processor.

4.5.2 Process Specifications:

4.5.2.1 In addition to routine permitting and certification procedures, depuration process specifications and physical plant specifications shall be approved by DNREC in cooperation with the depuration processor prior to commencing operations. The depuration process specifications shall substantiate that the depuration process will reduce bacteria and viruses to acceptable levels. Sampling protocols and indicator bacteria standards are located in Appendices 5 and 6.

4.5.2.2 Depuration process lots shall consist of shellfish from the same shellfish growing area or bed. A single process lot may consist of more than one harvest lot only if each harvest lot originates from the same shellfish growing area or bed.

4.5.2.3 Shellfish from different process batches shall be packaged separately.

4.5.2.4 Different shellfish species shall not be processed in the same depuration unit unless studies demonstrate that the species are compatible, and that each species is effectively depurated.

4.5.2.5 Shellfish process lots shall not be commingled during washing, culling, depuration, packing, or any other part of the processing operation. Shellfish harvest lots placed in the same depuration unit, and subsequently shipped all at once or in several batches, shall be considered a single process batch. If more than one harvest lot of shellfish are being processed at the same time the identity of each harvest lot shall be maintained throughout the depuration process.

4.5.2.6 Shellfish shall be depurated for at least 48 hours. Longer depuration times may be required by DNREC.

4.5.2.7 The maximum depth of shellfish in depuration vessels shall be 3 inches for hard clams and oysters, and 8 inches for soft clams.

4.5.2.8 Shellfish shall be washed and culled after depuration, and packaged in clean shipping containers fabricated from safe materials.

4.5.2.9 Processing vessels shall be cleaned, sanitized, and rinsed free of the sanitizer before a process lot is processed.

4.5.2.10 Depurated shellfish shall not be repackaged after leaving the depuration plant.

4.5.3 Process Water Specifications: The process water shall meet the following physical, chemical and microbiological parameters:

4.5.3.1 A minimum Dissolved Oxygen concentration of 50% of saturation;

4.5.3.2 No detectable coliform organisms as measured by the standard five-tube MPN for drinking water, or a test of equivalent sensitivity in the tank influent;

4.5.3.3 A salinity within 20% (+ or -) of the harvest area;

4.5.3.4 A minimum temperature of 50°F for oysters and hard clams and 35°F for soft clams and a maximum temperature of 68°F for hard and soft clams; and

4.5.3.5 A minimum flow rate of process water in each depuration unit shall be one gallon per minute for bushel of shellfish. The minimum volume of process water in depuration tanks shall be eight cubic feet of water per bushel of shellfish.

4.5.4 Materials Specifications:

4.5.4.1 Process tanks shall be fabricated from non-toxic, corrosion-resistant, easily-

cleanable material. All equipment is to be constructed to be easily cleanable. Shellfish depuration vessels shall be constructed to allow water flow to all shellfish located therein.

4.5.4.2 Separate holding and storage areas shall be provided for depurated and non-depurated shellfish.

4.5.5 Records: In addition to other records required, a record of bacteriological data and other quality assurance related information shall be established and kept for a minimum of two years for each depuration cycle or run. The following shall be maintained for each depuration processor:

4.5.5.1 Depuration process specifications for each depuration processor;

4.5.5.2 The sanitary survey reports and data for the harvest areas;

4.5.5.3 The pre-certification process verification data and reports that are used to establish the operational specifications;

4.5.5.3.1 The periodic analysis of the process data;

4.5.5.3.2 Sanitary inspection reports for the facility;

4.5.5.3.3 An adequate sampling scheme; and

4.5.5.3.4 An evaluation report verifying that the operators records have

been reviewed and the process has been evaluated.

4.6 Relaying of Shellfish: This Section is specific to shellfish relaying, and applies to depuration-processors in addition to all portions of Sections III and IV of these Regulations.

4.6.1 Relay Specifications:

4.6.1.1 In addition to routine permitting and certification procedures, relay specifications shall be approved by DNREC in cooperation with the relay operator prior to commencing the relay operation. The relay specifications shall substantiate that relaying will reduce bacteria and viruses to acceptable levels.

4.6.1.2 Relayed shellfish shall be identified by relay lot. Each relay lot shall be kept separate from other lots to prevent cross-contamination and commingling.

4.6.1.3 Shellfish relayed by container shall be washed reasonably free of bottom sediments and detritus, culled, and placed in clean containers made of approved/non-corrosive materials which allow free flow of water to the shellfish. The depth and configuration of shellfish in containers shall allow the shellfish to pump (feed) normally.

4.6.2 Relay Water Specifications: Shellfish shall be held in Approved shellfish growing areas for a sufficient period of time under suitable environmental conditions to assure purification. The bacteriological quality of the shellfish after relaying shall be of the same quality as the same species already in the area in which they were placed. The time required for purification will normally be determined by water temperature, salinity, initial quality, and species of shellfish. This period shall be at least 14 consecutive days when environmental conditions are suitable for purification unless shorter periods are demonstrated to be adequate. Aside from standard shellfish harvest standards, relay area water must meet the following criteria:

4.6.2.1 A salinity within 20% (+ or -) of the harvest area; and

4.6.2.2 A minimum temperature of 50°F for oysters and hard clams and 35°F for soft clams.

4.6.3 Records: Written operating procedures containing the following shall be maintained by DNREC in cooperation with the relay operator prior to commencing relaying operations, and shall be followed during relaying operations:

4.6.3.1 The source and species of shellfish to be harvested;

4.6.3.2 The quality of shellfish and/or water quality prior to harvest;

4.6.3.3 The quality of shellfish indigenous to the relay area;

4.6.3.4 The quality of relayed shellfish after purification;

4.6.3.5 The time period during the year the relaying may be conducted;

4.6.3.6 The issuance of special harvesting permits to licensed harvester in accordance

with Section 4.6;

4.6.3.7 The method of transportation to the relay site and the deposition method for the shellfish;

4.6.3.8 The method of maintaining adequate separation between lots of relayed shellfish;
and

4.6.3.9 All specifications relating to container/cage materials and seals if container/cage
relaying.

For further information regarding classification of Delaware's shellfish growing areas, please call (302)
739-9939.

APPENDIX 1

This list of **Prohibited** shellfish growing areas is recorded at the Delaware Department of Natural Resources and Environmental Control on December 20, 1995. Shellfish harvesting is prohibited in the following areas for any reason at any time:

Delaware River / Bay:

1. The Delaware River north of a line drawn in an east-west direction from the tower at Bombay Hook Point to a tower on the New Jersey side of the River running concurrently with the New Castle County / Kent County Line from the Western Shore of the Delaware River on the Delaware side of the River east to the New Jersey State Line.

2. Duck Creek, Leipsic River and Simons River and all their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.

3. Little Creek and its tributaries and a contiguous area in the Delaware Bay adjacent to the mouth. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.

4. St. Jones River and Murderkill River, including their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.

5. Mispillion River, Cedar Creek and Slaughter Creek, including their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.

6. Broadkill River including its tributaries. This area is marked by signs.

7. An area of Breakwater Harbor and Delaware Bay encompassed within a line running from the northern boundary of Beachplumb Island state-owned lands, in a northeasterly direction for 5000 feet, thence in a southeasterly direction to the west end of the inshore breakwater off of Lewes Beach and running on the inside of this breakwater to a point intersecting a line drawn from the Cape Henlopen Fishing Pier to the breakwater then running along said line to the fishing pier and down the center line of the fishing pier to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.

Rehoboth Bay and Indian River Bay:

8. Lewes-Rehoboth Canal. This area is marked by signs.

9. Rehoboth Bay north of a line drawn in a northeasterly direction between the tip of White Oak Point to the tip of Bald Eagle Point, thence in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in a northeasterly direction to the tip of Thompson Island, thence in an easterly direction to the southern most point of the Rehoboth Bay Marina. This area is marked by signs and buoys.

10. Indian River Inlet and Cedar Islands. The western boundary line begins at Burton's Island, running south to a point west of the marsh which lies south of an unnamed gut south of the South Inlet Marina, thence in an easterly direction to said marsh. The eastern boundary begins one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-

half mile to the beach. The northern boundary (in the vicinity of Cedar Islands in Rehoboth Bay) begins at an unnamed island north of Savages Ditch running in a southeasterly direction to Burton Island. The area is marked by signs and buoys.

11. White Creek and its tributaries extending south of a line drawn in an east-west direction from the East Shore of White Creek to a point on Big Marsh on the West Shore. This area is marked by signs.

12. Indian River-proper and its tributaries and an area adjacent to Indian River-proper bounded by a line 650 feet in length in a north-south direction beginning at the eastern bank of the mouth of Emily Gut thence running from the southern terminus of said line in a westerly direction to Highgrass Point. Vines Creek and Pepper Creek-proper and their tributaries beginning at a point south of Rock Point and running in an easterly direction to Grays Point.

13. Herring Creek and its tributaries extending northwest from a line running from Burton Point in a southerly direction to Long Neck. This area is marked by signs.

14. The southwest corner of Beach Cove. This area is marked by signs.

15. The southeast corner of Beach Cove. This area is marked by signs.

16. The northeast corner of Beach Cove. This area is marked by signs.

Little Assawoman Bay:

17. Assawoman Canal. The Canal-proper is not marked. However, the adjacent waters in White Creek in Indian River Bay and Little Assawoman Bay are marked by signs.

18. Miller Creek and its tributaries and the northern reaches of Little Assawoman Bay north of a line running in an east-west direction from Goose Point on the southern bank of Miller Creek at its mouth to an unnamed point on Fenwick Island State Park. This area is marked by signs.

19. Dirickson Creek west of a line running from Bennett Point in a southwesterly direction to Conch Point. This area is marked by signs.

20. Tubbs Cove south of a line running in an east-west direction from the shoreline north of Treasure Beach Campground to Point Of Ridge. This area is marked by signs.

21. The waters adjacent to the Town of Fenwick Island south of a line running from Old Inlet Point in a north-north-easterly direction to an unnamed point on the barrier. This area is marked by signs.

Assawoman Bay:

22. That portion of an unnamed bay north of the Delaware / Maryland line adjacent to the Cape Windsor Development. This area is marked by signs.

23. Roy Creek and its tributaries north-west of a line running from an unnamed point on Greys Neck north-east across several unnamed islands to a point south of Route 54. This area is marked by signs.

Nanticoke River:

24. Nanticoke River and all its tributaries. This area is marked by signs.

Atlantic Ocean:

25. The Atlantic Ocean adjacent to Indian River Inlet encompassed within a line beginning one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the *Delaware Fishing Guide*, and/or other maps available to the public.

26. The Atlantic Ocean within a radius of one-half mile from the South Coastal Sewage Treatment Plant outfall which is located at north latitude 38°31'34" west longitude 75°01'56".

Applies To All Areas:

27. All artificial lagoons. Most of these areas are unmarked.

28. All wet slip basins. Most of these areas are unmarked.

APPENDIX 2

This list of **Approved** shellfish growing areas is recorded at the Delaware Department of Natural Resources and Environmental Control into the public record on December 20, 1995. Shellfish harvesting is allowed in the following areas with no seasonal restriction:

1. Delaware River/Bay south of a line drawn in an east-west direction from the tower at Bombay Hook Point to a tower on the New Jersey side of the River running concurrently with the New Castle County / Kent County Line from the Western Shore of the Delaware River on the Delaware side of the River east to the New Jersey State Line, except the Prohibited areas listed in Appendix 1.
2. Rehoboth Bay with the exception of those areas listed in Appendices 1 and 3.
3. Indian River Bay with the exception of those areas listed in Appendices 1 and 3.
4. Little Assawoman Bay with the exception of those areas listed in Appendix 1.
5. Assawoman Bay with the exception of those areas listed in Appendix 1.
7. The Atlantic Ocean with the exception of those areas listed in Appendix 1.

NOTE: Please consult Delaware Fish and Game Laws for size and creel limits prior to harvesting shellfish. For further information regarding classification of Delaware's shellfish growing areas, please call (302) 739-9939.

APPENDIX 3

This list of **Seasonally Approved** shellfish growing areas is recorded at the Delaware Department of Natural Resources and Environmental Control into the public record on December 20, 1995. Shellfish harvesting is allowed in the following areas in accordance with Delaware's fish and game laws from December 1 through April 15:

Rehoboth Bay:

1. The areas north of a line drawn from the tip of White Oak Point in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in an easterly direction to the south submarine observation tower. This area is marked by signs and buoys.
2. Love Creek north of a line running from a point on the southwest bank in a northeasterly direction to a point on the northeast shoreline. This area is marked by signs.
3. The area adjacent to West Bay Trailer Park Marina from a point north of the Marina in a southeasterly direction to a point directly north of the eastern-most point of Sally Cove Marsh and directly east of the middle Marina lagoon, thence in a southwesterly direction to a point south of the Marina. This area is marked by signs and buoys.
4. The area adjacent to the mouth of Herring Creek west of a line running from Burton Point on Angola Neck in a southeasterly direction to Nats Cove Point. This area is marked by signs and buoys.
5. Massey's Ditch and Roman T. Pond south of a line running from Bluff Point in a southeasterly direction to an unnamed point on the north bank of the unnamed island east of Massey's Ditch. This area is marked by signs.

Indian River Bay:

6. The area landward of a line running from a point on the south bank of the unnamed island east of Massey's Ditch in a southerly direction to Middle Island, thence in a westerly direction to a point on the Townsend Property east of Emily Gut (the same point marking the beginning of the Prohibited area boundary line). This area is marked by signs and buoys.
7. The area south of an east-west line running from Pasture Point, to Walter Point. This area is marked by signs and buoys.

NOTE: Please consult Delaware Fish and Game Laws for size and creel limits prior to harvesting shellfish.

APPENDIX 4

Other-Than-Approved Shellfish Water Bacteriological Standards For Depurated Shellfish

The total coliform mean MPN of the water does not exceed 700 per 100 ml and not more than 10% of the samples exceed an MPN of 2,300 per 100 ml for a 5-tube decimal dilution test (or an MPN of 3,300 per 100 ml for a 3-tube decimal dilution test).

AND/OR

The fecal coliform mean MPN of the water does not exceed 88 per 100 ml and not more than 10% of the samples exceed an MPN of 260 per 100 ml for a 5-tube decimal dilution test (or an MPN of 300 per 100 ml for a 3-tube decimal dilution test).

APPENDIX 5

Depuration Plant Minimum Sampling Schedule

Number of Harvest Areas	Pollution Variability	Incoming Shellfish	Final Product
Single Area	Low	Periodic Single Samples	Single Samples Each Process Lot
Single Area	High	One Sample from Each Harvest Lot	Duplicate Samples Each Harvest Lot in Each Process Batch
Multiple Area	Variable	Periodic Single, Sample Each Area	At Least One Duplicate Sample From Each Harvest Each Week Each Process Batch. Single Samples of Each Batch, Other Times, Same Week

Samples of unprocessed shellfish and partially processed shellfish may be taken midway through the depuration cycle and analyzed for the end-point indicator. Such sample results may be used to predict whether the shellfish are acceptable for release. This approach can be used if an appropriate statistical analysis, performed or approved by DNREC, of the samples collected during the process verification study and other historical sample results demonstrates that this is a viable means of determining that the shellfish have been adequately depurated. Each process batch may be released for market only if the end-point fecal coliform criteria indicated in Appendix 6 are met at 24 or 48 hours.

APPENDIX 6**End-product Standards For Overall Depuration Plant Performance Evaluation****Fecal coliforms per 100 grams**

Species	Geometric Mean	Upper 10%
Soft Clam	50	130
Hard Clam	20	70
Surf clam	20	70
Oyster	20	70

End-product Standards For Each Process Batch Of Shellfish**Fecal Coliforms per 100 grams**

No. of Samples	Shellfish Species	Geometric Mean Not to Exceed	One Sample May Exceed	No Sample To Exceed
1	S.C.	-	-	170
	O., H.C.	-	-	100
2	S.C.	125	-	170
	O., H.C.	75	-	100
3	S.C.	110	-	170
	O., H.C.	45	-	100
5	S.C.	50	100	170
	O., H.C.	20	45	100
10	S.C.	50	130	170
	O., H.C.	20	70	100

S.C. = Soft Clam; O. = Oyster; H.C. = Hard Clam

APPENDIX 7**Shellfish Meat Bacteriological Standards****Shellfish Categories II & III
Satisfactory Shipping Conditions**

Analyze two (2) random samples of shellstock
or shucked product for F.C. and A.P.C.

Satisfactory	Unsatisfactory F.C.	Unsatisfactory A.P.C.
NAI*	(If one or both samples exceed an MPN of 230)	(If one or both <u>samples exceed a count of 500,000/g</u>)
	Analyze for <u>E. coli</u> (APHA method).	Notify shipper State.

PROPOSED REGULATIONS

* no action indicated	Satisfactory	Unsatisfactory
**state shellfish		(If one or both samples exceed
regulatory agency	NAI*	an MPN of 230)
	1. Notify dealer, shipper, and shipper state	
	2. Receiving dealer must notify the SSRA**	
	of next shipment from same shipper	
	3. SSRA samples next shipment	
	Second shipment from same shipper	
	Determine conditions of shipment	
Satisfactory		Unsatisfactory
(Analyze five (5) random shellstock		(Go to PAGE APA-7 for shucked samples for F.C.
and A.P.C.)		further guidance)
Satisfactory	Unsatisfactory F.C.	Unsatisfactory A.P.C.
NAI*	(If any sample exceeds	(If any sample exceeds
	an MPN of 330 or 2 or	1,500,000/g or 3 or
	more out of 5 exceed	more out of 5 exceed
	230 but are less than	500,000g but are less
	or equal to an MPN of	than or equal to
	330)	1,500,000/g)
	Analyze for <u>E. coli</u>	Shipper state should be
		notified for investigative and
		corrective action
Satisfactory	Unsatisfactory	
NAI*	(If any sample exceeds an MPN	
	of 330 or 2 or more out of 5	
	exceed 230 but are less than or	
	equal to 330)	

APPENDIX 8

Emergency Closure of Shellfish Growing Areas Notification/Closure/Rescinding of Closure Agenda

~~Recommendation of emergency shellfish harvest closure or the rescinding of emergency closure of shellfish growing areas shall be rendered by DNREC, and shall include consultation with the Division of Water Resources Shellfish and Recreational Water Branch Manager, the Division of Air and Waste, the Division of Fish and Wildlife, the Division of Parks and Recreation, and when practicable, the Secretary of the Department of Natural Resources and Environmental Control.~~

Emergency shellfish harvest closure or the rescinding of emergency closure of shellfish growing areas shall be rendered by DNREC, must by law be issued by the Secretary of DNREC, and should entail consultation with the Division of Water Resources Shellfish and Recreational Water Branch Manager, the Division of Air and Waste Management, the Division of Fish and Wildlife, the Division of Parks and Recreation.

APPENDIX 9**Shellfish Process Water Contact Specifications**

Shellfish shall not be in contact with fresh or salt water (during processing) after leaving the shucker, including the time of washing, rinsing, and any other contact with fresh or salt water, for more than 30 minutes; unless such shellfish are labeled as to identify water as an ingredient.

APPENDIX 10**Shellfish Harvester and Shipper Tag Specifications**

Harvester Tag Specifications

Tags must be at least 2 5/8" by 5 1/4" and made of durable stock, and must carry the following information in indelible lettering / numbering:

- i. Harvester;
- i. Harvester's name and license number;
- ii. the shellfish dealer/processor to which the shellstock are conveyed;
- ii. the amount of shellstock conveyed;
- iii. the amount of shellstock conveyed;
- iii. the species or common name of the shellstock;
- v. iv. the date of harvest and;
- vi. ~~the shellfish growing area.~~
- v. the shellfish growing area (example: Rehoboth / Indian River Bay, or Delaware Bay), also including DE (State abbreviation).

Shellfish Shipper Tag Specifications

Tags must be at least 2 5/8" by 5 1/4" and made of durable stock, and must carry the following information in indelible lettering/numbering:

- i. Name, address and Certification Number of the Shellfish Dealer/Processor;
- ii- ~~Date of processing;~~
- ii. date of harvest;
- iii. depuration cycle number and/or relay lot number, if any;
- iv- ~~The identity of the harvest area;~~
- iv. The identity of the harvest area, including DE State abbreviation, and harvest area name and/or bed number;
- v. Type and quantity of shellfish; and
- vi. The following statement in bold capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR ~~90 DAYS~~ ONE YEAR."

APPENDIX 11**Policy To Determine Shellfish Growing Area Classification in and Around Wet Slip Basins and Artificial Lagoons**

I. Introduction:

In 1988 the ISSC determined that human sewage may be discharged from boats and thereby may pose a human health threat due to consumption of sewage contaminated shellfish. The fecal discharge from one adult person is potentially the pathogenic equivalent to that from hundreds to thousands of people via a sewage treatment plant, depending upon the level of treatment. In 1988 the ISSC adopted the FDA Guideline, "Evaluation of Marinas By State Shellfish Sanitation Control Officials," to be used by the states as a basis for developing and implementing regulations establishing shellfish harvest buffers around wet slip basins associated with marinas and dry stack facilities. This is now NSSP doctrine.

The sewage discharge from boats is unpredictable and not uniformly distributed throughout the water column. Detection of human pathogen indicator bacteria by current methods may not provide sufficient information to properly classify the waters in and around wet slip basins. Therefore, the FDA Guideline requires restrictions on shellfish harvesting in and around wet slip basins based on the theoretical sewage discharge from the basins without regard to levels observed by monitoring.

In addition, precedent exists for the restriction of shellfish harvesting in artificial lagoons based on the poor water quality and/or the concentration of potential pollution sources often found in such lagoons.

Delaware's "Policy to Determine Shellfish Growing Area Classification In and Around Wet Slip Basins and Artificial Lagoons" is based on the FDA Guideline and the precedents established regarding artificial lagoons.

II. Definitions:

- A. **Artificial Lagoon:** A man-made, dead-end waterway, interconnected with another waterway.
- B. **Average Depth:** The average depth of the water at mean low water in a proscribed area.
- C. **Average Number of People Per Boat:** The average number of people occupying each boat during the daily use of the boats in a specific survey area.
- D. **Background:** The ambient biological, chemical and/or physical conditions of a water body.
- E. **Best Management Practices (BMPs):** Initiatives that in theory reduce the theoretical waste discharge of a wet slip basin.
- F. **Charter Boat:** A commercial boat hired to perform services for patrons, typically for a flat fee.
- G. **Commercial Boat:** A boat used primarily as a means of making money.
- H. **Dilution Formula:** The following formula used to calculate the area impacted by wet slip basins:

$$\frac{\text{TWDR} \times 2 \text{ e9 FC} \times \# \text{ of people/boat} \times \text{wet slip capacity}}{\text{shellfish harvest standard} \times \text{average depth}}$$

- I. **Dilution Formula Loading Factor (Loading Factor):** The following components of the dilution formula are loading factors, as follows:
 - Theoretical Waste Discharge Rate (TWDR).
 - Two Billion (2 e9) Fecal Coliform Bacteria (FC) per person per day (this is a constant).
 - Average number of people per boat.
 - Wet slip capacity.
- J. **Discharge:** Any actual or theoretical release of fecal material, pathogenic microorganisms, poisonous and deleterious substances. This includes the escape, disposal, spillage, leaking, pumping, emitting, pouring, dumping or emptying of such discharges.
- K. **Dry Stack Facility:** A boating facility which stores boats on dry land, including but not limited to: dry stack facilities; boatels; valet storage; pigeon hole storage; and stackominiums. A dry stack facility may have wet slip capacity.
- L. **Dump Station:** A mechanical and/or gravity fed connection to an approved sewage disposal facility used for the purpose of the disposal of human generated waste, such as the sewage from a porta-pottie.
- M. **Head Boat:** A commercial boat hired to perform services for patrons, typically for a fee per patron.

- N. **Marina:** Any water area with a structure (dock, basin, floating dock, etc.) which is utilized for docking or otherwise mooring vessels and is constructed to provide temporary or permanent docking space for more than ten boats. The definition of marina shall include all related ancillary structures and functions such as docks, piers, boat storage areas, boat ramps, anchorages, breakwaters, channels, moorings, basins, boat repair services, boat sales, sales of supplies normally associated with boating such as fuel, bait, and tackle, boat rentals, and parking areas.
- O. **Marine Head:** A toilet or other human waste catchment device with retention and/or discharge capability. A marine head may or may not be an MSD. MSD is the term for a Coast Guard approved marine head.
1. **Type I MSD:** A device that produces an effluent having a fecal coliform bacteria count not greater than 1,000 per 100 milliliters and no visible floating solids.
 2. **Type II MSD:** A device that produces an effluent having a fecal coliform bacteria count not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter.
NOTE: A marine head and holding tank capable of being discharged into receiving waters and into a pumpout unit is defined here as a Type II MSD.
 3. **Type III MSD:** A device designed for containment of sewage within a holding tank with the capability to discharge only into a pumpout unit (Type III Coast Guard definition without a Y-valve).
 4. **Porta-potty:** A portable, self contained sewage retention device that must be removed from the boat and dumped.
- P. **Occupancy Rate:** The percentage of boats in a wet slip basin that are occupied during the course of a day relative to the total number of occupied slips in the wet slip basin at the time of the collection of this information.
- Q. **Overnight Use Boat:** Any boat used for overnight habitation.
- R. **Potential Sewage Discharge Rate:** The percentage of boats in a wet slip basin with marine heads capable of discharging sewage directly into receiving waters (This excludes only Type III MSDs, as Type III MSD is defined in this policy) relative to the total number of boats surveyed in the wet slip basin at the time of the collection of this information.
- S. **Pumpout Facility:** A mechanical device which is temporarily connected to a boat for the purpose of removing sewage from a marine head holding tank to an approved sewage disposal facility.
- T. **Sewage:** Human body wastes and wastes from toilets and other receptacles intended to receive and/or retain human body wastes.
- U. **Shellfish Growing Area Standard:** The median or geometric mean of Fourteen Fecal Coliform Bacteria (FC) per 100 milliliters (ml) (or the equivalent: 3962 FC/cubic foot) of water must be maintained in shellfish growing water in order to harvest and market shellfish from that water.
- V. **Theoretical Waste Discharge:** **Theoretical waste discharge rate** multiplied by **two billion Fecal Coliform bacteria per person per day** multiplied by the **average number of people per boat** multiplied by the **wet slip capacity**.
- (TWDR x 2 e9 FC x # of people/boat x wet slip capacity)
- W. **Theoretical Waste Discharge Rate (TWDR):** The **potential sewage discharge rate** multiplied by the **occupancy rate**.
- X. **Wet Slip:** A place in the water where a boat may be docked or otherwise moored to a fixed or floating structure, including but not limited to a dock, pier, mooring or anchorage.
- Y. **Wet Slip Basin:** A natural waterway and/or artificial lagoon and/or portions thereof containing more than ten wet slips. A wet slip basin may be associated with a marina and/or with a dry stack facility.*

*An exception shall be made to the >10 boat qualifier if the theoretical waste discharge and/or the potential

for waste discharge in the basin is determined by the DNREC to be great enough to require restrictions on shellfish harvesting in or adjacent to and in the basin.

- Z. **Wet Slip Basin Classification:** A determination as to the type of wet slip basin. Differentiation as to wet slip basin type based on the parameters listed reflects variation in the theoretical waste discharge. The types of wet slip basins are as follows:
1. **Commercial Wet Slip Basin:** A wet slip basin which has a significant number of commercial boats.
 2. **Overnight Use Wet Slip Basin:** A wet slip basin which has a significant number of overnight use boats.
 3. **Residential Wet Slip Basin:** A wet slip basin which has primarily non-commercial boats, most of which are less than or equal to 28' and which serves a planned residential community and/or any general residential population(s).
- AA. **Wet Slip Basin Classification Survey:** The collection of the verified information required for classification of a wet slip basin.
- AB. **Wet Slip Capacity:** The total number of wet slips in a wet slip basin.
- AC. **Work Boat:** A boat used primarily for commercial purposes such as the harvesting of marine life for profit, dredging or police work, etc.

III. Policy Specifications:

- A. General Policy Specifications:
This policy defines the restrictions on shellfish harvesting in and around wet slip basins associated with marinas and dry stack facilities and also in artificial lagoons.
1. Artificial Lagoons:
All artificial lagoons, regardless of intended or actual use, shall be classified as "Prohibited" for the harvesting of shellfish.
 2. Wet Slip Basins and Adjacent Areas:
All wet slip basins located in or adjacent to shellfish growing areas shall be classified as Prohibited for the harvesting of shellfish.
DNREC shall classify shellfish growing areas or portions thereof adjacent to wet slip basins as other-than-Approved as determined on a volumetric basis. The size of the shellfish growing area(s), or portions thereof classified on the basis of the presence of wet slip basins, shall correspond to the volume of water required for dilution of the theoretical waste discharge from the wet slip basins as determined by the application of dilution formula loading factors. The area required for dilution shall be determined by performing the dilution formula calculations. Dilution formula loading factors shall be collected during sanitary surveys and/or wet slip basin classification surveys. The size and configuration of the shellfish growing area(s), or portions thereof classified based on the theoretical waste discharge from wet slip basins, shall be reevaluated and if necessary adjusted on a regular basis using the best available information.
When reliable mean low water depths are not available actual field measurements shall be taken as a basis for determining available dilution volume.
DNREC shall determine cumulative wet slip capacity of individual wet slip basins and/or the sum of more than one wet slip basin irrespective of demarcations that may arbitrarily and/or artificially reduce, eliminate or otherwise alter the theoretical waste discharge(s) of the wet slip basin(s). Therefore, DNREC will establish wet slip basin demarcations based on, but not limited to:
 - common ownership and/or management and/or operation;
 - sharing common waterways such as an entrance channel; and
 - being part of a common development plan.
- B. Surveys:

1. Sanitary Surveys:
A sanitary survey shall be considered valid by definition only if conducted during a time that is reflective of peak use of the facility such as warm season holidays and weekends when the weather is conducive to boating.
 2. Wet Slip Basin Classification Surveys:
A wet slip basin classification survey may be performed based on written information and/or by direct observation of the facility. This allows the classification of both proposed and existing wet slip basins. The minimum information required to constitute a valid wet slip basin classification survey of an existing or proposed marina and/or dry stack facility shall be as listed below.
 - facility name;
 - owner or applicant name, address and phone number;
 - specific facility location narrative and drawing showing the location, dimensions and configuration of the facility;
 - average depths and areas of the wet slip basin and entry and/or flushing channels;
 - a breakdown of the size range and numbers of proposed wet slips, (transient and non-transient) and/or dry stack capacity;
 - size range and types of boats to be accommodated including the presence of commercial boats and/or overnight use boats;
 - general population served by the facility; for example, residential population of a single community or general residential population or commercial clients, etc;
 - types of MSDs to be allowed;
 - best management practices (BMPs) employed, including, but not limited to those listed in section III. D. Best Management Practices;
 - available hydrographic information; and
 - any other information that the owner or applicant wishes to submit.
- C. Dilution Formula Loading Factors:
1. Loading Factor Application Parameters:
 - a. Loading factors shall never be smaller than the minimum loading factors required by the National Shellfish Sanitation Program.
 - b. Loading factors shall be considered valid by definition only if they are reflective of peak use of a wet slip basin, such as the use occurring on warm season holidays and weekends when the weather is conducive to boating, as determined by the DNREC.
 - c. All loading factors shall be derived from a representative number of boats as determined by DNREC. All loading factors shall be multiplied by the total wet slip capacity of marinas and dry stack facilities.
 - d. Loading factors may be derived from a survey of an individual wet slip basin and applied only to that facility surveyed.
 - e. Existing loading factors may be applied to other identically classified wet slip basins.
 - f. Written information associated with wet slip basin classification surveys may be assessed and applied based on the criteria listed under "Individual Loading Factors."
 - g. Loading factors derived from a sanitary survey may override loading factors derived from wet slip basin classification survey.
 - h. Any combination of existing loading factors and wet slip basin classification survey generated or sanitary survey generated loading factors may be applied at the discretion of DNREC, and also irrespective of the classification of the wet slip basin; except loading factors shall never be lower than the minimum required loading factors.

PROPOSED REGULATIONS

2. Existing Loading Factors:

Loading factors derived from a wet slip basin classification survey shall be no smaller than the following:

 - a. **Residential Wet Slip Basin Minimum Loading Factors (Inadequate or No BMPs Employed)**
 - i. 2 billion fecal coliform bacteria per person per day
 - ii. 3.3 people per boat
 - iii. 6.5% theoretical waste discharge rate
 - b. **Residential Wet Slip Basin Minimum Loading Factors (Adequate BMPs Employed by Marina)**
 - i. 2 billion fecal coliform bacteria per person per day
 - ii. 3.3 people per boat
 - iii. 4% theoretical waste discharge rate
 - c. **Minimum Loading Factors for Wet Slip Basins (Only the Wet Slip Capacity is Known)**
 - i. 2 billion fecal coliform bacteria per person per day
 - ii. 2 people per boat
 - iii. 100% theoretical waste discharge rate
3. Loading Factor Specifications:
 - a. Average Number of People Per Boat:

Within a specific survey area, the average number of people per boat shall be determined by counting the number of people in all boats surveyed, and dividing this number by the number of boats surveyed.
 - b. Potential Sewage Discharge Rate:
 - i. Boats with no marine head are determined not to be a probable source of sewage, and shall therefore be assigned a 0% potential sewage discharge rate. Boats with type III MSD's (as Type III MSD is defined in this policy) under normal conditions do not discharge sewage into receiving waters and shall therefore be assigned a 0% potential sewage discharge rate. Boats with any other type of marine head are capable of discharging sewage into receiving waters and shall be assigned a 100% potential sewage discharge rate.
 - ii. An overnight use boat is defined as such due to the increased potential for the discharge of sewage associated with spending extended periods of time on the boat. Therefore, overnight use boats shall be assigned a 100% potential sewage discharge rate unless the installation of a Type III MSD (as Type III MSD is defined in this policy) is proven.
 - iii. It is possible that any boat with a cabin could carry a marine head. As determined by surveys, the loading factors listed below are reflective of the installation rates for marine heads that are capable of discharging into receiving waters. Unless information to the contrary is determined by direct observation; the following shall apply to a specific survey area or areas as potential sewage discharge rates:
 - 6.5% of all boats < 25'; or the percentage of boats < 25' with cabins, relative to the total number of boats < 25' surveyed, which ever number is greater; and
 - 80% of all boats ≥ 25' or the percentage of boats ≥ 25' with cabins, relative to the total number of boats ≥ 25' surveyed, which ever number is greater
 - c. Occupancy Rate:

Occupancy rates shall be determined by counting the total number of boats in a

wet slip basin that are occupied by a person or persons during the course of a day as a percentage of the total number of wet slips which contain boats sometime during a 24 hour period immediately before or after and inclusive of the time period during which the occupancy rate information was gathered. The aforementioned portion of the 24 hour time period before or after the data collection time period shall be during a time period reflective of peak use of the facility.

d. Theoretical Waste Discharge Rate (TWDR):

The TWDR is determined by multiplying the potential sewage discharge rate by the occupancy rate.

D. Best Management Practices (BMPs):

The TWDR may be adjusted (within the parameters listed in this policy) if BMPs are employed and the marina or dry stack facility only contains boats with Type III MSDs (as Type III MSD is defined in this policy). The following are initiatives that will be given consideration as BMPs by DNREC:

- the presence, availability and documented use of pumpout facilities and/or dump stations;
- the presence and documented and proven use of dye tablets in MSD holding tanks;
- the use of written legal agreements prohibiting the discharge of sewage and which provide substantial penalties for the discharge of sewage;
- the use of written legal agreements permitting only boats with Type III MSDs or Type II MSDs with holding tanks capable of being discharged into a pumpout unit;
- the use of a harbor master or the equivalent to monitor activities in the marina, such as the illicit discharge of sewage from boats;
- the keeping of accurate records; and
- the adherence to the seasonal time frame (October 15 through March 15) for the adequate removal boats to allow depuration and the seasonal harvest of shellfish.

NOTE: Other means utilized for the purpose of reducing theoretical waste discharge may be given consideration as BMPs on a case by case basis. Not all BMPs listed are required to be employed to allow the default to the smaller loading factors. The smaller loading factors shall be applied on a case by case basis.

E. Specifications for Shellfish Growing Areas Classified on the Basis of Wet Slip Basins:

1. Shellfish Growing Area Size:

- a. Shellfish growing areas or portions thereof classified on the basis of the theoretical waste discharge from wet slip basins shall be no smaller than those required based on the required loading factors.
- b. Dilution formula loading factors shall be applied assuming hypothetical zero FC background water. Shellfish growing areas or portions thereof impacted on the basis of the theoretical waste discharge from wet slip basins shall correspond to the volume of water required for dilution of the theoretical waste discharge from wet slip basins to the shellfish growing area standard. The volume of water in wet slip basins is available for dilution and therefore shall be included in the required dilution area.
- c. Reclassification of the shellfish growing area or portions thereof beyond a wet slip basin shall not be required if the wet slip basin is large enough for adequate dilution of the theoretical waste discharge produced by the wet slip basin.
- d. Reclassification of the shellfish growing area or portions thereof adjacent to a wet slip basin will be required if the volume of water in the wet slip basin is inadequate for dilution of the theoretical waste discharge produced by the wet slip basin.

2. Shellfish Growing Area Configuration:

The boundary lines associated with shellfish growing areas or portions thereof impacted on the basis of the theoretical waste discharge from wet slip basins shall be straight lines

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established between imaginary points and/or fixed landmarks and marked by buoys and/or signs. These straight lines shall encompass at least the area determined to be impacted based on: the volume of water required for the dilution of the theoretical waste discharge from the wet slip basin(s) to the shellfish growing area standard; and the configuration of the area impacted based on available hydrographic data* and/or by superimposing an arc as measured from the marina entrance channel(s) onto a map, encompassing the area required for dilution. The area determined to be impacted by wet slip basins shall be superimposed over existing shellfish growing areas that are not classified on the basis of the theoretical waste discharge from wet slip basins. However, there shall be no overlap of the required wet slip basin dilution areas regardless of the shellfish growing area classification.

*Only hydrographic data approved by the FDA for use in the determination of the theoretical impact of wet slip basins shall be used when shellfish growing areas specifications are determined.

3. Shellfish Growing Area Classification Adjacent to Wet Slip Basins:
 - a. The classification of the shellfish growing areas or portions thereof impacted on the basis of the theoretical waste discharge from wet slip basins shall always default to the more restrictive, existing classification or a combination of conditions that provide cumulative required restrictions on shellfish harvesting.
 - b. Shellfish growing areas or portions thereof adjacent to wet slip basins that are determined to be impacted based on the theoretical waste discharge from wet slip basins may be classified as Seasonally Approved, Conditionally Approved, or Prohibited.
 - i. Seasonally Approved Classification:
 - A shellfish growing area or portions thereof (excluding the wet slip basin) impacted by the theoretical waste discharge from a wet slip basin may be classified as "Seasonally Approved" for the harvesting of shellfish, thereby allowing the harvesting of shellfish during a proscribed seasonal time period to correspond historically to the seasonal removal (+ a two-week depuration period), and the subsequent seasonal reintroduction of boats into the basin.
 - A residential wet slip basin may be declared seasonally vacant by DNREC when all but ten or less boats remain in the wet slip basin, and are to remain out of the basin for the time period (including the depuration period) during which the harvest of shellfish is allowed; OR a residential wet slip basin may be declared seasonally vacant by DNREC if enough dilution volume exists in the basin to accommodate the remaining boats in the basin without requiring additional dilution volume outside of the basin to adequately dilute theoretical loading from the basin.
 - A wet slip basin not classified as "Residential" may be considered seasonally vacant after an adequate number of boats, as determined by DNREC, are removed from the wet slip basin and are to remain out of the marina for the time period (including the depuration period) during which the harvest of shellfish is allowed.
 - ii. Conditionally Approved Classification:

DNREC may allow the harvest of shellfish on a seasonal basis in areas determined to be impacted by a wet slip basin, as per pre-established condition(s) which may include seasonal removal of boats from the wet slip basin(s).
 - iii. Prohibited Classification:

A shellfish growing area or portions thereof determined to be impacted by the theoretical waste discharge from a wet slip basin shall be classified as "Prohibited" if it is determined by the DNREC that a public health threat could

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result by classifying the area as other than Prohibited.

IV. Examples and Specifications:

Project name:	Little Chester Trailer Park & Marina
Applicant information:	Recreational Aquatic Profit Entity, Inc. P.O. Box 666, Washington, D.C. 20002
Project location:	Ulva Landing, Indian River Bay
Wet slip basin avg. depth:	5'
Number and size of slips:	102 slips, each slip 18' by 30'
Size and types of boats:	Recreational power and sail boats to be accommodated: roughly in the 16' to 25' range
General population served:	Private, community residents only
Hydrographic information:	None available
BMPs to be employed:	One stationary pumpout unit; Written agreement indicating seasonal removal of boats, as per DNREC Specifications:

Examples 1-A. and 1-B.

Seasonally Approved area size determination is as follows:

$$\frac{\text{TWDR} \times 2 \times 10^9 \text{ FC} \times \# \text{ of people/boat} \times \text{wet slip capacity}}{\text{shellfish harvest standard} \times \text{average depth}}$$

$$\frac{6.5\% \times 2 \times 10^9 \text{ FC} \times 3.3 \text{ people/boat} \times 102 \text{ slips}}{3962 \text{ FC/cubic foot of dilution water} \times 5'}$$

= 2,208,884 sq ft = area required for dilution

102 slips @ 18' x 30' each = 55,080 sq ft = area representing volume in marina at 5' average depth available for dilution

2,208,84 sq ft - 55,080 sq ft = 2,153,804 sq ft = area required for dilution beyond the marina basin

$$\frac{1}{2} \text{ circle radius} = \frac{\sqrt{2,153,804 \text{ sq ft} \times 2}}{\pi}$$

$$= \frac{\sqrt{4,307,608 \text{ sq ft}}}{\pi} = \frac{2,075.47}{\pi} = 660.3 \text{ ft} \approx 1170'$$

Example 1-A. The entire impacted area, as determined by superimposition of an arc based on the theoretical waste discharge from the marina, is within a currently classified Prohibited area. Therefore, no change in shellfish growing area classification for the impacted area is required.

Existing Approved Area	Existing Approved/Prohibited Boundary	Existing Prohibited Area
	Proposed 2,153,804 sq ft Seasonally Approved area (area of 1/2 circle)	Superimposed Arc

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Proposed Upland
Marina Basin 102 slips Land

Example 1-B. The portion of the Approved shellfish growing area, (in this case 1/2 the total area required for dilution) as determined by superimposition of an arc based on theoretical waste discharge from the marina, is reclassified as Seasonally Approved. NOTE: Rather than actually enforcing a curved boundary, the boundary shall be a straight line encompassing the required 1,076,902 sq ft Seasonally Approved area. Curved lines are not enforceable.

Existing Approved Area	Existing Approved/Prohibited Boundary	Existing Prohibited Area
	Proposed 1,076,902 sq ft Seasonally Approved area (1/2 area of 1/2 circle)	Superimposed Arc

Proposed Upland
Marina Basin 102 slips Land

Example 2: Two 51 slip Residential Marinas, Inadequate BMPs

Existing Prohibited Area	Existing Approved/Prohibited Boundary	Existing Approved Area
	Proposed 2,153,804 sq ft Seasonally Approved area (1,076,902 sq ft x 2) (Each marina basin is 27,540 sq ft)	
51 slips	Proposed Marina Basins	51 slips

NOTE: There is no overlap of dilution areas. The volume of water represented by the shaded area may not be counted for dilution of the theoretical waste discharge from both marinas.

DIVISION OF WATER RESOURCES

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

Proposed Total Maximum Daily Loads (TMDLs) for the Army Creek, Blackbird Creek, Broadkill River, Cedar Creek, Dragon Run Creek, Leipsic River, Little Creek, Mispillion River, Red Lion Creek, Smyrna River, and St. Jones River Watersheds, Delaware

PUBLIC NOTICE

Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct three Public Workshops to review draft Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and bacteria for the Army Creek, Blackbird Creek, Broadkill River, Cedar Creek, Dragon Run Creek, Leipsic River, Little

Creek, Mispillion River, Red Lion Creek, Smyrna River, and St. Jones River Watersheds. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Possible Terms of the Agency Action

Following the Public Workshops and after reviewing comments received during the comment period, Public Hearings will be scheduled to adopt the proposed Total Maximum Daily Loads for these Watersheds. Following adoption of the TMDL Regulations, DNREC will develop Pollution Control Strategies (PCSs) designed to achieve the necessary load reductions. PCSs will identify specific pollution reduction activities and timeframes and will be developed in concert with Tributary Action Teams, other stakeholders, and the public.

Statutory Basis or Legal Authority to Act

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 *et. seq.*, as amended.

Other Legislation That May be Impacted

None

Notice of Public Workshops and Comment Period

Proposed TMDLs for the Blackbird Creek, Leipsic River, Little Creek, Smyrna River, and St. Jones River Watersheds will be reviewed during a Public Workshop to be held at 6:00 p.m., Thursday, May 11, 2006 at the Delaware National Estuarine Research Reserve, 818 Kitts Hummock Road, Dover, DE.

Proposed TMDLs for the Army Creek, Dragon Run Creek, and Red Lion Creek Watersheds will be reviewed during a Public Workshop to be held at 6:00 p.m., Tuesday, May 16, 2006 at DNREC's Lukens Drive Building, 391 Lukens Drive, New Castle, DE.

Proposed TMDLs for the Broadkill River, Cedar Creek, and Mispillion River Watersheds will be reviewed during a Public Workshop to be held at 6:00 p.m., Thursday, May 18, 2006 at the City of Lewes Public Library, 111 Adams Street at Kings Highway, Lewes, DE.

Draft TMDL Regulations and technical support documents for these watersheds will be available as of Monday, May 1, 2006 on the Department's website (www.dnrec.delaware.gov) by clicking on "TMDLs" under "Information" or by contacting Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us).

The Department has developed these draft regulations pursuant to a federal Consent Decree which requires the establishment of these TMDLs by the end of Calendar Year 2006. In order to comply with the ambitious schedule set by the Court Order, the Department must receive comments as early as possible in the regulatory development process. Hence, the Department is requiring that written comments on the proposed regulations be submitted no later than 4:30 PM, Wednesday, May 31, 2006, in order to be considered. After consideration of the written public comments, the Department, upon public notice, will schedule a Public Hearing.

Please send written comments to Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us). All written comments must be received by 4:30 p.m., Wednesday, May 31, 2006. Electronic submission is preferred.

Prepared By:

John Schneider, Watershed Assessment Section, 739-9939.

7416 Total Maximum Daily Loads (TMDLs) for the Army Creek Watershed, Delaware**1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Army Creek and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Army Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Army Creek

Article 1. The nonpoint source nitrogen load in the entire Army Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total nitrogen load of 24.3 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Army Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total phosphorous load of 2.04 pounds per day.

Article 3. The nonpoint source *enterococcus* bacteria load in the entire Army Creek watershed shall be reduced by 39 percent from the 1997-2005 baseline level.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Army Creek.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7417 Total Maximum Daily Loads (TMDLs) for the Blackbird Creek Watershed, Delaware**1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Blackbird Creek and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Blackbird Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Blackbird Creek

Article 1. The nonpoint source nitrogen load in the entire Blackbird Creek watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total nitrogen load

of 175.5 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Blackbird Creek watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total phosphorous load of 19.97 pounds per day.

Article 3. The nonpoint source *enterococcus* bacteria load in the entire Blackbird Creek watershed shall be reduced by 80 percent from the 2002-2003 baseline level. This shall result in a yearly-mean *enterococcus* bacteria load of 4.67E+10 colony forming units (CFU) per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Blackbird Creek.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7418 Total Maximum Daily Loads (TMDLs) for the Broadkill River Watershed, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Broadkill River and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Broadkill River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Broadkill River

Article 1. The total nitrogen load from the four point source facilities in the Broadkill River watershed (Town of Milton, Allen Family Foods, Perdue Georgetown, and SAW Georgetown) shall be limited to 245.6 pounds per day. The nitrogen waste load allocation for each facility includes: 36.5 pounds per day for the Town of Milton, 73.0 pounds per day for Allen Family Foods, 116.8 pounds per day for Perdue Georgetown, and 19.3 pounds per day for SAW Georgetown.

Article 2. The total phosphorous load from the four point source facilities in the watershed (Town of Milton, Allen Family Foods, Perdue Georgetown, and SAW Georgetown) shall be limited to 28.0 pounds per day. The phosphorous waste load allocation for each facility includes: 13.1 pounds per day for the Town of Milton, 5.21 pounds per day for Allen Family Foods, 8.34 pounds per day for Perdue Georgetown, and 1.38 pounds per day for SAW Georgetown.

Article 3. The *enterococcus* bacteria load from the four point source facilities in the watershed (Town of Milton, Allen Family Foods, Perdue Georgetown, and SAW Georgetown) shall be limited to 1.67E+09 colony forming units (CFU) per day. The *enterococcus* bacteria waste load allocation for each facility includes: 4.37E+08 CFU per day for the Town of Milton, 4.73E+09 CFU per day for Allen Family Foods, 7.57E+09 CFU per day for Perdue Georgetown, and 1.25E+09 CFU per day for SAW Georgetown.

Article 4. The nonpoint source nitrogen load in the entire Broadkill River watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total nitrogen load of 2224.2 pounds per day.

Article 5. The nonpoint source phosphorous load in the entire Broadkill River watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total phosphorous

load of 94.7 pounds per day.

Article 6. The nonpoint source *enterococcus* bacteria load in the entire Broadkill River watershed shall be reduced by 75 percent from the 2002-2003 baseline level. This shall result in a yearly-average *enterococcus* bacteria load of 1.0E+11 CFU per day.

Article 7. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 6 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Broadkill River.

Article 8. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7419 Total Maximum Daily Loads (TMDLs) for the Cedar Creek Watershed, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Cedar Creek and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Cedar Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Cedar Creek

Article 1. The nonpoint source nitrogen load in the entire Cedar Creek watershed shall be reduced by 45 percent from the 2001-2003 baseline level. This shall result in a yearly-average total nitrogen load of 587.6 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Cedar Creek watershed shall be reduced by 45 percent from the 2001-2003 baseline level. This shall result in a yearly-average total phosphorous load of 23.25 pounds per day.

Article 3. The nonpoint source *enterococcus* bacteria load in the entire Cedar Creek watershed shall be reduced by 96 percent from the 2001-2003 baseline level. This shall result in a yearly-mean *enterococcus* bacteria load of 7.15E+10 colony forming units (CFU) per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Cedar Creek.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7420 Total Maximum Daily Loads (TMDLs) for the Dragon Run Creek Watershed, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Dragon Run Creek and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Dragon Run Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Dragon Run Creek

Article 1. The nonpoint source nitrogen load in the entire Dragon Run Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total nitrogen load of 79.7 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Dragon Run Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total phosphorous load of 4.25 pounds per day.

Article 3. The nonpoint source *enterococcus* bacteria load in the entire Dragon Run Creek watershed shall be reduced by 19 percent from the 1997-2005 baseline level.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Dragon Run Creek.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7421 Total Maximum Daily Loads (TMDLs) for the Leipsic River Watershed, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Leipsic River and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Leipsic River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Leipsic River

Article 1. The nonpoint source nitrogen load in the entire Leipsic River watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total nitrogen load of 559.4 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Leipsic River watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total phosphorous load of 61.98 pounds per day.

Article 3. The nonpoint source *enterococcus* bacteria load in the entire Leipsic River watershed shall be reduced by 75 percent from the 2002-2003 baseline level. This shall result in a yearly-mean *enterococcus*

bacteria load of 1.08E+11 colony forming units (CFU) per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Leipsic River.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7422 Total Maximum Daily Loads (TMDLs) for the Little Creek Watershed, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Little Creek and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Little Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Little Creek

Article 1. The nonpoint source nitrogen load in the entire Little Creek watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total nitrogen load of 101.5 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Little Creek watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total phosphorous load of 11.21 pounds per day.

Article 3. The nonpoint source *enterococcus* bacteria load in the entire Little Creek watershed shall be reduced by 75 percent from the 2002-2003 baseline level. This shall result in a yearly-mean *enterococcus* bacteria load of 1.11E+10 colony forming units (CFU) per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Little Creek.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7423 Total Maximum Daily Loads (TMDLs) for the Mispillion River Watershed, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Mispillion River and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL

sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Mispillion River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Mispillion River

Article 1. The nonpoint source nitrogen load in the Mispillion River watershed shall be reduced from the 2001-2003 baseline level by 88 percent for King's Causeway Branch and 57 percent for the remaining parts of the watershed. This shall result in a yearly-average total nitrogen load of 756.5 pounds per day.

Article 2. The nonpoint source phosphorous load in the Mispillion River watershed shall be reduced from the 2001-2003 baseline level by 88 percent for King's Causeway Branch and 57 percent for the remaining parts of the watershed. This shall result in a yearly-average total phosphorous load of 13.23 pounds per day.

Article 3. The nonpoint source *enterococcus* bacteria load in the Mispillion River watershed shall be reduced from the 2001-2003 baseline level by 87 percent. This shall result in a yearly-mean *enterococcus* bacteria load of 2.92E+11 colony forming units (CFU) per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Mispillion River.

Article 5. Implementation of this TMDL Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7424 Total Maximum Daily Loads (TMDLs) for the Red Lion Creek Watershed, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Red Lion Creek and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Red Lion Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Red Lion Creek

Article 1. The nonpoint source nitrogen load in the entire Red Lion Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total nitrogen load of 121.3 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Red Lion Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total phosphorous load of 3.7 pounds per day.

Article 3. The nonpoint source *enterococcus* bacteria load in the entire Red Lion Creek watershed shall be reduced by 40 percent from the 1997-2005 baseline level.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Red Lion Creek.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7425 Total Maximum Daily Loads (TMDLs) for the Smyrna River Watershed, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Smyrna River and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Smyrna River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Smyrna River

Article 1. The nonpoint source nitrogen load in the entire Smyrna River watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total nitrogen load of 742.2 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Smyrna River watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total phosphorous load of 57.8 pounds per day.

Article 3. The nonpoint source *enterococcus* bacteria load in the entire Smyrna River watershed shall be reduced by 75 percent from the 2002-2003 baseline level. This shall result in a yearly-mean *enterococcus* bacteria load of 1.74E+11 colony forming units (CFU) per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Smyrna River.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7426 Total Maximum Daily Loads (TMDLs) for the St. Jones River Watershed, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of St. Jones River and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed St. Jones River on several of the State's 303(d) Lists and proposes the following Total

Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for St. Jones River

Article 1. The total nitrogen load from the two point source facilities in the watershed (Dover McKee Run and Reichhold Chemicals) shall be limited to 9.2 pounds per day. The nitrogen waste load allocation for Dover McKee Run will be 7.7 pounds per day and for Reichhold Chemicals will be 1.5 pounds per day.

Article 2. The total phosphorous load from the two point source facilities in the watershed (Dover McKee Run and Reichhold Chemicals) shall be limited to 0.37 pounds per day. The phosphorous waste load allocation for Dover McKee Run will be 0.24 pounds per day and for Reichhold Chemicals will be 0.13 pounds per day.

Article 3. The *enterococcus* bacteria load from the two point source facilities in the watershed (Dover McKee Run and Reichhold Chemicals) shall be limited to 1.67E+09 colony forming units (CFU) per day. The *enterococcus* bacteria waste load allocation for Dover McKee Run will be 1.1E+09 CFU per day and for Reichhold Chemicals will be 5.7E+08 CFU per day.

Article 4. The nonpoint source nitrogen load in the entire St. Jones River watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total nitrogen load of 860.3 pounds per day.

Article 5. The nonpoint source phosphorous load in the entire St. Jones River watershed shall be reduced by 40 percent from the 2002-2003 baseline level. This shall result in a yearly-average total phosphorus load of 63.01 pounds per day.

Article 6. The nonpoint source *enterococcus* load in the entire St. Jones River watershed shall be reduced by 90 percent from the 2002-2003 baseline level. This shall result in a yearly-average *enterococcus* load of 1.63E+11 CFU per day.

Article 7. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 6 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the St. Jones River.

Article 8. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
700 Board of Chiropractic

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10)
(24 Del.C. §706(a)(1) and 10) 24 DE Admin. Code 700

PUBLIC NOTICE

The State Board of Chiropractic in accordance with 24 Del.C. §706(a)(1) has proposed changes to its rules and regulations related to license renewal.

A public hearing will be held at 8:30 a.m. on June 15, 2006 in the 2nd floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board of Chiropractic, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

700 Board of Chiropractic
1.0 Chiropractic Defined; Limitations of Chiropractic License

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

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

4 DE Reg. 1940 (6/1/01)
2.0 Officers; Meetings; Quorum

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

3.0 Certification

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

4.0 Continuing Education
4.1 Continuing Education for New Licensees:

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

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

License Granted During Second Year:	Credit Hours Required:
July 1 - December 31	12 hours
January 1 - June 30	0 hours

4.2 Continuing Education for Licensees other than new licensees:

4.2.1 Unless otherwise excused by the Board for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence or inadvertence, all Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must provide attest to the Board adequate proof of the satisfactory completion of twenty four (24) credit hours of Board approved continuing education within the immediately preceding two (2) year period. Of the required twenty four (24) credit hours of Board approved continuing education, a maximum of twelve (12) credit hours may be fulfilled by participating in online courses.

4.2.1.1 Attestation may be completed electronically if the renewal is accomplished online.

In the alternative, paper renewal documents that contain the attestation of completion may be submitted;

4.2.2 Proof Attestation of continuing education shall be received at the Division of Professional Regulation, Dover, Delaware, no later than ~~April~~ June 30th of the reporting year and shall be received every two (2) years after such date. Continuing education completed before ~~April~~ June 30th of the reporting year shall not be carried over to the next renewal period. The Board has the right to conduct an audit of the proof of continuing education submitted by licensees.

4.2.2.1 All licensees shall maintain documentation of continuing education during the licensure period to be submitted if their renewal application is selected for audit. Random audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit the log and attendance verification.

4 DE Reg. 1940 (6/1/01)

8 DE Reg. 1586 (5/1/05)

5.0 Issuance of License; Renewal; Inactive Status; Reinstatements; Retention of Patient Records

5.1 The Biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one (1) year. Licenses renewal may be accomplished online at <http://dpr.delaware.gov>.

5.2 Inactive Status and Termination of Practice. Any licensee who seeks to be placed on inactive status or who is terminating his or her practice in this State or is leaving this State and is not transferring his or her records to another chiropractor shall notify the Board in writing and notify all patients treated within the last three (3) years by publication in a newspaper of general circulation throughout the State of Delaware and offer to make the patients records available to the patient or his or her duly authorized representative. Except in an emergency situation where as much notice as is reasonably possible shall be given, the notice by publication shall be made at least ninety (90) days prior to termination of the practice or leaving the State and must be published at least 3 times over this ninety (90) day period and must explain how a patient can procure his or her patient records. All patients who have not requested their records thirty (30) days prior to the termination of the licensee's practice or the licensee leaving the State shall be notified by first class mail by the licensee to permit patients to procure their records. Any patient records that have not been procured within 7 years after the licensee terminates his or her practice or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.

5.3 Retention of Patient Records. Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for seven (7) years from the date of the last treatment.

5.4 Whenever a patient changes from the care of one Chiropractor to another Chiropractor and upon the request of either the new Chiropractor or the patient the previous Chiropractor (a) may charge for the reasonable expenses of copying the patient's records and upon receiving payment for such expenses, shall transfer the patient's records to the new Chiropractor, or (b) if there is no copying charge, shall transfer the records of the patient to the new Chiropractor, within a reasonable time frame. Alternatively, if the patient and new Chiropractor agree, the Chiropractor may forward to the new Chiropractor a summary of the patient's records in lieu of the entire record at no charge to the patient. If a patient changes care from one Chiropractor to another Chiropractor, and fails to notify the previous Chiropractor or leaves the care of the previous Chiropractor for a period of 7 years from the date of the last treatment and fails to notify the previous Chiropractor, or fails to request the transfer of records to the new Chiropractor, then the previous Chiropractor shall maintain said records for a period of 7 years from the date of last treatment, after which time the records may be permanently disposed of in a manner that ensures confidentiality of the records.

5.5 This rule shall not apply to a Chiropractor who has seen or treated a patient on referral from a Chiropractor and who has provided a record of the diagnosis or treatment to another chiropractor, hospital or agency which has provided treatment for the patient.

5.6 A Chiropractor or the personal representative of the estate of a Chiropractor who disposes of patient records in accordance with the provisions of this rule is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

4 DE Reg. 1940 (6/1/01)

5 DE Reg. 270 (9/1/01)

7 DE Reg. 36 (7/1/03)**6.0 Grounds for Discipline**

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

6.2 Examples of Unprofessional Conduct in Advertising and Promotional Practices. The following advertising and promotional practices are deemed to be misleading, false, deceptive, dishonorable and/or unethical and shall constitute unprofessional conduct by a licensee:

6.2.1 The use of testimonials without written permission of that doctor's patient.

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

6.2.3 The use of unjustified or exaggerated claims, promises or statements which guarantee or strongly imply cure or successful treatment or are otherwise false, fraudulent, deceptive, or misleading.

6.2.4 Willful failure to identify licensee as a Doctor of Chiropractic, Chiropractor or Chiropractic Physician.

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

4 DE Reg. 1940 (6/1/01)

5 DE Reg. 270 (9/1/01)

7.0 License to Practice

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

8.0 Voluntary Treatment Option

Any member of the public or a licensee may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by the Board pursuant to 29 **Del.C.** §8807(n).

8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional

enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in section 8.8.

8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

8.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

8.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

8.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment

Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

8.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

4 DE Reg. 1940 (6/1/01)

9.0 Crimes substantially related to the practice of chiropractic

9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of chiropractic in the State of Delaware without regard to the place of conviction:

- 9.1.1 Manslaughter. 11 **Del.C.** §632.
- 9.1.2 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
- 9.1.3 Murder in the second degree. 11 **Del.C.** §635.
- 9.1.4 Murder in the first degree. 11 **Del.C.** §636.
- 9.1.5 Rape in the second degree. 11 **Del.C.** §772.
- 9.1.6 Rape in the first degree. 11 **Del.C.** §773.
- 9.1.7 Continuous sexual abuse of a child. 11 **Del.C.** §778.
- 9.1.8 Dangerous crime against a child. 11 **Del.C.** §779.
- 9.1.9 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 9.1.10 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.

9.2 Crimes substantially related to the practice of chiropractic shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

8 DE Reg. 997 (1/1/05)

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))

NOTICE OF PROPOSED RULE-MAKING AND PUBLIC HEARING CONCERNING RENEWABLE ENERGY PORTFOLIO STANDARDS

IN THE MATTER OF THE ADOPTION OF THE RULES |
TO IMPLEMENT THE RENEWABLE ENERGY |
PORTFOLIO STANDARDS ACT, 26 **DEL.C.** §§ 351-363, |
AS APPLIED TO RETAIL ELECTRICITY SUPPLIERS |
(OPENED AUGUST 23, 2005) |

PSC REGULATION DOCKET NO. 56

On July 12, 2005, the Delaware General Assembly enacted legislation finding that "the benefit of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of [renewable energy] resources in the electric supply portfolio of [Delaware]." The General Assembly further stated that its purpose in enacting this legislation is to establish a market in Delaware for electricity from renewable resources, and to lower the cost of such electricity to Delaware consumers. To this end, the General Assembly directed the Delaware Public Service Commission (the

"Commission") to adopt rules and regulations governing the implementation of Renewable Energy Portfolio Standards, and further directed the Commission to promulgate such rules and regulations by July 31, 2006.

In PSC Order No. 6793 (Dec. 6, 2005), the Commission issued a set of regulations for public comment and designated a Hearing Examiner to conduct further proceedings. On March 7, 2006, the Hearing Examiner issued a written report with revised regulations that were proposed for adoption by the Commission. On April 11, 2006, the Commission voted to adopt the Hearing Examiner's Report and publish the revised regulations for further public comment. In connection with the authority given to it, the Commission now proposes to adopt new rules and regulations to govern the Renewable Energy Portfolio Standards obligations of electric suppliers.

The text of the revised Rules proposed to be adopted is set forth as Attachment "A" to PSC Order No. 6885 (Apr. 11, 2006). Such proposed Rules will be published in the January 2006 volume of the *Delaware Register of Regulations*. In summary form:

The first section of the Rules contains definitions of the terms used in the regulations.

The second section addresses the purpose and scope of the regulations, and identifies the entities which will be subject to the regulations. That section further identifies the steps that must be taken for certain entities to be exempt from the regulations.

The third section sets forth proposed regulations regarding the Commission's administration of the standards including, certifying eligible energy resources; ensuring compliance with the renewable energy standards (beginning with a cumulative minimum percentage of electricity generated by renewable energy resources of 1% in 2007 and reaching a 10% cumulative level in 2019); and verifying compliance with the renewable energy standards.

The fourth section of the regulations addresses an electricity supplier's recovery of costs incurred in complying with the renewable energy standards.

The final section of the regulation addresses the Freedom of Information Act, the persons who may file a complaint, and the penalties for failure to comply with the rules and regulations.

The Commission has authority to promulgate such regulations pursuant to 26 **Del.C.** §§353 and 362.

The Commission hereby solicits written comments, suggestions, compilations of data, briefs or other written materials concerning the proposed rules and regulations. Anyone desiring to submit written comments, suggestions, data compilations, briefs or other written materials shall file ten (10) copies of such materials with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904 (Attn: PSC Reg. Dckt. No. 56). **All such materials shall be filed with the Commission on or before June 1, 2006.** Persons who wish to participate in the proceedings but who do not wish to submit written materials are asked to send a letter to the Commission informing the Commission of their intention to participate on or before **June 1, 2006.**

The Commission will hold a public hearing concerning the proposed regulations on **June 6, 2006, beginning at 1:00 P.M. at its Dover office, identified above.**

The proposed rules and regulations and all materials submitted in connection with this docket will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The proposed rules and regulations may also be reviewed at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 N. French Street, Wilmington, DE 19801, during normal business hours by appointment. Finally, the proposed rules and regulations will be available for review on the Commission's website located at www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing, by telephone or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries may also be sent via Internet e-mail to david.bloom@state.de.us.

ORDER NO. 6885

AND NOW, to-wit, this 11th day of April, 2006, the Commission having received and considered the

PROPOSED REGULATIONS

Findings and Recommendations of the Hearing Examiner, previously designated in the above-captioned matter, which were submitted after a duly publicized evidentiary hearing, and having heard from all parties and the Commission Staff that there are no exceptions to said Findings and Recommendations;

AND WHEREAS, based upon the recommendations of the Hearing Examiner, the Commission has determined that the evidence of record supports approving the *Rules and Procedures to Implement the Renewable Energy Portfolio Standard*, as proposed by Commission Staff;

Now, therefore, **IT IS ORDERED**:

1. That the Commission hereby adopts and approves in its entirety the Findings and Recommendations of the Hearing Examiner, which is attached hereto as Exhibit "A."

2. That the Commission finds that the proposed rules may reflect substantive changes from the earlier published rules (Jan. 2006), and may constitute a new proposal within the meaning of 29 **Del.C.** §10118(c). Staff represents that these proposed rules are as set forth in Attachment "A" to the Report. A copy of the Report of the Hearing Examiner with Attachment "A" is attached hereto as Exhibit "A".

3. That the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* the notice attached hereto as Exhibit "B" and the proposed regulations attached to the Hearing Examiner's Report as Attachment "A" for publication on May 1, 2006.

4. That the Secretary of the Commission shall cause the notice attached hereto as Exhibit "B" to be published in *The News Journal* and the *Delaware State News* newspapers on or before May 1, 2006.

5. That the Secretary of the Commission shall cause the notice attached hereto as Exhibit "B" and the proposed regulations attached to the Hearing Examiner's Report as Attachment "A" to be sent by United States mail to all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

6. All written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations shall be submitted to the Commission on or before June 1, 2006.

7. That the Commission will hold a public hearing on June 6, 2006 at 1:00 PM to consider adoption of the proposed regulations attached to the Hearing Examiner's Report as Attachment "A".

8. That the public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 **Del.C.** §114.

9. 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:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

EXHIBIT "A"

IN THE MATTER OF THE ADOPTION OF RULES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT, 26 DEL.C. §§351-363, AS APPLIED TO RETAIL ELECTRICITY SUPPLIERS

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in this Docket pursuant to 26 **Del.C.** §502 and 29 **Del.C.** ch. 101, by Commission Order No. 6793, dated December 6, 2005, reports to the Commission as follows:

I. APPEARANCES

On behalf of Delaware Public Service Commission Staff:

JAMES McC. GEDDES, ESQUIRE
ASHBY & GEDDES

On behalf of the Delaware Energy Office:

BRIAN GALLAGHER, CONSULTANT

On behalf of the Division of the Public Advocate:

JOHN C. CITROLO, DEPUTY PUBLIC ADVOCATE

On behalf of Constellation New Energy, Inc.:

DIVESH GUPTA, ESQUIRE
McDERMOTT WILL & EMORY

On behalf of Delmarva Power & Light Company:

STEPHEN SUNDERHAUF, MANAGER OF PROGRAM EVALUATIONS DEPARTMENT

On behalf of PEPCO Energy Services:

CARLA G. PETTUS, ESQUIRE

II. BACKGROUND

1. On July 12, 2005, the Delaware General Assembly enacted new legislation, entitled the Renewable Energy Portfolio Standards Act ("Act"),¹ which requires retail electricity suppliers in Delaware to derive a percentage of their electricity supply from eligible renewable energy resources. The General Assembly authorized the Delaware Public Service Commission (the "Commission") to administer the Act and, in so doing, directed the Commission to adopt rules governing the Act's implementation by July 31, 2006.

2. On August 23, 2005, by PSC Order No. 6697, the Commission opened Regulation Docket No. 56 to develop standards under the Act and directed Staff to conduct workshops to gain input from interested parties regarding proposed rules. After conducting two workshops and otherwise collaborating with Delaware stakeholders, Staff drafted a proposed regulation entitled *Rules and Procedures to Implement the Renewable Energy Portfolio Standard* ("Rules" or 'regulation') and submitted it to the Commission.

3. On December 6, 2005, by PSC Order No. 6793, the Commission directed publication of notice of the proposed regulation, which included, among other things, publication in the *Delaware Register of Regulations* on January 1, 2006. The Commission set a deadline of February 2, 2006, for the filing of comments by interested parties, and scheduled a public hearing for February 14, 2006. Written comments were filed by the Delaware Energy Office ("DEO")(Ex. 3),² Delmarva Power & Light Company ("Delmarva Power")(Ex. 4), and Constellation NewEnergy, Inc. ("Constellation")(Ex. 5).

4. In accordance with PSC Order No. 6793, a duly noticed³ public hearing was conducted at the Commission's offices in Dover on February 14, 2006. Representatives of Staff, the Division of the Public Advocate, the Delaware Energy Office, Delmarva Power, Constellation, and PEPCO Energy Services, Inc. participated in the hearing. Appearing at the hearing, but not participating, were Janine Schleiden from PJM Interconnection, LLC and Paul Sample from the Delaware General Assembly, Division of Research. One member of the public attended the

1. The Act is codified, in main part, at 26 Del.C. §§351-363.

2. References to the Exhibits entered into the evidentiary record of this proceeding will be cited as "(Ex. ____)" or "(Ex. ____ at ____)." References to the transcript of the proceedings will be cited as "(Tr. ____)."

3. Ex. 1 consists of the affidavits of publication of notice from *The News Journal* and *Delaware State News* newspapers. Notice was also sent to those entities that had participated in the prior workshops.

hearing and offered comment, as summarized below.

5. At the hearing, Staff submitted written testimony, which described certain changes it had made to its proposed regulation based on the written comments received. (Ex. 2). In addition, the other participants placed their written comments into the record and cross-examined Staff's witness. At the conclusion of the hearing, the record was left open in order to allow Staff to submit a final proposed regulation based on further discussions with the participants during and after the hearing.

6. In accordance with the post-hearing schedule, Staff, on March 1, 2006, submitted its final proposed regulation (Ex. 6). Staff also provided a redlined version of the final proposal (Ex. 7), as well as a three-page, post-hearing memorandum describing each post-hearing modification that it had made to its proposed regulation (Ex. 8). After receiving these documents into evidence, I closed the record, which now consists of eight exhibits and a 66-page *verbatim* transcript of the proceedings. I have considered all of the record evidence of this docket and, based thereon, I submit for the Commission's consideration these Findings and Recommendations.

III. THE PROPOSED REGULATION

7. Staff's proposed regulation consists of five sections establishing renewable energy portfolio standards and governing compliance requirements for retail electricity suppliers. (Ex. 6.) The first section of the *Rules* contains definitions of the terms used in the regulation. The second section addresses the purpose and scope of the regulation and identifies the entities that will be subject to the regulation. In general, the *Rules* apply to all retail electricity sales in Delaware except those from a Municipal Electric Company or from an exempt Rural Electric Cooperative, and excluding sales to an exempt Industrial Customer. The second section identifies the steps that must be taken for Rural Electric Cooperatives and Industrial Customers to be exempt from the regulations.

8. The third section governs the Commission's administration of the standards including: (1) certifying eligible energy resources; (2) ensuring compliance with the renewable energy standards (beginning with a cumulative minimum percentage of electricity generated by renewable energy resources of 1 percent in 2007 and reaching a 10 percent cumulative level in 2019); and (3) verifying compliance with the renewable energy standards. Suppliers comply with the minimum percentage requirements by accumulating Renewable Energy Credits ("RECs"), which are equivalent, on a one-to-one basis, to mega-watt hours of energy derived from eligible renewable energy resources. Suppliers may buy and sell RECs for compliance purposes. In lieu of using a REC, suppliers have the option of making an alternative compliance payment ("ACP"), escalating from \$25 per megawatt-hour in the first year a supplier uses an ACP to \$50 after four years of using ACPs to meet compliance requirements.

9. The fourth section of the regulation addresses an electricity supplier's recovery of costs incurred in complying with the renewable energy standards. The fifth and final section addresses Delaware's Freedom of Information Act, the persons who may file a complaint under the *Rules*, and the penalties for failure to comply with the *Rules*.

IV. SUMMARY OF PUBLIC COMMENT

10. Rick Holmes, a resident of Wilmington and Vice President (for Delaware) of the Mid-Atlantic Solar Energy Association, offered comments at the February 14th hearing in support of solar hot water systems. (Tr. 59-61.) Mr. Holmes first noted that the definition of 'eligible energy resource' in the proposed *Rules*, and under the Act, includes "solar energy technology that includes solar radiation to produce electricity." Mr. Holmes recommended, however, that eligible solar energy technology include solar radiation that *displaces* electricity rather than just that which *produces* electricity. Mr. Holmes asserted that a 2-kilowatt solar electric system (which *produces* electricity) is about 15 to 20 percent efficient whereas a 2-kilowatt solar hot water system (which *displaces* electricity use) is closer to 70 percent efficient. He also noted that solar hot water has been included in federal tax credit legislation. Mr. Holmes emphasized, however, that he does not wish to include solar heated swimming pools as an eligible solar resource.

V. SUMMARY OF EVIDENCE

11. **DEO.** Charlie T. Smisson, Jr., State Energy Coordinator, submitted written comments on behalf of the Delaware Energy Office, which were admitted into the record by stipulation of the participants. (Ex. 3; Tr. 56-57.) Mr. Smisson noted that the DEO has oversight duties under the Act as well as a long history of facilitating the installation of renewable and alternative energy technologies in Delaware.

12. Mr. Smisson recommended that the Commission adopt the proposed rules, with two exceptions. First, Mr. Smisson objected to Staff's proposed method for determining which Industrial Customers are exempt from the regulation. (Ex. 3 at 2-3) Under §353(b) of the Act, electricity sales to industrial customers "with a peak demand in excess of 1,500 kilowatts" are exempted from the regulations. Proposed Section 2.2.2, however, allows exemption for customers with multiple accounts totaling in excess of 1,500 kilowatts, served by a single supplier, if "the aggregate of their accounts with an NAICS Manufacturing Sector Code... have a Peak Demand of at least 751 kilowatts...". According to Mr. Smisson, this section will allow industrial customers to exempt non-manufacturing loads, such as off-site office buildings, from the *Rules* because only 751 kilowatts of peak demand needs to be attributable to manufacturing activities. Mr. Smisson asserted that Section 2.2.2 effectively lowers the 1,500 kilowatts peak demand threshold established in the Act for an industrial customer and is, therefore, inconsistent with the Act. (Id. at 2.)

13. Second, Mr. Smisson testified that proposed Section 3.2.6 improperly ties the determination of what type of metering is permissible for a small generator to the types of metering allowed under the applicable utility's tariff. (Id. at 3-4.) Under §355(c) of the Act, "small eligible energy sources, 100 kilowatts of capacity or less" may aggregate generation to meet the Act's requirements as long as they document their level of generation with "appropriate metering." Proposed Section 3.2.6, however, adds that "appropriate metering" is defined in the applicable utility's tariff then in effect. According to Mr. Smisson, use of the utility's tariff to define "appropriate metering" undermines the Act's intent, which is to allow flexible or alternative metering arrangements. (Id. at 4.)

14. **Constellation.** Martha A. Duggan, Vice President, Regional Government and Regulatory Affairs, submitted written comments on behalf of Constellation, which were admitted into the record by stipulation of the participants. (Ex. 5; Tr. 58.) Ms. Duggan recommended that Staff:

(1) clarify the definition of "Retail Electricity Product" under Section 1.1 by specifying that multiple electrical energy offerings with the same "Generation Attributes" may be considered a single Product, despite any differences in pricing methods;

(2) clarify Section 2.2 by specifying that industrial customers that seek exemption from the Rules must inform its retail supplier of its intention to claim such exemption;

(3) add a requirement, under Section 3.1.6.1, that Staff notify suppliers (two years in advance of any change) that it is considering implementation of a tracking system for Renewable Energy Credits other than the system used by PJM;

(4) clarify Section 3.2.2 by specifying that reporting requirements apply to green and non-green products but do not require reporting on specific retail products within those categories;

(5) add language to Section 3.3.4.6 stating that increases in Alternative Credit Payments will occur only after a determination has been made that the Retail Electricity Supplier has not conducted adequate planning; and

(6) clarify and modify Section 4.3 so that suppliers' notice requirements to customers relating to cost recovery reflect the differences in billing functions performed by retail electricity suppliers and an Electric Distribution Company.

(Id. at 2-7.)

15. **Delmarva Power.** Randall V. Griffin, Associate General Counsel, submitted written comments on behalf of Delmarva Power, which were admitted into the record by stipulation of the participants. (Ex. 4; Tr. 57-58.) Mr. Griffin recommended that Staff add a Section 3.1.6.2 that permits the retroactive creation of Renewable Energy Credits for electricity produced after June 1, 2006, by a renewable generator that did not become certified until after such date. Mr. Griffin stated that allowing retroactive creation of RECs in this manner is consistent with the Act and will ensure that additional RECs are available for use by suppliers for RPS compliance purposes.

16. In addition, Mr. Griffin recommended that the *Rules* permit renewable energy generating entities to be certified as Delaware Eligible Energy Resources based upon comparable generator RPS certifications granted by other states. (Id. at 2.) According to Mr. Griffin, permitting reciprocity will increase the number of RECs available for RPS compliance purposes in Delaware, where the electricity market is much smaller than most other PJM states and, therefore, less attractive for renewable generators interested in selling RECs. Mr. Griffin provided language that could be added under Section 3.1.2 that would permit reciprocity for generator certification requirements.

17. Finally, Mr. Griffin recommended that Section 3.3.1 allow suppliers to submit their RPS compliance report within 120 days of the end of each compliance year, rather than within 90 days. (Id.) Mr. Griffin asserted that 90 days places too much burden on suppliers, especially when PJM does not finalize its revenue data until the close of a 60-day settlement period. Mr. Griffin noted that Maryland allows five months for RPS compliance reporting and the District of Columbia allows 120 days.

18. **Staff.** At the hearing, Staff submitted written testimony from David Bloom, Public Utilities Analyst, in which Mr. Bloom responded to the comments provided by the participants. (Ex. 2.) Mr. Bloom described the changes that Staff made to its proposed Rules, based on the comments, and explained why certain recommendations were not accepted. Mr. Bloom also answered participants' questions under cross-examination. (Tr. 41-48.)

19. Mr. Bloom testified that Staff accepted Constellation's recommendations regarding the definition of Retail Electricity Product under Section 1.1 and the notice requirements for Industrial Customers that seek exemption from the rules. (Ex. 2 at 2-3.) Mr. Bloom did not revise Section 3.1.6.1 to require two years notice from the Commission before changing renewable energy tracking systems, as recommended by Constellation, because a situation may arise where the Commission needs to cease using the PJM tracking system immediately and will not be able to wait two years to create another system. (Id. at 3-4.) Regarding Constellation's request that the Commission place certain restrictions on increases in Alternative Compliance Payments, Mr. Bloom asserted that any alteration of the ACP schedule would conflict with the Act and he declined therefore to make the proposed revision. In response to Constellation's concern regarding a supplier's obligation to notify its customers of RPS cost recovery through billing inserts, Mr. Bloom asked Retail Electric Suppliers to work with Delmarva and the Delaware Electric Cooperative to develop an appropriate billing arrangement that will allow for compliance with the notification requirements.

20. Mr. Bloom also responded to DEO's comments. Mr. Bloom testified that Staff decided to keep its definition of "Industrial Customer" in Section 2.2.2, notwithstanding DEO's concern that Staff's definition lowers the peak demand threshold for exemption under the Act from 1,500 kilowatts to 751 kilowatts. (Id. at 6-7.) Mr. Bloom asserted that an Industrial Customer with multiple accounts should be eligible for exemption as long as its accounts total 1,500 kilowatts, as long as more than half of the load corresponds to NAICS Manufacturing Sector Codes. Mr. Bloom noted that Staff had to create a definition for "Industrial Customer" since the Act did not provide a definition and because neither Delmarva Power nor the Delaware Electric Cooperative has tariffs specifically designed for Industrial Customers.

21. Mr. Bloom testified that Staff accepted DEO's recommendation regarding permissible metering for a small generator under Section 3.2.6. Staff, therefore, removed the language that it had added to the statutory language providing that small Eligible Energy Resources "document the level of generation, as recorded by appropriate metering." Staff had added, but now has removed, the language "as defined in the applicable utility's tariff." DEO was concerned that the utility's tariff may not contemplate alternative metering arrangements. Mr. Bloom emphasized, however, that the applicable utility's tariff, as well as any interconnection agreements, still apply. (Id. at 7.)

22. Mr. Bloom testified that Staff did not accept any of Delmarva Power's three recommendations. (Id. at 8-10.) First, Staff declined adding a section to the *Rules* that specifically would permit retroactive creation of RECs because Staff intended for June 1, 2006 to be the starting date for when RECs may be created. In addition, Delmarva Power's proposal permitting retroactive REC creation is not consistent with PJM's GATS Operating Rules, according to Mr. Bloom.

23. Second, Staff rejected Delmarva Power's recommendation to revise Section 3.1.2 to permit REC reciprocity between states because of the possibility that other states' regulations would change over time. (Id. at 9.) Third, Staff decided not to extend its deadline for submitting compliance reports from 90 to 120 days. (Id. at 9-10.) As grounds, Mr. Bloom noted that Delaware's compliance year is June 1 through May 31, and because PJM finalizes its revenue data at the close of 60 days following the end of a calendar year, suppliers have close to seven months after the PJM settlement period to file their compliance report. In contrast, Maryland and the District of Columbia use the calendar year for compliance purposes.

24. In his post-hearing memorandum, dated March 1, 2006, Mr. Bloom made three additional modifications to the proposed *Rules*, in addition to various grammatical corrections. (Ex. 8.) First, Mr. Bloom added a new section, which reads:

Section 2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgment of the status, exempt or non-exempt, of the Industrial Customer and...;

Mr. Bloom made this recommendation in order to ensure that all parties (i.e., the Industrial Customer, its Retail Electricity Supplier and Staff) are aware that the Industrial Customer has elected for exemption of its load. (Id. at 1-2.)

25. Second, Mr. Bloom added a new section, which reads:

Section 3.1.7.1 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, but no earlier than June 1, 2006.

Staff made this recommendation to ensure that RECs are available for use by Retail Electricity Suppliers for RPS compliance. (Id. at 2.)

26. Third, Mr. Bloom changed the filing date of the annual compliance report from within 90 days to within 120 days. As a result of this change, Staff also altered the date for Staff to notify the Retail Electricity Supplier of any compliance deficiencies from within 135 days to within 165 days. These changes affect Sections 3.2.2, 3.3.1, and 3.3.5. Staff made this revision to allow Retail Electricity Suppliers more time to submit a more accurate Report. (Id. at 2-3.)

VI. FINDINGS AND RECOMMENDATIONS

27. The Commission has the authority and jurisdiction to promulgate regulations under 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 *et seq.* Pursuant to 26 **Del.C.** §209(a), the Commission may fix "just and reasonable" regulations governing any public utility. In addition, Section 2 of the *Renewable Energy Portfolio Standards Act* directs the Commission to "adopt rules and regulations necessary to implement the provisions of this Act..." Under these statutes, the Commission has jurisdiction to promulgate Staff's proposed *Rules* in this docket.

28. The final proposed regulation, which is attached to the proposed Order in this case as Exhibit "B", closely follows the Act, which is codified primarily at 26 **Del.C.** §§351-363. In fact, the most significant provisions, such as: (a) the minimum levels of supply from renewable resources required over the next twelve years, which range from 1 to 10 percent of sales; (b) the list of Eligible Energy Resources; and (c) the creation of tradable

renewable energy credits ("RECs") which are used to meet compliance requirements; simply replicate provisions found in the Act. For the administrative details, however, Staff used its discretion (with ample input from the participants) to set more specific reporting requirements, to sharpen certain definitions, and generally to establish implementation procedures.

29. Based on the comments submitted and the statements made at the hearing, all of the participants generally support the proposed *Rules*. While Staff accepted just one of the two recommendations made by DEO, Mr. Gallagher stated that DEO found the final proposed *Rules* to be acceptable. (Tr. 55.) After initially declining Delmarva Power's recommendations regarding retroactive REC creation and the amount of time allotted for reporting, Staff made certain concessions in its final proposed *Rules* that moved towards Delmarva Power's positions. To wit, Staff allowed for an earlier recognition of RECs in Delaware and extended the deadline for annual reporting from 90 to 120 days from the end of the reporting period. (Ex. 8 at 2-3.) In addition, Staff's decision not to allow jurisdictional reciprocity for RECs is reasonable, given the administrative burden that of tracking changes in other state's requirements and the possibility that Staff would not agree that another state's requirements are appropriate.

30. Mr. Bloom addressed each of Constellation's concerns (Ex. 2 at 2-5; Tr. 29-34; Ex. 8 at 1-2). As summarized above, Staff adopted several of Constellation's recommendations designed to clarify certain sections and rejected other suggestions as contrary to the Act. In addition, Staff declined to place a two-year notice requirement on the Commission for implementing a new renewable energy tracking system if the Commission finds that the PJM's system is no longer suitable. (Ex. 2 at 3.) As noted by Mr. Bloom, if the Commission must cease use of PJM's system on short notice, it will not be able to wait two years before implementing a replacement system.

31. Staff did not make any changes to its proposed *Rules* based on Mr. Holmes's recommendation, under public comment, that electricity use that is *displaced* by solar energy (e.g., with a solar hot water system) qualify as an eligible resource, rather than just electricity *produced* by solar energy. (Tr. 59-61.) This change would contradict the Act's requirement that qualifying solar energy "produce electricity that powers electricity generators," under §354 (e)(1), as apparently recognized by Mr. Holmes. I agree, therefore, with Staff's decision not to add electricity displaced by solar energy to the list of eligible resources.

32. In summary, after considering comments from all of the interested parties, Staff has proposed rules that are consistent with the Act and which implement the Act in a reasonable manner. As such, and for all of the above reasons, I recommend that the Commission adopt, as just and reasonable, Staff's proposed regulation (Ex. 6). A proposed form of Order implementing the above recommendation is appended, as Attachment "A," for the Commission's convenience. I will also note that, based on the changes Staff made to the proposed regulation published in the *Delaware Register* in January of 2006, it is likely that the Commission will need to republish the proposed *Rules*, and establish a new 30-day comment period. See 29 **Del.C.** §10118(c).

Respectfully submitted,

William F. O'Brien, Senior Hearing Examiner

Dated: March 7, 2006

RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARD

1.0 Definitions

1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" ("ACP") means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this

Regulation.

"Customer-Sited Generation" means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar energy technologies that employ solar radiation to produce electricity;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation _____);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation _____);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Fund" means the Delaware Green Energy Fund.

"GATS" means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

"Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

"New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.

"Peak Demand" shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

PROPOSED REGULATIONS

“PJM” or “PJM Interconnection” means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

“PJM region” means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

“Renewable Energy Credit” (“REC”) means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

“Renewable fuel” means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

“RPS” and “Renewable Energy Portfolio Standard” means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

“Retail Electricity Product” means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End-Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.

“Retail Electricity Supplier” means a person or entity that sells electrical energy to End-Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

“Rural Electric Cooperative” means a non-stock, non-profit, membership corporation organized pursuant to the Federal “Rural Electrification Act of 1936” and operated under the cooperative form of ownership.

“Total Retail Sales” means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.0 Purpose and Scope

2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of 26 Del.C., §351 – 363, is to set forth the rules for governing the RPS.

2.2 This regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:

2.2.1.1 submit a notice to the Commission’s Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account;

2.2.1.1.1 the Commission’s Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer and;

2.2.1.2 submit the Commission’s Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to their Retail Electricity Supplier.

2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility’s service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they must follow the procedure found in Section 2.2.1.

2.3 Any Rural Electric Cooperative that is opted-out of Commission regulation by its membership pursuant to 26 Del.C. §223 of the Delaware Code shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.

2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation

provided that, on or before June 1, 2006, they:

2.4.1 submit a written notice to the Delaware General Assembly;

2.4.2 submit a written notice to the Commission;

2.4.3 alert their End-Use Customers with notices inserted in two (2) consecutive electricity bills;

2.4.4 offer their End-Use Customers a voluntary program for purchasing renewable energy under competitive rates; and

2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in the State.

3.0 Administration of RPS

3.1 Certifying Eligible Energy Resources:

3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.

3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.

3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.

3.1.4 If Commission Staff finds the Generation Unit to be in compliance with Sections 1.0 and 3.0 of this Regulation, as well as any other applicable Delaware statute; Commission Staff will issue a State of Delaware Certification Number.

3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.

3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) Renewable Energy Credit (REC) for each mega-watt hour of energy derived from Eligible Energy Resources. RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.

3.1.6.1 However, if in the future, the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS, the Commission may establish or participate in another renewable energy tracking system.

3.1.7 RECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.

3.1.7.1 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, but no earlier than June 1, 2006.

3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time the Generation Unit shall submit a revised Application, which shall be subject to the process laid out in Section 3.1 of this Regulation.

3.1.9 RECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.

PROPOSED REGULATIONS

3.2 Compliance with RPS

3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources as shown in Schedule 1.

<u>SCHEDULE 1</u>	
<u>Compliance Year</u>	<u>Cumulative Minimum Percentage</u>
<u>2007</u>	<u>1%</u>
<u>2008</u>	<u>1.5%</u>
<u>2009</u>	<u>2%</u>
<u>2010</u>	<u>2.75%</u>
<u>2011</u>	<u>3.5%</u>
<u>2012</u>	<u>4.25%</u>
<u>2013</u>	<u>5%</u>
<u>2014</u>	<u>5.75%</u>
<u>2015</u>	<u>6.5%</u>
<u>2016</u>	<u>7.25%</u>
<u>2017</u>	<u>8%</u>
<u>2018</u>	<u>9%</u>
<u>2019</u>	<u>10%</u>

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers and subject to Section 3.2.3 and, where appropriate, Commission regulations¹. Such RECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.

3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 2020 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.

3.2.4 A Retail Electricity Supplier shall not use RECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs not required to meet this regulation.

3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs for the purposes of calculating compliance with the RPS.

3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1, provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering.

3.2.7 A Retail Electricity Supplier shall receive 300% credit toward meeting the RPS for energy derived from the following sources installed on or before December 31, 2014:

3.2.7.1 Solar electric; or

3.2.7.2 Renewable fuel that is used in a fuel cell.

1. The Commission understands the legislation to mean that the Total Retail Sales of each Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1. The Commission shall, in another proceeding, further define how RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

3.2.8 A Retail Electricity Supplier shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.

3.2.9 A Retail Electricity Supplier shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels.

3.2.10 Cumulative minimum percentage requirements of Eligible Energy Resources shall be established by Commission rules for Compliance Year 2020 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2019 in Schedule 1. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

3.2.11 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 10%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.

3.2.12 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 10%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.

3.3 Verification of Compliance with the RPS

3.3.1 Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of RECs required for that Compliance Year according to Schedule 1 and the Total Retail Sales of each Retail Electricity Product.

3.3.2 RECs must have been created by PJM-EIS's GATS, or its successor at law or pursuant to Section 3.1.6.1 of this Regulation.

3.3.3 RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.

3.3.4 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund an ACP of \$25 for each megawatt-hour deficiency between the RECs used by a Retail Electricity Supplier in a given compliance year and the RECs necessary for such Retail Electricity Supplier to meet the year's Cumulative Minimum Percentage. In subsequent years, the ACP for any Retail Electricity Supplier shall increase as follows:

3.3.4.1 If a Retail Electricity Supplier has paid an ACP of \$25 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$35 for each megawatt-hour.

3.3.4.2 If a Retail Electricity Supplier has paid an ACP of \$35 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$45 for each megawatt-hour.

3.3.4.3 If a Retail Electricity Supplier has paid an ACP of \$45 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$50 for each megawatt-hour.

3.3.4.4 If a Retail Electricity Supplier has paid an ACP of \$50 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$50 for each megawatt-hour.

3.3.4.5 ACPs shall not be more than \$50 for each megawatt-hour.

3.3.5 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to

be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP, according to Section 3.3.4 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.

3.3.6. All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

4.0 Recovery of Costs

4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.

4.2 A Retail Electricity Supplier may recover any ACP if the payment of an ACP is the least cost measure to ratepayers as compared to the purchase of Renewable Energy Credits to comply with the RPS; or if there are insufficient Renewable Energy Credits available for the Retail Electricity Supplier to comply with the RPS.

4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

5.0 Other General Rules

5.1 Under Delaware's Freedom of Information Act, 29 Del.C. Ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del.C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.

5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.

5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 Del.C., §205(a), §217, and §1019.

Symbol Key

Arial 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 AGRICULTURE
THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005; 29 Delaware Code
Section 4815(b)(3)c (3 **Del.C.** §10005; 29 **Del.C.** §4815(b)(3)c)
3 **DE Admin. Code** 1002

ORDER

Pursuant to 3 **Del.C.** §10171 and 29 **Del.C.** §4815(b)(3)c, the Delaware Jockeys' Health and Welfare Board issues this Order adopting proposed Board Rules. Following notice and a public hearing on March 20, 2006, the Commission makes the following findings and conclusions:

Summary of the Evidence

1. The Commission posted public notice of the proposed amendments in the March 1, 2006 *Register of Regulations* and for two consecutive weeks in the *Delaware Business Review* and *Delaware State News*. The Commission proposed to adopt rules outlining the eligibility requirements of the Board.

2. The Commission received written comments from William Fasy and Robert Colton. The Commission held a public hearing on March 20, 2006 and received public comments from Duncan Patterson. Mr. Fasy's written comments were as follows: he does not believe the Board has the power to award family coverage, "reasonable expenses" for the board should be more definitively defined, changes should be made to the definition of an active rider to make it more clear.

3. Mr. Colton's written comments were as follows: the definition of retired rider could discriminate against struggling jockeys, coverage for permanently disabled jockeys should be regardless of their time as a Delaware rider before injury, also using the definition of disable rider as dependant on social security disability may be problematic as recent immigrants will not qualify for social security regardless of the severity of their injury, and the definition of dependants should be spelled out in the rules and not left to the carriers.

4. Duncan Patterson asked during the public hearing where the 5,000 career mounts came from and was concerned that this number may be a little onerous.

Findings of Fact and Conclusions

5. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

6. The Commission has considered the public comments at the March 20, 2006 hearing. The Commission does not find those comments require further revisions of the proposed rules. The Commission finds that the new rules address the definition of eligibility in the most fair manner possible and that they should be adopted as previously published in the *Register of Regulations*.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2006.

IT IS SO ORDERED this _____ day of April, 2006.

Ed Stegemeier, Chair
William Fasy, Board Member
Michael McCarthy, Board Member
Jose Caraballo, Board Member
Larry Saumell, Board Member
Oliver Castillo, Board Member

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations

1.0 Introduction

1.1 These regulations are authorized pursuant to 3 Del.C. §10171 and 29 Del.C. §4815(b)(3)c which established a Delaware Jockeys' Health and Welfare Benefit Board (hereinafter "the Board") and Delaware Jockeys' Health and Welfare Benefit Fund (hereinafter "the Fund").

1.2 The Delaware Jockeys' Health and Welfare Benefit Board shall consist of 1 member of the Delaware Thoroughbred Racing Commission, 1 member from the licensed agent under Chapter 1010 of Title 3 or Chapter 4 of Title 28, 1 member of the Delaware Horsemen's Association, 1 representative from the organization that represents the majority of the jockeys who are licensed and ride regularly in Delaware, and 2 jockeys who are licensed and ride regularly in Delaware. The Chairman of the Thoroughbred Racing Commission shall serve as an *ex officio* member, and vote on matters in the event of a tie vote on any issue. All members shall be appointed by the Thoroughbred Racing Commission, and shall serve a two year term.

1.3 The Board shall elect a Chairperson from among the appointed members of the Board. The Chairperson shall serve a two year term and may serve consecutive terms. The Chairperson shall be the presiding officer at all meetings of the Board.

1.4 The Board shall administer the Fund pursuant to these regulations and other reasonable criteria for benefit eligibility.

1.5 A special fund of the State has been established and will be known as the "Delaware Jockeys' Health and Welfare Benefit Fund." The Fund shall consist of the proceeds transferred from the licensed video lottery agent and the purse account pursuant to 29 Del.C. §4815(b)(3)c. The proceeds transferred to the Fund will be maintained in an account established in the Department of Agriculture.

1.6 The Fund will be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. All income earned by the Fund will be reinvested in the Delaware Jockeys' Health and Welfare Benefit Fund.

1.7 The Board shall use the Fund to provide for jockeys who regularly ride in Delaware, health benefits for active, disabled and retired jockeys. The Board may also expend usual and customary expenses for

administrative purposes from the Fund.

1.8 The Thoroughbred Racing Commission's Administrator of Racing will provide administrative support to the Board and keep minutes of all the meetings of the Board and preserve all records of the Board. The Board's Office will be considered as part of the Office of the Thoroughbred Racing Commission.

1.9 The Board can propose to amend these regulations by an affirmative vote of the majority of the Board.

2.0 Eligibility Criteria for Health Coverage

2.1 The Board will pay from the Fund for health coverage for active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.

2.1.1 An Active Delaware Jockey, who regularly rides in Delaware, is eligible for health insurance coverage under the fund, if the jockey had twenty-five (25) mounts in a Delaware Park season at Delaware Park; and

2.1.1.1 If the jockey's Delaware Park mounts are less than 50 in a Delaware Park season, then 80% of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.

2.1.1.2 If the jockey's Delaware Park mounts are less than 100 but more than 50 in a Delaware Park season, then 50% of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.

2.1.1.3 If the jockey's Delaware Park mounts are 100 or more in a Delaware Park season, the jockey is eligible for health insurance coverage, regardless of the amount of total mounts at other tracks.

2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:

2.1.2.1 The Jockey was receiving health insurance coverage as a retired jockey provided by the Delaware Thoroughbred Racing Commission's health insurance plan with the Jockey's Guild on January 1, 2006; or

2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least seven years and had at least 5,000 career mounts at any track.

2.1.3 A disabled Delaware Jockey's spouse and dependents qualify for health benefits if the disabled jockey meets all of the following requirements:

2.1.3.1 Qualification as an active Delaware jockey as defined by 2.1.1 for at least three years preceding determination of permanent disability; and

2.1.3.2 Be deemed permanently disabled by Social Security and qualify for Medicare as a result of an injury sustained during the regular Delaware Park season on the premises of Delaware Park, and arising in the course of his/her participation as a licensed jockey.

2.2 A jockey and/or the jockey's family who meets the eligibility requirements of either an active Delaware jockey, a retired Delaware jockey, or a disabled Delaware jockey's family will be entitled to health coverage beginning on the first of the month after it can be determined the eligibility requirement has been met, and continuing until December 31st of the next calendar year.

2.3 The Board will pay from the Fund for health coverage for the dependents of active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.

2.3.1 Eligibility for coverage for dependants will be determined by the company providing the insurance coverage.

FINAL REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 **Del.C.** §1220(a))
14 **DE Admin. Code** 275

REGULATORY IMPLEMENTING ORDER

275 Charter Schools

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 275 Charter Schools Sections 4.2.1.3 and 4.2.2.1 based on recommendations made by a task force created by House Resolution 78 from the 142nd General Assembly to review the Standards for Licensing and Chartering and the Continued Licensing of Charter Schools.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 21, 2006, in the form hereto attached. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 275 in order to implement recommendations made by a task force created by House Resolution 78 from the 142nd General Assembly to review the Standards for Licensing and Chartering and the Continued Licensing of Charter Schools.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 275. Therefore, pursuant to 14 **Del.C.** Ch. 5, 14 **DE Admin. Code** 275 attached hereto is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 275 hereby amended 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 14 **DE Admin. Code** 275 amended hereby shall be in the form attached hereto, and said regulation shall be cited as 14 **DE Admin. Code** 275 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch. 5 on April 20, 2006. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 20th day of April 2006.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

Approved this 20th day of April 2006

STATE BOARD OF EDUCATION

Jean W. Allen, President
Richard M. Farmer, Jr., Vice President
Mary B. Graham, Esquire
Gregory A. Hastings
Barbara B. Rutt
Dennis J. Savage
Dr. Claibourne D. Smith

275 Charter Schools***(Break in Continuity of Sections)*****4.0 Standards and Criteria for Granting Charter**

4.1 Applicant Qualifications

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business management, including but not limited to accounting and finance.

4.1.1.3 Personnel management.

4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.

4.1.1.5 At risk populations and children with disabilities, including but not limited to students eligible for special education and related services.

4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:

4.1.3.1 The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First Instructional Day;

4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.

4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 **Del.C.** Ch. 100 in conducting the Charter School's business.

4.2 Student Performance

4.2.1 Minimum Requirements

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 **Del.C.** §§151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program.

4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the assessments administered pursuant to the Delaware Student Testing Program (DSTP), and a timetable for accomplishment of those goals.

4.2.1.3 ~~At a minimum, t~~The Applicant must agree and certify that the Charter School's average student performance on the DSTP assessments in each content area will meet or exceed the statewide average student performance of students in the same grades for each year of test administration, unless the student population meets the criteria established in Section 4.2.2.

4.2.2 Special Student Populations

4.2.2.1 An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3. This requirement ~~may~~ shall be waived where the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve at risk students and will apply performance goals and timetables which are appropriate for such a student population.

4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and apply additional and higher student performance goals consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.

4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.

4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 **Del.C.** §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 **Del.C.** Ch. 31 and with 14 **DE Admin. Code** 925, specifically including a plan for having a continuum of educational placements available for children with disabilities.

4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.

4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.

4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.

4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the

application shall document the sources and amounts of all proposed revenues and expenditures during the start up period prior to the opening of the school.

4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.

4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.

4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, or the construction or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.

4.4.5 Reserved

4.5 Attendance, Discipline, Student Rights and Safety

4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun Free Schools Act of 1994 (20 U.S.C.A. §8921) and Department Regulation 878.

4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.

4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:

4.5.2.1 14 **Del.C.** Ch. 27 and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.

4.5.2.2 11 **Del.C.** Ch. 85 and applicable Department regulations regarding criminal background checks for public school related employment.

4.5.2.3 14 **Del.C.** §4112 and applicable Department regulations regarding the reporting of school crimes.

4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.

4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.

4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School's policies and procedures for routine student health screenings, for administering medications to students (including any proposed self administration), for monitoring chronic student medical

conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full time services of a corresponding number of registered nurses.

6 DE Reg. 274 (9/1/02)

7 DE Reg. 928 (1/1/04)

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Education is available at: <http://www.state.de.us/research/AdminCode/title14/index.shtml>**

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

ORDER

2007 Stop Payments and 2008 Replacement Benefits - TANF, GA, RCA

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to case processing procedures. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the March 2006 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

DSSM 2007, *Stop Payments for TANF, GA and RCA Benefits* and DSSM 2008, *Replacement Benefits – TANF, GA, RCA*: Procedurally, DSS has denied requests for replacement checks when the requests were made after the stale date on the check. The stale date is sixty (60) days from the date of the check.

Stale date means the date the check is no longer valid for cashing. If the issue date is 1/1/06, the check is good for sixty (60) days until 3/1/06 and, 3/2/06 becomes the stale date. If a client cashes the check after the stale date, they will not receive reimbursement from the state. DSS is updating the DSSM to reflect this procedure.

DSS also added the requirement to sign and return an affidavit within ten (10) days of the date of the reported loss to align the procedures with the food stamp program.

Currently, a client could request a benefit replacement for a check they claim they did not receive a year ago. The client could request a replacement check in December but not sign an affidavit until three months later.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows:

The impact of the proposed regulations could be quite onerous; especially if one considers that loss of benefits such as General Assistance may be life threatening and that, many beneficiaries have mental disabilities and limited understanding of DSS procedures.

60 Day Rule

The 60-day time period to report non-receipt of a check may generally be reasonable. However, there are some situations in which it would be unfair to penalize a beneficiary for not reporting lack of receipt within 60 days. For example, a beneficiary may be unclear on when to expect an initial benefit check after filing the application. Sixty days could pass after issuance of a check and the beneficiary may simply believe that DSS is still processing the application. If that check is misdirected, lost in the mail, or stolen, the beneficiary would be forever barred from obtaining replacement benefits despite the lack of any fault. Alternatively, there may be confusion if the beneficiary has been advised that DSS may be adjusting/withholding benefits due to a past overpayment. The beneficiary may believe that absence of a check is indicative of lack of issuance based on a past overpayment or other eligibility issue. It would be preferable to retain the 60-day rule but allow exceptions for good cause.

Agency Response: At application, staff informs clients that DSS has 30 days to act on an application. Staff encourages clients to return their mandatory verifications as quickly as possible. If a client fails to return verifications at the end of the 30 days, a denial notice is sent to the client. If a client has not received a notice after returning their verifications, they do call their worker. When checks are recouped due to overpayments, the calculation information is on a notice sent to the client. The client will know the amount of the recoupment and the net check. Rarely, if at all, would a recoupment take the full check, as recoupment is 7% or \$15, whichever is greater. DSS maintains that the 60-day rule is reasonable and should stand as is.

10 Day Rule

Adoption of a 10-day standard for submission of an affidavit after report of loss may likewise unfairly penalize some beneficiaries.

At a minimum, DSS should clarify how and when beneficiaries would be notified of the requirement. If a 10-day rule is applied, the beneficiary should be advised of the rule no later than the date of the reported loss.

The regulation does not address how and when the beneficiary is provided with Form 124. If a beneficiary called to report loss on a Friday afternoon, and DSS mails out the form on Monday, several days may pass before the beneficiary actually obtains the form after reporting the loss. The beneficiary must then find a notary and not simply mail it back to DSS (since it will not be received in time) but somehow hand deliver it. The 10-day rule appears to presume that all beneficiaries have a Form 124 on hand.

Access to a notary, especially for "home-bound" beneficiaries, could be a major barrier. As a practical matter, query how a homebound beneficiary will entice a notary to perform a home visit? 5 **DE Reg.** 1927 (April 1, 2002) and 8 **DE Reg.** at 1152 (February 1, 2005) [DSS may conduct telephone interviews for homebound Food Stamp and TANF applicants]. For non-homebound beneficiaries, it would be preferable to include a regulatory requirement that each State Service Center have a notary available during normal business hours and that beneficiaries be notified of such availability.

A "good cause" exception should be authorized. For example, if a beneficiary reported a loss and then became hospitalized for 10 days, there is no authorization for an exception. Indeed, if the hospitalized beneficiary called DSS on the 10th day and asked the worker for an extension, the worker would have no authority to grant an extension irrespective of hardship or fairness. Indeed, if the DSS office were unexpectedly closed on the 10th day (e.g. due to snow or state of emergency), there is no authorization for an extension. The beneficiary is simply out of luck.

The following standard could be added to the end of Section 2008 to address both the 60-day and 10-day rules: "A DSS supervisor may grant reasonable extensions of the above time limits based on good cause (e.g. unforeseen hospitalization; reasonable belief benefit check not issued)."

Agency Response: Workers routinely inform clients at application what to do when a check is not received. They inform clients to report the loss right away, and that client will have to come into the office to sign the affidavit. A notary is located at each office location. A person who cannot come into the office can have a worker go

to the hospital or to the home to take the affidavit. DSS has not had any problem with these procedures.

Staff is flexible with clients who experience circumstances that prevent them from meeting certain deadlines. DSS always try to give the client the benefit of the doubt. DSS will add the following statement at the end of Section 2008:

A DSS supervisor may grant reasonable extensions of the above ten-day time limit based on good cause.

Timetable for Replacement Benefits

The timetable for replacement benefits is inconsistently described. Section 2008 indicates that "DSS will provide replacement benefits within ten days of the reported loss or within four working days of receiving the affidavit, whichever is later." In contrast, Section 2007, Part 4, adopts a "mailbox" approach in which replacement benefits will be mailed within four working days of receipt of the affidavit. For consistency, DSS may wish to consider substituting "issue" for "provide".

Agency Response: "Issue" has been substituted for "provide" at Sections 2007 and 2008.

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2006 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to case processing procedures is adopted and shall be final effective May 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 4/12/2006

DSS FINAL ORDER REGULATIONS #-6-17 REVISIONS:

2007 Stop Payments for TANF, GA and RCA Benefits

The following procedures are used to place a stop payment on a check that is reported by a client as lost, stolen, or not received by the 5th of the month.

1. The client must sign the ~~affidavit form~~ Affidavit of Forgery and Request for Replacement of Lost Checks (Form 124) indicating that the check was not received, or was lost or stolen. Form 124 must have the benefit number and the benefit amount to be replaced. Form 124 is to have a notary signature.

2. The worker completes Form 230, Stop Payment or Rescind Payment, ~~in the case of either~~ for each TANF, General Assistance, and RCA checks not received.

3. Form 230 and Form 124 are forwarded to DMS.

4. DMS investigates claims of checks that were not received, lost, or stolen. DMS will ~~mail~~ **issue** a replacement check to the recipient four working days after the receipt of the affidavit and Form 230, if the original check has not been cashed. (Note: In rare instances, DMS will send a replacement check to the pool ~~must be specified and a~~ when requested. A reason must be given for distribution by the pool.)

2008 Replacement Benefits - TANF, GA, RCA

The client must sign the Affidavit of Forgery and Request for Replacement of Lost Check (Form 124) attesting to the loss and submit the affidavit to DSS within ten days of the report of the loss.

The household will not receive a replacement check if the affidavit is not received by DSS within ten days of the report of the loss. If the tenth day falls on a weekend or holiday, DSS will consider the affidavit as received timely if it is received on the next business day.

The household will not receive a replacement check if the date of request exceeds the stale date on the check. The stale date on checks is sixty (60) days [from the date of the check.]

DSS will [provide issue] replacement benefits within ten days of the reported loss or within four working days of receiving the affidavit, whichever is later.

The procedures listed below are followed in order to replace benefits. They apply to both closed and open cases.

1. The DCIS II screen that reflects the current status of the case (open or closed), Form 124, and Form 230 (~~in the case of an assistance check~~) are sent to the Payments Section, DMS, Third Floor Annex, Administration Building, Herman M. Holloway, Sr. Health and Social Services Campus.

If the replacement is to be issued in an amount different from the original benefit, the pool supervisor must indicate on a separate sheet of paper the amount of the replacement benefit, the reason for the different amount, and sign it.

2. Upon receipt of Form 124 and Form 230, the Payments Section will issue the benefit via the DCIS II system and mail it to the recipient. Note: ~~in~~ In order to issue a replacement benefit for a closed case, the Payments Section will have to reopen the case. Once the replacement benefit has been issued, the Payments Section will return the case to a closed status.

[A DSS supervisor may grant reasonable extensions of the above ten-day time limit based on good cause.]

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

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

Order No. 2006F-0014

Summary of Evidence and Information

Pursuant to due notice 9, issue 8 **DE Reg.** 1139, (2/1/06), The Department of Natural Resources and Environmental Control proposes to amend Tidal Finfish Regulation Nos. 3511 and 3507 pertaining to summer flounder and black sea bass respectively. For summer flounder six options were proposed to restrain the recreational harvest to conform to the harvest cap of 116,000 fish imposed on Delaware for the 2006 fishing season by the Atlantic States Marine Fisheries Commission's (ASMFC) regional fisheries management plan. The proposed regulation for black sea bass would exclude the caudal filament as part of the total length measurement.

The options presented for summer flounder and the changes associated with the black sea bass regulation are necessary for Delaware to remain in compliance with the Atlantic States Marine Fisheries Commission fishery management plan provisions for these species and all of the options presented have been pre-judged to be in compliance with the mandatory provisions of these fishery management plans.

A public hearing was held on the proposed amendments to Regulations 3511 and 3507 on March 9, 2006. Comments were taken on the six options for summer flounder. No comments were presented for the changes in black sea bass regulation. Written testimony was received via email and included into the record.

Findings of Fact

- There was no opposition to the proposed elimination of the caudal filament when determining total length for black sea bass.
- Among the sixteen people who spoke on the record at the public hearing eight supported Option 6 because they felt that New Jersey and Delaware should have the same size (16.5") limit. Four individuals supported Option 2 and four individuals supported Option 4. These two options were based

on a 17" minimum size with two different bag limits. The individuals that supported these two options expressed concern about possibly exceeding the harvest cap if the size limit were smaller than 17". These individuals were aware of the consequences that could occur if the harvest cap were exceeded in 2006 and definitely did not want to see a seasonal restriction implemented in 2007 if at all possible. They were concerned that a smaller size limit would result in an overage and therefore require a seasonal closure in 2007.

- The Division received sixty three emails as part of the public input process regarding comments on the six proposed options for management of the recreational harvest of summer flounder in 2006. The majority of those people (29) who provide email comments supported Option 2. These individuals felt that the 17" minimum size limit associated with this option would restrain the harvest within the harvest cap with only minimal chance of exceeding the harvest cap of 116,000 fish. Thirteen (13) individuals provided comments that supported Option 6. The primary focus for the support of this option dealt with the perceived need for the same size limit for all individuals fishing in Delaware Bay. Option 4 which was based on a 17" minimum size with a six fish creel limit received eight (8) supporting emails while Option 5 received six (6) endorsements.
- Option 1, status quo, received six (6) email endorsements from individuals that felt that the current management system should remain in place for the 2006 fishing season.
- The Atlantic States Marine Fisheries Commission (ASMFC) provided written comments which summarized the findings from the Commission's Technical Committee review of the six Delaware options for managing the recreational harvest of summer flounder in 2006. These findings indicate that Options 1, 2, 3, and 4 were perceived to have only a minimal risk of exceeding the state's harvest cap in 2006. However, the members of the Technical Committee cautioned that Options 5 and 6 had a much higher level of risk for exceeding the harvest cap of 116,000 fish in 2006. The committee indicated that due to the uncertainty in the size composition and discards in the recreational harvest, Options 5 and 6 carry a higher level of associated risk than the other options presented.

Conclusions

I have reached the following conclusions:

- Delaware and the surrounding states are required to restrain the recreational harvest of summer flounder to a harvest cap level that is calculated individually for each state. The cap is predicated on state landings of recreationally caught summer flounder in 1998 and consequently all states have different caps. The individual state harvest cap is a compliance requirement in the ASMFC summer flounder FMP. In order to avoid any action by ASMFC, which under a worse case scenario could result in a Federal moratorium on fishing for summer flounder in Delaware, it will be necessary to require management measures in 2006 that will restrain the harvest within the 116,000 fish cap.
- Information presented at the public hearing by the Department indicates that based on historical landings data state anglers exceeded the 2006 cap in 2001 and 2004 despite the fact that a 17.5" minimum size limit was in place. In addition, average landings for the periods 2001 through 2005 indicate that the level of harvest was almost equivalent with the 2006 harvest cap despite the fact that a 17.5" minimum size and four fish creel limit were in place. Furthermore, an analysis that projects estimated 2006 landings, based on 2005 catch and discard data, suggests that the harvest cap could be exceeded in Options 5 and 6 which both employ a minimum fish size of 16.5".
- Technical review of Delaware's six management options, by the ASMFC Technical Committee, indicates that a higher probability of exceeding the 2006 harvest cap exists if options 5 and 6 are adopted. Uncertainty associated with summer flounder harvest size composition data and discard size frequencies contribute to the higher level of risk incumbent with the management options that utilize a 16.5" minimum size limit.
- The majority of people who commented, via email, supported Option 2, while those individuals that responded for the record at the public hearing were split between those options with the 17" minimum

size (2 and 4) and Option 6 with the 16.5" minimum size. Those individuals that supported the 16.5" minimum size cited the need for a compatible size limit with New Jersey while fishing in Delaware Bay. The responders that supported the 17" minimum size felt that this larger size limit would help restrain the harvest as required by the ASMFC harvest cap.

- Only six emails supported the status quo and no one at the public meeting spoke in favor of Option 1 which would have maintained the current management program based on a 17.5" minimum size and four fish bag limit.
- Delaware's minimum size limit, for recreational anglers in 2006, should be reduced to 17" with a creel limit of 4 fish per day. This approach should restrain the harvest within the confines of the 116,000 fish harvest cap as required by ASMFC and based on public input has a wide range of support amongst those individuals that commented on the public record.
- The current regulation for Black Sea Bass should be amended to exclude the caudal filament as part of the measurement for total length. This change in regulations will insure that Delaware's management program is consistent with the majority of the coastal states from Massachusetts to North Carolina.

ORDER

It is hereby ordered this _____ day in March in the year 2006 that an amendment to the Tidal Finfish Regulation Nos. 3507 and 3511, copies of which are attached hereto, is adopted pursuant to 7 **Del.C.** §903(e)(2)(a) and is supported by the Department findings of evidence and testimony received. This Order shall become effective on May 11, 2006.

John A. Hughes, Secretary, Department of Natural Resources and Environmental Control

3507 Black Sea Bass Size Limit; [~~Trip Limits, Landing Permits, Qualifying Criteria;~~] Seasons; Quotas (Formerly Tidal Finfish Reg. 23)

(Penalty Section 7 **Del.C.** §936(b)(2))

1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve (12) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 **CFR** §§ 648.4 and

who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.

6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

- 1 DE Reg. 1767 (5/1/98)**
- 2 DE Reg. 1900 (4/1/99)**
- 3 DE Reg. 1088 (2/1/00)**
- 4 DE Reg. 1665 (4/1/01)**
- 4 DE Reg. 1859 (5/1/01)**
- 5 DE Reg. 2142 (5/1/02)**
- 6 DE Reg. 348 (9/1/02)**
- 6 DE Reg. 1230 (3/1/03)**

7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.

8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery [~~by 4:30 PM on a date no later than 15 days after this regulation is signed by the Secretary of the Department~~].

9.0 It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.

10.0 Each commercial food fishermen participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

11.0 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

- 7 DE Reg. 1575 (5/1/04)**
- 6 DE Reg. 1230 (3/1/03)**
- 8 DE Reg. 1488 (4/1/05)**

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ **[four (4)]** 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. [~~(Note: creel limit to be determined in combination with seasonal closure and size limit.)~~]

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~seventeen and one half (17.5)~~ **[seventeen (17)]** inches between the tip of the snout and the furthest tip of the tail. [~~(Note: creel limit to be determined in combination with seasonal closure and size limit.)~~]

7 DE Reg. 1575 (5/1/04)

3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~seventeen and one half (17.5)~~ **[seventeen (17)]** 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. [~~(Note: creel limit to be determined in combination with seasonal closure and size limit.)~~]

4.0 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:

4.1 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;

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

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

4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.

5.0 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.

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

7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ **[four (4)]** 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. [~~(Note: creel limit to be determined in combination with seasonal closure and size limit.)~~]

1 DE Reg. 1767 (5/1/98)

2 DE Reg. 1900 (4/1/99)

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

4 DE Reg. 1552 (3/1/01)

5 DE Reg. 462 (8/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 1358 (4/1/03)

7 DE Reg. 1575 (5/1/04)

8 DE Reg. 1488 (4/1/05)

FINAL REGULATIONS

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
300 Board of Architecture**

Statutory Authority: 24 Delaware Code, Section 205 (24 **Del.C.** §306)
24 **DE Admin Code** 300

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 5, 2006 at a scheduled meeting of the Delaware Board of Architecture to receive comments regarding proposed amendments to Regulation 6.5. The proposal amends regulation 6.5 *Late Renewal* to clarify the late renewal process for continuing education requirements. The regulation does not change the total number of required continuing education credit hours. The proposed regulation was published in the *Register of Regulations*, Vol. 9, Issue 8, February 1, 2006.

Summary of the Evidence and Information Submitted

No written comments were received. No members of the public attended the hearing.

Findings of Fact With Respect to the Evidence and Information Submitted

There was no public comment received at the public hearing concerning the proposed amendments to the regulation. The Board finds that the amendments to the regulation are necessary to clarify the process by which a licensee may request an extension of time to complete the continuing education requirement necessary for renewal. The previous regulation did not permit renewal if the licensee did not complete the continuing education during the biennial period subject to renewal.

The Board finds that the regulation as proposed satisfies the requirement that licensees complete continuing education in furtherance of professional competency; however, the regulation removes the harsh result of denying renewal to a licensee who has failed to meet the continuing education by the renewal deadline. The regulation requires the licensee to request an extension of time and to complete the deficient continuing education within six (6) months of the renewal date. The amendments to Regulation 6.5 also provide licensees with a fair opportunity to make up continuing education during periods of audit. The regulation also makes clear that no continuing education completed during the late period may be used to satisfy future requirements. The regulation does not change the total number of required continuing education credit hours.

The "primary objective of the Board of Architects, to which all other objectives and purposes are secondary, is to protect the general public (including those persons who are direct recipients of services regulated by this chapter) from unsafe practices, and from occupational practices which tend to reduce competition or fix the price of services rendered. The secondary objectives of the Board are to maintain minimum standards of architect competency, and to maintain certain standards in the delivery of services to the public. In meeting its objectives, the Board shall develop standards assuring professional competence; shall monitor complaints brought against architects regulated by the Board; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against architects." 24 **Del.C.** §301.

In summary, the Board finds that adopting the amendments to regulation 6.5 meets both objectives and is in the best interest of the citizens of the State of Delaware and those individuals regulated by the Board. The changes are consistent with requiring licensees to maintain minimum standards of competency with regard to continuing education.

The Law

The Board's rulemaking authority is provided by 24 **Del.C.** §306 (a)(1).

Decision and Effective Date

The Board hereby adopts the changes to Regulation 6.5 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised regulation remains as published in *Register of Regulations*, Vol. 9, Issue 8, February 1, 2006, without any changes.

SO ORDERED this 5th day of April, 2006.

STATE BOARD OF ARCHITECTURE

Arden Bardol, Registered Architect, President

Jean N. McCool, Registered Architect, Secretary

Alvin French, Registered Architect

Julia C. Hopkins, Public Member

Peter Jennings, Registered Architect

Charles Weymouth, Registered Architect

300 Board of Architects

(Break in Continuity of Sections)

6.0 Registration

6.1 Duration- Each certificate of registration issued by the Board shall be valid for two years, or the expiration of the current licensing period.

6.2 Continuing Education Requirement For Renewal - For license or registration periods beginning August 1, 2003, and thereafter, each holder of a Certificate of Registration shall complete sixteen (16) hours of continuing education (Professional Development Units or PDUs) acceptable to the Board during each biennial licensing period. Completion of required continuing education is a condition for renewal of a Certificate of Registration. Each Registered Architect shall be exempt from the continuing education requirement in his or her initial biennial licensing period, or any portion thereof, in which he or she is licensed or registered to practice. Each Registered Architect shall be required to complete and submit forms prescribed by the Board certifying compliance with the continuing education requirement for renewal of registration. Required documentation may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity, as well as proof of attendance. The Board reserves the right to require additional information or documentation regarding continuing education compliance from a Registered Architect.

6.3 Content: All continuing education shall be obtained in the areas of Health, Safety and Welfare. The following are deemed acceptable continuing education: a) NCARB monograph programs; b) health safety and welfare programs approved by AIA.

6.4 Hardship Extension: The Board may, in its discretion, grant an extension of time within which the continuing education requirement must be completed for reasons, including, but not limited to, illness, disability, military service, and exceptional family responsibilities. The period of hardship extension granted shall be determined by the Board. Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period.

6.5 Late Renewal. ~~A licensee that has failed to renew on or before the renewal date may apply to renew their expired certificate of registration within twelve (12) months following the renewal date. Such late renewal application must be accompanied by payment of the renewal fee, payment of a late fee, and documentation of compliance with the continuing education requirement.~~

6.5.1 A licensee that has failed to renew on or before the renewal date may apply to renew their expired registration within six (6) months following the renewal date; provided however, that those licensees with a

pending renewal from the 2003 biennial registration period may submit such application within six months of the effective date of this Rule, unless otherwise required by law.

6.5.2 All late renewal applications must be accompanied by:

6.5.2.1 Renewal fee

6.5.2.2 Late renewal fee

6.5.2.3 Documentation of compliance with the continuing education requirement prior to

the renewal date.

6.5.3 A licensee who has failed to complete the continuing education requirement by the renewal date may request an extension of time of up to six (6) months following the renewal date to satisfy the prior license period continuing education requirement; provided however, that those licensees with a pending renewal from the 2003 biennial registration period may satisfy such continuing education requirement with 6 months of the effective date of this Rule, unless otherwise required by law.

6.5.4 No continuing education completed during the late period may be used to satisfy future renewal requirements.

6.6 Not Transferable - A certificate of registration shall not be transferable.

6.7 Revocation, Suspension, Cancellation or Non-renewal of Registration - In the event of revocation, cancellation, suspension or nonrenewal of any registration, the registered architect shall be required immediately to return his/her Certificate of Registration, seal and license to the Board.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Architects is available at: <http://dpr.delaware.gov/boards/architects/index.shtml>.**

DIVISION OF PROFESSIONAL REGULATION

700 Board of Chiropractic

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10) (24 **Del.C.** §706(a)(1) and 10)

24 DE Admin. Code 700

ORDER

At the regularly scheduled meeting of the Board of Chiropractic on March 23, 2006, the Board amended Regulation 4.2 Continuing Education for Licensees other than new licensees.

Summary of the Evidence and Information Submitted

No period of public comment is required for non-substantive changes. (29 **Del.C.** §10113(b)(4)) The text of the amended Regulation is shown in its entirety in Exhibit A attached hereto.

Findings of Fact

WHEREAS, the Board of Chiropractic ("Board") proposed changes in its Rules and Regulations affecting the continuing education requirement in the *Register of Regulations*, Vol. 8, Issue 9, March 1, 2005;

WHEREAS, the Board considered comment received during the comment period and at the public hearing on April 20, 2005;

WHEREAS, the Board adopted the changes by Order dated April 21, 2005 and published in the *Register of Regulations*, Vol. 8, Issue 11, May 1, 2005;

WHEREAS, the regulation as adopted failed to include an effective date;

WHEREAS, the Regulation's immediate implementation may create a hardship for licensees who had completed their continuing education requirements prior to the change;

NOW, THEREFORE, in consideration of these premises, and with the authority in 24 **Del.C.** §706(a)(1) and (10), the Board hereby amends its Order to include the following findings:

1. The immediate implementation of Rule 4.2 limiting online learning to 12 hours per licensure period may create a hardship for licensees who completed their continuing education for the current licensure period prior to the promulgation of the rule.
2. Including a future effective date is non-substantive change, so no additional period of public comment is required. 29 **Del.C.** §10118.
3. The effective date of the new Regulation shall be July 1, 2006.

Decision and Effective Date

The Board of Chiropractic hereby adopts the Rules and Regulations as proposed to be effective 10 days following final publication in the *Register of Regulations*.

Text and Citation

The text of the amended Rules and Regulations will appear in the *Register of Regulations*, Vol. 9, Issue 11, May 1, 2006.

BOARD OF CHIROPRACTIC

Trent Camp, D.C., President
William Houghton
Michael Kelman, D.C., Secretary
Prameela D. Kaza
Gary Morgan, D.C.
Date: March 23, 2006

700 Board of Chiropractic

(Break in Continuity of Sections)

4.0 Continuing Education.

4.1 Continuing Education for New Licensees:

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

License Granted During First Year:	Credit Hours Required:
July 1 - December 31	24 hours
January 1 - June 30	18 hours
License Granted During Second Year:	Credit Hours Required:
July 1 - December 31	12 hours
January 1 - June 30	0 hours

4.2 Continuing Education for Licensees other than new licensees:

4.2.1 Unless otherwise excused by the Board for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence or inadvertence, all

Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twenty four (24) credit hours of Board approved continuing education within the immediately preceding two (2) year period. Effective July 1, 2006, ~~Of~~ the required twenty four (24) credit hours of Board approved continuing education, a maximum of twelve (12) credit hours may be fulfilled by participating in online courses.

4.2.2 Proof of continuing education shall be received at the Division of Professional Regulation, Dover, Delaware, no later than April 30th of the reporting year and shall be received every 2 years after such date. Continuing education completed before April 30th of the reporting year shall not be carried over to the next renewal period. The Board has the right to conduct an audit of the proof of continuing education submitted by licensees.

4 DE Reg. 1940 (6/1/01)

8 DE Reg. 1586 (5/1/05)

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Chiropractic is available at: <http://dpr.delaware.gov/boards/chiropractic/index.shtml>.**

**DIVISION OF PROFESSIONAL REGULATION
2000 Board of Occupational Therapy**

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 **Del.C.** §2006(a)(1))
24 **DE Admin. Code** 2000

ORDER

A public hearing was held to receive comments on April 19, 2006, at the regularly scheduled meeting of the Board of Occupational Therapy Practice. The Board considered changes to its Rules and Regulations, 2.0 Licensure Procedures and 3.0 Continuing Education, that were published in the *Register of Regulations*, Vol. 9, Issue 8, February 1, 2006.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact With Respect to the Evidence and Information

The Board finds that the changes clarify the online renewal process as well as the auditing of continuing education for compliance.

Decision and Effective Date

The Board of Occupational Therapy Practice hereby adopts the Rules and Regulations as proposed to be effective 10 days following final publication in the *Register of Regulations*.

Text and Citation

The text of the Rules and Regulations appears in the *Register of Regulations*, Vol. 9, Issue 8, February 1, 2006 at page 1143.

BOARD OF OCCUPATIONAL THERAPY PRACTICE

Michael von Reider, President

Michelle Maahs

December Hughes, Vice President

Virginia Mirro

Debra Young, Secretary

2000 Board of Occupational Therapy**1.0 Supervision/consultation Requirements for Occupational Therapy Assistants**

1.1 **“Occupational therapy assistant”** shall mean a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist. 24 **Del.C.** §2002(4). (emphasis added)

“Under the supervision of an occupational therapist” means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or co-signature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

The phrase, “Under the supervision of an occupational therapist,” as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:

1.1.1 Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;

1.1.2 In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the plan.

1.1.3 Case management;

1.1.4 Determining program termination;

1.1.5 Providing information, instruction and assistance as needed;

1.1.6 Observing the occupational therapy assistant periodically; and

1.1.7 Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant’s performance and discussion of that appraisal with the assistant.

The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist.

1.2 Supervision for Occupational Therapy Assistants is defined as follows:

1.2.1 Direct Supervision requires the supervising occupational therapist to be on the premises and immediately available to provide aid, direction, and instruction while treatment is performed in any setting including home care. Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.

1.2.2 Routine Supervision requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as telephonic or written communication.

1.2.3 General Supervision requires at least monthly direct contact, with supervision available as needed by other methods.

1.3 Minimum supervision requirements:

1.3.1 Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.

Occupational therapy assistants with experience greater than one (1) full year must be supervised under either direct, routine or general supervision based upon skill and experience in the field as determined by the supervising OT.

1.3.2 Supervising occupational therapists must have at least one (1) year clinical experience after they have received permanent licensure.

1.3.3 An occupational therapist may supervise up to three (3) occupational therapy assistants

but never more than two (2) occupational therapy assistants who are under direct supervision at the same time.

1.3.4 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.

1.3.5 The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the level of supervision and shall document the supervision of each occupational therapy assistant. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six months or more frequently as demands of service changes.

1.3.6 A supervisor who is temporarily unable to provide supervision shall arrange for substitute supervision by an occupational therapist licensed by the Board with at least one (1) year of clinical experience, as defined above, to provide supervision as specified by Rule 1.0 of these rules and regulations.

2 DE Reg. 2040 (5/1/99)

2.0 Licensure Procedures:

2.1 To apply for an initial license, including relicensure after expiration, an applicant shall submit to the Board:

2.1.1 A completed notarized application on the form approved by the Board;

2.1.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

2.1.2.1 If the date of application for licensure is more than three years following the successful completion of the NBCOT exam, the applicant shall submit proof of twenty (20) hours of continuing education in the two years preceding the application in accordance with Rule 5.0 of these rules and regulations.

2.1.3 Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;

2.1.4 Fee payable to the State of Delaware.

2.2 To apply for a reciprocal license, in addition to the requirements listed in 24 Del.C. §2011, an applicant shall submit the following to the Board:

2.2.1 A completed notarized application on the form approved by the Board;

2.2.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

2.2.3 Letter of verification from any state in which the applicant has been licensed (the applicant is responsible for forwarding the blank verification form to all states where they are now or ever have been licensed);

2.2.4 Fee payable to the State of Delaware.

2.3 To apply for renewal, an applicant shall submit:

2.3.1 A completed renewal application on the form approved by the Board. Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov;

2.3.2 ~~Evidence~~ Proof of meeting continuing education requirements as designated by the Board in Rule ~~5~~ 3.0;

2.3.3 Renewal fee payable to the State of Delaware.

2.4 To apply for inactive status:

A licensee may, upon written request to the Board, have his/her license placed on inactive status if he/she is not actively engaged in the practice of occupational therapy in the State.

2.5 To apply for reactivation of an inactive license, a licensee shall submit:

2.5.1 A letter requesting reactivation;

2.5.2 A completed application for renewal

2.5.3 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 5.0 of these rules and regulations;

2.5.4 Fee payable to the State of Delaware.

2.6 To apply for reinstatement of an expired license, an applicant shall submit (within three (3) years of the expiration date):

2.6.1 A completed application for renewal;

2.6.2 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule ~~5.0~~ 3.0 of these rules and regulations;

2.6.3 Licensure and late fee payable to the State of Delaware.

6 DE Reg. 1331 (4/1/03)

3.0 Continuing Education

3.1 Continuing Education Content Hours

3.1.1 ~~Proof of e~~Continuing education (CE) is required for license renewal and shall be ~~submitted~~ completed by May 31st of each renewal year. A licensee who ~~submits~~ completes continuing education that is not approved by the Board will be notified so that he or she may obtain additional CE to substitute before the license expiration date of July 31.

3.1.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 3.0;

3.1.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted;

3.1.1.3 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in 3.1.2.

3.1.2 A log of CE on a form approved by the Board shall be maintained ~~and submitted~~. ~~Documentation of the CE should not be routinely sent with the log but must be retained~~ during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirement. Licensees selected for the random audit shall submit the log and attendance verification.

3.1.3 Contact hours shall be prorated for new licensees in accordance with the following schedule:

3.1.3.1 *21 months up to and including 24 months remaining in the licensing cycle
requires 20 hours

3.1.3.2 *16 months up to and including 20 months remaining in the licensing cycle
requires 15 hours

3.1.3.3 *11 months up to and including 15 months remaining in the licensing cycle
requires 10 hours

3.1.3.4 *10 months or less remaining in the licensing cycle - exempt

3.2 Definition of Acceptable Continuing Education Credits:

Activities must be earned in two (2) or more of the six (6) categories for continuing education beginning in section 5.5.

3.3 Continuing Education Content:

3.3.1 Activities must be in a field of health and social services related to occupational therapy, must be related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and must directly or indirectly serve to protect the public by enhancing the licensee's continuing competence.

3.3.2 Approval will be at the discretion of the Board. A licensee or continuing education provider may request prior approval by the Board by submitting an outline of the activity at least six weeks before it is scheduled. The Board pre-approves continuing education activities sponsored or approved by AOTA or offered by AOTA-approved providers as long as the content is not within the exclusion in Rule 5.5.1 for courses covering documentation for reimbursement or other business matters.

3.3.3 CE earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.

3.4 Definition of Contact Hours:

3.4.1 "Contact Hour" means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks."

3.4.2 One (1) academic semester hour shall be equal to fifteen (15) contact hours.

3.4.3 One (1) academic quarter hour shall be equal to ten (10) contact hours.

3.4.4 The preparing of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) contact hour for preparation ~~for~~ for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

3.5 Continuing Education Activities:

3.5.1 Courses: The maximum credit for course work shall not exceed nineteen (19) hours. Extension courses, refresher courses, workshops, seminars, lectures, conferences, and non patient-specific in-service training qualify under this provision as long as they are presented in a structured educational experience beyond entry-level academic degree level and satisfy the criteria in 5.3.1. Excluded are any job related duties in the workplace such as a fire safety, OSHA or CPR. Also excluded are courses covering documentation for reimbursement or other business matters.

3.5.1.1 Course work involving alternative therapies shall be limited to five(5) hours,

3.5.1.2 Course work by homestudy/ correspondence shall be limited to ten (10) hours,

3.5.2 Professional Meetings & Activities: The maximum number of credit hours shall not exceed ten (10) hours. Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings, NBCOT meetings, OT Licensure Board meetings and AOTA National Round Table discussions. Credit will be given for participation as an elected or appointed member/officer on a board, committee or council in the field of health and social service related to occupational therapy. Seminars or other training related to management or administration are considered professional activities. Excluded are any job related meetings such as department meetings, supervision of students and business meetings within the work setting.

3.5.3 Publications: The maximum number of credit hours shall not exceed fifteen (15) hours. These include writing chapters, books, abstracts, book reviews accepted for publication and media/ video for professional development in any venue.

3.5.4 Presentations: The maximum number of credit hours shall not exceed fifteen (15) hours. This includes workshops and community service organizations presentations that the licensee presents. Credit will not be given for the presentation of information that the licensee has already been given credit for under another category. Excluded are presentations that are part of a licensee's job duties. The preparation of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

3.5.5 Research/Grants: Credit may be awarded one time for contact hours per study/topic regardless of length of project, not to exceed ten (10) hours. Contact hours accumulated under this category may not be used under the publication category. Licensees must submit documentation of authorship or letters from authorizing entity to receive continuing education credit.

3.5.6 Specialty Certification: Approval for credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period will be at the discretion of the Board. Examples include Certified Hand Therapist (CHT) and Occupational Therapist, Board Certified in Pediatrics (BCP).

3.6 The Board may waive or postpone all or part of the continuing education activity requirements of these regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the Board of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the individual's completion of the requirements.

6 DE Reg. 1331 (4/1/03)

4.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

4.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

4.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

4.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

4.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

4.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

4.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

4.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

4.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

4.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

4.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

4.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

4.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

4.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

4.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

4.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

4.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

4.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

4.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

5.0 Crimes substantially related to practice of occupational therapy

5.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the practice of occupational therapy in the State of Delaware without regard to the place of conviction:

- 5.1.1 Unlawful harm to law enforcement or seeing eye dogs. 7 **Del.C.** §1717
- 5.1.2 Aggravated menacing. 11 **Del.C.** §602(b)
- 5.1.3 Reckless endangering. 11 **Del.C.** §604
- 5.1.4 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605
- 5.1.5 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606
- 5.1.6 Assault in the second degree. 11 **Del.C.** §612
- 5.1.7 Assault in the first degree. 11 **Del.C.** §613
- 5.1.8 Felony abuse of a sports official. 11 **Del.C.** §614
- 5.1.9 Assault by abuse of neglect. 11 **Del.C.** §615
- 5.1.10 Felony Terroristic threatening. 11 **Del.C.** §621
- 5.1.11 Unlawful administering drugs. 11 **Del.C.** §625
- 5.1.12 Unlawful administering controlled substance or counterfeit substance or narcotic drugs.

11 **Del.C.** §626

- 5.1.13 Vehicular assault in the first degree. 11 **Del.C.** §629
- 5.1.14 Criminally negligent homicide. 11 **Del.C.** §631
- 5.1.15 Manslaughter. 11 **Del.C.** §632
- 5.1.16 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
- 5.1.17 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
- 5.1.18 Murder in the second degree. 11 **Del.C.** §635
- 5.1.19 Murder in the first degree. 11 **Del.C.** §636
- 5.1.20 Sexual harassment. 11 **Del.C.** §763
- 5.1.21 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
- 5.1.22 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
- 5.1.23 Rape in the fourth degree. 11 **Del.C.** §770
- 5.1.24 Rape in the third degree. 11 **Del.C.** §771

- 5.1.25 Rape in the second degree. 11 **Del.C.** §772
- 5.1.26 Rape in the first degree. 11 **Del.C.** §773
- 5.1.27 Sexual extortion. 11 **Del.C.** §776
- 5.1.28 Bestiality. 11 **Del.C.** §777
- 5.1.29 Continuous sexual abuse of a child. 11 **Del.C.** §778
- 5.1.30 Dangerous crime against a child. 11 **Del.C.** §779
- 5.1.31 Unlawful imprisonment in the first degree. 11 **Del.C.** §782
- 5.1.32 Kidnapping in the second degree. 11 **Del.C.** §783
- 5.1.33 Kidnapping in the first degree. 11 **Del.C.** §783A
- 5.1.34 Acts constituting coercion. 11 **Del.C.** §791
- 5.1.35 Burglary in the second degree. 11 **Del.C.** §825
- 5.1.36 Burglary in the first degree. 11 **Del.C.** §826
- 5.1.37 Robbery in the second degree. 11 **Del.C.** §831
- 5.1.38 Robbery in the first degree. 11 **Del.C.** §832
- 5.1.39 Carjacking in the second degree. 11 **Del.C.** §835
- 5.1.40 Carjacking in the first degree. 11 **Del.C.** §836
- 5.1.41 Extortion. 11 **Del.C.** §846
- 5.1.42 Identity theft. 11 **Del.C.** §854
- 5.1.43 Felony forgery. 11 **Del.C.** §861
- 5.1.44 Falsifying business records. 11 **Del.C.** §871
- 5.1.45 Felony unlawful use of a credit card. 11 **Del.C.** §903
- 5.1.46 Insurance fraud. 11 **Del.C.** §913
- 5.1.47 Health care fraud. 11 **Del.C.** §913A
- 5.1.48 Dealing in children. 11 **Del.C.** §1100
- 5.1.49 Endangering the welfare of a child. 11 **Del.C.** §1102
- 5.1.50 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105
- 5.1.51 Unlawfully dealing with a child. 11 **Del.C.** §1106
- 5.1.52 Sexual exploitation of a child. 11 **Del.C.** §1108
- 5.1.53 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 5.1.54 Possession of child pornography. 11 **Del.C.** §1111
- 5.1.55 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- 5.1.56 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 5.1.57 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240
- 5.1.58 Felony abetting the violation of driver's license restrictions. 11 **Del.C.** §1249
- 5.1.59 Felony offenses against law enforcement animals. 11 **Del.C.** §1250
- 5.1.60 Felony hate crimes. 11 **Del.C.** §1304
- 5.1.61 Felony stalking. 11 **Del.C.** §1312A
- 5.1.62 Felony cruelty to animals. 11 **Del.C.** §1325
- 5.1.63 Felony maintaining a dangerous animal. 11 **Del.C.** §1327(a)
- 5.1.64 Felony violation of privacy. 11 **Del.C.** §1335(a)
- 5.1.65 Adulteration. 11 **Del.C.** §1339
- 5.1.66 Promoting prostitution in the second degree. 11 **Del.C.** §1352
- 5.1.67 Promoting prostitution in the first degree. 11 **Del.C.** §1353
- 5.1.68 Obscenity. 11 **Del.C.** §1361
- 5.1.69 Carrying a concealed deadly weapon. 11 **Del.C.** §1442
- 5.1.70 Felony unlawful dealing with a dangerous weapon. 11 **Del.C.** §1445(a)
- 5.1.71 Felony possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447
- 5.1.72 Possession of a firearm during a commission of a felony. 11 **Del.C.** §1447A
- 5.1.73 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448
- 5.1.74 Felony Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457

§1447

- 5.1.75 Duty to report child abuse or neglect. 16 **Del.C.** §903
- 5.1.76 Abuse, neglect, mistreatment or financial exploitation of residents or patients in a nursing or similar facility. 16 **Del.C.** §1136
- 5.1.77 Felony falsification or destruction of records related to maintenance medical treatment. 16 **Del.C.** §2513
- 5.1.78 Manufacture, delivery or possession with intent to deliver schedule I or II narcotic drugs. 16 **Del.C.** §4751
- 5.1.79 Manufacture, delivery or possession with intent to deliver Schedule I, II, III, IV, or V non-narcotic drugs. 16 **Del.C.** §4752
- 5.1.80 Unlawful delivery or non controlled substances. 16 **Del.C.** §4752A.
- 5.1.81 Possession, consumption, or use of controlled substances. 16 **Del.C.** §4753.
- 5.1.82 Trafficking in marijuana, cocaine, illegal drugs, metamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A
- 5.1.83 Possession, consumption, or use of non-narcotic controlled substances classified in Schedule I, II, III, IV, or V. 16 **Del.C.** § 4754
- 5.1.84 Crimes related to controlled substances. 16 **Del.C.** §4756
- 5.1.85 Distribution of controlled substances to persons under 21 years of age. 16 **Del.C.** §4761
- 5.1.86 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
- 5.1.87 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768
- 5.1.88 Felony obtaining benefit under false representation. 31 **Del.C.** §1003
- 5.1.89 Felony falsification of reports, statements, or documents. 31 **Del.C.** §1004
- 5.1.90 Kickback schemes and solicitation. 31 **Del.C.** §1005
- 5.1.91 Conversion of benefit payment. 31 **Del.C.** §1006
- 5.1.92 Intentional abuse, neglect, mistreatment, or exploitation of an infirm adult. 31 **Del.C.** §3913
- 5.2 Crimes substantially related to the practice of occupational therapy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.
- 8 **DE Reg. 1449 (4/1/05)**
9 **DE Reg. 587 (10/01/05)**

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING

17 Delaware Code, Section 1021 (17 **Del.C.** §1021 et seq.)

ORDER

Delaware Safe Routes to School Regulations

Summary of Evidence and Information Submitted

The Department published the draft *Delaware Safe Routes to School Regulations* in the March 1, 2006 edition of the *Delaware Register of Regulations*. Publication in the *Delaware Register of Regulations* also signified the start of the 31-day public comment period that began on the same date and ended March 31, 2006.

As a result of the aforementioned public outreach, the following is a summary of the comments received related to the draft Regulations:

Comments

The Department received an email from the Transportation Supervisor for Capital School District that suggested that the Department should establish a proposed timeline for completing infrastructure projects.

The Department received a letter from the American Heart Association's Pennsylvania Delaware Affiliate that generally supported the Department's SRTS efforts. The American Heart Association requested that language be added that calls for partnering with a health agency or a recognized health organization. The American Heart Association also requested that a public relations campaign or public relations effort to encourage walking and biking to school, in addition to advertising the SRTS program, to the public at either a district, county, or state level.

The Department received a letter from the Delaware State Council for Persons with Disabilities (SCPD). The Council raised several points. SCPD suggested that additional language be added to the Regulations that promotes participation by students with disabilities. SCPD requested that bullets be added to Section 6.1 stating that accessible route improvements (e.g., ramps, curb cuts, automatic doors) and audible warning and digital countdown traffic signals be eligible infrastructure costs. SCPD suggested that the Regulations specifically highlight helmet safety and use. The letter also noted that the Regulations are unclear about the specific meaning of biking and walking, and whether students may use other means of non-motorized transportation to travel to school. The Council suggested that eligible costs should include funding crossing guards, holding public service campaigns targeted at motorists, and the purchase of safety provisions to minimize endangerment to children on routes that may be isolated. SCPD recommended that school buses be made to transport bicycles and that the SRTS program should include bicycling to a bus stop.

The Department received a letter from the Governor's Advisory Council for Exceptional Citizens (GACEC). The Council raised several points. GACEC suggested that additional language be added to the Regulations that promotes participation by students with disabilities. GACEC requested that bullets be added stating that accessible route improvements (e.g., ramps, curb cuts, automatic doors) and audible warning and digital countdown traffic signals are eligible infrastructure costs. GACEC suggested that the Regulations specifically highlight helmet safety and use. The letter also noted that the Regulations are unclear about the specific meaning of biking and walking, and whether students may use other means of non-motorized transportation to travel to school. The Council suggested that eligible costs should include funding crossing guards, holding public service campaigns targeted at motorists, and the purchase of safety provisions to minimize endangerment to children on routes that may be isolated. GACEC recommended that school buses be made to transport bicycles and that the SRTS program should include bicycling to a bus stop.

The Department received an email from the Wilmington Area Planning Council (WILMAPCO). WILMAPCO suggested that the Department set aside a portion of the funds for high need areas. WILMAPCO suggested that the Department require a commitment from the school principal or parent-teacher organization to accompany an application. WILMAPCO requested that the requirements for the SRTS Plan include identifying safety hazards, potential walking and bicycling improvements, and an educational component. WILMAPCO suggested that walking path improvements, parent education materials, and school safety materials (e.g., reflective vests, cones, new signs, road paint) be included as eligible costs.

The Department received an email from the Transportation Supervisor at the Department of Education in general support of the draft Regulations and suggested a minor word change.

The Department received an email from a member of the public suggesting that crosswalks and sidewalks be required with all new development, and that pedestrian walkways should not be level with the road surface. The email also expressed specific concerns about the lack of sidewalks on Limestone Road and in adjacent neighborhoods, and specifically the absence of a crosswalk or pedestrian signal at the intersection of Limestone Road and Milltown Road.

In addition to the above, Department staff made the following comments on the draft Regulations as part of their final review:

- "In the vicinity" in Section 3.2.2 should be defined as within one-mile of the participating school.
- "In the vicinity" in Section 3.2.3 should be defined as within two-miles of the participating school.

- Department use of funds should be explicitly defined in the Regulations.
- FHWA restricts the use of infrastructure funds to those schools with students who reside near enough to the school to walk or bicycle. Further definition of eligible recipients is needed in Section 6.1.
- It may be beneficial to add ineligible uses of funds.
- Project selection and prioritization in Section 7.0 should match the Delaware SRTS legislation.

Findings of Fact

Based on the comments received and summarized above, the following changes were made to the draft Regulations:

- Report Change:
 - Requirement that a letter of support by the school principal or a district-level administrator accompany a funding request was added to Section 2.1.
- Report Change:
 - Clarification on the intended objective of the program was added to Section 2.1.
- Report Change:
 - Language was added in Section 2.1 to clarify that where students are encouraged to walk or bicycle; students with disabilities are encouraged to travel to school in their wheelchair or other assistive technology device when applicable.
- Report Change:
 - The elements that are required in a SRTS Plan were further defined in Section 3.1. The language was also changed to reflect the elements that are required, and the elements that are optional.
- Report Change:
 - Section 3.1 now encourages schools to partner with a local health agency or organization.
- Report Change:
 - The sentence that defines the "5 E's" in Section 3.2 was reworded for clarity.
- Report Change:
 - Educating students and their parents on Delaware's pedestrian and bicycle laws was added to the general description of Education in Section 3.2.2.
- Report Change:
 - The area in which driver safety campaigns should be held was defined in Section 3.2.2 as within one-mile of the school.
- Report Change:
 - The area in which enforcement activities should be held was defined in Section 3.2.3 as within two-miles of the school.
- Report Change:
 - Inclusion of Department use of funds for administration of the program was added as a new section under Section 4.0.
- Report Change:

- The program encourages children to walk and bicycle to and from school. The words “and from” were added to Section 6.1 to obviate any contrary reference.
- Report Change:
- Eligible recipients of infrastructure funds was further defined in Section 6.1, to reflect that where it is not possible for students to walk or bicycle to school, funds are not available to those schools.
- Report Change:
- The requirement that only those infrastructure projects that are approved by DelDOT in accordance with Department and state policies was added in Section 6.1.
- Report Change:
- A timeline of 18-months to complete infrastructure projects was added in Section 6.1.
- Report Change:
- Walking path improvements, installation of pedestrian signals and accessible pedestrian signals, and accessible route improvements were added as eligible infrastructure projects in Section 6.1.
- Report Change:
- The sentence in Section 6.2 that establishes the limit to the amount of money that may be spent on a single prize was reworded for clarity.
- Report Change:
- Parent education materials and materials to assist in enforcement of safety behaviors were added as eligible non-infrastructure expenses in Section 6.2.
- Report Change:
- Section 7.0 on ineligible costs was added for clarification purposes.
- Report Change:
- Changes were made in Section 8.1 to select proposals for funding based on a statewide competition to comply with the Delaware legislation (17 **Del.C.** §1022). In addition, changes were made in Section 8.2 as a result of this change, and defines the project selection process.

These changes were made to the draft Regulations, and they are noted in the full citation that is part of the submission to the *Delaware Register of Regulations*. Additions are underlined and deletions are ~~struck through~~.

Text and Citation

See attached regulations.

Decision

Pursuant to the authority in 17 **Delaware Code**, Section 1021 and 1022, and Public Law 109-59, and after due notice as required under the *Administrative Procedures Act*, the Department of Transportation is hereby adopting the *Delaware Safe Routes to School Regulations* effective June 10, 2006.

Comment or questions regarding how the Safe Routes to School program will be administered should be directed to:

Erin Fasano, Project Planner
Safe Routes to School Program, Division of Planning
Delaware Department of Transportation
P.O. Box 778

Dover, DE 19903
(302) 760-2121 (telephone), (302) 739-2251 (fax)
erin.fasano@state.de.us

APPROVED: Carolann D. Wicks, Secretary, Department of Transportation, 4/15/06

Delaware Safe Routes to School

1.0 Introduction

Delaware's Safe Routes to School (SRTS) Program was established September 10, 2002 when Governor Ruth Ann Minner signed Senate Bill 353 of the 141st General Assembly of Delaware (73 Del. Laws, c. 435). As directed, the Department of Transportation (DelDOT) began developing a program that would enable DelDOT to work with schools to encourage children to walk and bicycle to school safely. Three years later similar federal legislation was passed (Pub. L. No. 109-59). Delaware's legislation authorizes DelDOT to make SRTS grants available for bicycle and pedestrian safety and traffic calming measures in the vicinity of schools (17 Del.C. §1022).

The federal SRTS program was established August 10, 2005 under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This law describes the purpose of the program as follows: (1) to enable and encourage children, including those with disabilities, to walk and bicycle to school; (2) to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and, (3) to facilitate the planning, development and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools (Pub. L. No. 109-59, §1404 (b)). The federal program employs a multi-faceted approach that addresses infrastructure needs as well as implements non-infrastructure activities to achieve the program goals.

These Program **[Requirements Regulations]** establish the Delaware Department of Transportation SRTS program and outline how DelDOT will administer the program. This document provides information regarding eligible recipients of funding, the availability of funds, and the project selection process.

2.0 Eligibility

2.1 Eligible Participants

Any public **[school]** or public charter school recognized by the Department of Education may participate in the SRTS program, **provided that the request is accompanied by a letter of support by the school principal or a district-level administrator**; however, participation is restricted to projects and activities that benefit elementary and middle school children in grades kindergarten through eighth grade. **[The program seeks to encourage students who live within one mile of their school to walk and those who live within two miles to bicycle both to and from school. When applicable, students with ambulatory impairments are encouraged to travel to and from school using an assistive technology device, such as a wheelchair or scooter.]**

2.2 Eligible Funding Recipients

Funding is available to the organization or agency that is administering the SRTS program; this may be the participating school or an organization acting on behalf of the participating school. Eligible funding recipients include state, regional, or local agencies, including nonprofit organizations, and schools or school districts. An organization may receive funding to implement part or all aspects of a SRTS program at a school or multiple schools, as long as the organization is able to demonstrate that the funding request is based on a comprehensive SRTS plan that addresses a set of core components.

3.0 Program Components

3.1 SRTS Plan

A comprehensive program is established by developing a SRTS plan. **[The SRTS plan must identify safety hazards, current and potential walking and bicycling routes to school, and activities that will incorporate each of the 5 E's (Engineering, Education, Enforcement, Encouragement, and Evaluation)]**

to create a comprehensive program.] A plan ~~[should must]~~ be created with a group representing different aspects of the school community. This group or committee ~~[may must]~~ include ~~[students,]~~ parents, teachers, school ~~[administrators officials, local transportation agencies, and law enforcement agencies., neighboring residents, and local government representatives.~~ Partnering with a local health agency or recognized health organization, local civic associations, neighboring residents, and local governments are also encouraged.] The committee works through a process to identify areas of concern or need, and then prioritizes activities and projects. SRTS program participants are encouraged to utilize the "Delaware Safe Routes to School Program Sourcebook" when developing a SRTS plan. The "Delaware Safe Routes to School Program Sourcebook" provides guidance on how to develop a SRTS plan and references other resources. It is available on the DeIDOT website (URL address to be determined).

3.2 The "5 E's"

[The program is divided into five elements, that include both infrastructure and non-infrastructure components.] The "5 E's" are ~~[divided into infrastructure projects (the Engineering component), and the non-infrastructure activities, which are the remaining components of Engineering,]~~ Education, Enforcement, Encouragement, and Evaluation. A general description of the components that make up the "5 E's" is provided below.

3.2.1 Engineering – Creating operational and physical improvements to the infrastructure surrounding schools that reduce speeds and potential conflicts with motor vehicle traffic, and establish safer and fully accessible crossings, walkways, trails[,] and bikeways.

3.2.2 Education – Teaching children about the broad range of transportation choices, instructing them in important lifelong bicycling and walking safety skills, ~~[educating students and their parents on Delaware's pedestrian and bicycle laws,]~~ and launching driver safety campaigns ~~[in the vicinity within one-mile]~~ of schools.

3.2.3 Enforcement – Partnering with local law enforcement to ensure traffic laws are obeyed ~~[in the vicinity within two-miles]~~ of schools (this includes enforcement of speeds, yielding to pedestrians in crossings, and proper walking and bicycling behaviors), and initiating community enforcement such as crossing guard programs.

3.2.4 Encouragement – Using events and activities to promote walking and bicycling.

3.2.5 Evaluation – Monitoring and documenting outcomes and trends through the collection of data, including the collection of data before and after the intervention(s).

4.0 Project Funding

[4.1] DeIDOT is expected to receive \$1 million dollars in federal monies each year for five federal fiscal years (FY 2005 – FY 2009) to administer the SRTS Program. While the majority of these funds will be expended towards infrastructure (capital) projects, ten to thirty percent must be dedicated to non-infrastructure projects. No matching funds from the participant are required.

[4.2] DeIDOT will set aside some of the SRTS funds for Department use towards staff training on SRTS, training materials, public awareness campaigns and outreach about the Delaware SRTS Program, creation and reproduction of promotional and educational materials, technical assistance, and other uses as deemed necessary for successful administration of the SRTS program.]

5.0 Funding Limitations

5.1 There is no limit on the number of projects for which a sponsor can submit proposals. However, no project or activity will be eligible for funding unless it has been identified through a SRTS planning process and identified in a SRTS plan.

5.2 Individual SRTS projects may be funded up to \$125,000. If a project has been identified in the SRTS plan that exceeds this limit, the project shall not be administered or funded through the SRTS Program. Instead, DeIDOT will seek to combine the project with other ongoing work in the area, or submit the project to compete for funding with other Delaware capital improvement projects.

6.0 Eligible Costs

6.1 Infrastructure Costs

Infrastructure projects should directly support increased safety and convenience for elementary and middle school children, in kindergarten through eighth grades, to bicycle and/or walk to [and from] school. [Infrastructure funds are only available to schools that have students who reside within two-miles of the school, measured along existing transportation infrastructure.] Project limits must be within two miles of the participating school. Planning, design, engineering expenses, including consultant services associated with developing the project, and construction costs are eligible infrastructure expenses. [All infrastructure projects must be approved for use in the state of Delaware. Infrastructure projects should be constructed as soon as possible after the project has been awarded. Infrastructure projects that are not completed within 18-months from the date on executed agreement will be cancelled, and the sponsor will be required to return any funds expended on the project. A letter requesting an extension may be submitted prior to the end of the 18-month completion period. Each request will be reviewed and responded to accordingly.] Eligible projects include:

- sidewalk [and walking path] improvements;
- traffic calming and speed reduction improvements;
- **[installation of pedestrian signals and accessible pedestrian signals;**
- **accessible route improvements (including ramps and curb cuts);]**
- pedestrian and bicycle crossing improvements;
- on-street bicycle facilities;
- off-street bicycle and pedestrian facilities;
- secure bicycle parking facilities; and,
- traffic diversion improvements in the vicinity of schools.

6.2 Non-infrastructure Costs

The federal legislation requires that all non-infrastructure activities that are eligible for funding must be "activities to encourage walking and biking to school." Eligible activities include:

- costs for assistance in developing SRTS plans (funding for assistance shall not exceed \$10,000 per school);
- traffic education and enforcement within the school zone of a participating school;
- student sessions and materials on bicycle and pedestrian safety, health, and environment;
- modest incentives, promotional activities, and prizes for SRTS contests [(no single prize shall exceed \$50 the cost for a single prize shall not exceed \$50)];
- **[parent education materials;**
- **materials to assist in enforcement of safety behaviors;]**
- costs for data gathering, analysis, and evaluation reporting;
- photocopying, printing, mailing, and survey costs;
- costs to employ a program manager to run a citywide, countywide, or district wide program that includes numerous schools; and,
- other costs as approved by DelDOT.

[7.0 Ineligible Costs

SRTS program funds shall not be used for recreation, beautification, bus safety, or similar safe routes programs to bus stops or transit. Funds may not be used to supplement or provide for additional crossing guards; however, funds may be used for crossing guard training. SRTS funds may not be used to build closed paths. Infrastructure improvements on the school campus must connect the transportation system to the school entrance.]

[78.0] Project Selection and Prioritization

[78.1] Limits on funding have been set to enable more participants to develop a SRTS program[.]; without having to prioritize applications. However, if popularity of the Program creates a demand for funding that outweighs Delaware's limited resources,] DelDOT shall implement [the an] evaluation process for

project selection [based on a statewide competition] as set out in the Delaware legislation [17 Del.C. §1022.-At such time, tThe] following factors will be used to rate submitted proposals: (1) demonstrated needs of the applicant; (2) potential for reducing child injuries and fatalities; (3) potential of the proposal for encouraging increased walking and bicycling among students; and, (4) completion of a "Safe Routes to School" plan that identifies safety hazards, and current and potential walking and bicycling routes to school, and involves students, parents, teachers, local transportation agencies, law enforcement agencies and school officials in the plan development process.

~~[78.2 Proposals for SRTS funding will be accepted continually. DeIDOT will arrange a meeting with each project sponsor to discuss the eligibility of any proposed project and activities. DeIDOT shall provide a written response to all applicants. Prioritization of proposals will be based on a rating system and scale that will be defined in the "Delaware Safe Routes to School Program Sourcebook" The Sourcebook will also establish the closing date for proposals and the issue date of awards. The SRTS coordinator will make the project selection. DeIDOT reserves the right to judge the capability of the applicant. If the sum of all proposals received is less than the sum of funds to be awarded, no prioritization will be made.]~~

[78.3] All inquiries are welcome. The state coordinator is available to provide information, answer questions, participate in meetings, and assist potential SRTS participants in initiating a SRTS program. Please direct any questions or comments to:

Safe Routes to School Program, Division of Planning
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2121 (telephone), (302) 739-2251 (fax)

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE STATE FIRE PREVENTION COMMISSION

PUBLIC NOTICE

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** 101 on Tuesday, June 20, 2006, at 1:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following State Fire Prevention Regulations:

PART I, CHAPTER 2 & 5
PART I, ANNEX A, B & C
PART II, CHAPTER 5, 6 & 7
PART III, CHAPTER 3
PART V, CHAPTERS 1
PART VI, CHAPTER 7
APPENDIX D

Persons may view the proposed changes to the Regulations 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, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947.

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10:00 a.m. on June 19, 2006, 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 charge for copies of the proposed changes.

DELAWARE RIVER BASIN COMMISSION

NOTICE OF PUBLIC HEARING AND COMMISSION MEETING

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, May 10, 2006 at 10:15 a.m. at the Commissioner's office, 25 State Police Drive, West Trenton, New Jersey. For more information contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, May 18, 2006 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

NOTICE OF PUBLIC HEARING

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware**

CALENDAR OF EVENTS/HEARING NOTICES

1785

Code) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance is proposing to amend several policies in the Division of Social Services Manual (DSSM) to comply with the CMS-approved Medicaid state plan amendment regarding the use of a self-employment standard deduction to determine eligibility.

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 Sharon L. Summers, Policy, Program and Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by May 31, 2006.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE NOTICE OF PUBLIC HEARING

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance to close a potential loophole in excluded resources.

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 Sharon L. Summers, Policy, Program and Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by May 31, 2006.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES NOTICE OF PUBLIC COMMENT PERIOD

7402 Shellfish Sanitation Regulations

Regulations establishing the basis for classifying waters as to the suitability of the shellfish therein for human consumption, and sanitation during harvest, transportation, and processing of shellfish (molluscan bivalves), as per Interstate Shellfish Sanitation Conference (ISSC) specifications, as administered under the auspices of the U.S. Food and Drug Administration. The proposed changes would open up more shellfish waters to shellfish harvesting, establish an additional shellfish water classification definition, allowing the possibility of additional Approved shellfish harvest waters, and revising references in the Regulations for consistency with the latest iteration of ISSC specifications and protocols. The latter action primarily entails shellfish processing plant sanitation, and is taken under advise from FDA.

Notice of proposed changes and notice of public workshop have been sent to Rick Cole and Jim Graybeal, Division of Fish and Wildlife, to all licensed Delaware shellfish harvesters, and to all Delaware shellfish dealer/processors on the Interstate Certified Shellfish Shipper's List. A public workshop was held on 3/31/06 at the R. &

R. Auditorium. No one from the public showed up.

DIVISION OF WATER RESOURCES**NOTICE OF PUBLIC HEARING****Proposed Total Maximum Daily Loads (TMDLs) for the Army Creek, Blackbird Creek, Broadkill River, Cedar Creek, Dragon Run Creek, Leipsic River, Little Creek, Mispillion River, Red Lion Creek, Smyrna River, and St. Jones River Watersheds, Delaware****Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct three Public Workshops to review draft Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and bacteria for the Army Creek, Blackbird Creek, Broadkill River, Cedar Creek, Dragon Run Creek, Leipsic River, Little Creek, Mispillion River, Red Lion Creek, Smyrna River, and St. Jones River Watersheds. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Possible Terms of the Agency Action

Following the Public Workshops and after reviewing comments received during the comment period, Public Hearings will be scheduled to adopt the proposed Total Maximum Daily Loads for these Watersheds. Following adoption of the TMDL Regulations, DNREC will develop Pollution Control Strategies (PCSs) designed to achieve the necessary load reductions. PCSs will identify specific pollution reduction activities and timeframes and will be developed in concert with Tributary Action Teams, other stakeholders, and the public.

Notice of Public Workshops and Comment Period

Proposed TMDLs for the Blackbird Creek, Leipsic River, Little Creek, Smyrna River, and St. Jones River Watersheds will be reviewed during a Public Workshop to be held at 6:00 p.m., Thursday, May 11, 2006 at the Delaware National Estuarine Research Reserve, 818 Kitts Hummock Road, Dover, DE.

Proposed TMDLs for the Army Creek, Dragon Run Creek, and Red Lion Creek Watersheds will be reviewed during a Public Workshop to be held at 6:00 p.m., Tuesday, May 16, 2006 at DNREC's Lukens Drive Building, 391 Lukens Drive, New Castle, DE.

Proposed TMDLs for the Broadkill River, Cedar Creek, and Mispillion River Watersheds will be reviewed during a Public Workshop to be held at 6:00 p.m., Thursday, May 18, 2006 at the City of Lewes Public Library, 111 Adams Street at Kings Highway, Lewes, DE.

Draft TMDL Regulations and technical support documents for these watersheds will be available as of Monday, May 1, 2006 on the Department's website (www.dnrec.delaware.gov) by clicking on "TMDLs" under "Information" or by contacting Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us).

The Department has developed these draft regulations pursuant to a federal Consent Decree which requires the establishment of these TMDLs by the end of Calendar Year 2006. In order to comply with the ambitious schedule set by the Court Order, the Department must receive comments as early as possible in the regulatory development process. Hence, the Department is requiring that written comments on the proposed regulations be submitted no later than 4:30 PM, Wednesday, May 31, 2006, in order to be considered. After consideration of the written public comments, the Department, upon public notice, will schedule a Public Hearing.

Please send written comments to Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us). All

written comments must be received by 4:30 p.m., Wednesday, May 31, 2006. Electronic submission is preferred.

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
700 Board of Chiropractic
NOTICE OF PUBLIC HEARING**

The State Board of Chiropractic in accordance with 24 **Del.C.** §706(a)(1) has proposed changes to its rules and regulations related to license renewal.

A public hearing will be held at 8:30 a.m. on June 15, 2006 in the 2nd floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board of Chiropractic, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION
1770 Respiratory Care Advisory Council
NOTICE OF RESCHEDULED PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to 29 **Delaware Code** Chapter 101 and 24 **Delaware Code** Section 1775 (c), the Respiratory Care Advisory Council of the Delaware Board of Medical Practice has developed and proposes to modify Section 8.0 Continuing Education by amending subsection 8.6.7 to provide clarity to the continuing education requirements that must be met by a licensee seeking to reinstate a license that has lapsed for less than three (3) years. The proposal also includes new subsections 8.6.8 and 8.6.9 establishing additional requirements for applicants who wish to obtain reinstatement after the applicant's prior license has expired for three or more years. In addition, the proposal modifies Section 10.0 Application for a License by amending subsection 10.2.1.4 to provide individuals who have not been licensed in any jurisdiction within three (3) years of initially passing the NBRC entry level examination will be required to re-take the NBRC examination and provide proof of a current passing score before a license will be issued.

The new subsections delineate the requirements for those applicants who have been engaged in the active practice of respiratory care during a specified period and those who have not.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, May 16, 2006 at 2:30 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Council will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Council in care of Gayle MacAfee at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should contact Gayle MacAfee at the above address or by calling (302) 739-4520.

CALENDAR OF EVENTS/HEARING NOTICES

PUBLIC SERVICE COMMISSION**Regulation Docket No. 56: Notice of Proposed Rule-making and Public Hearing Concerning Renewable Energy Portfolio Standards****NOTICE OF PUBLIC HEARING AND COMMENT PERIOD**

The Commission hereby solicits written comments, suggestions, compilations of data, briefs or other written materials concerning the proposed rules and regulations. Anyone desiring to submit written comments, suggestions, data compilations, briefs or other written materials shall file ten (10) copies of such materials with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904 (Attn: PSC Reg. Dckt. No. 56). **All such materials shall be filed with the Commission on or before June 1, 2006.** Persons who wish to participate in the proceedings but who do not wish to submit written materials are asked to send a letter to the Commission informing the Commission of their intention to participate on or before **June 1, 2006.**

The Commission will hold a public hearing concerning the proposed regulations on **June 6, 2006, beginning at 1:00 P.M. at its Dover office, identified above.**

The proposed rules and regulations and all materials submitted in connection with this docket will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The proposed rules and regulations may also be reviewed at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 N. French Street, Wilmington, DE 19801, during normal business hours by appointment. Finally, the proposed rules and regulations will be available for review on the Commission's website located at www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing, by telephone or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries may also be sent via Internet e-mail to david.bloom@state.de.us.

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Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.

COMMITTEE HEARINGS

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