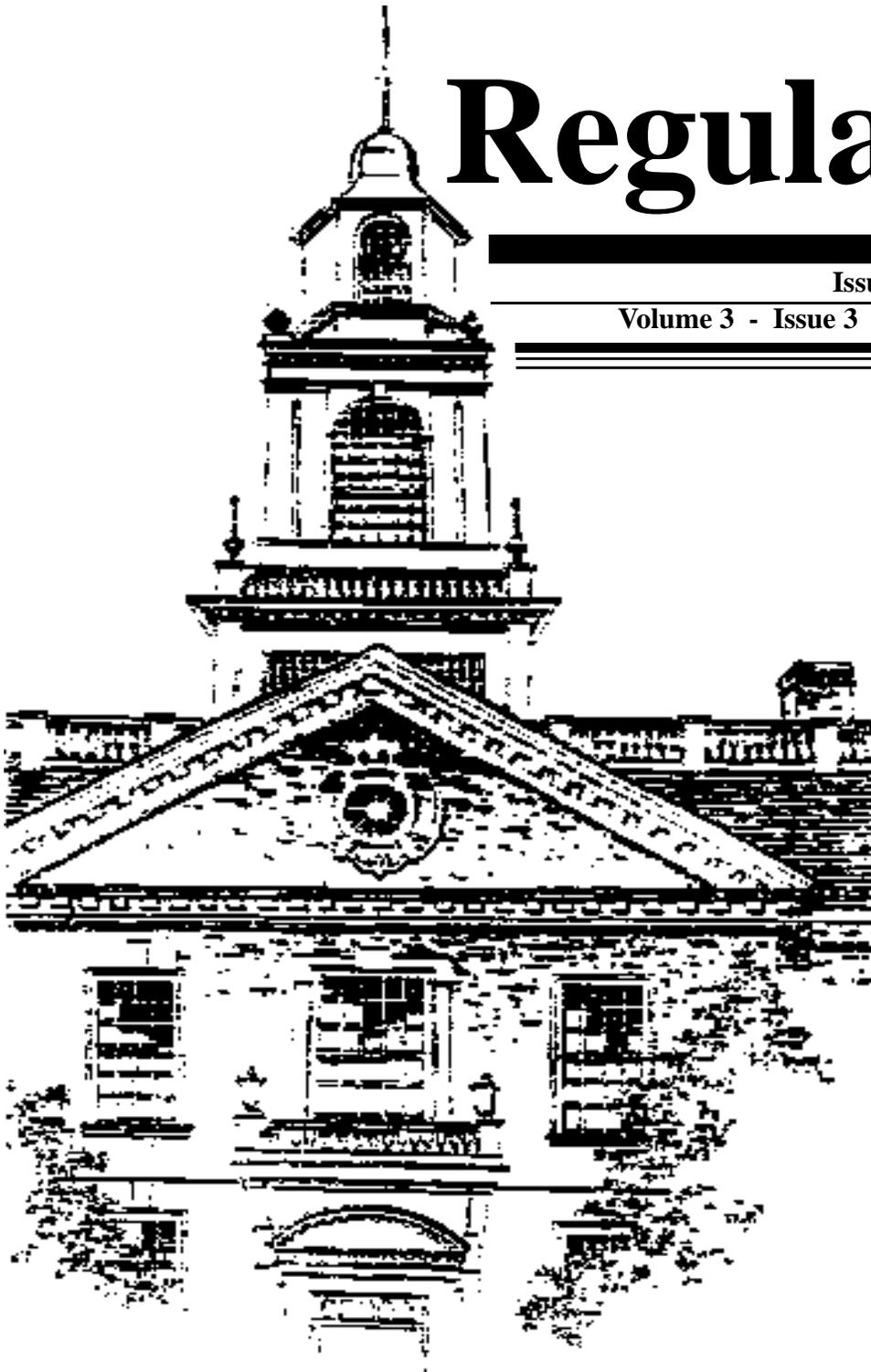

Delaware Register of Regulations

Issue Date: September 1, 1999

Volume 3 - Issue 3

Pages 353 - 477



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Proposed

Final

Governor

Executive Orders

Appointments

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Calendar of Events &

Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before August 15, 1999.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

2 DE Reg. 1000 - 1010 (12/1/98)

Refers to Volume 2, pages 1000 - 1010 of the Delaware Register issued on December 1, 1998.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE**THOROUGHBRED RACING COMMISSION**

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

The Delaware Thoroughbred Racing Commission proposes to amend the Commission's existing Regulations. The Commission proposes these amendments pursuant to 3 Del.C. §10103 and §10128.

The Commission proposes two rule amendments which are summarized below:

1. Amend Rule 10.04 and Rule 15.02(f) to amend the restrictions for when bleeding horses may race. Under the proposed rules, a horse that bleeds for a third time will no longer be barred from further racing but will instead be barred for a ninety (90) day period. A horse that bleeds for the fourth time will be barred from further racing except under limited circumstances when the bleeding incidents occur outside of a twelve month period.

Copies of the existing regulations and proposed regulations as amended may be obtained by the public from the Commission's Office, 2320 S. DuPont Highway, Dover, DE 19901; phone (302) 739-4811. The Commission will accept written comments from the public from September 1, 1999 through September 30, 1999. A public hearing will be held at Delaware Park, 777 Delaware Park Blvd., Stanton, DE on September 28, 1999, at 10:00 a.m.

Rule 10.04 Bleeders

Any horse known to have bled from its nostrils during a race or workout may not be entered or raced without the prior approval for racing by Licensee's Veterinarian. A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for ~~sixty (60)~~ thirty (30) calendar days. A horse which bleeds a third time ~~will be barred from further racing in the State of Delaware~~ shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. (A positive endoscopic examination shall be classed as a first time bleeder). See Rule 15.02 Bleeder Medication.

Rule 15.02 Bleeder Medication

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

- (a) A horse which, during a race or workout at a duly

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

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

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

(d) A horse in the Bleeder Program shall be required to be brought to a detention barn designated by the Licensee and approved by the Commission not later than three and one-half (3 ½) hours before post time for the race in which it is entered and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time. During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

(e) (repealed).

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for ~~sixty (60)~~ thirty (30) calendar days. A horse which bleeds a third time ~~will be barred from further racing in the State of Delaware~~ shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

DEPARTMENT OF EDUCATION

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

EDUCATIONAL IMPACT ANALYSIS

MILITARY LEAVE

CREDIT FOR SERVICE IN THE ARMED FORCES

A. TYPE OF REGULATORY ACTION REQUESTED
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATIONS

The Acting Secretary of Education seeks the consent of the State Board of Education to amend two regulations from the Handbook of Personnel Administration for Delaware School Districts to clarify and improve the language and eliminate references found in the Delaware Code. It is recommended that two former regulations be combined, Military Leave, page 7-5, and Credit for Service in the Armed Forces, page 1-12 to form one regulation, Military Leave and Credit for Experience for full time Service in the Armed Forces. The amended regulation addresses the issues of service in the National Guard and Reserves without loss of pay or vacation, procedures for notifying school districts when service is required and the amount of credit granted toward experience for pay and pension purposes for full time active duty in the armed forces and removes the language "during time of war or National Emergency (commencing Sept. 1940)."

C. IMPACT CRITERIA

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

These amended regulations address personnel issues, not student achievement.

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

These amended regulations address personnel issues, not equity issues.

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

These amended regulations address personnel issues, not health and safety issues.

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

The amended regulations address personnel issues, not students' legal rights.

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

The amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

8. Will the amended regulations 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 regulations 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 amended regulations?

The amended regulations are necessary to clarify district personnel issues.

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

There is no additional cost to the state or to the local boards for compliance with the amended regulations.

AS APPEARS IN THE HANDBOOK OF PERSONNEL FOR DELAWARE SCHOOL DISTRICTS

Military Leave

~~Title 14, §1327(a) requires that leave of absence for military service be granted and specifies attendant conditions and provisions.~~

~~The person who may be appointed to replace the principal, teacher, or other employee shall be appointed only for the period covered by the leave of absence. §1327(b):~~

~~Any permanent and full-time employee who is a member of the National Guard or any reserve component of the Armed Forces of the United States and who is ordered to attend training camp or to perform special duty not in excess of fifteen (15) days in any calendar year shall be allowed leave with pay for attending such training sessions or~~

~~performing such special duty. Leave for teachers shall apply only if the training is with the individual's unit. Such military training or special duty leaves shall not be deducted from vacation leave or in any other way result in loss of privileges or compensation to said employee.~~

~~An employee called to temporary military training or special duty shall file a request for military leave with the secretary of the local board at least two weeks prior to his leave, along with a copy of the official orders summoning him to military service.~~

~~(State Board of Education regulation, August 21, 1969).~~

Service in the Armed Forces

~~Together, Title 29, §5105 and Title 14, §1327 authorize leave of absence for military service, establish rights to pension and the term of successor appointees.~~

~~State Board of Education regulation states that:~~

~~"In determining the credit for service in the armed forces, one year's experience shall be allowed for each twelve (12) months or major fraction thereof, except that a combination of service and teaching during a school year may count if ninety-one (91) days or more.~~

~~"Credit for Experience for service in the armed forces shall count for full time active duty, not in excess of six (6) years in the Armed Services of the United States during time of war or National emergency (commencing September, 1940), provided that the individual became an employee within five (5) years after completion of a tour of duty or within five (5) years after his completion of a course of professional or vocational training, if such course was begun within five (5) years after completion of a tour of duty. Included in the six (6) years will be any instruction in Military Science given during years of enlistment." (State Board of Education regulation, June 19, 1975, effective July 1, 1975.)~~

AS AMENDED

700.2 Training Camp and Special Duty in the National Guard and/or Reserves and Credit for Experience for Full-Time Service in the Armed Forces

1.0 Leave for Training Camp and Special Duty in the National Guard and/or Reserves

1.1 Any permanent and full-time employee who is a member of the National Guard or any reserve component of the Armed Forces of the United States and who is ordered to attend training camp or to perform special duty not in excess of fifteen (15) days in any calendar year shall be allowed leave with pay for attending such training sessions or performing such special duty. Leave for teachers shall apply only if the training is with the individual's unit.

1.2 Such military training or special duty leaves

shall not be deducted from vacation leave or in any other way result in loss of privileges or compensation to said employee.

1.3 An employee called to temporary military training or special duty shall file a request for military leave with the secretary of the local board at least two weeks prior to his leave, along with a copy of the official orders summoning him to military service.

2.0 Credit for Experience for Full-Time Service in the Armed Forces

2.1 In determining the credit for service in the armed forces, one year's experience shall be allowed for each twelve (12) months or major fraction thereof, except that a combination of service and teaching during a school year may count if ninety-one (91) days or more.

2.2 Credit for Experience for service in the armed forces shall count for full time active duty, not in excess of six (6) years in the Armed Services of the United States, provided that the individual became an employee within five (5) years after completion of a tour of duty or within five (5) years after his completion of a course of professional or vocational training, if such course was begun within five (5) years after completion of a tour of duty. Included in the six (6) years will be any instruction in Military Science given during years of enlistment.

(See Del. C., Title 29, Section 5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees, and Title 14, Sections 1312(a) and 1327 Leave of Absence for Persons in Military Service).

Repeal of Regulations from the Handbook of Personnel Administration for Delaware School Districts

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal four regulations from the Handbook of Personnel Administration for Delaware School Districts because they are found in either the Delaware Code or in other Department of Education Regulations or in the approved application materials.

Deferred Compensation found on page 3-1 is fully addressed in Del. C. 29, Chapter 60A, and is the responsibility of the local school districts.

Payment of Teachers in Summer Programs in Vocational-Technical School Districts, page 2-2, is a repeat of language in Del. C., Section 1703(i).

State Salary Increase Adjustments for Changed Status, page 2-1, has been updated and currently is regulated in Chapter IX-Professional Growth Credits in 300.1 General Regulations and Glossary of Terms of the Manual for Certification of Professional Public School Personnel.

Payment Schedules for Contractual Programs/In-service Education, page 2-2, is no longer accurate since all in-

service programs require a product in order for the participant to be paid or receive credit and these rules are found in the application forms for approval to offer in-service programs.

3- Benefits

Deferred Compensation

~~**Tax Sheltered Annuities** — The purchase of tax sheltered annuities by educational personnel (applicable to both federal and state income tax) has been approved by the State Board of Education by the following resolution:~~

~~The State Board of Education approved in principle the institution of a tax sheltered annuity program for all eligible employees in the various school systems.~~

~~(State Board of Education regulation, April 5, 1962)~~

~~From this point forward, the execution and administration of these purchases come under the jurisdiction of the local boards.~~

~~**Deferred Compensation for Employees of the State**~~

~~Title 29, Chapter 60A establishes an intent to create a vehicle through which all employees of the State may, on a voluntary basis, provide for additional retirement income security. Under this chapter the Department of Finance and the State Treasurer are authorized to make payroll deductions for any employee of the State who has authorized such deductions in writing.~~

~~**Payment of Teachers in Summer Programs in Vocational-Technical School Districts**~~

~~Teachers under contract with a Vocational-Technical School District who work in summer programs shall be entitled to payment at the rate of number of days employed under their most recent contract multiplied by 1/185 of their entitlement for a full school year. Any occupational/vocational teacher in a vocational-technical school district may be employed an additional fifteen (15) days for participation in program development as approved by the State Board of Education and paid at the rate of 1/185 of his annual salary. Teachers employed in summer vocational-occupational programs or in program development as indicated in this paragraph shall not be employed in excess of 2/10 the number of days authorized for the regular school year in any fiscal year. (State Board of Education regulation, June 18, 1970.)~~

~~**State Salary Increase Adjustments for Changed Status**~~

~~State salary adjustments, because of the completion of~~

~~Professional Growth Graduate Programs (B+15, B+30, M+15, M+30, and M+45) or college and university degrees from regionally accredited institutions, will become effective in the pay period next following approval of the candidate's record by the Division of Certification and Personnel, but the adjustment will be retroactive to the first of the month following the date certified as the date when the program was completed. No salary credit may be retroactive into a prior fiscal year. Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or State fiscal officers. (State Board of Education regulation, September 15, 1977.) The Manual of Certification of Professional School Personnel, Delaware, May 16, 1974 includes rules and regulations, definitions and application procedures for professional growth graduate programs and for inservice training.~~

~~Payment Schedules for Contractual Programs/Inservice~~

~~Hourly salary schedules are authorized for payment of personnel employed in contractual programs such as Adult Basic Education, Vocational Education, Homebound Instruction and the James H. Groves High School. The hourly salary schedule for the current fiscal year is in Section 10 of this handbook.~~

~~Inservice Education Rates for:~~

~~a. Attendance at inservice education programs or institutes sponsored by the Department of Public Instruction will be a fractional part of the hourly rate established for teaching in contractual programs.~~

~~b. Participants in programs that require development of a position paper, a program, or the like, may be paid at a rate up to the full hourly rate of contractual programs on approval by Administrative Council. Inservice rates are included in Section 10 of this handbook.~~

~~State Board of Education regulation, February 18, 1982.)~~

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

DELAWARE STUDENT TESTING PROGRAM

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary seeks the consent of the State Board of Education to amend the regulations on the Delaware Student Testing Program by adding sections 4.0

through 7.0. These amendments are necessary in order to carry out the requirements of 14 Del. C., Sections 151 through 153 on the student testing. The additional regulations deal with the following issues: Promotion and placement decisions for students in 3rd and 5th grades based on the reading portion of the Delaware Student Testing Program and for 8th grade students on the reading and mathematics portion of the Delaware Student Testing Program; the conclusion date for summer school programs resulting from the Delaware Student Testing Program; and the Individual Improvement Plan for Students.

C. IMPACT CRITERIA

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

The new regulations will help to improve student achievement by assessing student progress on meeting the requirements of the state content standards.

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

The new regulations address assessment issues, not equity issues.

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

The new regulations address assessment issues, not health and safety issues.

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

The new regulations address assessment issues, not students' legal rights.

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

The new regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

The new regulations will add to the reporting and administrative requirements in the local school districts but the Del. C. directs the Department of Education to make such regulations.

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

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

8. Will the regulations 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 new regulations will be consistent with and not an impediment to the implementation of other state educational policies.

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

The Del. C. requires the Department of Education to make such regulations.

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

There are additional costs associated with the Delaware Student Testing Program but the state has funded and will continue to fund the majority of the program costs.

AS AMENDED

100.1 Delaware Student Testing Program

July 1999

1.0 General: Assessments created pursuant to the Delaware Student Testing Program shall be administered annually, on dates specified by the Secretary of Education, to students in grades 3, 5, 8, and 10, in the content areas of reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in the content areas of social studies and science. All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

2.0 Security and Confidentiality: In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

2.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the affidavit provided by the Department of Education regarding test security before, during and after test administration.

2.2 Violation of the security or confidentiality of any test required by the *Delaware Code* and the regulations of the Department of Education shall be prohibited.

2.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials. Conduct that violates the security or confidentiality of a test is defined as any departure from the test administration procedures established by the Department of Education. Conduct of this nature shall include, without limitation, the following acts and omissions:

2.3.1. duplicating secure examination materials;

2.3.2 disclosing the contents of any portion of

a secure test;

2.3.3 providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

2.3.4 changing or altering a response or answer of an examinee to a secure test item or prompt;

2.3.5 aiding or assisting an examinee with a response or answer to a secure test item or prompt;

2.3.6 encouraging or assisting an individual to engage in the conduct described above;

2.3.7 failing to report to an appropriate authority that an individual has engaged in conduct outlined above;

3.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered pursuant to the Delaware Student Testing Program. Said levels are defined and shall be determined as follows:

3.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

3.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State

Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process. Students at the upper end of this level are to be further sub-classified as Near the Performance Standard. Students who are Near the Performance Standard are those whose performance on the fundamental skills and knowledge articulated in the Delaware Content Standards is not yet sufficient to Meet the Performance Standard, but the student is near the threshold in relation to the Meets the Performance Standard category. The threshold for Near the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using an error of measurement determined by the test data and the results from the standard setting process.

3.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

4.0 Promotion and Placement

4.1 "Initial Testing" means the spring administration of the Delaware Student Testing Program (DSTP).

4.2 "Placement" means the location where educational services are delivered.

4.3 "Promotion" means the process of moving a student's record from one grade level to the next.

4.4 "Regular Conditions" shall include accommodations which do not interfere with the tested construct.

4.5 "Retention" shall refer to the process of retaining a student's record at the previously completed

grade level.

4.6 "Secondary Testing" means the end-of-summer administration of the Delaware Student Testing Program.

4.7 "Tertiary Testing" means the spring administration of the Delaware Student Testing Program for those students retained or taking classes under an IIP as a result of this regulation.

5.0 Grades 3 and 5 Students: Reading

5.1 Students who test under regular conditions on the reading portion of the Delaware Student Testing Program during the initial testing shall be considered eligible for promotion when their achievement level is at or above Level 3, Meets the Standard, providing they have met all other requirements for promotion as deemed necessary by the State and local districts.

5.2 Students who test under regular conditions on the reading portion of the Delaware Student Testing Program during the initial testing shall be required to participate in a summer school program designed to move the student toward proficiency when their achievement level is below Level 3, Meets the Standard. The summer school program shall be provided by the district in which the student receives services.

5.2.1 Conclusion of Summer School: Districts shall conclude the mandatory portion of their summer school programs by July 31 to permit adequate time for test scoring and parental notification.

5.3 Students required to participate in a summer school program as a result of their initial Delaware Student Testing Program scores in reading shall be required to test on an equally valid and reliable instrument of the reading portion of the Delaware Student Testing Program at the conclusion of the summer school program. Conditions for secondary testing shall be the same as during the initial testing.

5.4 Students who scored at Level 2, Near the Standard, on the initial testing in reading and who participated in a summer school program shall be eligible for promotion at the conclusion of the program. Students who score below Level 3 on the secondary testing shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian.

5.5 For students who score below Level 2, Near the Standard, on the initial reading test, the reading proficiency level from the secondary testing shall be utilized to make placement and promotion decisions in the following ways:

5.5.1 Students who score at or above Level 3, Meets the Standard, on the secondary testing shall be considered eligible for promotion providing they have met all other requirements for promotion as deemed necessary by the State or local districts.

5.5.2 Students who score at Level 1 or Level 2

on the secondary testing in reading shall be retained at the previous grade level. Students who have been retained for two years because of inadequate student performance may be promoted to the next grade level but shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian.

5.6 Students who are retained as a result of their DSTP reading score but who have achieved grade level proficiency in other core academic subjects shall be provided a course of study in those subjects designed to help the student continue to progress at grade level proficiency. These services may be provided in the physical location where the student participated in the initial testing or at another district school. In either case the student's record shall be retained at the previous grade level.

5.7 Testing and Promotion After the Retention Year: All students who have been retained shall be required to test again at the conclusion of the retention year during the regular administration of the Delaware Student Testing Program.

5.7.1 Students who test at or above Level 3, Meets the Standard, on the tertiary testing shall be eligible to have their record promoted, providing they have met all other requirements for promotion as deemed necessary by the State and local districts.

5.7.2 Students who score within the Level 2, Near the Standard, category on the tertiary testing must participate in a summer school program but shall be eligible to have their record promoted, providing they have met all other requirements for promotion as deemed necessary by the State and local districts but shall be provided a revised Individual Improvement Plan.

5.7.3 Students who score at Level 1 or Level 2 (but below the Level 2, Near the Standard, category) on the tertiary testing in reading shall be retained at the previous grade level. Such students shall be required to participate in a summer school program designed to move the student toward proficiency and shall be provided a revised Individual Improvement Plan. Students who have been retained for two years because of inadequate student performance may be promoted to the next grade level but shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian.

5.8 Other Indicators for Promotion

5.8.1 Other indicators may be considered when determining eligibility for promotion of students who score within one standard error of measurement below the Level 2, Near the Standard, category on the reading test:

5.8.1.1 The student's score on the Delaware Student Testing Program writing test: If the student's assigned proficiency on the writing portion of the DSTP is Meets the Standard or better, the student shall be eligible for promotion providing he/she has met all other

requirements for promotion as deemed necessary by the State or local districts.

5.8.1.2 The student's score on the normative portion of the Delaware Student Testing Program reading test: If the student's assigned National Percentile Ranking is at or above the 85th percentile, the student shall be eligible for promotion providing he/she has met all other requirements for promotion as deemed necessary by the State or local districts.

5.8.1.3 The student's score on a school district reading test that has been approved by the Department of Education. The Department of Education shall certify a score on any approved test that would be sufficient for eligibility for promotion.

6.0 Grade 8 Students: Reading and Mathematics

6.1 Students who test under regular conditions on the reading and mathematics portions of the Delaware Student Testing Program during the initial testing shall be considered eligible for promotion when their achievement level is at or above Level 3, Meets the Standard, on the Reading and Mathematics portions of the Delaware Student Testing Program providing they have met all other requirements for promotion as deemed necessary by the State and local districts.

6.2 Students who test under regular conditions on the reading and mathematics portions of the Delaware Student Testing Program during the initial testing shall be required to participate in a summer school program designed to move the student toward proficiency when their achievement level is below Level 3, Meets the Standard, on either the Reading and Mathematics portions of the Delaware Student Testing Program. The summer school program shall be provided by the district in which the student receives services.

6.2.1 Conclusion of Summer School: Districts shall conclude the mandatory portion of their summer school programs by July 31 to permit adequate time for test scoring and parental notification.

6.3 Students required to participate in a summer school program as a result of their initial Delaware Student Testing Program scores in reading and/or mathematics shall be required to test on an equally valid and reliable instrument of the reading portion of the Delaware Student Testing Program at the conclusion of the summer school program. Conditions for secondary testing shall be the same as during the initial testing.

6.4 Students who scored Level 2, Near the Standard, on the initial testing in reading and/or mathematics and who participated in a summer school program shall be eligible for promotion at the conclusion of the program. Students who score below Level 3 on the secondary testing in reading and/or mathematics shall have an Individual Improvement Plan prepared by school personnel and signed

by the principal and a parent or guardian.

6.5 For students who score below Level 2, Near the Standard, on the initial reading and/or mathematics test, the proficiency level from the secondary testing shall be utilized to make placement and promotion decisions in the following ways:

6.5.1 Students who score at or above Level 3, Meets the Standard, on the relevant secondary testing shall be considered eligible for promotion providing they have met all other requirements for promotion as deemed necessary by the State or local districts.

6.5.2 Students who score at Level 1 or Level 2 on the secondary testing in reading shall be retained at the previous grade level. Students who have been retained for two years because of inadequate student performance may be promoted to the next grade level but shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian.

6.5.3 Students who score at Level 1 or Level 2 on the secondary testing in mathematics may be retained at the previous grade level or may be placed in a program such as a readiness academy designed to improve the student to a level of proficiency sufficient to be promoted. Students who have been retained for two years because of inadequate student performance may be promoted to the next grade level but shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian.

6.6 Testing and Promotion After the Retention Year: All students who have been retained shall be required to test again at the conclusion of the retention year during the regular administration of the Delaware Student Testing Program.

6.6.1 Students who test at or above Level 3, Meets the Standard, on the tertiary testing shall be eligible to have their record promoted, providing they have met all other requirements for promotion as deemed necessary by the State and local districts.

6.6.2 Students who score within the Level 2, Near the Standard, category on the tertiary testing must participate in a summer school program but shall be eligible to have their record promoted, providing they have met all other requirements for promotion as deemed necessary by the State and local districts but shall be provided a revised Individual Improvement Plan.

6.6.3 Students who score at Level 1 or Level 2 (but below the Level 2, Near category) on the tertiary testing in reading shall be retained at the previous grade level. Such students shall be required to participate in a summer school program designed to move the student toward proficiency and shall be provided a revised Individual Improvement Plan. Students who have been retained for two years because of inadequate student performance may be promoted to the next grade level but shall have an Individual

Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian.

6.6.4 Students who score at Level 1 or Level 2 (but below the Near category) on the tertiary testing in mathematics may be promoted to the next grade. Such students shall be provided a revised Individual Improvement Plan. Students who have been retained for two years because of inadequate student performance may be promoted to the next grade level but shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian.

6.7 Other Indicators for Promotion:

6.7.1 Other indicators may be considered when determining eligibility for promotion of students who score Near the Standard within one standard error of measurement below Level 3, Meets the Standard on reading testing:

6.7.1.1 The student's score on the writing test: If the student's assigned proficiency on the writing portion of the Delaware Student Testing Program is Meets the Standard or better, the student shall be eligible for promotion providing he/she has met all other requirements for promotion as deemed necessary by the State or local districts.

6.7.1.2 The student's score on the normative portion of the Delaware Student Testing Program: If the student's assigned National Percentile Ranking is at or above the 85th percentile, the student shall be eligible for promotion providing he/she has met all other requirements for promotion as deemed necessary by the State or local districts.

6.7.1.3 The students score on a school district test that has been approved by the Department of Education. The Department of Education shall certify a score on any approved test that would be sufficient for eligibility for promotion.

6.7.2 Other indicators may be considered when determining eligibility for promotion of students who score Near the Standard within one standard error of measurement below Level 3, Meets the Standard on the mathematics testing:

6.7.2.1 The student's score on the normative portion of the Delaware Student Testing Program: If the student's assigned National Percentile Ranking is at or above the 85th percentile, the student shall be eligible for promotion providing he/she has met all other requirements for promotion as deemed necessary by the State or local districts.

6.7.2.2 The student's score on a school district administered test that has been approved by the Department of Education. The Department of Education shall certify a score on any approved test that would be sufficient for eligibility for promotion.

7.0 The Individual Improvement Plan shall be on a form prescribed by the Department of Education and shall be placed in a student's file. The Individual Improvement Plan shall be updated annually depending on the results of further student testing.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

DELAWARE'S A BETTER CHANCE WELFARE REFORM PROGRAM

The Delaware Health and Social Services / Division of Social Services / Delaware's *A Better Chance Welfare Reform* Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3002 and 3031. These changes arise from Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option and was first announced in January 1995, as part of the original Delaware *A Better Chance (ABC) Welfare Reform* waiver design.

SUMMARY OF PROPOSED REVISIONS:

- Changing the time limit from forty-eight (48) cumulative months to thirty-six (36) cumulative months for all households headed by an employable adult applying on or after January 1, 2000.
- Revising language in the Work For Your Welfare provision to require up front Work For Your Welfare for individuals applying on or after January 1, 2000.

The time limit is a lifetime time limit.

INVITATION FOR PUBLIC COMMENT

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P. O. Box 906, New Castle, DE, by September 30, 1999.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the

consideration of the comments and written materials filed by other interested persons.

3002 Time Limit, Temporary Welfare Program

3002.1 Two-Parent Families - Time Limit, Temporary Welfare Program

A). Delaware's A Better Chance (ABC) Welfare Reform, cash benefits ~~will be~~ are time-limited for households headed by two employable adult's age 19 or older who are included in the grant. ~~The time limit is forty-eight (48) cumulative months.~~ For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive these benefits only through participation in a pay-after-performance work experience position or if the adults are working at least 20 hours per week and the family has countable income that is below the need standard.

Time Limits will not apply when Delaware's unemployment rate exceeds the national average by 2% or when the Delaware unemployment rate is greater than 7.5%.

Time limits apply when four conditions are met:

- the caretaker is included in the grant,
- the caretaker is age 19 or older,
- the caretaker is employable, and
- the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children's Program.

B) During the time-limited period, employable adult recipients will receive full cash benefits only as long as they fulfill their Contract of Mutual Responsibility, and participate in a pay-after-performance work experience program or they are working and family income is below the need-standard of 75% of the Federal Poverty level.

The pay-after-performance work experience position is intended for families who do not have unsubsidized employment. Determine the number of hours of work required by dividing the ABC benefit by the minimum wage. In addition, participants will be required to conduct up to ten (10) hours of job search each week. Failure to comply with the job search requirements will result in an employment and training sanction being applied as described in DSSM 3011.2.

C) Periodic Alerts to Families Regarding Time Remaining before the Family Reaches the Time Limit

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

3002.2 Single Parent / Non-Parent Caretaker Families

A). ~~Under Delaware's A BETTER CHANCE AFDC (ABC) Welfare Reform~~, cash benefits are time-limited for households headed by an employable adult, who is age 19 or older and included in the grant. ~~The time limit is twenty-four (24) cumulative months. For households applying on or after 01/01/2000 the lifetime time limit will be thirty-six (36) cumulative months.~~ Families will receive ~~these~~ benefits for an additional twenty-four (24) cumulative months only through participation in a pay-after-performance work experience position or if the adult is working at least twenty hours per week and the family has countable income that is below the need standard.

Time limits will not apply when Delaware's unemployment rate exceeds the national average by 2% or when the Delaware unemployment rate is greater than 7.5%.

Time limits apply when four conditions are met:

- the caretaker is included in the grant;
- the caretaker is age 19 or older;
- the caretaker is employable; and
- the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.

When one or more of the conditions listed above is not met, the family receives benefits in the non-time-limited program known as the Children's Program.

(B) Periodic Alerts to Families Regarding Time Remaining Before the Family Reaches the Time Limit.

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

~~3002.3 Periodic Alerts to Families Regarding Time Remaining Before the Family Reaches the Time Limit~~

~~The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.~~

TIME LIMITS FOR THOSE ON ASSISTANCE PRIOR TO 01/01/2000

If a family was headed by an employable adult age 19 or older who was included in the grant and received Delaware's A BETTER CHANCE (ABC) welfare Reform cash benefits prior to 01/01/2000 they had a forty-eight (48) cumulative month time limit. This lifetime time limit will still apply for those families. After twenty-four (24) cumulative months these families can only receive benefits if the adult is working at least twenty hours per week or through participation in a pay-after-performance work experience position. The family must still have countable income that is below the need standard. Families with a forty-eight (48) month cumulative time limit who reapply for assistance on or after 01/01/2000 can only receive benefits if

the adult is working at least twenty hours per week or if through participation in a pay-after-performance work experience position.

Here are some examples:

1. Example:

A family initially began receiving ABC 08/01/1997. The ABC case was closed 06/30/1998. The family applied for and received ABC benefits while the time limit was forty-eight (48) months. The family used eleven (11) months of time limited ABC benefits. The family reapplies for benefits 02/01/2000. The family can receive up to thirty-seven (37) more cumulative months of ABC benefits in the time-limited program if and only if:

- the employable adult is working at least twenty hours per week; or
- by participating in a pay-after-performance work experience position; and
- the family still has countable income that is below the need standard.

2. Example:

A family had not received ABC benefits prior to 01/01/2000. The family applies for and it opened in ABC 03/01/2000. The family can only receive ABC benefits for up to thirty-six (36) cumulative months and only if:

- the employable adult is working at least twenty hours per week; or
- by participating in a pay-after-performance work experience position; and
- the family still has countable income that is below the need standard.

3002.4 Periodic Alerts to Families Regarding Time Remaining Before the Family Reaches the Time Limit.

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

~~3002.4~~ 3002.5 Assessment Prior to Termination of Benefits

At least ~~120~~ 90 days prior to the end of the 36 or 48 cumulative month period in which a family has received assistance (through cash assistance and participation in pay-after-performance), the Division will complete another assessment of employability. If the Division determines that the adult caretaker is not employable, the Division will continue benefits under the Children's Program as described in DSSM 3003. If the Division determines that the adult caretaker is employable, ABC benefits will end to the family as of the last day of the 36 or 48 cumulative months.

~~3002.5~~ 3002.6 Noticing Prior to Termination of Benefits

At least two months prior to the end of the 36 or 48 cumulative months in which a family has received assistance, the Division will remind the family that assistance will end and notify the family of the right to apply

for an extension.

~~3002.6~~ 3002.7 Extensions

The Division will limit extensions to those families who can demonstrate that:

- the agency substantially failed to provide the services specified in the individual's Contract of Mutual Responsibility (see DSSM 3009 for Contract); the related extension will correspond to the time period for which services were not provided; or
- despite their best efforts to find and keep employment, no suitable unsubsidized employment was available in the local economy to the employable adult caretaker; the maximum extension under such circumstances will be in 12 cumulative months periods. A family may request extensions until; the family has reached sixty (60) cumulative months in the time-limited program for families with a 48 cumulative life time time limit and 48 months for families with a 36 month cumulative life time time limit. See "SUITABLE EMPLOYMENT" definition.

The Division Director or the Director's designee will make decisions on granting extensions within 45 days of the request. Fair hearing provisions set forth in DSSM 5000 apply. Benefits will not continue beyond the time limit.

The Division will not grant extensions if:

- the adult caretaker received and rejected offers of employment, quit a job without good cause, or was fired for cause; ~~or~~
- the adult caretaker did not make a good faith effort to comply with the terms of the CONTRACT OF MUTUAL RESPONSIBILITY.

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

~~3002.7~~ 3002.8 Re-Application after the Time Limit

Assistance will be denied to employable caretakers reapplying for benefits after the 36 or 48 cumulative month time limit, unless the caretaker proves that grounds exist for an extension.

- ~~the family has not received assistance for 96 consecutive months or~~
- ~~the caretaker proves that grounds exist for an extension.~~

Benefits will be provided to these families only in

the pay-after-performance component, for a maximum of ~~twelve cumulative months~~ sixty (60) cumulative months in the time-limited program for families with a 48 cumulative life time time limit and 48 months for families with a 36 month cumulative life time time limit. DSS will conduct an assessment and notice the family prior to termination of benefits (See DSSM 3002).

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

3031 WORK FOR YOUR WELFARE

~~All two-parent households and single-parent adult recipients who reach their 22nd month of benefit and are without employment~~ All two-parent households, who are without employment, must enter a Work For Your Welfare activity to qualify for benefits. Single adult recipients, who reach their 22nd month of benefit and are without employment, and all eligible applicants on or after 01/01/2000, must enter a Work For Your Welfare activity to qualify for benefits. Work for Your Welfare is defined as a work experience program in which participants work to earn their benefits. In addition, DSS requires each participant to complete 10 hours of job search activity per week. The failure to complete job search as required will result in a progressive 1/3 sanction. For two parent households, one parent must participate in the work for your welfare program in order to earn benefits. The second parent, unless exempt, must also participate in required employment related activities as defined by DSS and the DSS contractor.

Currently DSS operates the work for your welfare program under contract with a work for your welfare services provider. The provider assumes responsibility for the assessment, placement and monitoring of all work for your welfare participants in unsalaried work assignments. The work assignments are with public or nonprofit organizations. In return for their services, participants earn the amount of the benefit they are eligible to receive.

Work for your welfare is not preferable to participants obtaining unsubsidized employment. Though the work for your welfare assignment should be a safe assignment, it should not be more attractive than unsubsidized employment.

DSS is to ensure that no participants placed in work for welfare activities displace regular paid employees of any of the organizations providing the placements.

Since placements are not voluntary, DSS expects participants to accept assignments unless the assignment represents an unreasonable health and safety risk (e.g., the participant has a health condition, which would be aggravated by the assignment).

Participants cannot appeal their assignments to work for your welfare work sites.

3031.1 HOURS OF PARTICIPATION - ONE PARENT FAMILIES

Effective 10/1/98, participants in single parent households are required to work for up to 30 hours per week. The 30 hours are the maximum participation hours. DSS determines the actual hours of participation by dividing the ABC and Food Stamp benefits by the minimum wage. If the hours determined by dividing the grants by the minimum wage exceeds 30 hours per week, participants are to complete no more than the 30 hours maximum. In addition to these hours, every participant is expected to participate in 10 hours of job search per week.

EXAMPLE: The ABC grant amount for two is \$270. Divided by the minimum wage (\$5.45 ~~65~~), this equates to 52 hours per month for the ABC grant (always round down to the nearest whole number). The Food Stamp allotment amount is \$224. Divided by the minimum wage (\$5.45 ~~65~~), this equates to 43 hours per month for the Food Stamp allotment. Together this would mean that the participant must work 95 hours per month. Divide the 95 monthly hours by 4.33 (number of weeks per month) to arrive at a weekly participation rate. ~~Ninety-five~~ 95 divided by 4.33 is 21 hours per week. So the above participant must participate 21 hours per week in a work-for-your welfare placement in order to receive his/her full grant and allotment.

Total performance hours are based on grant amounts regardless of sanctions. In other words, a participant who has a 1/3 sanction does not perform fewer hours because of the sanction. Performance is based on what the total grant would have been without the sanction.

EXAMPLE: A family of two has a grant of \$270. The grant, however, has been reduced by 1/3 because of an employment and training sanction. When DSS assigns this adult to work, the total performance hours are based on the grant amount of \$270 despite the 1/3 sanction.

The 10 hours per week job search requirement still applies. The failure to complete the 10 hours of job search is a sanctionable offense, punishable by the progressive 1/3 penalty for failure to comply with an employment and training activity.

Participants who fail to complete the hours required by dividing their grant by the minimum wage will have their grant adjusted. For each hour not worked, participants will have the grant adjusted downward by the amount of the minimum hourly wage.

EXAMPLE: A participant in a family size of 2 is required to work 52 hours in a month. The participant however, only works 50 hours. This participant will have the grant reduced by \$5.45 ~~65~~ (minimum wage) x 2. DSS will reduce the grant amount for this participant by \$10.00, always rounding down to the nearest dollar amount.

Once DSS determines the hours participants are to work, the contractor will assign participants to a work site.

At the work site, participants must complete their assigned hours within the time period determined by the contractor and the work site.

3031.2 HOURS OF PARTICIPATION - TWO PARENT FAMILIES

Two parent households must participate in work for your welfare as soon as DSS determines the household eligible for benefits. In two-parent households, one parent must participate at their assigned maximum performance hours (35 hours per week), and the second parent must participate in required employment related activities as determined by DSS and the DSS work for your welfare contractor, unless the second parent is otherwise exempt (e.g., caring for a disabled child or is incapacitated). DSS requires the second parent in the two-parent household to go to the workfare contractor to be placed in a component other than workfare.

If the families of two-parent households receive federally subsidized child care, together they must participate in at least 55 hours per week of required activity. In this case, one parent will do work for your welfare activity, and the second parent must participate in a sufficient number of hours with the work for your welfare contractor so that, when combined with the hours of the first parent, together they equal 55 hours. If the one parent in the two-parent household who is participating in work for your welfare does not complete his/her required performance hours, the grant allowance for the entire family is reduced by the hours not worked times the minimum wage. The grant adjustment occurs regardless of whether the second parent completed his/her required hours of employment related activities.

If the second parent does not complete or refuses to complete the required employment related activities, DSS will impose a separate 1/3 sanction on this second parent. This sanction will increase by 1/3 as long as this second parent refuses to complete his/her required activities. DSS will treat the second parent's 1/3 sanctions separately from the first parent's sanctions. For example, if the first parent in this two-parent family already has a 1/3 sanction, the 1/3 sanction for the second parent will not increase the sanction level to 2/3 for the entire family. However, the highest sanction level of either parent will determine the entire sanction level for the family.

3031.3 INITIATING WORK FOR YOUR WELFARE - ONE PARENT FAMILIES

~~DSS will alert single parent families to report to the work for your welfare contract in the 22nd month of their receipt of benefits. The contractor will schedule participants for an interview for assessment and placement in a work for your welfare activity. Participants' failure to keep their~~

scheduled interview with the contractor will result in the progressive 1/3 penalty for an employment and training activity.

Participants whose cases are closed can only have benefits restored once they have agreed to and have cooperated for two weeks with their work for your welfare assignment. If a participant fails to cooperate by not completing any portion of this two weeks of his/her work for your welfare placement, DSS will not restore benefits.

Participants are to begin their work for your welfare assignment on the 12th of the 23rd month of benefit receipt. Participants will have until the 11th of the 24th month to complete their work for your welfare monthly assignment in order to receive a benefit for their 25th month. Otherwise, DSS will reduce benefits for the 25th month based on any hours not worked.

FOR EXAMPLE: Mary Jones is a single parent receiving benefits. September 1998 is her 22nd month of ABC benefit receipt. On Post Adverse Action day in August, Mary's October benefit as well as her work for your welfare requirement is calculated. A letter is generated to Mary informing her that she must participate in work for your welfare beginning in October. The letter also informs her of the required hours per day she must complete, and that she will have from October 12th until November 11th to complete her assignment if she is to get benefits in December. If Mary does not complete any of her work for your welfare hours, she receives no benefit for December and her case closes. In order for her to start receiving benefits again, Mary would have to agree to go to her assigned work for your welfare work site, and cooperate by completing her assigned hours for up to two weeks. If she fails to do this, her case remains closed.

3031.3.1 Families That Have A Forty-Eight (48) Month Time Limit Who Are Continuously On Assistance:

DSS will alert single adult families to report to the work for your welfare contractor in the 22nd month of their receipt of benefits. The contractor will schedule participants for an interview for assessment and placement in a work for welfare activity. Participants' failure to keep their scheduled interview with the contractor will result in the progressive 1/3 penalty for an employment and training activity.

Participants whose cases are closed can only have benefits restored once they have agreed to and have cooperated for two weeks with their work for your welfare assignment. If a participant fails to cooperate by not completing any portion of this two weeks of his/her work for your welfare placement, DSS will not restore benefits.

Participants are to begin their work for your welfare assignment on the 12th of the 23rd month of benefit

receipt. Participants will have until the 11th of their 24th month to complete their work for your welfare monthly assignment in order to receive a benefit for their 25th month. Otherwise, DSS will reduce benefits for the 25th month based on any hours not worked.

FOR EXAMPLE: Mary Jones is a single parent with one child receiving benefits. September 1998 is her 22nd month of ABC benefit receipt. On Post Adverse Action day in August, Mary's October benefit as well as her work for your welfare requirement is calculated. A letter is generated to Mary informing her that she must participate in work for your welfare beginning in October. The letter also informs her of the required hours per day she must complete, and that she will have from October 12th until November 11th to complete her assignment if she is to get benefits in December. If Mary does not complete any of her work for your welfare hours, she receives no benefit for December and her case closes. In order for her to start receiving benefits again, Mary would have to agree to go to her assigned work for your welfare work site, and cooperate by completing her assigned hours for up to two weeks. If she fails to do this, her case remains closed.

3031.3.2 Families That Have A Thirty-Six (36) Month Time Limit And Families That Have A Forty-Eight (48) Month Time Limit Who Reapply On Or After January 1, 2000

DSS will alert single adult families to report to the work for your welfare contractor immediately after they are approved to receive benefits. Participants will be required to participate in the Work For Your Welfare program activities to receive benefits for the month following initial approval. The contractor will schedule participants for an interview for assessment and placement in a work for welfare activity. Participants' failure to keep their scheduled interview with the contractor will result in the progressive 1/3 penalty for an employment and training activity.

Participants whose cases are closed can only have benefits restored once they have agreed to and have cooperated for two weeks with their work for your welfare assignment. If a participant fails to cooperate by not completing any portion of this two weeks of his/her work for your welfare placement, DSS will not restore benefits.

FOR EXAMPLE: Sammy Smith is a single parent who applied for and was approved to receive ABC on December 2, 2000. A letter is generated to Sammy informing him that he must participate in work for your welfare beginning the following month. The letter also informs him of the required hours per day he must complete, and that he will have from January 12th until February 11th to complete his assignment if he is to get benefits in March.

3031.4 INITIATING WORK FOR YOUWELFARE - TWO PARENT FAMILIES

For two parent families, only one parent will have to complete a work for your welfare assignment. DSS will inform the family of their work for your welfare obligation once the family is eligible for benefits, usually within 30 days of the intake interview. In addition, the other parent in the family, unless exempt, must also participate in employment and training activities. Again DSS will send a letter to the family instructing them that one parent must report to a work for your welfare assignment and the other parent must participate with the work for your welfare contractor in a component other than work for your welfare. The family must decide which parent will complete the work for your welfare assignment and which parent will participate in employment and training activities with the work for your welfare contractor. The failure to report to the contractor will result in a progressive 1/3 penalty for an employment and training activity. In addition, the parent who participates in the work for your welfare assignment must also complete 10 hours of job search per week.

~~The month after DSS determines eligibility is the first required month for which participation hours are calculated. DSS will calculate hours the same as it does for single parent families. That is, the parent in the two parent family must report by the 12th of the month and will have until the 11th of the following month to complete his/her work for your welfare hours.~~

~~FOR EXAMPLE: Mary and Tom Jones apply for cash assistance in August. By September DSS determines them eligible. The family decides that Tom will complete the work for your welfare hours. Having calculated the hours Tom must complete, DSS sends them a letter instructing Tom that he has from October 12th until November 11th to complete his hours if the family is to receive benefits in December.~~

The following month is the first required month for which participation hours are calculated. DSS will calculate hours the same as it does for single parent families. That is, the parent in the two parent family must report by the 12th of the month and will have until the 11th of the following month to complete his/her work for your welfare hours.

FOR EXAMPLE: Janet and Jim Roberts apply for cash assistance in October. By November DSS determines them eligible. The family decides that Jim will complete the work for your welfare hours. Having calculated the hours Jim must complete, DSS sends them a letter instructing Jim that he has from November 12th until December 11th to complete his hours if the family is to receive benefits in January. In addition, the letter instructs Janet that she is to report to the work for your welfare contractor to participate in a component other than work for your welfare.

3031.5 ENDING A WORK FOR WELFARE PLACEMENT

Work for welfare placements will end when any of the following circumstances occur:

The participant secures a full-time, non-subsidized job or a part-time, non-subsidized job of 20 hours or more.

The participant becomes exempt. Exemptions, however, can only occur if DSS declares participants unemployable, using the standard ABC definition for unemployable. In this case, DSS will transfer the participants to the Children's Program under ABC.

The participant requests an end to benefits payments.

When the 36 or 48 month time limit has been reached.

Note: Participants in either one parent or two parent households are exempt from work for your welfare participation if a parent is working 20 or more hours per week in a non-subsidized job.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Medicaid / Medical Assistance Program

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by September 30, 1999.

REVISION:

Home Health Provider Manual

X. ASSISTED LIVING MEDICAID WAIVER PROGRAM

Individuals who are eligible for the Assisted Living Medicaid Waiver program will be issued a unique Medicaid card. The card will identify the individual as being eligible for the Assisted Living Waiver.

Home health services provided to clients who are eligible for the Assisted Living Medicaid Waiver program must be prior authorized by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) nurse/case manager. The primary care physician, family, consumer, home health agency, or private duty nurse should direct request for prior authorization to the appropriate DSAAPD location as listed in the front of the General Policy. The request should include the following information:

- Name of consumer
- Consumer's Medical Assistance ID number
- Date of birth
- Detailed medical history that documents the need for the home health or private duty nursing service requested
- Nursing assessment and plan of care
- Physical assessment and diagnosis
- Psycho-social assessment including home, family and environmental factors
- Level of function (physical, mental, developmental)
- Availability and ability of caretaker to maintain client in the home, e.g., knowledge of emergency procedures.

The DSAAPD will forward a letter detailing the prior authorization to the home health agency. This notification must be retained in the home health agency's medical record. Prior authorization from the DSAAPD nurse/case manager does not relieve the HHA from responsibility of conducting an independent assessment that meets the DMAP policy. See Appendix A for the appropriate HCPCS codes used for services provider to assisted living waiver clients.

The DMAP does not cover home health services provided to an assisted living consumer on a non-medical/social leave of absence outside the State of Delaware.

The DMAP may cover medically necessary home health services to an assisted living consumer on a non-medical/social leave of absence within the State of Delaware. Prior authorization must be obtained through the DSAAPD nurse for nursing aide services and/or skilled nursing services.

The DMAP does not cover home health aide visits in the assisted living agency.

The DMAP may cover medically necessary skilled nursing visits in the assisted living agency. Prior authorization must be obtained through the DSAAPD nurse.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Medicaid / Medical Assistance Program

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by September 30, 1999.

REVISION:

Pharmacy Provider Manual

Drugs Used for Cosmetic Purposes

Drugs used for cosmetic purposes are not **routinely** covered by the DMAP. Currently, those drugs include Minoxidil Lotion and Retin A for adults. [NOTE: Retin A is covered for DMAP recipients under the age of 21 (through the 20th year).] The DMAP defines the treatment of acne in adults as cosmetic. Medications for adults suffering from acne are not covered.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

AIR QUALITY MANAGEMENT SECTION

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

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

Regulation 37 - NO_x Budget Program

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

The ambient air in Delaware does not meet the national ambient air quality standard (NAAQS) for the pollutant ozone. It has been determined that NO_x, a pollutant that contributes to the formation of ozone, must be reduced in order for Delaware to support its Rate of Progress Plan and ozone attainment demonstration. The Department is herein amending an existing regulation that requires boilers and indirect heat exchangers rated at 250 MMBTU/hr, or greater, heat input and electric generating units with an electrical output rating of 15 MW, or greater, to meet NO_x emissions cap limitations that collectively reflect substantial reductions in NO_x emissions. To aid industry in making the necessary reductions in a more cost effective manner, the regulation includes provisions that facilitate compliance through participation in a regional cap and trade program administered by the USEPA. The amendments to the regulation give the Department, at its discretion and upon a showing by the non-compliant source that all reasonable efforts were made to comply with the regulation, the authority to impose a phased-in emission offset penalty on a non-compliant source in lieu of a mandatory 3-for-1 penalty.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

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

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing on this regulation will be held on Thursday, September 23, 1999, at 6:00 P.M. in the DNREC

Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware.

7. PREPARED BY:

Robert Clausen (302) 323-4542, August 15, 1999

Section 1 - General Provisions

a. The purpose of this regulation is to reduce nitrogen oxides (NO_x) emissions in Delaware through implementation of Delaware's portion of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) by establishing in the State of Delaware a NO_x Budget Program.

b. A NO_x *allowance* is an authorization to emit NO_x, valid only for the purposes of meeting the requirements of this regulation.

1. All applicable state and federal requirements remain applicable.

2. A NO_x *allowance* does not constitute a security or other form of property.

c. On or after May 1, 1999, the *owner or operator* of each *budget source* shall, not later than December 31 of each calendar year, hold a quantity of NO_x *allowances* in the *budget source's current year NATS account* that is equal to or greater than the total NO_x emitted from that *budget source* during the period May 1 through September 30 of the subject year.

d. *Allowance transfers* between *budget sources* sharing a common *owner or operator* and/or *authorized account representative* are subject to all applicable requirements of this regulation, including the *allowance transfer* requirements identified in Section 11 of this regulation.

e. Offsets required for new or modified sources subject to non-attainment new source review must be obtained in accordance with Regulation 25 of Delaware's "Regulations Governing the Control of Air Pollution" and Section 173 of the Clean Air Act. *Allowances* are not considered offsets within the context of this regulation.

f. Nothing in this regulation shall be construed to limit the authority of the Department to condition, limit, suspend, or terminate any *allowances* or authorization to emit.

g. The Department shall maintain an up to date listing of the NO_x sources subject to this regulation.

1. The listing shall identify the name of each NO_x *budget source* and its annual *allowance allocation*, if any.

2. The Department shall submit a copy of the listing to the *NATS Administrator* by January 1 of each year, commencing in 1999.

Section 2 - Applicability

a. The NO_x Budget Program applies to any *owner or operator* of a *budget source* where that source is located in

the State of Delaware.

b. Any person who owns, operates, leases, or controls a stationary NO_x source in Delaware not subject to this program, by definition, may choose to *opt into* the NO_x Budget Program in accordance with the requirements of Section 8 of this regulation. Upon approval of the *opt-in* application by the Department, the person shall be subject to all terms and conditions of this regulation.

c. A *general account* may be established in accordance with Section 7 of this regulation. The person responsible for the *general account* shall be responsible for meeting the requirements for an *Authorized Account Representative* and applicable *account* maintenance fees.

Section 3 - Definitions

For the purposes of this regulation, the following definitions apply. All terms not defined herein shall have the meaning given them in the Clean Air Act and Regulation 1 of the State of Delaware "Regulations Governing the Control of Air Pollution".

a. *Account* means the place in the NO_x Allowance Tracking System where allowances held by a *budget source* (*compliance account*), or allowances held by any person (*general account*), are recorded.

b. *Account number* means the identification number assigned by the NO_x Allowance Tracking System (NATS) Administrator to a *compliance* or *general account* pursuant to Section 10 of this regulation.

c. *Administrator* means the Administrator of the U.S. EPA. The Administrator of the U.S. EPA or his designee(s) shall manage and operate the NO_x Allowance Tracking System and the NO_x Emissions Tracking System.

d. *Allocate* or *Allocation* means the assignment of allowances to a *budget source* through this regulation; and as recorded by the Administrator in a NO_x Allowance Tracking System *compliance account*.

e. *Allowance* means the limited authorization to emit one ton of NO_x during a specified *control period*, or any *control period* thereafter subject to the terms and conditions for use of *banked allowance* as defined by this regulation. All allowances shall be allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

f. *Allowance deduction* means the withdrawal of allowances for permanent retirement by the NATS Administrator from a NO_x Allowance Tracking System *account* pursuant to Section 16 of this regulation.

g. *Allowance transfer* means the conveyance to another *account* of one or more allowances from one *account* to another by whatever means, including but not limited to

purchase, trade, auction, or gift in accordance with the procedures established in Section 11 of this regulation, effected by the submission of an *allowance transfer* request to the NATS Administrator.

h. *Alternative monitoring system* means a system or component of a system, designed to provide direct or indirect data of mass emissions per time period, pollutant concentrations, or volumetric flow as provided for in Section 13 of this regulation.

i. *Authorized Account Representative (AAR)* means the responsible person who is authorized, in writing, to transfer and otherwise manage allowances as well as certify reports to the NATS and the NETS.

j. *Banked Allowance* means an allowance which is not used to reconcile emissions in the designated year of *allocation* but which is carried forward into the next year and flagged in the *compliance* or *general account* as "banked".

k. *Banking* means the retention of unused allowances from one *control period* for use in a future *control period*.

l. *Baseline* means, except for the purposes of Section 12(d) (Early Reductions) of this regulation, the NO_x emission inventory approved by the Ozone Transport Commission on June 13, 1995, and revised thereafter, as the official 1990 baseline emissions of May 1 through September 30 for purposes of the NO_x Budget Program.

m. *Boiler* means a unit which combusts fossil fuel to produce steam or to heat water, or any other heat transfer medium.

n. *Budget* or *Emission Budget* means the numerical result in tons per *control period* of NO_x emissions which results from the application of the emission reduction requirement of the OTC MOU dated September 27, 1994, and which is the maximum amount of NO_x emissions which may be released from the *budget sources* collectively during a given *control period*.

o. *Budget source* means a fossil fuel fired boiler or indirect heat exchanger with a maximum heat input capacity of 250 MMBTU/Hour, or more; and all electric generating units with a generator nameplate capacity of 15 MW, or greater. (Although not a *budget source* by definition, any person who applies to *opt into* the NO_x Budget Program shall be considered a *budget source* and subject to applicable program requirements upon approval of the application for *opt-in*.)

p. *Clean Air Act* means the federal Clean Air Act (42 U.S.C. 7401- 7626).

q. *Compliance account* means the *account* for a particular *budget source* in the NO_x Allowance Tracking System, in which are held current and/or future year allowances.

r. *Continuous Emissions Monitoring System (CEMS)* means the equipment required by this regulation used to sample, analyze, and measure which will provide a

permanent record of emissions expressed in pounds per million British Thermal Units (Btu) and tons per day. The following systems are component parts included in a continuous emissions monitoring system: nitrogen oxides pollutant concentration monitor, diluent gas monitor (oxygen or carbon dioxide), a data acquisition and handling system, and flow monitoring systems (where appropriate).

s. *Control period* means the period beginning May 1 of each year and ending on September 30 of the same year, inclusive.

t. *Current year* means the calendar year in which the action takes place or for which an *allocation* is designated. For example, an *allowance allocated* for use in 1999 which goes unused and becomes a *banked allowance* on January 1, 2000 can be used in the "Current Year" 2000 subject to the conditions for *banked allowance* use as stated in this regulation.

u. *Early Reduction Allowance* means an *allowance* credited for a NO_x emission reduction achieved during the *control periods* of either 1997 or 1998, or both.

v. *Electric generating unit* means any *fossil fuel fired* combustion unit which provides electricity for sale or use.

w. *Excess emissions* means emissions of nitrogen oxides reported by a *budget source* during a particular *control period*, rounded to the nearest whole ton, which is greater than the number of *allowances* which are available in that *budget source's NO_x Allowance Tracking System compliance account* on December 31 of the calendar year for the subject NO_x control season. For the purpose of determining whole tons on *excess emissions*, the number of tons of *excess emissions* shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

x. *Existing budget source* means a *budget source* that operated at any time during the period beginning May 1, 1990 through September 30, 1990.

y. *Fossil fuel* means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived wholly, or in part, from such material. For the purposes of this regulation only, this definition does not include CO derived from any source.

z. *Fossil fuel fired* means the combustion of *fossil fuel* or any derivative of *fossil fuel* alone, or, if in combination with any other fuel, where *fossil fuel* comprises 51% or greater of the annual *heat input* on a BTU basis.

aa. *General Account* means an *account* in the *NATS* that is not a *compliance account*.

bb. *Heat input* means heat derived from the combustion of any fuel in a *budget source*. *Heat input* does not include the heat derived from preheated combustion air, recirculated flue gas, or exhaust from other sources.

cc. *Indirect heat exchanger* means combustion equipment in which the flame and/or products of combustion

are separated from any contact with the principal material in the process by metallic or refractory walls, which includes, but is not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, reactor feed preheaters, and fuel-fired reactors such as steam hydrocarbon reformer heaters and pyrolysis heaters.

dd. *Maximum heat input capacity* means the ability of a *budget source* to combust a stated maximum amount of fuel on a steady state basis, as determined by the greater of the physical design rating or the actual maximum operating capacity of the *budget source*. *Maximum heat input capacity* is expressed in millions of British Thermal Units (MMBTU) per unit of time which is the product of the gross caloric value of the fuel (expressed in MMBTU/pound) multiplied by the fuel feed rate in the combustion device (expressed in pounds of fuel/time).

ee. *Nameplate capacity* means the maximum electrical generating output that a generator can sustain when not restricted by seasonal or other deratings.

ff. *New budget source* means a NO_x source that is a *budget source*, by definition, that did not operate between May 1, 1990 and September 30, 1990, inclusive. A NO_x source, that is a *budget source* by definition, that was constructed prior to or during the period May 1, 1990 through September 30, 1990, but did not operate during the period May 1, 1990 through September 30, 1990, shall be treated as a *new budget source*.

gg. *NO_x Allowance Tracking System (NATS)* means the computerized system established and used by the *Administrator* to track the number of *allowances* held and used by any person.

hh. *NO_x Emissions Tracking System (NETS)* means the computerized system established and used by the *Administrator* to track and provide a permanent record of NO_x emissions from each *budget source*.

ii. *Non-Part 75 Budget Source* means any *budget source* not subject to the requirements for emissions monitoring adopted pursuant to Regulation 36 of the State of Delaware "Regulations Governing the Control of Air Pollution".

jj. *Off budget* means not subject to this regulation.

kk. *Off budget source* means any source of NO_x emissions that is not included in the NO_x Budget Program as either a *budget source*, by definition, or as an *opt in source*.

ll. *Opt in* means to choose to voluntarily participate in the NO_x Budget Program, and comply with the terms and conditions of this regulation.

mm. *Opt-in-baseline* means the Department approved *heat input* and/or NO_x emissions for use as a basis for *allowance allocation* and deduction.

nn. *OTC* means the Ozone Transport Commission.

oo. *OTC MOU* means the Memorandum of Understanding that was signed by representatives of eleven states and the District of Columbia on September 27, 1994.

pp. *OTR* means the Ozone Transport Region as designated by Section 184(a) of the Clean Air Act.

qq. *Owner or Operator* means any person who is an owner or who operates, controls or supervises a *budget source* and shall include, but not be limited to, any holding company, utility system or plant manager of a *budget source*.

rr. *Quantifiable* means a reliable and replicable basis for calculating the amount of an emission reduction that is acceptable to both the Department and to the Administrator of the U.S. EPA.

ss. Part 75 Budget Source means any *budget source* subject to the requirements for emissions monitoring adopted pursuant to Regulation 36 of the State of Delaware "Regulations Governing the Control of Air Pollution".

tt. *Real* means a reduction in the rate of emissions, quantified retrospectively, net of any consequential increase in actual emissions due to shifting demand.

uu. *Recorded* with regard to an *allowance transfer or deduction* means that an *account* in the *NATS* has been updated by the *Administrator* with the particulars of an *allowance transfer or deduction*.

vv. *Regional NO_x budget* means the maximum amount of NO_x emissions which may be released from all *budget sources*, collectively throughout the *OTR*, during a given *control period*.

ww. *Repowering*, for the purpose of *early reduction credit* means either: 1) Qualifying Repowering Technology as defined by 40 CFR, Part 72 or; 2) the replacement of a *budget source* by either a new combustion source or the purchase of heat or power from the owner of a new combustion source, provided that: a) The replacement source (regardless of owner) is on the same, or contiguous property as the *budget source* being replaced; b) The replacement source has a maximum heat output rate that is equal to or greater than the maximum heat output rate of the *budget source* being replaced; or, c) The replacement source has a power output rate that is equal to or greater than the power output rate of the combustion source being replaced; and d) The replacement source incorporates technology capable of controlling multiple combustion pollutants simultaneously with improved fuel efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

xx. *Submitted* means sent to the appropriate authority under the signature of the *authorized account representative* or alternate *authorized account representative*. An official U.S. Postal Service postmark, or electronic time stamp, shall establish the date of submittal.

yy. *Surplus* means that, at the time the reduction was

made, the emission reduction was not required by Delaware's SIP, was not relied upon in an applicable attainment demonstration, was not required by state or federal permit or order, and was made enforceable in a permit that was issued after the date of the *OTC MOU* (September 27, 1994).

zz. *Use* means, for purposes of emission reductions moved off budget, that approval of the Department has been obtained to apply the emission reduction at a source.

Section 4 - Allowance Allocation

a. This program establishes NO_x emission *allowances* for each NO_x *control period* beginning May 1, 1999 through the NO_x *control period* ending September 30, 2002. *Allowance allocation* levels for each of these annual NO_x *control periods* are based on actual May 1, 1990 to September 30, 1990 actual NO_x mass emissions.

b. The NO_x Budget Program does not establish NO_x emission *allowances* for any NO_x *control period* subsequent to the year 2002 NO_x *control period*. NO_x emission *allowances* for each NO_x *control period* subsequent to the year 2002 NO_x *control period* will established through ~~amendment of this regulation~~ follow-on regulation.

c. NO_x *allowance allocations to budget sources* may be made only by the Department in accordance with Section 4, Section 8, ~~and~~ Section 12 and Section 18 of this regulation.

d. Appendix A of this regulation identifies the *budget sources* and identifies the number of *allowances* each *budget source* is *allocated*. *Allowance allocations* to each of the *budget sources* was determined as follows:

1. Unless otherwise noted in Appendix A of this regulation, the document EPA-454/R-95-013, "1990 OTC NO_x Baseline Emission Inventory" served as the basis for determination of the number of *OTC MOU Allowances allocated to each existing budget source*.

i. Each *existing budget source's OTC MOU Allowance allocation* for NO_x *control periods* during the period May 1, 1999 to September 30, 2002, inclusive, was identified in the referenced document, Appendix B, Final OTC NO_x Baseline Inventory, Delaware, Point-Segment Level Data, Phase II Target (Point Level).

ii. The identified values were rounded to the nearest whole *allowance* by rounding down for *allowances* less than 0.5 and rounding up for decimals of 0.5 or greater.

2. *Exceptional Circumstances Allowances*, as granted by the *OTC* and as identified in the document EPA-454/R-95-013, "1990 OTC NO_x Baseline Emission Inventory" for the *existing budget sources*, are identified in Appendix A. These *Exceptional Circumstance Allowances* were adjusted for the appropriate NO_x emission rate reduction requirement prior to inclusion in Appendix A.

3. The *OTC* allocated to the state of Delaware an additional 86 *allowances*, referred to as *reserve allowances*, prior to application of NO_x emission rate reduction requirements, as its share of a total 10,000 ton reserve. Application of *OTC* required emission reductions resulted in a total of 35 *Reserve Allowances* available for distribution, as identified in the document EPA-454/R-95-013, "1990 NO_x Baseline Emission Inventory".

i. Each of the 28 *existing budget sources* identified in Appendix A as the *existing budget sources* were allocated one (1) *reserve allowance*.

ii. One (1) additional *reserve allowance* was allocated to each of the four organizations with *existing budget sources*. The additional *reserve allowance* for each of the four organizations was added to the respective *existing budget source* with the greatest *heat input* rating.

iii. The remaining three (3) *reserve allowances* shall be held by the Department unused for the NO_x *control periods* between May 1, 1999 and September 30, 2002.

iv. *Reserve Allowances* are applicable only for the NO_x *control periods* during the period May 1, 1999 to September 30, 2002, inclusive. *Reserve Allowances* do not exist for NO_x *control periods* subsequent to the year 2002.

4. The final NO_x *allowance allocation* for each of the 28 *existing budget sources*, for each of the NO_x *control periods* during the period of May 1, 1999 and September 30, 2002, is the sum of the values determined in Sections 4(d)(1) - (3) and is identified in Appendix A. For the *existing budget sources* that were not identified in the document "1990 NO_x Baseline Emissions Inventory", the final *allowance allocation* includes an *allowance allocation* determined in accordance with the procedures identified in Section 4(f)(2)(i) - (ii) of this regulation.

5. Known operating NO_x sources, that are *budget sources by definition*, that did not operate in the May 1, 1990 to September 30, 1990 period are identified in Appendix A with a final *allowance allocation* of zero (0) *allowances*.

e. *Budget sources* that receive a NO_x *emission allowance allocation* and subsequently cease to operate shall continue to receive *allowances* for each *control period* unless the *allowances* are reduced under Section 4(g) of this regulation or a request to reallocate *allowances* has been approved in accordance with Section 11 of this regulation.

f. Any NO_x source, that is a *budget source* by definition, and that is not included in Attachment A of this regulation and which operated at any time between May 1, 1990 and September 30, 1990, inclusive, shall comply with the requirements of this regulation prior to operating in any NO_x *control period*.

1. The *owner or operator* shall submit to the Department an application including, as a minimum, the following information:

i. Identification of the source by plant name, address, and plant combustion unit number or equipment identification number.

ii. The name, address, telephone and facsimile number of the *authorized account representative* and, if desired, of an alternative *authorized account representative*.

iii. A list of the owners and operators of the source.

iv. A description of the source, including fuel type(s), maximum rated heat input capacity and electrical output rating where applicable.

v. Documentation of the May 1, 1990 - September 30, 1990 mass emissions (in tons), including:

A. Quantification of the mass emissions (in tons).

B. A description of the method used to determine the NO_x emissions.

C. Under no circumstances shall the emissions exceed any applicable federal or state emission limit.

vi. Documentation of the May 1, 1990 - September 30, 1990 *heat input* (in MMBTU), including:

A. Quantification of the *heat input* (in MMBTU/hr).

B. A description of the method used to determine the *heat input*.

C. The *heat input* shall be consistent with the *baseline control period* NO_x mass emissions determined in Section 4(f)(1)(v) of this regulation.

vii. Determination of the May 1, 1990 - September 30, 1990 NO_x emission rate, consistent with the guidelines of the "Procedures for Development of the NO_x Baseline Emission Inventory", using the mass emissions identified in Section 4(f)(1)(v) of this regulation and the *heat input* identified in Section 4(f)(1)(vi) of this regulation. viii. An emission monitoring plan in accordance with Section 13 of this regulation.

ix. A statement that the *submitted* information is representative of the true emissions during the May 1, 1990 - September 30, 1990 and that the source was operated in accordance with all applicable requirements during that time.

x. The following statement: "I am authorized to make this submission on behalf of the owners and operators of the budget source for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting

false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

xi. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

2. For sources that notify the Department that they are subject to this regulation no later than April 30, 1999, the Department shall *allocate* NO_x emissions *allowances* to the source as follows:

i. For *fossil fuel fired boilers* and *indirect heat exchangers* with a maximum *heat input* capacity of 250 MMBTU/hr or more, *allowance allocations* shall be determined as follows:

A. For sources located in New Castle and Kent counties, *allowance allocations* shall be based on the more stringent of the following:

1. The less stringent of:

a. The actual May 1, 1990 to September 30, 1990 mass emissions reduced by 65%; or,

b. The mass emissions resulting from the multiplication of the actual May 1, 1990 to September 30, 1990 heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

2. If an approved RACT emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 4(f)(2)(i)(A)(1)(a) and 4(f)(2)(i)(A)(1)(b), then the RACT value shall be the emissions limit for the NO_x Budget Program.

B. For sources located in Sussex county, *allowance allocations* shall be based on the more stringent of the following:

1. The less stringent of:

a. The actual May 1, 1990 to September 30, 1990 mass emissions reduced by 55%; or,

b. The mass emissions resulting from the multiplication of the actual May 1, 1990 to September 30, 1990 heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

2. If an approved RACT emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 4(f)(2)(i)(B)(1)(a) and 4(f)(2)(i)(B)(1)(b), then the RACT value shall be the emissions limit for the NO_x Budget Program.

ii. For *electric generating units* with a rated output of 15 MW or more that is not affected by Section 4(f)(2)(i) of this regulation, *allowance allocations* shall equal the more stringent of the May 1, 1990 to September 30, 1990 actual emissions or that derived from the application of an approved RACT limit to the actual May 1, 1990 to September 30, 1990 heat input value.

3. Within 60 days of receipt of the submittal, the Department shall review the submittal and take the following actions:

i. If the Department does not approve the submittal, the *authorized account representative* identified in the submittal shall be notified in writing of the finding and the reason(s) for the finding.

ii. If the Department approves the submittal, the Department shall:

A. Notify in writing the *authorized account representative* identified in the submittal.

B. The Department shall notify the *OTC* of the *allowance allocation* and authorize the *NATS Administrator* to open a *compliance account* for the subject source.

4. Any subject source that does not notify the Department prior to May 1, 1999, or that can not quantify its May 1, 1990 - September 30, 1990 emissions rate or heat input, shall be treated as a new *budget source* in accordance with Section 9 of this regulation.

5. Compliance with Section 4(f) of this regulation does not imply compliance nor sanction noncompliance with this regulation for prior NO_x *control period* operation.

g. If, after the effective date of this regulation, a *budget source* reduces *control period* emissions and said emission reductions are to be *used* by a source that is not a *budget source* (i.e. the emissions are moved off *budget*), that *budget source* shall request that the Department reduce its current year and future year allocation.

1. The request shall be *submitted* to the Department not later than the date that the request to *use* the emissions reduction at the *off budget source* is *submitted*, and shall include the following information, as a minimum:

i. The *compliance account* number of the *budget source* providing the emissions reduction.

ii. Identification of the NO_x source that is to *use* the emissions reduction, including:

A. Name and mailing address of the source.

B. Name, mailing address, and telephone number of a knowledgeable representative from that source.

iii. Identification of the calendar date for which the reduction of *current year* and future year allocations is to be effective, which shall not be later than the effective date of the *use* of the emissions reduction.

iv. A statement documenting the physical changes to the *budget source* or changes in the methods of operating the *budget source* which resulted in the reduction of NO_x emissions.

v. Quantification and justifying documentation of the NO_x emissions reduction, including a description of the methodology used to verify the emissions reduction.

vi. The quantity of *current year* and future year

allocations to be reduced, which is the portion of the *control period* emissions reduction that is to move off budget.

vii. Certification by the *authorized account representative* or alternate *authorized account representative* including the following statement in verbatim: “*I am authorized to make this submission on behalf of the owners or operators of the NO_x source and I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment.*”

viii. Signature of the *authorized account representative* or alternate *authorized account representative* of the *budget source* providing the emissions reduction and the date of signature.

2. Within 30 days of receipt of the submittal, the Department shall review the submittal and take the following actions:

i. If the Department does not approve the request, the *authorized account representative* identified on the submittal shall be notified in writing of the finding and the reason(s) for the finding.

ii. If the Department approves the request, the Department shall notify in writing the *authorized account representative* identified on the request and the following provisions apply:

A. The Department shall authorize the *NATS Administrator* to deduct from the *compliance account* of the *budget source* providing the emissions reduction the quantity of *current year* and future year *allowances* to be reduced.

B. The deducted *current year* and future year *allowances* shall be permanently retired from the NO_x Budget Program.

Section 5 - Permits

a. No later than the effective date of this regulation, the *owner or operator* of an *existing budget source* shall request amendment of any applicable construction or operating permit issued, or application for any permit submitted, in accordance with the State of Delaware “Regulations Governing the Control of Air Pollution”. The amendment request shall include the following:

1. A condition(s) that requires the establishment of a *compliance account* in accordance with Section 6 of this regulation.

2. A condition(s) that requires NO_x mass emission monitoring during NO_x *control periods* in accordance with Section 13 of this regulation.

3. A condition(s) that requires NO_x mass emission reporting and other reporting requirements in accordance with Section 15 of this regulation.

4. A condition(s) that requires end-of-season *compliance account* reconciliation in accordance with Section 16 of this regulation.

5. A condition(s) that requires compliance certification in accordance with Section 17 of this regulation.

6. A condition(s) that prohibits the source from emitting NO_x during each NO_x *allowance control period* in excess of the amount of NO_x *allowances* held in the source’s *compliance account* for the NO_x *allowance control period* as of December 31 of the subject year.

7. A condition(s) that authorizes the transfer of *allowances* for purposes of compliance with this regulation, containing reference to the source’s *NATS compliance account* and the *authorized account representative* and alternate *authorized account representative*, if any.

b. Permit revisions/amendments shall not be required for changes in emissions that are authorized by *allowances* held in the *compliance account* provided that any transfer is in compliance with this regulation by December 31 of each year, is in compliance with the authorization for transfer contained in the permit, and does not affect any other applicable state or federal requirement.

c. Permit revisions/amendments shall not be required for changes in *allowances* held by the source which are acquired or transferred in compliance with this regulation and in compliance with the authorization for transfer in the permit.

d. Any equipment modification or change in operating practices taken to meet the requirements of this program shall be performed in accordance with all applicable state and federal requirements.

Section 6 - Establishment of Compliance Accounts

a. The *owner or operator* of each *existing budget source*, and each *new budget source*, shall designate one *authorized account representative* and, if desired, one alternate *authorized account representative* for that *budget source*. The *authorized account representative* or alternate *authorized account representative* shall submit to the Department an “Account Certificate of Representation”.

1. For *existing budget sources*, initial designations shall be *submitted* no later than the effective date of this regulation.

2. For *new budget sources* that began operation prior to May 1, 1999, initial designations shall be *submitted* no later than April 30, 1999. For *new budget sources* that begin operation on or after May 1, 1999, initial designations shall be *submitted* no less than 30 days prior to the first hour of operation in a NO_x *control period*.

3. An *authorized account representative* or alternative account representative may be replaced at any

time with the submittal of a new "Account Certificate of Representation". Notwithstanding any such change, all submissions, actions, and inactions by the previous *authorized account representative* or alternate *authorized account representative* prior to the date and time the *NATS Administrator* receives the superseding "Account Certificate of Representation" shall be binding on the new *authorized account representative*, on the new alternate *authorized account representative*, and on the *owners and operators* of the *budget source*.

4. Within 30 days following any change in *owner* or *operator*, *authorized account representative*, or any alternate *authorized account representative*, the *authorized account representative* or the alternate *authorized account representative* shall submit a revision to the "Account Certificate of Representation" amending the outdated information.

b. The "Account Certificate of Representation" shall be signed and dated by the *authorized account representative* or the alternate *authorized account representative* for the NO_x *budget source* and shall contain, as a minimum, the following information:

1. Identification of the NO_x *budget source* by plant name, address, and plant combustion unit number or equipment identification number for which the certification of representation is *submitted*.

2. The name, address, telephone and facsimile number of the *authorized account representative* and alternate *authorized account representative*, if applicable.

3. A list of the *owners and operators* of the NO_x *budget source*.

4. A description of the source, including fuel type(s), *maximum heat input capacity*, and electrical output rating where applicable.

5. The following statement: "*I am authorized to make this submission on behalf of the owners and operators of the budget source for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.*"

6. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

c. The Department shall review all *submitted* "Account Certificate of Representation" forms. Within 30 days of

receipt of the "Account Certificate of Representation", the Department shall take one of the following actions:

1. If not approved by the Department, the Department shall notify in writing the *authorized account representative* identified in the "Account Certificate of Representation" of the reason(s) for disapproval.

2. If approved by the Department, the Department shall forward the "Account Certificate of Representation" to the *NATS Administrator* and authorize the *NATS Administrator* to open/revise a *compliance account* for the *budget source*.

d. *Authorized account representative* and alternate *authorized account representative* designations or changes become effective upon the logged date of receipt of a completed "Account Certificate of Representation" by the *NATS Administrator*. The *NATS Administrator* shall acknowledge receipt and the effective date of the designation or changes by written correspondence to the *authorized account representative*.

e. The alternate *authorized account representative* shall have the same authority as the *authorized account representative*. Correspondence from the *NATS Administrator* shall be directed to the *authorized account representative*.

f. Only the *authorized account representative* or the alternate *authorized account representative* may request transfers of NO_x *allowances* in a *NATS account*. The *authorized account representative* shall be responsible for all transactions and reports *submitted* to the *NATS*.

Section 7 - Establishment of General Accounts

a. An *authorized account representative* and alternate *authorized account representative*, if any, shall be designated for each *general account* by the *general account owners*. Said representative shall have obligations similar to that of an *authorized account representative* of a *budget source*.

b. Any person or group of persons may open a *general account* in the *NATS* for the purpose of holding and transferring *allowances*. That person or group of persons shall submit to the Department an application to open a *general account*. The *general account* application shall include the following minimum information:

1. Organization or company name to be used for the general account name listed in the *NATS*, and type of organization (if applicable).

2. The name, address, telephone, and facsimile number of the *account's authorized account representative* and alternate *authorized account representative*, if applicable.

3. A list of all persons subject to a binding agreement for the *authorized account representative* or alternate *authorized account representative* to represent their ownership interest with respect to the *allowances* held in the

general account.

4. The following statement: "I certify that I was selected under the terms of an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the NO_x allowance tracking system (NATS) account. I certify that I have all necessary authority to carry out my duties and responsibilities on behalf of the persons with ownership interest and that they shall be fully bound by my actions, inactions, or submissions under this regulation. I shall abide by my fiduciary responsibilities assigned pursuant to the binding agreement. I am authorized to make this submission on behalf of the persons with an ownership interest for whom this submission is made. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the information is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false material information, or omitting material information, including the possibility of fine or imprisonment for violations."

5. Signature of the general account's authorized account representative or alternate authorized account representative and date of signature.

c. The Department shall review all submitted general account and revised general account applications. Within 30 days of receipt of the application, the Department shall take one of the following actions:

1. If not approved by the Department, the Department shall notify in writing the authorized account representative identified in the general account application of the reason(s) for disapproval.

2. If approved by the Department, the Department shall forward the general account application to the NATS Administrator and authorize the NATS Administrator to open/revise a general account in the organization or company name identified in the general account application.

d. No allowance transfer shall be recorded for a general account until the NATS Administrator has established the new account.

e. The authorized account representative or alternate authorized account representative of an established general account may transfer allowances at any time in accordance with Section 11 of this regulation.

f. An authorized account representative or alternative account representative of an existing general account may be replaced by submitting to the Department a revised general account application in accordance with Section 7(b) of this regulation.

g. The authorized account representative or alternate authorized account representative of a general account may apply to the Department to close the general account as

follows:

1. By submitting a copy of an allowance transfer request to the NATS Administrator authorizing the transfer of all allowances held in the account to one or more other accounts in the NATS and/or retiring allowances held in the account.

2. By submitting to the Department, in writing, a request to delete the general account from the NATS. The request shall be certified by the authorized account representative or alternate authorized account representative.

3. Upon approval, the Department shall authorize the NATS Administrator to close the general account and confirm closure in writing to the general account's authorized account representative.

Section 8 - Opt In Provisions

Except as provided for in Section 4(g) of this regulation, the owner or operator of any stationary source in the state of Delaware that is not subject to the NO_x Budget Program by definition, may choose to opt into the NO_x Budget Program as follows:

a. The owner or operator of a stationary source who chooses to opt into the NO_x Budget Program shall submit to the Department an opt-in application. The opt-in application shall include, as a minimum, the following information:

1. Identification of the opt-in source by plant name, address, and plant combustion unit number or equipment identification number.

2. The name, address, telephone and facsimile number of the authorized account representative and, if desired, of an alternative authorized account representative.

3. A list of the owners and operators of the opt-in source.

4. A description of the opt-in source, including fuel type(s), maximum rated heat input capacity and electrical output rating where applicable.

5. Documentation of the opt-in-baseline control period mass emissions (in tons).

i. The opt-in-baseline control period emissions shall be the lower of the average of the mass emissions from the immediately preceding two consecutive NO_x control periods and the allowable emissions.

A. If the mass emissions from the preceding two control periods are not representative of normal operations, the Department may approve use of an alternative two consecutive NO_x control periods within the five years preceding the date of the opt-in application.

B. If the opt-in source does not have two consecutive years of operation, the owner or operator shall identify the lower of the permitted allowable NO_x emissions and any applicable Federal or State emission limitation as the opt-in-baseline emissions.

ii. The documentation shall include:

A. Identification of the time period represented by the emissions data.

B. Quantification of the *opt-in-baseline control period* mass emissions (in tons).

C. A description of the method used to determine the *opt-in-baseline control period* NO_x emissions.

6. Documentation of the *opt-in-baseline* NO_x *control period heat input* (in MMBTU).

i. The *opt-in-baseline control period heat input* shall be consistent with the *opt-in-baseline control period* NO_x mass emissions determined in Section 8(a)(5) of this regulation.

ii. The documentation shall include:

A. Quantification of the *opt-in-baseline control period heat input* (in MMBTU/hr).

B. A description of the method used to determine the *opt-in-baseline control period heat input*.

7. Determination of the *opt-in-baseline* NO_x emission rate, consistent with the guidelines of the "Procedures for Development of the OTC NO_x Baseline Emission Inventory", using the *opt-in-baseline control period* mass emissions identified in Section 8(a)(5) of this regulation and the *opt-in-baseline* NO_x *control period heat input* identified in Section 8(a)(6) of this regulation.

8. An emission monitoring plan in accordance with Section 13 of this regulation.

9. A statement that the source was operated in accordance with all applicable requirements during the *control periods*.

10. The following statement: "*I am authorized to make this submission on behalf of the owners and operators of the budget source for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.*"

11. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

b. Within 60 days of receipt of any *opt-in* application, the Department shall take the following actions:

1. The Department shall review the application for completeness and accuracy and:

i. Verify that the monitoring methods used to determine the *opt-in-baseline control period* NO_x mass

emissions and the *opt-in-baseline* NO_x *control period heat input* are consistent with those described in Section 13 of this regulation.

ii. Verify that the *opt-in-baseline* emissions were calculated in accordance with the guidelines in the "Procedures for Development of the OTC NO_x Baseline Emission Inventory".

2. If the Department disapproves the *opt-in* application, the *authorized account representative* identified in the *opt-in* application shall be notified in writing of the determination and the reason(s) for the application not being approved.

3. If the Department determines that the *opt-in* application is acceptable, the Department shall request the OTC Stationary/Area Source Committee to review the application. Within 30 days of receiving the OTC Stationary/Area Source Committee comments, the Department shall consider the comments and take the following action:

i. If it is determined that the *opt-in* application does not properly justify opting the source into the NO_x Budget Program, the Department shall notify the *authorized account representative* in writing of the determination and the reason(s) for the application not being accepted.

ii. If it is determined that the *opt-in* application justifies opting the source into the NO_x Budget Program, the Department shall notify the *authorized account representative* in writing of that determination.

c. The Department shall assign an *allowance allocation* to any *owner or operator* that has been approved by the Department to *opt into* the NO_x Budget Program.

1. The *allowance allocation* for an *opt-in* source, that is not considered a *budget source* by definition, shall be equal to the more stringent of the *opt-in-baseline control period* emissions or the allowable NO_x emissions from the source.

2. The *allowance allocation* for an *opt-in* source that has a maximum *heat input* rating of 250 MMBTU/hr shall be determined as follows:

i. For sources located in New Castle and Kent counties, *allowance allocations* shall be based on the more stringent of the following:

A. The less stringent of:

1. The *opt-in-baseline* actual mass emissions reduced by 65%; or,

2. The mass emissions resulting from the multiplication of the actual *opt-in-baseline* heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

B. If any permitted NO_x emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 8(c)(2)(i)(A)(1) and 8(c)(2)(i)(A)(2), then the permitted emissions limit shall be

used to determine the emissions limitation for the NO_x Budget Program.

ii. For sources located in Sussex county, *allowance allocations* shall be based on the more stringent of the following:

A. The less stringent of:

1. The *opt-in-baseline* actual mass emissions reduced by 55%; or,
2. The mass emissions resulting from the multiplication of the actual *opt-in-baseline* heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

B. If any permitted NO_x emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 8(c)(2)(ii)(A)(1) and 8(c)(2)(ii)(A)(2), then the permitted emissions limit shall be used to determine the emissions limitation for the NO_x Budget Program.

3. If the *owner or operator* of an *opt-in* source is required to obtain NO_x emissions offsets in accordance with Regulation 25 of the State of Delaware "Regulations Governing the Control of Air Pollution", the *allowance allocation* calculated under Section 8(c)(1) or (2) of this regulation shall be reduced by the portion of the *control period* emission reduction that is associated with any *budget source*.

4. The *allowance allocation* associated with the *opt-in* source shall be added to Delaware's NO_x *budget* prior to *allocation* of *allowances* to the *opt-in* source. This regulation shall be revised to reflect changes in the number of *allowances* in the NO_x Budget Program.

5. Under no circumstances shall the *allocation of allowances* to a source which chooses to *opt into* the program require adjustments to the *allocation of allowances to budget sources* in the NO_x Budget Program.

d. Upon the approval of the *opt-in* application and assignment of an *allowance allocation*, the Department shall authorize the *NATS Administrator* to open a *compliance account* for the *opt-in* source in accordance with Section 10 of this regulation.

e. Within 30 days of approval to *opt into* the NO_x Budget Program, any *owner or operator* shall apply for a permit, or the modification of applicable permits, in accordance with Section 5 of this regulation.

f. Upon approval of the *opt-in* application and establishment of the *compliance account*, the *owner or operator* of the source shall be subject to all applicable requirements of this regulation including the requirements for *allowance transfer* or deduction, emissions monitoring, record keeping, reporting, and penalties.

1. A certification test notice and test protocol shall be *submitted* to the Department no later than 90 days prior to anticipated performance of the certification testing.

2. Certification testing shall be completed prior to operation in the next NO_x *control period* following approval of the source to *opt into* the NO_x Budget Program.

3. A certification test report meeting the requirements of the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions" shall be *submitted* to the Department no later than 45 days following the performance of the certification testing.

g. Any *owner or operator* approved to *opt into* the NO_x Budget Program that did not have two consecutive years of operation upon initial application and determined *opt-in-baseline* emissions in accordance with Section 8(a)(5)(i)(B) of this regulation shall submit to the Department a revised *opt-in* application.

1. The revised *opt-in* application shall be *submitted* no more than 60 days following first completion of operation in two consecutive NO_x *control periods*.

2. The revised *opt-in* application shall provide actual operating information, including NO_x mass emissions and *heat input*, for each of the two NO_x *control periods*.

3. Within 60 days of receipt on any revised *opt-in* application, the Department shall review the revised *opt-in* application and take the following actions:

i. If the Department does not approve the revised *opt-in* application:

A. The Department shall notify the *opt-in source's authorized account representative* of the determination in writing and indicate the reason(s) for the determination.

B. The *opt-in source's authorized account representative* shall resolve the Department's comments and an updated revised *opt-in* application shall be submitted to the Department no more than 60 days from the Department's request.

C. Upon approval of any updated revised *opt-in* application, the Department shall process the application in accordance with Section 8(g)(3)(ii) of this regulation.

ii. If the Department is in concurrence with the revised *opt-in* application, the following actions shall be taken:

A. The Department shall request the *OTC Stationary/Area Source Committee* to comment on the revised *opt-in* application. Within 30 days of receiving the *OTC Stationary/Area Source Committee* comments, the Department shall consider the comments and take action in accordance with Section 8(g)(3)(ii)(B) or Section 8(g)(3)(ii)(C) of this regulation.

B. If it is determined that the revised *opt-in* application shall not be approved:

1. The Department shall notify the *opt-in source's authorized account representative* of the determination in writing and indicate the reason(s) for the

determination.

2. The *opt-in source's authorized account representative* or alternate *authorized account representative* shall resolve the Department's comments and an updated revised *opt-in* application shall be submitted to the Department no more than 60 days from the Department's request.

3. Upon approval of any updated revised *opt-in* application, the Department shall process the application in accordance with Section 8(g)(3)(ii)(C) of this regulation.

C. If it is determined that the revised *opt-in* shall be approved, the following actions shall be taken:

1. If the initial *allocation* was lower than that indicated in the revised application:

a. The Department shall revise the *NO_x budget* to reflect the *allocation* determination identified in the revised *opt-in* application.

b. The Department shall authorize the *NATS Administrator* to revise the *allocation* to the subject source's *compliance account*.

c. The Department shall not authorize any additional allowances to cover any shortfall in the two *opt-in-baseline NO_x control periods*. Any violation of a permit condition or of this regulation may result in an enforcement action.

2. If the initial *allocation* was higher than that indicated in the revised application:

a. The Department shall revise the *NO_x budget* to reflect the *allocation* determination identified in the revised *opt-in* application.

b. The Department shall authorize the *NATS Administrator* to revise the *allocation* to the subject source's *compliance account*.

c. The Department shall authorize the *NATS Administrator* to deduct the excess *allowances allocated* to the *opt-in* source, calculated as the difference between the actual *allocated allowances* and the *allowances allocated* on the basis of the revised *opt-in* application for the years of operation in *NO_x control periods*.

h. Any *owner or operator* who chooses to *opt into* the *NO_x Budget Program* can not opt-out of the program unless *NO_x emitting operations* at the *opt-in* source have ceased, and the *allowance* adjustment provisions of Section 8(i) of this regulation apply.

i. Any *owner or operator* who chooses to *opt into* the *NO_x Budget Program* and who subsequently chooses to cease or curtail operations during any *NO_x allowance control period* after opting-in shall be subject to an *allowance* adjustment equivalent to the *NO_x emissions decrease* that results from the shut down or curtailment.

1. The *NETS Administrator* shall compare actual

heat input data following each *NO_x control period* with the *opt-in-baseline heat input* for each *opt-in* source.

2. The *NATS Administrator* shall calculate and deduct *allowances* equivalent to any decrease in the *opt-in* source's *heat input* below its *opt-in-baseline heat input*. This deduction shall be calculated using the average of the two most recent years *heat input* compared to the *heat input* used in the *opt-in-baseline* calculation.

3. The *NATS Administrator* shall notify the *NO_x budget source's authorized account representative* and the Department of any such deductions.

4. This adjustment affects only the *current year allocation* and shall not effect the *NO_x budget source's allocations* for future years.

5. No deduction shall result from reducing *NO_x emission rates* below the rate used in the *opt-in allowance* calculation.

6. A source that is to be repowered or replaced can be opted into the *NO_x Budget Program* without the shutdown/curtailment deductions. The *heat input* for the repowered or replaced source can be substituted for the present year's activity for the *opt-in NO_x allowance* adjustment calculation.

j. For replacement sources, all sources under common control in the State of Delaware to which production may be shifted shall be opted-in together.

k. When an *opt-in* source undergoes reconstruction or modification such that the source becomes a *budget source* by definition:

1. The *opt-in source's authorized account representative* or alternate *authorized account representative* shall notify the Department within 30 days of completion of the modification or reconstruction.

2. The Department shall authorize the *NATS Administrator* to deduct *allowances* equal to those allocated to the *opt-in* source in the *NO_x control period* for the calendar year in which the *opt-in* source becomes a *budget source* by definition.

3. The Department shall authorize the *NATS Administrator* to deduct all *allowances* that were allocated pursuant to Section 8(c) of this regulation to the *opt-in* source, for all future years following the calendar year in which the *opt-in* source becomes a *budget source* by definition. This regulation shall be revised to reflect changes in the number of allowances in the *NO_x Budget Program*.

4. The reconstructed or modified source shall be treated as a *new budget source* in accordance with Section 9 of this Regulation.

Section 9 - New Budget Source Provisions

a. *NO_x allowances* shall not be created for new *NO_x sources* that are *budget sources* by definition. The *owner or*

operator is responsible to acquire any required NO_x allowances from the NATS.

b. The *owner or operator* of a *new budget source* shall establish a compliance account and be in compliance with all applicable requirements of this regulation prior to the commencement of operation in any NO_x control period. *New budget sources* shall:

1. Request a permit/permit amendment meeting the requirements of Section 5 of this regulation no less than 90 days prior to operation in any NO_x control period.

2. Submit a monitoring plan to the Department, in accordance with Section 13 of this regulation, no later than 90 days prior to the anticipated performance of monitoring system certification.

3. Install and operate an approved monitoring system(s) to measure, record, and report hourly and cumulative NO_x mass emissions.

4. *Submit* to the Department a certification test notice and protocol no later than 90 days prior to the anticipated performance of the certification testing.

5. Complete the monitoring system certification prior to operation in any NO_x control period.

6. *Submit* to the Department a certification test report meeting the requirements of the OTC document "NO_x Budget Program Monitoring Certification and Reporting Instructions" no later than 45 days following the performance of the certification testing.

Section 10 - NO_x Allowance Tracking System (NATS)

a. The NO_x allowance tracking system is an electronic recordkeeping and reporting system which is the official database for all NO_x allowance deduction and transfer within this program. The NATS shall track:

1. The allowances allocated to each *budget source*.

2. The allowances held in each *account*.

3. The allowances deducted from each *budget source* during each *control period*, as requested by a transfer request submitted by the *budget source's authorized account representative* or alternate *authorized account representative* in accordance with Section 16(b) of this regulation.

4. *Compliance accounts* established for each *budget source* to determine the compliance for the source, including the following information:

i. The *account number* of the *compliance account*.

ii. The name(s), address(es), and telephone number(s) of the *account owner* (s).

iii. The name, address, and telephone number of the *authorized account representative* and alternate *authorized account representative*, as applicable.

iv. The name and street address of the associated *budget source*, and the state in which the *budget*

source is located.

v. The number of *allowances* held in the *account*.

5. *General accounts* opened by individuals or entities, upon request, which are not used to determine compliance, including the following information:

i. The *account number* of the *general account*.

ii. The name(s), address(es) and telephone number(s) of the *account owner*(s).

iii. The name, address, and telephone number of the *authorized account representative* and alternate *authorized account representative*, as applicable.

iv. The number of *allowances* held in the *account*.

6. *Allowance transfers*.

7. Deductions of *allowances* by the NATS Administrator for compliance purposes, in accordance with Section 16(d) of this regulation.

b. The NATS Administrator shall establish *compliance* and *general accounts* when authorized to do so by the Department pursuant to Sections 6, 7, and 8 of this regulation.

c. Each *compliance account* and *general account* shall have a unique identification number and each *allowance* shall be assigned a unique serial number. Each *allowance* serial number shall indicate the year of *allocation*.

Section 11 - Allowance Transfer

a. *Allowances* may be transferred at any time during any year, not just the *current year*.

b. The transfer of *allowances* between *budget sources* in different states for purposes of compliance is contingent upon the adoption and implementation by those states of NO_x budget program regulations and their participation in the NATS.

c. Transfer requests shall be *submitted* to the NATS Administrator on a form or electronic media, as directed by the NATS Administrator, and shall include the following information:

1. The *account number* of the originating *account* and the acquiring *account*.

2. The name(s) and address(s) of the owner(s) of the originating *account* and the acquiring *account*.

3. The serial number of each *allowance* being transferred.

4. The following statement from the *authorized account representative* or alternate *authorized account representative* of the originating *account*, in verbatim: "I am authorized to make this submission on behalf of the owners or operators of the budget source and I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments, and that based on my inquiry of those individuals immediately

responsible for obtaining the information, I believe the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment.”

5. Signature of the *authorized account representative* or alternate *authorized account representative* of the originating account and the date of signature.

d. The *Authorized account representative* or alternate *authorized account representative* for the originating account shall further provide a copy of the transfer request to each *owner or operator* of the *budget source*.

e. Transfer requests shall be processed by the *NATS Administrator* in order of receipt.

f. A transfer request shall be determined to be valid by the *NATS Administrator* if:

1. Each *allowance* listed in the transfer request is held by the originating *account* at the time the transfer is to be recorded.

2. The acquiring party has an *account* in the *NATS*.

3. The transfer request has been certified by the person named as *authorized account representative* or alternate *authorized account representative* for the originating *account*.

g. Transfer requests judged valid by the *NATS Administrator* shall be completed and recorded in the *NATS* by deducting the specified *allowances* from the originating *account* and adding them to the acquiring *account*.

h. Transfer requests judged to be invalid by the *NATS Administrator* shall be returned to the *authorized account representative* indicated on the transfer request along with documentation why the transfer request was judged to be invalid.

i. The *NATS Administrator* shall provide notification of an *allowance* transfer to the *authorized account representatives* of the originating *account*, the *authorized account representative* of the acquiring *account*, and the Department, including the following information:

1. The effective date of transfer.

2. Identification of the originating *account* and acquiring *account* by name as well as by *account number*.

3. The number of *allowances* transferred and their serial numbers.

j. The *authorized account representative* or alternate *authorized account representative* of a *compliance account* or a *general account* may request that some or all allocated *allowances* be transferred to another *compliance account* or to a *general account* for the current year, any future year, block of years, or for the duration of the program. The *authorized account representative* or alternate *authorized account representative* of the originating *account* shall submit a request for transfer that states this intent to the *NATS Administrator*, and the transfer request shall conform to the requirements of this Section. In addition, the request for transfer shall be *submitted* to the Department with a letter

requesting that the *budget* be revised to reflect the change in *allowance* allocations.

k. Upon request by the Department any *authorized account representative* or alternate *authorized account representative* shall make available to the Department information regarding transaction cost and *allowance* price.

Section 12 - Allowance Banking

a. The *banking* of *allowances* is permitted to allow retention of unused *allowances* from one year to a future year in either a *compliance account* or a *general account*.

b. Except for *allowances* created under Section 12(d) of this regulation, *allowances* not used under Section 16 of this regulation shall be held in a *compliance account* or *general account* and designated as “banked” *allowances* by the *NATS Administrator*.

c. The use of *banked allowances* shall be restricted as follows:

1. By March 1 of each year the *NATS Administrator* shall divide the total number of *banked allowances* by the regional *NO_x budget*.

i. If the total number of *banked allowances* in the *NATS* is less than or equal to 10% of the regional *NO_x budget* for the *current year control period*, all *banked allowances* can be deducted in the *current year* on a 1-for-1 basis.

ii. If the total number of *banked allowances* in the *NATS* exceeds 10% of the regional *NO_x budget* for the *current year control period*, *budget sources* shall be notified by the *NATS Administrator* of the *allowance* ratio which must be applied to *banked allowance* in each *compliance account* and *general account* to determine the number of *allowances* available for deduction in the *current year control period* on a 1-for-1 basis and the number of *allowances* available for deduction on a 2-for-1 basis.

2. Where a finding has been made by the *NATS Administrator* that *banked allowances* exceed 10% of the *current year regional NO_x budget*, each *NATS compliance account* and *general account* of *banked allowances* shall be subject to the following *banked allowance* deduction protocol:

i. A ratio shall be established according to the following formula:

$$\frac{0.10 \times \text{the regional NO}_x \text{ Budget}}{\text{the total number of banked allowances in the region}}$$

ii. The ratio calculated in Section 12(c)(2)(i) of this regulation shall be applied to the *banked allowances* in each *account*. The resulting number is the number of *banked allowances* in the *account* which can be used in the *current year control period* on a 1-for-1 basis. *Banked allowances* in excess of this number, if used, shall be used on a 2-for-1

basis.

d. The owner or operator of an existing budget source may apply to the Department to receive early reduction allowances for actual NO_x reductions occurring in 1997 and/or 1998.

1. No later than the effective date of this regulation, the authorized account representative or alternate authorized account representative from any budget source seeking early reduction allowances shall submit to the Department an application that includes, at a minimum, the following information:

i. Identification of the budget source.

ii. Identification of the calendar time period for which early reduction allowances are being sought (i.e., May 1 - September 30, 1997, May 1 - September 30, 1998, or both).

iii. Identification of the baseline NO_x control period emission limit (tons), which shall be the more stringent of the following:

A. The level of control required by the OTC MOU;

B. The lower of the permitted allowable emissions for the source and the allowable emissions identified in the state implementation plan (SIP);

C. The actual emissions for the 1990 control period, or;

D. The actual emissions for the average of two representative year control periods within the first five years of operation if the budget source did not commence operation until after 1990.

iv. The baseline NO_x control period heat input (MMBTU) corresponding to the baseline NO_x control period emission limit (tons) determined in Section 12(d)(1)(iii) of this regulation.

v. The actual NO_x control period NO_x emissions (tons) occurring in 1997 and/or 1998, as applicable.

vi. The actual NO_x control period heat input (MMBTU) occurring in 1997 and/or 1998, as applicable.

vii. The calculated NO_x control period emissions rate (lb/MMBTU), as determined using the control period NO_x emissions identified in Section 12(d)(1)(v) of this regulation multiplied by 2000 to obtain actual emissions in pounds (lbs), divided by the control period heat input (MMBTU) identified in Section 12(d)(1)(vi) of this regulation.

viii. The amount of NO_x emissions early reduction allowances shall be calculated by subtracting the actual control period NO_x emissions (in tons), identified in Section 12(d)(1)(v) of this regulation, from the baseline NO_x emissions limit (in tons) identified in Section 12(d)(1)(iii) of this regulation.

ix. If the actual control period heat input, as identified in Section 12(d)(1)(vi) of this regulation, is less than the baseline NO_x control period heat input, as identified in Section 12(d)(1)(iv) of this regulation, the NO_x emissions early reduction allowances determined in Section 12(d)(1)(viii) of this regulation shall be corrected as follows:

A. The actual control period heat input (MMBTU), as identified in Section 12(d)(1)(vi) of this regulation, shall be subtracted from the baseline NO_x control period heat input (MMBTU), as identified in Section 12(d)(1)(iv) of this regulation, to obtain the heat input correction.

B. The heat input correction (MMBTU) is multiplied by the calculated NO_x control period emissions rate (lb/MMBTU) determined in Section 12(d)(1)(vii) of this regulation. The resulting value is divided by 2000 to obtain tons of NO_x.

C. The corrected NO_x emissions early reduction allowance is the result of subtracting the results of Section 12(d)(1)(ix)(B) of this regulation from the NO_x emissions early reduction allowances calculated in Section 12(d)(1)(viii) of this regulation.

x. A statement indicating the budget source was operating in accordance with all applicable requirements during the applicable NO_x control period including:

A. Whether the monitoring plan that was submitted in accordance with Section 13 of this regulation was maintained to reflect the actual operation and monitoring of the unit and contains all information necessary to attribute monitored emissions to the budget source. If early reduction allowances are being sought for a control period prior to the implementation of monitoring in accordance with Section 13(a) of this regulation, a monitoring plan prepared in accordance with Section 13(a) of this regulation shall be submitted describing the monitoring method in use during the control period for which early reduction allowances are being sought.

B. Whether all the emissions from the budget source were monitored, or accounted for, throughout the NO_x control period and reported.

C. Whether the information that formed the basis for certification of the emissions monitoring plan has changed affecting the certification of the monitoring.

D. If a change in the monitoring method is reported under Section 12(d)(1)(x)(C) of this regulation, specify the nature of the change, the reason for the change, when the change occurred, and what method was used to determine emissions during the period mandated by the change.

xi. A statement documenting the specific physical changes to the budget source or changes in the methods of operating the budget source which resulted in the

reduction of emissions.

xii. The following statement: “*I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.*”

xiii. Signature of the *authorized account representative* or *alternate authorized account representative* and date of signature.

2. *Early reduction allowance* requests shall be reviewed by the Department.

i. If the Department determines that the emissions reductions were not enforceable, *real*, *quantifiable*, or *surplus*, the Department shall notify the *budget source's authorized account representative* in writing, indicating the reason(s) the request for *early reduction allowances* is being denied.

ii. If the Department determines that the emissions reductions are enforceable, *real*, *quantifiable*, and *surplus*:

A. The Department shall request the *OTC Stationary/Area Source Committee* to comment on the generation of potential *early reduction allowances*.

B. The Department shall consider the *OTC Stationary/Area Source Committee* comments and either:

1. Notify the *budget source's authorized account representative* in writing denying the request for *early reduction allowances* and indicate the reason(s) for the determination; or

2. Notify the *budget source's authorized account representative* in writing that the requested emissions reduction *allowances* shall be added to the *budget source's account*; and

3. Authorize the *NATS Administrator* to add the *allowances* to the *budget source's account* as 1999 *allowances*.

3. Reductions associated with *repowering* of a *budget source* are eligible for *early reduction credit* provided that the permit for construction of the replacement source was issued after the date of the *OTC MOU* (September 27, 1994), and the *budget source* being replaced ceases operation in 1997 or 1998.

4. No later than October 1, 1999, the Department shall publish a report which documents the applicable sources and the number of *early reduction credits* awarded.

Section 13 - Emission Monitoring

a. NO_x emissions from each *budget source* shall be

monitored in accordance with this section and in accordance with the requirements of the *OTC* documents titled “Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program”, dated January 28, 1997, and “ NO_x Budget Program Monitoring Certification and Reporting Instructions”, dated July 3, 1997. The provisions of these documents are hereby adopted by reference.

b. Monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing, and quality assurance/quality control testing as specified in the *OTC* document titled “Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program”. If an *owner or operator* uses certified monitoring systems under Part 75 to meet the requirements of this program and maintains and operates those monitoring systems according to the requirements of Part 75, it is not necessary to re-perform initial certification tests to ensure the accuracy of these components under the NO_x Budget Program.

c. During a period when valid data is not being recorded by devices approved for use to demonstrate compliance with the requirements of this section, the *owner or operator* shall provide substitute data in accordance with the requirements of:

1. For *Part 75 budget sources*, the procedures of 40 CFR Part 75, Subpart D, and Part 1 of the *OTC* document titled “Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program”.

2. For *non-Part 75 budget sources*, the procedures of Part 2 of the *OTC* document “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program” except for those provisions in this document that allow alternative methods or procedures. Any alternative methods or procedures must be reviewed and approved by the Department and EPA.

d. The *owner or operator* of a NO_x *budget source* shall meet the following emissions monitoring deadlines:

1. All existing *Part 75* NO_x *budget sources* not required by the NO_x Budget Program to install additional monitoring equipment, or required to only make software changes to implement the additional requirements of this program, shall meet the monitoring requirements of the NO_x Budget Program as follows:

i. By meeting all current Part 75 monitoring requirements during the NO_x *control period* during each calendar year.

ii. By monitoring hourly and cumulative NO_x mass emissions for the NO_x *control period* in each calendar year starting in 1999 in accordance with the *OTC* documents “Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program” and “ NO_x Budget Program Monitoring Certification and Reporting

Instructions”.

2. All existing *Part 75 budget sources* required to install and certify new monitoring systems to meet the requirements of the NO_x Budget Program shall meet the monitoring requirements of this program as follows:

i. By meeting all current *Part 75* monitoring requirements during the NO_x *control period* during each calendar year.

ii. Reserved

iii. By monitoring hourly and cumulative NO_x mass emissions using certified monitoring systems for each NO_x *control period* each calendar year starting in 1999 in accordance with the *OTC* documents “Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program” and “NO_x Budget Program Monitoring Certification and Reporting Instructions”.

3. All *existing non-Part 75 budget sources* shall meet the monitoring requirements of the NO_x Budget Program as follows:

i. Reserved

ii. By monitoring hourly and cumulative NO_x mass emissions using certified monitoring systems for each NO_x *control period* of each calendar year starting in 1999 in accordance with the *OTC* documents “Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program” and “NO_x Budget Program Monitoring Certification and Reporting Instructions”.

e. The *owner or operator* of a *budget source* subject to 40 CFR Part 75 shall demonstrate compliance with this section with a certified *Part 75* monitoring system.

1. The *authorized account representative* or alternate *authorized account representative* shall submit to the Department a monitoring plan prepared in accordance with 40 CFR Part 75 and the additional requirements of the *OTC* document “Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program” and the *OTC* document “NO_x Budget Program Monitoring Certification and Reporting Instructions”.

i. All existing *Part 75 budget sources* not required to install additional monitoring equipment shall submit to the Department a complete hardcopy monitoring plan containing monitoring plan changes and additions required by the NO_x Budget Program no later than the effective date of this regulation. These *Part 75 budget sources* shall also submit to the Department a complete electronic monitoring plan upon request by the Department.

ii. For any *Part 75 budget source* required to install and certify new monitoring systems, submit to the Department a complete hardcopy monitoring plan acceptable to the Department at least 45 days prior to the initiation of certification tests for the new system(s). These *Part 75 budget sources* shall also submit to the Department a

complete electronic monitoring plan upon request by the Department.

iii. For *new budget sources* under 40 CFR Part 75, submit to the Department the NO_x Budget Program information with the hardcopy Acid Rain Program monitoring plan no later than 90 days prior to the projected Acid Rain Program participation date. These new *Part 75 budget sources* shall also submit to the Department a complete electronic monitoring plan upon request by the Department.

2. The *authorized account representative* or alternate *authorized account representative* shall obtain certification of the NO_x emissions monitoring system in accordance with 40 CFR Part 75 and the additional requirements of the *OTC* document “Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program” and the *OTC* document “NO_x Budget Program Monitoring Certification and Reporting Instructions”.

i. If the *Part 75 budget source* uses certified monitoring systems under *Part 75* to meet the requirements of the NO_x Budget Program and maintains and operates those monitoring systems according to the requirements of *Part 75*, it is not necessary to re-perform initial certification tests to ensure the accuracy of the monitoring systems under the NO_x Budget Program.

A. Formula verifications must be performed to demonstrate that the data acquisition system accurately calculates and reports NO_x mass emissions (lb/hr) based on hourly *heat input* (MMBTU/hr) and NO_x emission rate (lb/MMBTU).

B. Formula verifications shall be *submitted* to the Department no later than the effective date of this regulation.

ii. If it is necessary for the *owner or operator* of a *Part 75 budget source* to install and operate additional NO_x or flow systems or fuel flow systems because of stack and unit configuration, the *owner or operator* must certify the monitoring systems using the procedures of 40 CFR Part 75.

A. Successful certification testing of the monitoring system in accordance with the requirements of 40 CFR Part 75 shall be completed no later than April 30, 1999.

B. A certification test notice and protocol shall be *submitted* to the Department for approval prior to the anticipated performance of the certification testing, but no later than the effective date of this regulation.

C. A certification report meeting the requirements of the *OTC* document “NO_x Budget Program Monitoring Certification and Reporting Instructions” shall be *submitted* to the Department no later than 45 days

following the performance of the certification testing.

3. If the *Part 75 budget source* has a flow monitor certified under Part 75, NO_x emissions in pounds per hour shall be determined using the Part 75 NO_x CEMS and the flow monitor. The NO_x emission rate in pounds per million BTU shall be determined using the procedure in 40 CFR Part 75, Appendix F, Section 3. The hourly *heat input* shall be determined by using the procedures in 40 CFR Part 75, Appendix F, Section 5. The NO_x emissions in pounds per hour shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) by the *heat input* rate (in million BTU per hour).

4. If the *Part 75 budget source* does not have a certified flow monitor, but does have a certified NO_x CEMS, the NO_x emissions rate in pounds per hour shall be determined by using the NO_x CEMS to determine the NO_x emission rate in pounds per million BTU and the *heat input* shall be determined by using the procedures in 40 CFR Part 75, Appendix D. The NO_x emissions rate (in pounds per hour) shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) by the *heat input* rate (in million BTU per hour).

5. If the *Part 75 budget source* uses the procedures in 40 CFR Part 75, Appendix E, to determine the NO_x emission rate, the NO_x emissions in pounds per hour shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) determined using the Appendix E procedures times the *heat input* (in million BTU per hour) determined using the procedures in 40 CFR Part 75, Appendix D.

6. If the *Part 75 budget source* uses the procedures in 40 CFR Part 75, Subpart E, to determine NO_x emission rate, the NO_x emissions in pounds per hour shall be determined using the alternative monitoring method approved under 40 CFR Part 75, Subpart E, and the procedures contained in the OTC document titled "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

7. The relevant procedures of the OTC document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program" shall be employed for unusual or complicated stack configurations.

f. The *owner or operator* of a *budget source* not subject to 40 CFR Part 75 shall seek the use of a NO_x monitoring method to comply with this regulation as follows:

1. The *authorized account representative* or alternate *authorized account representative* shall prepare and submit to the Department for approval a hardcopy monitoring plan for each NO_x *budget source*. Upon request by the Department, the *authorized account representative* or alternate *authorized account representative* shall also submit

to the Department a complete electronic monitoring plan. Sources subject to the program on the effective date of this regulation shall submit the complete monitoring plan no later than the effective date of this regulation. Sources becoming subject to the *budget* program after the effective date of this regulation must submit a complete monitoring plan no later than 90 days prior to projected initial participation date. The monitoring plan shall be prepared in accordance with the requirements of the OTC documents "Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring and Certification and Reporting Instructions", and shall contain the following information, as a minimum:

i. A description of the monitoring method to be used.

ii. A description of the major components of the monitoring system including the manufacturer, serial number of the component, the measurement span of the component and documentation to demonstrate that the measurement span of each component is appropriate to measure all of the expected values. This requirement applies to all monitoring systems including NO_x CEMS which have not been certified pursuant to 40 CFR Part 75.

iii. An estimate of the accuracy of the system and documentation to demonstrate how the estimate of accuracy was determined. This requirement applies to all monitoring systems that are not installed/being installed in accordance with the requirements of 40 CFR Part 75.

iv. A description of the tests that will be used for initial certification, initial quality assurance, periodic quality assurance, and relative accuracy.

v. If the monitoring method of determining *heat input* involves *boiler* efficiency testing, a description of the tests to determine *boiler* efficiency.

vi. If the monitoring method uses fuel sampling, a description of the test to be used in the fuel sampling program.

vii. If the monitoring method utilizes a generic default emission rate factor, the monitoring plan shall identify the generic default emission rate factor and provide documentation of the applicability of the generic default emission rate factor to the *non-Part 75 budget source*.

viii. If the monitoring method utilizes a unit specific default emission rate factor the monitoring plan shall include the following:

A. All necessary information to support the emission rate including:

1. Historical fuel use data and historical emissions test data if previous testing has been performed prior to May 1, 1997 to meet other state or federal requirements and the testing was performed using Department approved methods and protocols; or

2. If emissions testing is performed to

determine the emission rate, include a test protocol explaining the test to be conducted. All test performed on or after May 1, 1997 must meet the requirements of 40 CFR Part 75, Appendix E, and the requirements of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

B. Procedures which will be utilized to demonstrate that any control equipment in operation during the testing to develop source specific emission factors, or during development of load-based emission curves, are in use when those emission factors are applied to estimate NO_x emissions.

C. Alternative uncontrolled emission rates to be used to estimate NO_x emissions during periods when control equipment is not being used or is inoperable.

ix. If the monitoring method utilizes fuel flow meters to determine *heat input* and said meters have not been certified pursuant to 40 CFR Part 75, the monitoring plan shall include a description of all components of the fuel flow meter, the estimated accuracy of the fuel flow meter, the most recent calibration of each of the components and the original accuracy specifications from the manufacturer of the fuel flow meter.

x. The *submitted* complete monitoring plan shall meet all of the provisions of Part 2, Section II of the *OTC* document "Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program" and the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions".

2. The *authorized account representative* or alternate *authorized account representative* shall obtain certification of the NO_x emissions monitoring system in accordance with the requirements of the *OTC* documents "Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

i. The certification testing shall be successfully completed no later than April 30, 1999.

ii. A certification test notice and protocol shall be *submitted* to the Department prior to the anticipated performance of the certification testing, but no later than the effective date of this regulation.

iii. A certification report meeting the requirements of the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions" shall be *submitted* to the Department no later than 45 days following the performance of the certification testing.

3. The *owner or operator* of a *non-Part 75 budget source* shall monitor NO_x emissions in accordance with one of the following requirements:

i. Any *non-Part 75 budget source* that has a

maximum rated *heat input* capacity of 250 MMBTU/hr or greater which is not a peaking unit as defined in 40 CFR 72.2, or whose operating permit allows for the combustion of any solid fossil fuel, or is required to install a NO_x *CEMS* for the purposes of meeting either the requirements of 40 CFR Part 60 or any other Department or Federal requirement, shall install, certify, and operate a NO_x *CEMS*. Any *budget source* that has previously installed a NO_x *CEMS* for the purposes of meeting either the requirements of 40 CFR Part 60 or any other Department or Federal requirement shall certify and operate the NO_x *CEMS*.

A. The NO_x *CEMS* shall be used to measure stack gas NO_x concentration and the NO_x emissions rate in lb/MMBTU calculated in accordance with the procedures in 40 CFR Part 75, Appendix F.

B. Any *non-Part 75 budget source* utilizing a NO_x *CEMS* shall meet the following requirements from the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program":

1. Initial certification requirements identified in Part 2, Section III.

2. Quality assurance requirements identified in Part 2, Section IV.

3. Re-certification requirements identified in Part 2, Section V.

ii. The *owner or operator* of a *non-Part 75 budget source* not required to install a NO_x *CEMS* in accordance with Section 13(f)(3)(i) of this regulation may elect to install a NO_x *CEMS* meeting the requirements of 40 CFR Part 75 or Section 13(f)(3)(i) of this regulation.

iii. The *owner or operator* of a *non-Part 75 budget source* that is not required to have a NO_x *CEMS* may request approval from the Department to use any of the following methodologies to determine the NO_x emission rate:

A. The *owner or operator* of a *non-Part 75 budget source* may request the use of an alternative monitoring methodology meeting the requirements of 40 CFR Part 75, Subpart E. The Department must approve the use of an *alternative monitoring system* before such system is operated to meet the requirements of the NO_x Budget Program. If the methodology must be incorporated into a permit pursuant to Regulation 30 of Delaware's "Regulations Governing the Control of Air Pollution", the methodology must also be approved by the EPA.

B. The *owner or operator* of a *boiler or combustion turbine non-Part 75 budget source* may request the use of the procedures contained in 40 CFR Part 75, Appendix E, to measure the NO_x emission rate, in lb/MMBTU, consistent with the requirements identified in Part 2 of the *OTC* document "Guidance for the Implementation of

Emission Monitoring Requirements for the NO_x Budget Program.

C. The *owner or operator* of a combustion turbine *non-Part 75 budget source* may request the use of default emission factors to determine NO_x emissions, in pounds per MMBTU, as follows:

1. For oil-fired combustion turbines, the generic default emission factor is 1.2 pounds of NO_x per MMBTU.

2. For gas-fired combustion turbines, the generic default emission factor is 0.7 pound of NO_x per MMBTU.

3. The *owner or operator* of oil-fired and gas-fired combustion turbines may perform testing, in accordance with Department approved methods, to determine unit specific maximum potential NO_x emission rates in accordance with the requirements of Part 2 of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

D. The *owner or operator* of a *boiler non-Part 75 budget source* may request the use of default emission factors to determine NO_x emissions, in pound per MMBTU, as follows:

1. For oil-fired *boilers*, the generic default emission factor is 2.0 pounds of NO_x per MMBTU.

2. For gas-fired *boilers*, the generic default emission factor is 1.5 pound of NO_x per MMBTU.

3. The *owner or operator* of oil-fired and gas-fired *boilers* may perform testing, in accordance with Department approved methods, to determine unit specific maximum potential NO_x emission rates in accordance with the requirements of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

4. The *owner or operator* of a *non-Part 75 budget source* may determine *heat input* in accordance with the following guidelines:

i. The *owner or operator* of a *non-Part 75 budget source* using a NO_x *CEMS* to measure NO_x emission rate may elect to measure stack flow and diluent (O₂ or CO₂) concentration and use the procedures of 40 CFR Part 75, Appendix F, to determine the hourly *heat input*. For flow monitoring systems, the *non-Part 75 budget source* must meet all applicable requirements of 40 CFR Part 75.

ii. The *owner or operator* of a *non-Part 75 budget source* combusting only oil and/or natural gas may determine hourly *heat input* rate by monitoring fuel flow and conducting fuel sampling.

A. The *owner or operator* of a *non-Part 75 budget source* may monitor fuel flow by using fuel flow meter systems certified under 40 CFR Part 75, Appendix D, or as defined in Part 2, Section III of the *OTC* document

"Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

B. The *owner or operator* of a *non-Part 75 budget source* combusting oil may perform oil sampling and testing in accordance with the requirements of 40 CFR Part 75 or Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

C. The *owner or operator* of a *non-Part 75 budget source* combusting gas must determine the heating value of the gas in accordance with the requirements of 40 CFR Part 75 or the methodologies approved in Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

iii. The *owner or operator* of a *non-Part 75 budget source* electrical generating unit less than 25 megawatts rated capacity that combusts only oil or gas may petition the Department to determine *heat input* by measuring fuel used on a frequency of greater than one hour but no less than weekly.

A. The fuel usage must be reported on an hourly basis by apportioning the fuel based on electrical load in accordance with the following formula:

$$\text{Hourly fuel usage} = \frac{\text{Hourly electrical load}}{\text{Total electrical load}} \times \text{total fuel usage}$$

B. The *owner or operator* of a *non-Part 75 budget source* combusting oil may perform oil sampling and testing in accordance with the requirements of 40 CFR Part 75 or Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

C. The *owner or operator* of a *non-Part 75 budget source* combusting gas must determine the heating value of the gas in accordance with the requirements of 40 CFR Part 75 or the methodologies approved in Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

iv. The *owner or operator* of a *non-Part 75 budget source* that combusts only oil and/or gas and has elected to use a unit-specific or generic default NO_x emission rate, may petition the Department to determine hourly *heat input* based on fuel use measurements for a specified period that is longer than one hour.

A. The petition must include a description of the periodic measurement methodology, including an assessment of its accuracy.

B. Each time period must begin on or after May 1 and conclude on or before September 30 of each calendar year.

C. To determine hourly input, the *owner or operator* shall apportion the long term fuel measurements to operating hours during the *control period*.

D. Fuel sampling and analysis must conform to the requirements of Part 2, Section I(C)(2) of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

v. The *owner or operator* of a *non-Part 75 budget source* that combusts any fuel other than oil or natural gas may petition the Department to use an alternative method of determining *heat input*, including:

A. Conducting fuel sampling and analysis and monitoring fuel usage.

B. Using *boiler* efficiency curves and other monitored information such as *boiler* steam output.

C. Any other method approved by the Department and which meets the requirements identified in Part 2, Section I, of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

vi. The *owner or operator* of a *non-Part 75 budget source* may petition the Department to use a unit-specific maximum hourly *heat input* based on the higher of the manufacturer's rated capacity or the highest observed hourly *heat input* in the period beginning five years prior to the program participation date. The Department may approve a lower maximum *heat input* if an *owner or operator* demonstrates that the highest observed hourly *heat input* in the last five years is not representative of the unit's current capabilities because modifications have been made limiting its capacity permanently.

vii. Methods used for determination of *heat input* are subject to both applicable initial and periodic relative accuracy and quality assurance testing requirements in accordance with the following provisions of the *OTC* document "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program":

A. Initial certification requirements identified in Part 2, Section III.

B. Quality assurance requirements identified in Part 2, Section IV.

C. Re-certification requirements identified in Part 2, Section V.

5. Once the NO_x emission rate in pounds per million BTU has been determined in accordance with Section 13(f)(3) of this regulation and the *heat input* rate in MMBTU per hour has been determined in accordance with Section 13(f)(4) of this regulation, the two values shall be multiplied together to result in NO_x emissions in pounds per hour and reported to the *NETS* in accordance with Section 15 of this regulation.

6. The relevant procedures of the *OTC* document "Guidance for Implementation of Emission Monitoring

Requirements for the NO_x Budget Program" shall be employed for unusual or complicated stack configurations.

Section 14 - Recordkeeping

The *owner or operator* of any *budget source* shall maintain, for a period of at least five years, copies of all measurements, tests, reports, data, and other information required by this regulation.

Section 15 - Emissions Reporting

a. The *Authorized account representative* or alternate *authorized account representative* for each *budget source* shall submit to the *NETS Administrator*, electronically in a format which meets the requirements of the EPA's Electronic Data Reporting (EDR) convention, emissions and operating information in accordance with the *OTC* documents "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

1. All existing *Part 75 budget sources* not required to install additional monitoring equipment shall meet the reporting requirements of the NO_x Budget Program as follows:

i. By meeting all current Part 75 reporting requirements and reporting the additional unit identification information as required by the NO_x Budget Program (100 and 500 level records) beginning no later than with the submittal of the quarterly report for the second calendar quarter of 1999.

ii. Reserved

iii. Beginning with the quarterly report for the second quarter of 1999, report all Part 75 required information and all additional information required by the NO_x Budget Program including:

A. Additional unit identification information.

B. Hourly NO_x mass emissions in pounds per hour based on reported hourly *heat input* and hourly NO_x emission rate.

C. Cumulative NO_x *control period* NO_x mass emissions in tons per NO_x *control period*.

D. Additional monitoring plan information related to the NO_x Budget Program.

E. Certification status information as required by the NO_x Budget Program.

2. Beginning no later than with the quarterly report for the second quarter of 1999 all *Part 75 budget sources*, that are required to install and certify new monitoring systems to meet the requirements of the NO_x Budget Program, shall meet the reporting requirements of the NO_x Budget Program by meeting all current Part 75 reporting

requirements and the additional reporting requirements of the NO_x Budget Program including *submittal* of the following information:

- i. Additional unit identification information.
- ii. Hourly NO_x mass emissions in pounds per hour based on reported hourly *heat input* and hourly NO_x emission rate.
- iii. Cumulative NO_x *control period* NO_x mass emissions in tons per NO_x *control period*.
- iv. Additional monitoring plan information related to the NO_x Budget Program.
- v. Certification status information as required by the NO_x Budget Program.

3. All *non-Part 75 budget sources* shall meet the reporting requirements of the NO_x Budget Program by reporting all information required by the NO_x Budget Program as well as reporting hourly and cumulative NO_x mass emissions beginning no later than with the quarterly report for the second quarter of 1999.

b. The *authorized account representative* or alternate *authorized account representative* of a *budget source* subject to 40 CFR Part 75 shall submit NO_x Budget Program quarterly data to the U.S. EPA as part of the quarterly reports *submitted* for the compliance with 40 CFR Part 75.

c. The *authorized account representative* or alternate *authorized account representative* of a *budget source* not subject to 40 CFR Part 75 shall submit NO_x budget program quarterly data to the U.S. EPA as follows:

1. For *non-Part 75 budget sources* not utilizing NO_x CEMS, submit two quarterly reports each year, one for the second quarter and one for the third quarter.

2. For *non-Part 75 budget sources* using any NO_x CEMS based measurement methodology, submit a complete quarterly report for each quarter in the year.

3. The submission deadline is thirty days after the end of the calendar quarter. If the thirtieth day falls on a weekend or federal holiday, the reporting deadline is midnight of the first day following the holiday or weekend.

d. Should a *budget source* be permanently shutdown, the *authorized account representative* or alternate *authorized account representative* may submit a written request the Department for an exemption from the requirements of Sections 13 and 14 of this regulation. The shutdown exemption request shall identify the *budget source* being shutdown and the date of permanent shutdown. Within 30 days of receipt of the shutdown exemption request, the Department shall:

1. If the Department does not approve the shutdown exemption request, the *authorized account representative* shall be notified in writing, including the reason(s) for not approving the request.

2. If the Department approves the shutdown

exemption request:

i. The *authorized account representative* shall be notified in writing.

ii. The Department shall notify the *NETS Administrator* of the approved shutdown request.

Section 16 - End-of Season Reconciliation

a. *Allowances* may be used for compliance with this program in a designated compliance year by being in a *compliance account* as of December 31 of the subject year, or by being identified in an *allowance transfer* request that is *submitted* by December 31 of the subject year.

b. Each year during the period November 1 through December 31, inclusive, the *authorized account representative* or alternate *authorized account representative* shall request the *NATS Administrator* to deduct *current year allowances* from the *compliance account* equivalent to the NO_x emissions from the *budget source* in the most recent *control period*. This request shall be *submitted* by the *authorized account representative* or alternate *authorized account representative* to the *NATS Administrator* by not later than December 31. This request shall identify the *compliance account* of the *budget source* and the serial number of each of the *allowances* to be deducted.

1. *Allowances* allocated for the current NO_x *control period* may be used without restriction.

2. *Allowances* allocated for future NO_x *control periods* may not be used.

3. *Allowances* which were allocated for any preceding NO_x *control period* which were banked may be used in the current *control period*. *Banked allowance* shall be deducted against NO_x emissions in accordance with the ratio of NO_x *allowances* to emissions as specified in Section 12 of this regulation.

c. If the emissions from a *budget source* in the current *control period* exceed the *allowances* held in that *budget source's compliance account* for that *control period*:

1. The *budget source* shall obtain additional *allowances* by December 31 of the subject year so that the total number of *allowances* in the *compliance account* meeting the criteria of Section 16(b)(1) through (3) of this regulation, including *allowances* identified in any *allowance transfer* request properly *submitted* to the *NATS Administrator* by December 31 of the subject year, equals or exceeds the *control period* emissions of NO_x rounded to the nearest whole ton.

2. If there is an insufficient number of NO_x *allowances* available for NO_x *allowance deduction*, the source is out of compliance with this regulation and subject to enforcement action and penalties pursuant to Section 18 of this regulation.

d. If by the December 31 compliance deadline the

authorized account representative or alternate authorized account representative either makes no NO_x allowance deduction request, or a NO_x allowance deduction request insufficient to meet the allowances required by the actual emissions, a violation of this regulation may have occurred and the NATS Administrator may deduct the necessary number of NO_x allowances from the budget source's compliance account. The NATS Administrator shall provide written notice to the authorized account representative that NO_x allowances were deducted from the source's account.

e. The authorized account representative or alternate authorized account representative may notify the NATS Administrator of any claim that the NATS Administrator made an error in recording transfer information that was submitted in accordance with Section 11 of this regulation, provided that such claim of error notification is submitted to the NATS Administrator by no later than 15 business days following the date of the notification by the NATS Administrator pursuant to actions taken in accordance with Section 16(d) of this regulation.

1. Such claim of error notification shall be in writing and shall include:

i. A description of the error alleged to have been made by the NATS Administrator.

ii. A proposed correction of the alleged error.

iii. Any supporting documentation or other information concerning the alleged error and proposed corrective action.

iv. The following statement: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

v. Signature of the authorized account representative or alternate authorized account representative and date of signature.

2. The NATS Administrator, at the NATS Administrator's sole discretion based on the documentation provided, shall determine what changes, if any, shall be made to the account(s) subject to the alleged error. Not later than 20 business days after receipt of a claim of error notification, the NATS Administrator shall submit to the authorized account representative and to the Department a written response stating the determination made, any action taken by the NATS Administrator, and the reason(s) for the determination and actions.

3. The NATS Administrator may, without prior

notice of a claim of error and at the NATS Administrator's sole discretion, correct any errors in any account on the NATS Administrator's own motion. The NATS Administrator shall notify the authorized account representative and the Department no later than 20 business days following any such corrections.

Section 17 - Compliance Certification

a. For each NO_x allowance control period, the authorized account representative or alternate authorized account representative of each budget source shall submit to the Department an annual compliance certification.

b. The compliance certification shall be submitted no later than December 31 of each year.

c. The compliance certification shall contain, at a minimum, the following information:

1. Identification of the budget source, including the budget source's name and address, the name of the authorized account representative and alternate authorized account representative, if any, and the NATS account number.

2. A statement indicating whether or not emissions data was submitted to the NETS Administrator pursuant to Section 15 of this regulation.

3. A statement indicating whether or not the budget source held sufficient NO_x allowances, as determined in Section 16 of this regulation, in its compliance account for the NO_x allowance control period as of December 31 of the subject year, or by being identified in an allowance transfer request that was submitted by December 31 of the subject year, to equal or exceed the budget source's actual emissions as reported to the NETS Administrator for the control period.

i. If the budget source's compliance account held sufficient allowances, no additional documentation is required to be submitted under Section 17(c)(3) of this regulation.

ii. If the budget source's compliance account held insufficient allowances, the authorized account representative or alternate authorized account representative may include all of the following information as part of the compliance certification for consideration by the Department under Section 18(b) and Section 18(c) of this regulation:

A. A calculation showing the overall percentage that the control period NO_x emissions from the non-compliant budget source plus all other budget sources under control of a common company, as identified in Appendix "A" of this regulation, and within the State of Delaware, exceeded their allowance holdings:

Overall Percentage = ((Total NO_x Emissions/Total Allowance Holdings)-1) * 100

Where:

Total NOx Emissions = The subject year's control period NOx emissions from the non-compliant budget source plus all other budget sources under the control of a common company, as identified in Appendix "A" of this regulation, and within the State of Delaware.

Total Allowance Holdings = As of December 31 of the subject year, the total number of allowances held in the compliance accounts of the non-compliant budget source plus all other budget sources under the control of a common company, as identified in Appendix "A" of this regulation, and within the State of Delaware. The total allowance holdings shall also include allowances identified in any allowance transfer request properly submitted to the NATS Administrator, in accordance with the requirements of Section 11 of this regulation, by December 31 of the subject year.

B. A copy of a reasonably specific plan for the balancing of the budget source's compliance account by December 31 of the subject year that 1) was prepared at the start of the control period, and 2) included contingencies for reasonably anticipated events which might compromise the budget source's ability to balance its compliance account (e.g., especially hot weather, operational glitches at the budget source, etc);

C. Documentation showing that investments in equipment, allowance purchase, and/or other items were made consistent with the budget source's plan under Section 17(c)(3)(ii)(B) of this regulation;

D. Documentation showing that the budget source's plan under Section 17(c)(3)(ii)(B) of this regulation was periodically reevaluated, and continuing reasonable efforts were made to ensure operations and/or allowance purchases would allow the budget source to balance the budget source's compliance account by December 31 of the subject year;

E. Documentation indicating that communications with brokers about the availability of allowances for purchase occurred consistent with the budget source's plan under Sections 17(c)(3)(ii)(B) and (D) of this regulation and, if applicable, rationale indicating why any available allowances were not purchased);

F. Certification that, except for the final balancing of a compliance account, all program requirements (e.g., applications, submittals, monitoring, etc.) were substantially satisfied. For the purposes of making the determination under Section 18(b) of this regulation only, instances where a requirement was not satisfied due to the Department's and/or the United States Environmental Protection Agency's failure to provide a necessary approval in a timely fashion shall be considered by the Department in determining whether the budget source substantially satisfied that particular requirement, provided documentation of such failure is included with the certification, and;

G. Documentation of any other factors that the authorized account representative or alternate authorized account representative considers relevant.

4. A statement of certification whether the monitoring plan which governs the budget source was maintained to reflect actual operation and monitoring of the budget source and contains all information necessary to attribute monitored emissions to the budget source.

5. A statement of certification that all emissions from the budget source were accounted for, either through the applicable monitoring or through application of the appropriate missing data procedures.

6. A statement whether the facts that form the basis for certification of each monitor or monitoring method approved in accordance with Section 13 of this regulation have changed.

7. If a change is required to be reported in accordance with Section 17(c)(6) of this regulation, specify the nature of the change, when the change occurred, and how the budget source's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor re-certification.

8. The following statement in verbatim, "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fines or imprisonment."

9. Signature of the budget source's authorized account representative or alternate authorized account representative and the date of signature.

d. The Department may verify compliance by whatever means necessary, including but not limited to:

1. Inspection of facility operating records.

2. Obtaining information on allowance deduction and transfers from the NATS Administrator.

3. Obtaining information on emissions from the NETS Administrator.

4. Testing emission monitoring devices.

5. Requiring the budget source to conduct emissions testing using testing methods approved by the Department.

Section 18 - Failure to Meet Compliance Requirements

a. If the emissions from a budget source exceed allowances held in the budget source's compliance account for the control period as of December 31 of the subject year,

the *NATS Administrator* shall deduct *allowances* from the *budget source's compliance account* for the next *control period* at a rate of three (3) *allowances* for every one (1) ton of *excess emissions*.

1. The *NATS Administrator* shall provide written notice to the *budget source's authorized account representative* that NO_x *allowances* were deducted from the *budget source's account*.

2. The *authorized account representative* or alternate *authorized account representative* may notify the *NATS Administrator* of any claim that the *NATS Administrator* made an error in recording *submitted* transfer information in accordance with Section 16(e) of this regulation.

3. If the NO_x emissions from a *budget source* exceed *allowances* held in the *budget source's compliance account* for the year 2002 *control period* as of December 31, 2002, *allowances* will be deducted from the 2003 *control period* in accordance with the requirements of follow-on regulation that addresses *allowance allocations* for the year 2003 *control period*.

b. If the result of the calculation submitted pursuant to Section 17(c)(3)(ii)(A) of this regulation is equal to or less than 5%, and if the Department determines that the *budget source* has made all reasonable efforts to comply with the requirements of this regulation based on the information submitted pursuant to Section 17(c)(3)(ii) of this regulation, considered collectively, then:

1. For shortfalls that occurred for the 1999 *control period*, the Department shall:

i. Within 30 days of receipt of the notification under Section 18(a)(1) of this regulation:

A. Calculate a penalty correction allocation. Such allocation shall be calculated by multiplying the value of the 3-to-1 penalty that was applied to the 1999 *control period* shortfall under Section 18(a) of this regulation by two-thirds. This quantity may be adjusted by the Department at any time to account for any revision occurring under Section 18(a)(2) of this regulation.

B. Notify the *OTC* and authorize the *NATS Administrator* to transfer the quantity of *allowances* equal to the penalty correction allocation calculated under Section 18(b)(1)(i)(A) of this regulation into Delaware's primary reserve *NATS account*.

ii. Within 30 days of determining that the *NATS Administrator* has added the subject *allowances* into Delaware's primary reserve *NATS account*, submit a transfer request to the *NATS Administrator* transferring the penalty correction allocation to the appropriate *budget source's compliance account*.

2. For shortfalls that occurred for the 2000 *control period*, the Department shall:

i. Within 30 days of receipt of the notification under Section 18(a)(1) of this regulation:

A. Calculate a penalty correction allocation. Such allocation shall be calculated by multiplying the value of the 3-to-1 penalty that was applied to the 2000 *control period* shortfall under Section 18(a) of this regulation by one-third. This quantity may be adjusted by the Department at any time to account for any revision occurring under Section 18(a)(2) of this regulation.

B. Notify the *OTC* and authorize the *NATS Administrator* to transfer the quantity of *allowances* equal to the penalty correction allocation calculated under Section 18(b)(2)(i)(A) of this regulation into Delaware's primary reserve *NATS account*.

ii. Within 30 days of determining that the *NATS Administrator* has added the subject *allowances* into Delaware's primary reserve *NATS account*, submit a transfer request to the *NATS Administrator* transferring the penalty correction allocation to the appropriate *budget source's compliance account*.

3. For shortfalls that occurred subsequent to calendar year 2000 *control period*, the 3-to-1 penalty is in effect for all circumstances and the Department shall not process any penalty corrections under Section 18(b) of this regulation.

bc. In addition to NO_x *allowance deduction* penalties under Section 18(a) of this regulation, the Department may enforce the provisions of this regulation under 7 Del.C. Chapter 60. In the determination of the number of days of violation for the purposes of calculating the maximum penalty under the provisions of 7 Del.C. Chapter 60, any *excess emissions* for the *control period* shall constitute daily violations for the *control period*, 153 violations. The Department will consider collectively the criteria set forth in Section 17(c)(3)(ii) of this regulation in determining the magnitude of the penalty assessed.

Section 19 - Program Audit

a. The Department shall conduct an audit of the NO_x Budget Program prior to May 1, 2002, and at a minimum every three years thereafter. The audit shall include the following:

1. Confirmation of emissions reporting accuracy through validation of NO_x *allowance* monitoring and data acquisition systems at the *budget source*.

2. Examination of the extent to which *banked allowances* have, or have not, contributed to emissions in excess of the *budget* for each *control period* covered by the audit.

3. An analysis of the geographic distribution of emissions as well as hourly and daily emission totals in the context of ozone control.

4. An assessment of whether the program is providing the level of emissions reductions anticipated and include in the SIP.

b. The Department shall prepare a report on the results of the audit. The Department shall seek public input on the conclusions contained in the audit report and provide for a public notice, public comment period, and allow for the request to hold a public hearing on the conclusions contained in the report.

c. In addition to the Department audit, the Department may seek a third party audit of the program. Such an audit could be implemented by the Department or could be performed on a region-wide basis under the supervision of the OTC.

d. Should an audit result in recommendations for program revisions at the state level, the Department shall consider the audit recommendations, in consultation with the OTC, and if found necessary, propose the appropriate

program revisions as changes to current procedures or modifications to this regulation.

Section 20 - Program Fees

The *authorized account representative* or alternate *authorized account representative* of each *compliance account* and each *general account* shall pay fees to the Department consistent with the fee schedule established from time to time by the Delaware General Assembly, should a fee schedule be established.

NO_x BUDGET PROGRAM --- APPENDIX "A"

COMPANY	FACILITY and PLANT POINT	OTC IDENTIFIED ALLOWANCES	EXCEPTIONAL CIRCUMSTANCES ALLOWANCES	RESERVE ALLOWANCES	FINAL ALLOWANCES	SOURCE TYPE
DELMARVA POWER	Christiana Sub 001	6	-0-	1	7	Non-Part 75
	Christiana Sub 002	6	-0-	1	7	Non-Part 75
	Delaware City 002	1	-0-	1	2	Non-Part 75
	Edge Moor 001	1	-0-	1	2	Non-Part 75
	Edge Moor 002	241	-0-	1	242	Part 75
	Edge Moor 003	345	-0-	1	346	Part 75
	Edge Moor 004	621	28	1	650	Part 75
	Hay Road 001	49	-0-	1	50	Non-Part 75
	Hay Road 002	34	-0-	1	35	Non-Part 75
	Hay Road 3*	-0-	-0-	-0-	-0-	Part 75
	Indian River 001	340	-0-	1	341	Part 75
	Indian River 002	397	-0-	1	398	Part 75
	Indian River 003	834***	-0-	1	835	Part 75
	Indian River 004	1,652	-0-	2	1,654	Part 75
	Indian River 10**	-0-	-0-	1	2	Non-Part 75
	Madison Str. 001	-0-	-0-	1	1	Non-Part 75
	West Sub 001	2	-0-	1	3	Non-Part 75
DFD Operating Services	McKee Run 001	72***	-0-	1	73	Non-Part 75
	McKee Run 002	44***	-0-	1	45	Non-Part 75
	McKee Run 003	184	-0-	2	186	Part 75
	VanSant 1*	-0-	-0-	-0-	-0-	Part 75
FIRST STATE STAR	Co-Gen 1**	-0-	-0-	2	203	Non-Part 75
MOTIVA ENTERPRISE	DelawareCity 006****	-0-	-0-	1	105	Non-Part 75
	Delaware City 019	20	-0-	1	21	Non-Part 75
	Delaware City 034	70	-0-	1	71	Non-Part 75
	Delaware City 067	93	-0-	1	94	Non-Part 75
	Delaware City 068	206	-0-	1	207	Non-Part 75
	Delaware City 069	227	-0-	1	228	Non-Part 75
	Delaware City 070	214	-0-	2	216	Non-Part 75
	Delaware City 072	-0-	-0-	-0-	-0-	Non-Part 75
	Delaware City 074	117	-0-	1	118	Non-Part 75
	Delaware City 105	-0-	-0-	-0-	-0-	Non-Part 75
TOTAL		5,776	28	32	6,142	

(***) OTC MOU allowances corrected from "1990

NOTES:

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

(**) Units operated in the 1990 NO_x control period but were not included in the "1990 OTC Baseline Emissions Inventory".

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

OTC Baseline Emissions Inventory" due to incorrect reporting of 1990 fuel use information.

PROPOSED REGULATIONS

NO_x BUDGET PROGRAM - APPENDIX B

COMPANY	FACILITY or PLANT POINT	1990 BASELINE HEAT INPUT (10 ⁶ BTU)	1990 BASELINE NO _x EMISSIONS (Tons)	1990 BASELINE EMISSION RATE (lb/mmBTU)	RACT NO _x EMISSIONS (Tons)
DELMARVA POWER	Christiana Sub 001	16,243	5.8	0.709	5.8
	Christiana Sub 002	15,447	5.5	0.709	5.5
	Delaware City 002	1,612	0.6	0.703	0.6
	Edge Moor 001	1,835	0.7	0.708	0.7
	Edge Moor 002	2,409,836	655.8	0.545	648.1
	Edge Moor 003	3,451,182	928.7	0.540	516.0
	Edge Moor 004	6,213,944	1,436.8	0.463	1,147.3
	Hay Road 001	938,341	49.0	0.105	49.0
	Hay Road 002	631,111	33.6	0.106	33.6
	Hay Road 3*	-0-	-0-	-0-	-0-
	Indian River 001	1,816,612	755.6	0.828	755.6
	Indian River 002	2,134,257	882.3	0.828	882.3
	Indian River 003	4,521,301	1,853.7	0.819	762.1
	Indian River 004	8,747,546	3,671.6	0.838	1,830.8
	Indian River 10**	-0-	-0-	-0-	-0-
	Madison Street 001	1,079	0.4	0.706	0.4
	West Sub 001	6,105	2.2	0.709	2.2
DFD	McKee Run 001	344,472	91.6	0.524	55.0
	McKee Run 002	211,742	56.3	0.505	33.8
	McKee Run 003	1,724,601	411.7	0.447	321.8
	VanSant 1*	-0-	-0-	-0-	-0-
FIRST STATE	Co-Gen 1**	-0-	-0-	-0-	-0-
STAR MOTIVA ENTERPRISE	Delaware City 006**	-0-	-0-	-0-	-0-
	Delaware City 019	318,601	20.1	0.126	20.1
	Delaware City 034	1,100,470	69.5	0.126	69.5
	Delaware City 067	931,712	229.0	0.486	116.5
	Delaware City 068	1,820,133	588.5	0.647	345.8
	Delaware City 069	2,002,309	647.4	0.647	440.5
	Delaware City 070	1,888,905	610.7	0.647	368.3
	Delaware City 072	-0-	-0-	-0-	-0-
	Delaware City 074	1,847,552	116.7	0.126	116.7
	Delaware City 105	-0-	-0-	-0-	-0-

NOTES: Data as identified in "1990 OTC NO_x Baseline Emission Inventory", Final OTC NO_x Baseline Inventory, Point-Segment Level Data.

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

(**) *Indian River Point 10*, *First State Co-Gen 1*, and *Delaware City 006* were not included in the Reference Document, but were operating in the 1990 NO_x control period.

DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER

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

NOTICE OF PROPOSED AMENDMENT OF REGULATIONS OF THE STATE BANK COMMISSIONER

Summary:

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001. Proposed amended Regulation Nos. 5.2112.0001 ("Mortgage Loan Brokers Operating Regulations"), 5.2111(a).0002 ("Mortgage Loan Brokers Minimum Requirements for Content of Books and Records") and 5.2113.0004 ("Mortgage Loan Brokers Minimum Disclosure Requirements") are amended to delete provisions for non-processing or originating mortgage brokers and to make other technical and conforming

changes. Proposed amended Regulation No. 5.2115.0003 ("Mortgage Loan Broker Regulations - Itemized Schedule of Charges") is amended to provide that an informational screen with the capability for an affirmative acknowledgment by the consumer shall satisfy the requirement that the consumer be provided a copy of the regulation in the case of Internet transactions, to specify that all fees shall be customary and reasonable, and to make other technical and conforming changes. Proposed amended Regulation Nos. 5.2111(b).0005 ("Report of Delaware Loan Volume" for mortgage brokers), 5.2210(e).0005 ("Report of Delaware Loan Volume" for licensed lenders), 5.2318.0001 ("Report of Delaware Sale of Checks, Drafts and Money Orders Volume"), and 5.2906(e).0003 ("Report of Delaware Loan Volume - Motor Vehicle Installment Contracts") are amended to add provisions for the licensees to specify the periods for which they are currently reporting. Proposed amend Regulation No. 5.2213.0002 ("Licensed Lenders Minimum Requirements for Content of Books and Records") is amended to delete the requirement for an index of borrowers, endorsers, co-makers, etc., and to make other technical and conforming changes. Proposed amended Regulation No. 5.2218/2231.0003 ("Licensed Lenders Regulations -Itemized Schedule of Charges") is amended to provide that an explanation shall satisfy the requirement that the consumer be provided a copy of the regulation in the case of a telephonic transaction and that an informational screen with the capability for an affirmative acknowledgment by the consumer shall satisfy the requirement that the consumer be provided a copy of the regulation in the case of an Internet transaction, to conform provisions for interest and fees to recent statutory changes, to specifically authorize loan discount points to reduce the periodic interest rate applicable to a mortgage loan, to specifically authorize tax certification and service fees, flood hazard certification or determination fees, property survey fees, pest inspection fees and other miscellaneous fees, to specify that all fees shall be customary and reasonable, and to make other technical and conforming changes. Proposed amended Regulation Nos. 5.2906(e)/122(b).0001 ("Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records") and 5.2906(e).0002 ("Motor Vehicle Sales Finance Companies Operating Regulations") are amended to conform to a recent statutory change by specifically providing for the financing of negative equity in a trade-in, and to make other technical and conforming changes. Proposed amended Regulation No. 5.3404/3409.0001("Preneed Funeral Contract Regulations Governing Revocable and Irrevocable Trust Agreements") is amended to require that licensees provide annual statements for both revocable and irrevocable preneed funeral trust agreements, to provide for an irrevocable trust document to include a provision for the transfer of trust funds to a new trustee at the consumer's election, and to make other

technical and conforming changes. Proposed amended Regulation Nos. 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001 would be adopted by the State Bank Commissioner on or after October 4, 1999. Other regulations issued by the State Bank Commissioner are not affected by the proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

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

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received before the public hearing on October 4, 1999.

Public Hearing:

A public hearing on the proposed revised regulations will be held in Room 112, Tatnall Building, William Penn Street, Dover, Delaware on Monday, October 4, 1999 at 10:00 a.m.

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

Regulation No.: 5.2112.0001
Proposed

**MORTGAGE LOAN BROKERS OPERATING
REGULATIONS
(5 DEL. C. §2112)**

1. Application of Chapter

Chapter 21 of Title 5 of the Delaware Code governs persons who broker extensions of credit secured by a first or second mortgage on any one-to-four family residential owner-occupied property intended for personal, family, or household purposes. Chapter 21 of Title 5 of the Delaware Code does not apply to the brokering of commercial

mortgage loans, including a first or second mortgage on any income producing property that does not fall into the aforementioned definition.

2. Maintenance of Copies of Applicable Regulations

All licensees shall conduct business in compliance with Chapter 21 of Title 5 of the Delaware Code, and all regulations issued thereunder. Each office licensed under Chapter 21 of Title 5 of the Delaware Code shall maintain copies of all applicable regulations. These regulations include:

- 5.2112.0001 - Mortgage Loan Brokers Operating Regulations;
- 5.2111(a).0002 - Mortgage Loan Brokers Minimum Requirements for Content of Books and Records;
- 5.2115.0003 - Mortgage Loan Brokers Itemized Schedule of Charges;
- 5.2113.0004 - Mortgage Loan Brokers Minimum Disclosure Requirements;
- 5.2111(b).0005 - Report of Delaware Loan Volume;
- 5.2111/2210/2906.0006 - Report of Delaware Assets; and
- 5.141.0001.NC - Retention of Financial Institution Records.

The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2111(a) of Title 5 of the Delaware Code and this regulation.

3. Fees for Examination and Supervisory Assessment

Mortgage Loan Broker licensees are subject to examination pursuant to §2110 of Title 5 of the Delaware Code. The costs of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the Delaware Code.. A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for examination. In addition, the Commissioner assesses annually each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the Delaware Code. Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the Delaware Code.

4. Representations at Mortgage Loan Closings

At no time shall a mortgage loan close in the name of the mortgage loan broker except for the sole purpose of satisfying requirements for VA government loans.

Document Control No.:

Regulation No.: 5.2111(a).0002

Proposed

MORTGAGE LOAN BROKERS MINIMUM REQUIREMENTS FOR CONTENT OF BOOKS AND RECORDS (5 DEL. C. §2111(a))

Each licensed office shall establish and maintain the following books and records, on a current basis, either at the office of the licensed broker, or at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations that accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested. The following records shall be maintained in accordance with the time periods provided in Regulation No. 5.141.0001.NC Retention of Financial Institution Records.

1. Applicant Register - This record shall show the name of the applicant, identifying file number, date application was filed, name of lender, date of commitment, amount of broker's fee, and date fee was paid. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed and, if known, date application was denied and reason for denial.

2. Individual Records of Applicant - A file of all documents, invoices and/or other obligations for each applicant shall be maintained and shall include the following:

- (a) Name and address of the applicant;
- (b) Identifying number;
- (c) Date of application/broker's agreement;
- (d) A copy of the mortgage loan broker agreement containing original signature(s) of applicant(s), or a certified copy thereof;
- (e) A copy of all invoices or other evidence of expenses incurred in connection with the mortgage loan

including, but not limited to, the property appraisal, title certificate, and credit report;

(f) A copy of all receipts provided to the applicant(s) for amounts paid to the broker;

(g) A record of all fees collected by the broker in accordance with Regulation No. 5.2115.0003 Mortgage Loan Broker Regulations Itemized Schedule of Charges;

(h) Name of lender;

(i) Copy of the commitment;

(j) Date and amount of broker fee collected; and

(k) Evidence of any refunds and an explanation of the refunds.

3. Record of Litigation - All files on applicants who initiate litigation against the licensee or who are sued by the licensee, shall be maintained in a separate litigation section of the files and shall include the following:

(a) All original paper or a certified copy thereof;

(b) Date and terms of judgment.

4. Advertising - Copies of all printed or other advertising materials circulated by the mortgage loan broker.

Document Control No.:

**Regulation No. 5.2115.0003
Proposed**

**MORTGAGE LOAN BROKER REGULATIONS
ITEMIZED SCHEDULE OF CHARGES
(5 DEL. C., §2115)**

1. Notification - Every licensee shall make available for review to every applicant, a copy of this regulation at the time when such application is made. Posting of this regulation in the office of the licensee in a place both prominent and easily visible to all potential applicants shall satisfy this requirement. An explanation as to the contents and limitations contained herein shall satisfy this requirement when transactions occur telephonically. An informational screen containing these limitations with an affirmative acknowledgement by the consumer prior to application shall satisfy this requirement for internet transactions.

2. Fees Permissible for Collection Prior to Receipt of a Written Commitment - In connection with the application for credit and on behalf of the borrower, the following fees subject to the limitations enumerated herein may be collected prior to the receipt of a written commitment from a bona fide lender:

(a) Property appraisal fees shall be limited to the amount paid to a third-party for such appraisal and shall be

limited to those amounts that are customary and reasonable;

(b) Credit report fees shall be limited to the actual cost of the report, the amount of which was paid to a third-party. Such amounts shall be customary and reasonable;

(c) Title examination fees and/or title insurance shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

(d) Returned check charges may be assessed to consumers, provided the amounts of such charges are customary and reasonable for checks that are returned unpaid;

(e) Other bona fide third-party fees actually and reasonably paid or incurred on behalf of the borrower. Such other fees shall not be incurred without the express permission of the borrower and shall be limited to amounts actually paid or incurred. Such amounts shall be customary and reasonable;

(f) An application fee may be imposed in lieu of the fees itemized above (excluding item d) provided the amount of such application fee reasonably reflects the anticipated amounts of all appropriate fees and amounts collected in excess of such actual costs shall be refunded. Those fees which reasonably exceed the anticipated amounts shall be payable by the borrower.

(g) Fees associated with the commitment of a specific interest rate, to be held for a specified period of time, may be collected in accordance with a signed rate lock agreement, provided the fees are payable to the lender.

3. Fees Permissible for Collection Upon or After Receipt of a Written Commitment or Pre-Approval and Prior to Consummation of the Mortgage Loan

(a) Fees associated with loan commitments, if such fees are required by the lender upon receipt of a written commitment, provided the fees are payable to the lender.

(b) Fees that the lender may require in advance of a loan closing, provided, however, that such fees are paid directly to the lender or third-party provider.

(c) This section shall not prohibit the collection of fees otherwise permitted under item 2 of this regulation, if such fees are collected after receipt of a written commitment or pre-approval.

4. Collection of Fees in the Name of the Mortgage Loan Broker - Notwithstanding the limitations under items 2(g) and 3, a mortgage loan broker may collect the fees authorized in items 2(g) and 3 of this regulation, in the mortgage loan broker's own name, if required by the lender.

5. Fees for Mortgage Loan Broker Services - A fee may be collected from a bona fide lender, in accordance with the mortgage loan broker agreement, at closing or following the rescissionary period (for loans which qualify for rescission under the Federal Truth-in-Lending Act). In no event shall

the aggregate points charged to the borrower exceed ten percent of the principal amount of the loan. Such point limitation shall apply to points assessed by the lender on the lender's behalf, together with points charged by the lender on behalf of any other party to the transaction. The total compensation paid to a mortgage loan broker shall reasonably reflect the value of the goods and services provided.

Document Control No.:

Regulation No.: 5.2113.0004
Proposed

MORTGAGE LOAN BROKERS
MINIMUM DISCLOSURE REQUIREMENTS
(5 DEL. C., §2113)

1. Advertising

When a licensed mortgage loan broker advertises with respect to a mortgage loan, the advertisement shall clearly and conspicuously state that the broker is a licensed mortgage loan broker.

2. Written Agreement

The mortgage loan broker shall enter into a separate, signed, written agreement with the potential borrower, independent of the loan agreement. The terms of such agreement shall be disclosed to the potential borrower before the payment of any nonrefundable fee. A copy of the agreement shall be provided to the prospective borrower at the time he signs the agreement. The agreement shall contain, at a minimum:

- (a) The name of the mortgage loan broker;
- (b) The name of the prospective borrower;
- (c) The date of the agreement and the period for which it shall remain in effect;
- (d) A statement that the mortgage loan broker is not the credit provider;
- (e) A complete description of the services the mortgage loan broker undertakes to perform for the prospective borrower;
- (f) A specific statement of the circumstances under which the mortgage loan broker will be entitled to obtain or retain consideration from the party with whom the mortgage loan broker contracts;
- (g) An estimate of the costs of the broker's services which may be expressed as a dollar amount or range together with the maximum cost of services. Such maximum cost shall be expressed as follows: "In no event shall the cost of these services exceed _____." Such amounts shall include all compensation paid to the broker whether paid directly or indirectly;

(h) A statement as to which fees are refundable and nonrefundable and under what circumstances a fee may be refundable; and

(i) A statement that the borrower may be entitled to the refund of certain monies paid to the mortgage loan broker if he exercises his right to rescind under the Federal Truth-in-Lending Act.

Document Control No.:

Regulation No.: 5.2111(b).0005
Proposed

REPORT OF DELAWARE LOAN VOLUME
(CHAPTER 21, TITLE 5 OF THE DELAWARE CODE)

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

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

- 1. Name of Licensee:

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

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

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

Loans Placed, per agreement: _____

Total Dollar Value: _____

Loans Rescinded: _____

Applications Denied: _____

7. The period for which you are currently reporting is from _____ to _____.

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

Date	Signature	Title
Printed Name		Phone Number

Document Control No.:

Regulation No.: 5.2213.0002
Proposed

**LICENSED LENDERS MINIMUM REQUIREMENTS
FOR CONTENT OF BOOKS AND RECORDS
(5 DEL. C. §2213)**

Each licensed office shall establish and maintain the following books and records, including automated and electronic record processing systems, on a current basis, either at the office of the licensed lender, or, at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations that accommodate individual accounting systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested. The following records shall be maintained in accordance with the time periods provided in Regulation No. 5.141.0001.NC Retention of Financial Institutions Records:

1. Loan Register - This record shall show the account number, date of loan, name of borrower, type of security, contract rate or annual percentage rate, and amount of loan. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed and, if known, date application was denied and reason for denial.

2. Individual Accounts with Borrowers - A record or ledger sheet shall be kept for each borrower and shall include

the following:

- (a) Name and address of the borrower;
- (b) Loan number;
- (c) Face amount of loan;
- (d) Date of loan;
- (e) Rate of interest charges and the amounts of all charges;
- (f) Terms of repayment;
- (g) Type of security;
- (h) Where and to whom hypothecated;
- (i) Names of endorsers, co-makers, guarantors, or sureties;
- (j) The actual date of receipt of payment of principal and charges; and,
- (k) Name of assignee of mortgage note.

In addition, the record or ledger sheet shall be kept in such manner as to show at once the balance due on principal.

3. File of All Original Paper - (or copies thereof). All obligations and disclosure forms signed by the borrower and taken in connection with loans made shall bear the loan number, shall be maintained in one file, and shall be made available to the examiners when requested. Such file, if applicable, shall include evidence that a mortgage of record has been appropriately removed.

4. Daily Transaction Record - All transactions involving either the receipt or disbursement of any amount whatsoever shall be recorded. Details of disbursements to, or for the account of, borrowers shall be itemized.

5. Record of Loans in Litigation and Repossessions - A record of all loans in litigation, repossessions, or voluntary surrenders shall be maintained either on the borrower's account record or a litigation record. If a composite record of such loans is not kept, the loans shall be maintained in a separate litigation and repossession file. The litigation and repossession record shall disclose the following information:

- (a) Loan number, original amount of loan and unpaid balance;
- (b) Type of security foreclosed, attached, replevined, repossessed, or surrendered;
- (c) Date and terms of settlement of account or, if after judgment, prejudgment balance, current balance, unearned charges credited to borrower's account, and legal costs;
- (d) Evidence that the terms of sale were fair to the borrower, if the security was sold after repossession; and,
- (e) Records of litigation accounts handled by attorneys or corporate collection centers shall be maintained in the branch office and should reflect a correct current balance.

6. Credit Insurance Claims Register - A credit insurance claims register or file that is a record of all claims submitted

by borrowers to the insurer shall disclose the following:

- (a) Date of claim
- (b) Amount of claim;
- (c) Date and amount of payment by insurer or the date of rejection and the reason therefor;
- (d) Borrower's name;
- (e) Loan number;
- (f) Reason for claim (i.e. death, illness, etc.);
- (g) Proof of death;
- (h) A copy of the check(s) issued by, or other record of disbursement by, the insurance company in payment of life, accident, health, or accident and health benefits; and,
- (i) A copy of the check(s) issued by, or other record of disbursement by, the insurance company to rebate unearned insurance premiums, which result from pre-payment of the loan or cancellation of the insurance.

7. In the event a loan is sold and no servicing performed, only those items listed in item 6 available prior to such sale shall be required.

Document Control No.:

Regulation No. 5.2218/2231.0003
Proposed

LICENSED LENDERS REGULATIONS ITEMIZED SCHEDULE OF CHARGES (5 DEL. C. §§2218 AND 2231)

1. Notification - Every licensee shall furnish to every applicant, a copy of this regulation at the time when such application is made. Posting of this regulation in the office of the licensee in a place both prominent and easily visible to all potential applicants shall satisfy this requirement. An explanation as to the contents and limitations contained herein shall satisfy this requirement when transactions occur telephonically. An informational screen containing these limitations with an affirmative acknowledgement by the consumer, prior to application, shall satisfy this requirement for internet transactions.

2. Interest

(a) A lender may charge and collect interest in respect to a revolving credit plan or closed end loan at such daily, weekly, monthly, annual, or other periodic percentage rate or rates as the agreement governing the plan or loan provides, or as established in the manner provided in such agreement. Periodic interest may be calculated on a revolving credit plan using any balance computation method provided for in the agreement governing the plan. Periodic interest may be calculated on a closed end loan by way of simple interest or such other method as the agreement governing the loan

provides.

(b) If the agreement governing the revolving credit plan or closed end loan so provides, the periodic percentage rate or rates of interest may vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of the outstanding unpaid indebtedness or outstanding unpaid amounts. In the case of revolving credit, such rate shall become applicable on or after the first day of the billing cycle that contains the effective date of such variation. In the case of closed end loan transactions, such rate may be made applicable to all or any part of the outstanding unpaid amounts on and after the effective date of such variation. Without limitation, a permissible schedule or formula hereunder may include provisions in the agreement governing the revolving credit plan or closed end loan agreement for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness or outstanding unpaid amounts, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan or agreement, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the revolving credit plan or loan agreement.

3. Additional Fees and Charges; Limitations - If the agreement governing the plan or loan so provides, in addition to, or in lieu of, interest at a periodic percentage rate or rates permitted by Chapter 22, Title 5 of the Delaware Code, the licensee may charge and collect the following fees and charges, subject to the limitations provided below, in respect to revolving credit plans or closed end loans:

(a) Revolving Credit - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees and charges under plans subject to the provisions of Subchapter II, Chapter 22, Title 5 of the Delaware Code:

(i) periodic charges - a daily, weekly, monthly, annual or other periodic charge in such amount or amounts as the agreement may provide for the privileges made available to the borrower under the plan;

(ii) transaction charges - a transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan;

(iii) minimum charges - a minimum charge in such amount or amounts as the agreement may provide for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan;

(iv) fees for services rendered or reimbursement of expenses - reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agent in connection with such loan, including without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses. In the event a borrower defaults under the terms of a plan, the licensee may, if the borrower's account is referred to an attorney (not a regularly salaried employee of the licensee) or to a third party for collection and if the agreement governing the revolving credit plan so provides, charge and collect from the borrower a reasonable attorney's fee. In addition, following a borrower's default, the licensee may, if the agreement governing the plan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the licensee;

(v) overlimit charges - a charge in such amount or amounts as the agreement may provide, for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which the total outstanding indebtedness exceeds the credit limit established under the plan;

(vi) delinquency charges - a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default; provided, however, that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding provision all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due;

(vii) returned check charges - a returned check charge may be assessed to consumers, in such amount or amounts as the agreement may provide, provided the amount(s) of such charges are customary and reasonable for checks that are returned unpaid;

(viii) termination fees - a charge in such amount or amounts as the agreement may provide to terminate a revolving credit plan;

(ix) charges incurred in connection with real estate secured transactions - in the case of revolving credit secured by real estate such additional charges as outlined in item (3)(c) of this regulation may also be collected within the limitations stated therein.

(b) Closed End Credit - with respect to a borrower, a lender may charge, collect, or receive one or more of the

following fees and charges for loans subject to the provisions of Subchapter III, Chapter 22, Title 5 of the Delaware Code:

(i) fees for services rendered or reimbursement of expenses - reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agent in connection with such loan, including without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses. In the event a borrower defaults under the terms of the loan, the licensee may, if the borrower's account is referred to an attorney (not a regularly salaried employee of the licensee) or to a third party for collection and if the agreement governing, or the bond, note or other evidence of, the loan so provides, charge and collect from the borrower a reasonable attorney's fee. In addition, following a borrower's default, the licensee may, if the agreement governing, or the bond, note or other evidence of, the loan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the licensee;

(ii) deferral charges - a deferral charge may be assessed to a borrower in accordance with an agreement to permit the borrower to defer installment payments of a loan;

(iii) delinquency charges - if the agreement governing the loan so provides, a late or delinquency charge may be imposed upon any outstanding unpaid installment payment or portions thereof under the loan agreement which are in default; provided, however, that no more than 1 such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further that no such delinquency charge may exceed 5% of the amount of any such installment or portion thereof in default;

(iv) returned check charges - if the agreement governing the loan so provides, a returned check charge may be assessed to consumers, for checks that are returned unpaid provided the amount(s) of such charges are customary and reasonable;

(v) charges incurred in connection with real estate secured transactions - in the case of closed end credit secured by real estate such additional charges as outlined in item (3)(c) of this regulation may also be collected within the limitations stated therein.

(c) Real Estate Secured Transactions - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees and charges subject to the limitations herein, for loans subject to the provisions of Subchapters II (Revolving Credit) and III (Closed End

Credit), Chapter 22, Title 5 of the Delaware Code when such loans are secured by real estate:

(i) loan origination points - points charged to the borrower on the lender's behalf for any purpose other than to reduce the periodic interest rate applicable to the mortgage loan may not exceed 10% of the principal amount of the loan. Such points may be deducted from the gross proceeds of the loan. For purposes of this regulation "gross proceeds" is the amount financed as defined in Federal Reserve Regulation Z;

(ii) loan discount points - points charged to the borrower as a function of rate for the purpose of reducing the periodic interest rate applicable to the mortgage loan. Such points may be deducted from the gross proceeds of the loan;

(iii) property appraisal fees - property appraisal fees shall be limited to the amount paid to a third party for such appraisal and shall be limited to those amounts that are customary and reasonable;

(iv) credit report fees - credit report fees shall be limited to the actual cost of the report if paid to a third party, not an employee of the lender or affiliate. Such amounts shall be customary and reasonable;

(v) mortgage loan broker compensation fees - mortgage loan broker compensation may be deducted from the gross proceeds of the loan. Such amounts shall reasonably reflect the value of the goods and services provided;

(vi) tax certification and service fees - fees for agreements to provide certification of the current tax status of the property as well as fees for ongoing monitoring and notice to the lender of all tax and improvement lien payments as they become due shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

(vii) flood hazard certification or determination fees - determination fees may be charged for determining whether the property is or will be located in a special flood hazard area. This fee may also include the cost of life-of-loan monitoring. Such amounts shall be customary and reasonable;

(viii) title abstract/search/examination and title insurance premiums - title insurance and/or cost of a title certificate, search, examination and binder shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable and may, at the borrower's discretion, include owner's coverage in addition to lender's coverage;

(ix) legal fees - legal fees incurred in securing or closing a loan shall be limited to amounts actually paid to an attorney not in the employ of the lender, its parent, or affiliate, and such charges shall not exceed those which are customary and reasonable;

(x) recording/satisfaction fees - recording/satisfaction fees shall be limited to those actually expended

by the lender to any governmental authority for protection of interest in collateral tendered. The State Bank Commissioner may approve the payment of alternative fees for this purpose provided the amount of said fee (payable by the borrower) shall not exceed the amount which would be payable to any governmental authority for protection of interest in collateral tendered;

(xi) property survey fees - property survey fees to obtain a drawing that delineates the exact boundaries of a property, including lot lines and placement of improvements on the property, shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

(xii) pest inspection fees - pest inspection fees to cover inspections for termites or other pest infestation on the property shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

(xiii) fees incidental to loan closing - other fees and charges including but not limited to: odd days interest, hazard and mortgage insurance premiums, escrow reserves, lender's inspection fees, mortgage insurance application fees, assumption fees, underwriting fees, document preparation fees, settlement or closing fees, notary fees, funding fees, fees for lead based paint or other inspections and overnight mail fees may be charged and such amounts shall be customary and reasonable;

(xiv) prepayment penalties - a charge in such amount or amounts as the agreement so provides imposed in connection with the payoff and termination of a revolving credit plan or closed end loan secured by real estate;

(xv) notwithstanding the provisions of item (3)(c) of this regulation, Licensed Lenders who are making mortgage loans pursuant to the rules, regulations, guidelines and/or loan forms established by the State of Delaware or federal governmental or quasi-governmental entity (including, without limitation: the Federal Housing Administration, the Department of Veterans Affairs, the Farmers Home Administration, the Government National Mortgage Association, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation) shall be permitted to charge and collect any fees, charges or sums prescribed to be charged and collected in connection with a mortgage loan originated pursuant to a lending program conducted or supervised by any such entity.

Document Control No.:

Regulation No.: 5.2210(e).0005

Proposed

REPORT OF DELAWARE LOAN VOLUME (CHAPTER 22, TITLE 5 OF THE DELAWARE CODE)

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

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

- 1. Name of Licensee:
2. Is this a consolidated report? Yes No
3. License No.: (If consolidated, list all license numbers):
4. List the address where the loan files are maintained:
5. Examination contact person's name, title, phone number and fax number:
6. Please report the Delaware business conducted (number of loans) in each of the following categories:
Loans Executed:
Total Dollar Value:
Loans Paid Off at Maturity:
Loans Paid Off Prior to Maturity:
Applications Denied:
Loans in Litigation:
Credit Life Insurance Claims:
Credit A & H Insurance Claims:

7. The period for which you are currently reporting is from to.

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

Date Signature Title
Printed Name Phone Number

Document Control No.:

Regulation No.: 5.2318.0001

Proposed

REPORT OF DELAWARE SALE OF CHECKS, DRAFTS AND MONEY ORDERS VOLUME (CHAPTER 23, TITLE 5 OF THE DELAWARE CODE)

This report shall be completed by all institutions licensed under Chapter 23, Title 5 of the Delaware Code and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 31 and must contain figures from January 1 through June 30 of the current year. The second report is due on or before January 31 and must contain figures from January 1 through December 31 of the previous year.

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

- 1. Name of Licensee:
2. License No.:
3. List the address where the books and records are maintained:
4. Examination contact person's name, title, phone number and fax number:
5. Please report the Delaware business conducted in each of the following categories:

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

6. The period for which you are currently reporting is from _____ to _____.

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

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

Document Control No.:

Regulation No.: 5.2906(e)/122(b).0001
Proposed

**MOTOR VEHICLE SALES FINANCE COMPANIES
 MINIMUM REQUIREMENTS FOR CONTENT OF
 BOOKS AND RECORDS
 (5 DEL. C. §§122(b) and 2906(e))**

Each licensed office shall establish and maintain the following books and records, on a current basis, either at the office of the licensed broker, or, at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations which accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system as to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested.

(1) Retail Installment Contract Applicant Register - This shall be a record showing the name of the applicant, identifying file number, date application was filed, name of lender, date of commitment, amount of lender's fee, and date fee was paid. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed, date application was denied and reason for denial.

(2) Individual Accounts with Borrowers - A record shall

be kept for each borrower and shall include the following:

- (a) Name and address of the borrower;
- (b) Loan number;
- (c) Date of loan;
- (d) Total amount of loan;
- (e) Total sale price;
- (f) Rate of interest charges and the amounts of all charges;
- (g) Terms of repayment;
- (h) Description of motor vehicle;
- (i) Where and to whom hypothecated;
- (j) Names of endorsers, comakers, guarantors, or sureties;
- (k) The actual date of receipt of payment of principal and charges; and,
- (l) Name of assignee or purchaser of retail installment contract.

(3) File of All Original Paper - (or copies thereof). All obligations and disclosure forms signed by the borrower and taken in connection with loans made shall bear the loan number, shall be maintained in one file, and shall be made available to the examiners when requested. Such file, if applicable, shall include evidence that a retained title or lien was released within the time period prescribed in Regulation No. 5.2906(e).0002, Item (4).

(4) Daily Transaction Record - All transactions involving either the receipt or disbursement of any amount whatsoever shall be entered in this record. Details of disbursements to, or for, the account of borrowers shall be itemized.

(5) Record of Loans in Litigation and Repossessions - A record of all loans in litigation, repossessions, or voluntary surrenders shall be maintained either on the borrower's account record or a litigation record. If a composite record of such loans is not kept, the loans shall be maintained in a separate litigation and repossession file. The litigation and repossession record shall disclose the following information:

- (a) Loan number, original amount of loan and unpaid balance;
- (b) Description of motor vehicle, attached, replevined, repossessed, or surrendered;
- (c) Date and terms of settlement of account or, if after judgement, the date and amount of judgement, prejudgement balance, current balance, unearned charges credited to borrower's account, and legal costs;
- (d) Evidence of the terms of sale if the security was sold after repossession, such evidence including copies of all bids or other offers received together with the purchaser's name and address, price, date of sale and cash or financing terms.
- (e) Evidence that notification of the time and place of sale was sent to the borrower;

(f) Evidence of amount paid, if any, to third party repossessors; and,

(g) Records of litigation accounts handled by attorneys or corporate collection centers shall be maintained in the existing (principal or branch) office and should reflect a correct current balance.

(6) Credit Insurance Claims Register - A credit insurance claims register or file which is a record of all claims submitted by borrowers to the insurer shall disclose the following:

- (a) Date of claim;
- (b) Amount of claim;
- (c) Date and amount of payment by insurer or the date of rejection and the reason therefor;
- (d) Borrower's name;
- (e) Loan number;
- (f) Reason for claim (i.e. death, illness, etc.);
- (g) Proof of death;
- (h) A copy of the check(s) issued by the insurance company in payment of life, accident, health, or accident and health benefits; and,
- (i) A copy of the check(s) issued by the insurance company, or other evidence of credit, which result from prepayment of the loan or cancellation of the insurance.

(7) In the event a loan is sold and no servicing performed, only those items listed in item 6 available prior to such sale shall be required.

Document Control No.:

Regulation No.: 5.2906(e).0002
Proposed

**MOTOR VEHICLE SALES FINANCE COMPANIES
OPERATING REGULATIONS
(5 DEL. C. §2906(e))**

1. Application of Chapter

(a) Lease Contracts

(i) A lease contract is governed by Chapter 29 of Title 5 of the Delaware Code, when all of the following exist:

(1) The lessee contracts to pay a sum substantially equivalent or in excess of the value of the motor vehicle for the use of the motor vehicle over the lease term.

(2) The lessee is bound to become, or has the option of becoming, the owner of the motor vehicle at some time during, or at the expiration of, the lease contract.

(3) The value for which the motor vehicle is to be sold at the end of the lease term is not payable in a single

installment (Cash Sale).

(ii) A lease contract is not governed by Chapter 29 of Title 5 of the Delaware Code, when any one of the contract provisions described in 1.(a) (i), (1), (2), and (3) is absent.

(b) For the purposes of Chapter 29 of Title 5 of the Delaware Code, all 'motor vehicles' which meet the definition contained in 5 Del. C. §2901(1), regardless of whether the intended use is commercial or personal, fall under the auspices of this chapter.

(c) If a trade-in is involved in a credit sale transaction and the amount of the existing lien exceeds the value of the trade-in, inclusion of the negative equity financing is permissible under Chapter 29, Title 5 of the Delaware Code. In a negative equity trade-in transaction where no cash payment is involved licensees must disclose a zero down payment and under no circumstances should the negative equity be disclosed as a negative number as the consumer's down payment. Any negative equity to be financed under the retail installment sale contract should be disclosed under the provisions of §2907(e)(4) and not §2907(e)(2) of Title 5 of the Delaware Code.

2. Maintenance of Operating Regulations for Motor Vehicle Sales Finance Companies

All licensees shall conduct business in compliance with Chapter 29 of Title 5 of the Delaware Code, and any regulations issued thereunder. Each office licensed under Chapter 29 of Title 5 of the Delaware Code shall possess copies of all applicable regulations. These regulations include:

- 5.2906(e)/122(b).0001 - Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records;
- 5.2906(e).0002 - Motor Vehicle Sales Finance Companies Operating Regulations;
- 5.2906(e).0003. - Report of Delaware Loan Volume Motor Vehicle Installment Contracts;
- 5.2111/2210/2906.0006 - Report of Delaware Assets; and
- 5.141.0001.NC - Retention of Financial Institution Records.

The manager and staff of each office shall familiarize themselves with said regulations. Loss or misplacement of regulations shall be made known to the Office of the State Bank Commissioner and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both 5 Del. C. §2906(e) and this regulation.

3. Examination and Supervisory Assessment Fees

Motor Vehicle Sales Finance Companies licensees shall

be subject to examination pursuant to §122 of Title 5 of the Delaware Code. The cost of such examinations shall be assessed to the licensee in accordance with 5 Del. C. §127(a). A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for the examination. In addition, the Commissioner shall assess annually each licensee a supervisory assessment fee, due and payable on August 1 of each year, as provided in 5 Del. C. §127(b). Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the Delaware Code.

4. Security Interest

A licensee shall take the necessary action(s), to release or satisfy a retained title or a lien created by a retail installment contract, within thirty days of the date the debt secured by the motor vehicle is satisfied or performed.

5. Credit Life, Health, and Accident Insurance

(a) A licensee may request, but not require, an individual borrower to be insured under a life, health, accident, health and accident, or other credit or other permissible insurance policy, whether group or individual.

(b) Any lender may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to all statutes of the Insurance Code of the State of Delaware, as well as rules and regulations of the Insurance Commissioner, as may from time to time be prescribed.

(c) Every lender offering credit life and health insurance, whose charges do not conform to those authorized in the Insurance Commissioner's Regulation No. 5, shall maintain in each office a copy of a letter filed with the Insurance Commissioner requesting the deviated rate, as well as approval by the Insurance Commissioner of the rate.

(d) Credit life insurance refunds shall be calculated as of the date of death.

(e) Credit health insurance payments received by the lender shall be applied to the account for the period the payment actually covers, regardless of the date of receipt. Additional interest charges shall not accrue should payment be received after the payment due date.

(f) The Office of the State Bank Commissioner shall provide a copy of the Insurance Commissioner's Regulation No. 5, and any subsequent applicable regulations promulgated, to each licensee.

6. Other Insurance

(a) Any licensee may require a proof of insurance coverage for any loan secured by a motor vehicle.

(b) A licensee may offer, but not require, such other

insurance products as the State Bank Commissioner may, upon written approval, permit. No such insurance may be offered, after January 1, 1992, without the State Bank Commissioner's written approval. Those insurances offered prior to January 1, 1992 shall not require written approval, provided such insurances were reported to the State Bank Commissioner before February 10, 1993.

7. Borrower-Signed Authorization for Insurance

Any insurance authorized by these Rules and Regulations must be supported by a specific request signed by the borrower. This request shall be attached to, or made a part of, the application documents.

Document Control No.:

Regulation No.: 5.2906(e).0003
Proposed

REPORT OF DELAWARE LOAN VOLUME MOTOR VEHICLE INSTALLMENT CONTRACTS (CHAPTER 29, TITLE 5 OF THE DELAWARE CODE)

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

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

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

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

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

Contracts Executed: _____

Total Dollar Value: _____

Contracts Paid Off at Maturity: _____

Contracts Paid Off Prior to Maturity: _____

Applications Denied: _____

Contracts in Litigation: _____

Credit Life Insurance Claims: _____

Credit A & H Insurance Claims: _____

7. The period for which you are currently reporting is from _____ to _____.

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

Date	Signature	Title
	Printed Name	Phone Number

Document Control No.: _____

Regulation No.: 5.3404/3409.0001
Proposed

**PRENEED FUNERAL CONTRACTS REGULATIONS
GOVERNING REVOCABLE AND IRREVOCABLE
TRUST AGREEMENTS
(5 DEL. C. §§3404 and 3409)**

1. Annual Statements

At least once, annually, a licensee shall mail or deliver, to each party for whom such licensee holds a preneed funeral contract, a statement containing, at a minimum, the following information:

- (a) the previous balance in the trust account or the beginning balance for the statement period;
- (b) the number and amounts of payments received for the statement period;
- (c) the amount of accrued interest for the statement period;
- (d) the "ending" or total account balance for the statement period; and

(e) the name and address of the financial institutions where the trust deposit is held.

2. Disclosure Requirements for the Irrevocable Trust Document

The trust document establishing the irrevocable trust permitted by Section 3404 of Title 5 of the Delaware Code shall contain, at a minimum, the following mandatory provisions:

- (a) A provision which expressly identifies the trust as irrevocable for the lifetime of the beneficiary;
- (b) A provision for the disposition of trust funds to an alternate trustee upon discontinuation of business or inability to provide goods or services by the original trustee in accordance with the terms of the trust or a provision for the transfer of trust funds, to a new trustee, at the consumer's election;
- (c) A provision that in the event funds paid into the trust are inadequate, at the time of the death of the beneficiary, to cover anticipated funeral expenses, the trustee shall contribute all trust funds toward payment of the actual funeral expenses for the funeral of the beneficiary;
- (d) A provision that in the event the sum held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary, the excess funds shall be paid to the estate of the beneficiary;
- (e) A provision that the trustee may, from time to time, accept periodic monetary contributions to the trust, provided that the principal sum contributed, exclusive of interest earned, shall not exceed \$10,000;
- (f) A provision which shall state "In no event shall the principal amount of the trust exceed \$10,000 plus interest."

Document Control No.: _____

Symbol Key

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

Final Regulations

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

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

DELAWARE STATE FIRE PREVENTION COMMISSION

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

Order

The State Fire Prevention Commission ("The Commission") held a properly noticed public hearing on June 22, 1999 at 1:00 p.m. and 7:00 p.m. to receive comment on proposed changes to Part I, Annex A, State Fire Prevention Regulations, adopted NFPA Codes and Standards, Numerical Listing, Annex B, State Fire Prevention Regulations, Additions, Deletions and Changes to Codes and Standards Listed in Annex A. The attendance sheets and transcribed minutes of this hearing are attached to this Order as Exhibit "A" in lieu of a statement of the summary of evidence. Similarly, any written comments received by the Commission are attached to this Order as Exhibit "B".

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence.

The regulations as proposed will safeguard life and property from the hazards of fire and explosion.

Decision

The Commission hereby adopts the proposed changes to

the State Fire Prevention Commission Regulations as advertised for the June 22, 1999 Public Hearing, and the regulations as amended will apply to the pending applications for plan review by the State Fire Marshal's Office. A copy is attached.

SO ORDERED this 17th day of August, 1999.

Chairman Carleton E. Carey, Sr.
Robert E. Palmer, Vice Chairman
W. (Bill) Betts, Jr.
Francis J. Dougherty
Donald W. Knight
Daniel W. Magee
Kenneth H. McMahon

Part I

Annex A

Adopted NFPA Codes & 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			
			24 ¹	1995	Standard for the Installation of Private Fire Service Mains and Their Appurtenances
			25 ¹	1995	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems
			30 ^{1,3}	1996	Flammable and Combustible Liquids Code
			30A ^{1,3}	1996	Automotive and Marine Service Station Code
			30B	1994	Code for the Manufacture and Storage of Aerosol Products
			31 ¹	1997	Standard for the Installation of Oil-Burning Equipment
10	1994	Standard for Portable Fire Extinguishers	32 ¹	1996	Standard for Drycleaning Plants
10R	1992	Portable Fire Extinguishing Equipment in Family Dwellings and Living Units, Recommended Practice for	33 ¹	1995	Standard for Spray Application Using Flammable and Combustible Materials
11	1994	Standard for Low-Expansion Foam	34 ¹	1995	Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids
11A	1994	Standard for Medium- and High-Expansion Foam Systems	35	1995	Standard for the Manufacture of Organic Coatings
12	1993	Standard on Carbon Dioxide Extinguishing Systems	36 ¹	1997	Standard for Solvent Extraction Plants
12A	1992	Standard on Halon 1301 Fire Extinguishing Systems	37	1994	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines
13 ^{1,3}	1996	Standard for the Installation of Sprinkler Systems	40	1994	Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film
13D ^{1,3}	1996	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes	40E	1993	Code for the Storage of Pyroxylin Plastic
13R ^{1,3}	1996	Standard for the Installation of Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height	43B	1993	Code for the Storage of Organic Peroxide Formulations
14 ^{1,3}	1996	Standard for the Installation of Standpipe and Hose Systems	43D	1994	Code for the Storage of Pesticides in Portable Containers
15 ¹	1996	Standard for Water Spray Fixed Systems for Fire Protection	45 ¹	1996	Standard on Fire Protection for Laboratories Using Chemicals
16 ¹	1995	Standard for the Installation of Deluge Foam-Water Sprinkler Systems and Foam-Water Spray Systems	50 ¹	1996	Standard for Bulk Oxygen Systems at Consumer Sites
16A	1994	Standard for the Installation of Closed-Head Foam-Water Sprinkler Systems	50A	1994	Standard for Gaseous Hydrogen Systems at Consumer Sites
17	1994	Standard for Dry Chemical Extinguishing Systems	50B	1994	Standard for Liquefied Hydrogen Systems at Consumer Sites
17A	1994	Standard on Wet Chemical Extinguishing Systems	51 ¹	1997	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes
18 ¹	1995	Standard on Wetting Agents	51A ¹	1996	Standard for Acetylene Cylinder Charging Plants
20 ¹	1996	Standard for the Installation of Centrifugal Fire Pumps	51B	1994	Standard for Fire Prevention in Use of Cutting and Welding Processing
22 ¹	1996	Standard for Water Tanks for Private Fire Protection	52 ¹	1995	Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems
			54 ^{1,3}	1996	National Fuel Gas Code

55	1993	Standard for the Storage, Use, and Handling of Compressed and Liquefied Gases in Portable Cylinders	101 ^{1,3}	1997	Life Safety Code (Code for Safety to Life from Fire in Buildings and Structures)
57 ²	1996	Standard for Liquefied Natural Gas (LNG) Vehicular Fuel Systems	102	1995	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures
58 ³	1995	Standard for the Storage and Handling of Liquefied Petroleum Gases	110 ¹	1996	Standard for Emergency and Standby Power Systems
59	1995	Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants	120	1994	Standard for Coal Preparation Plants
59A ¹	1996	Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG)	150 ¹	1995	Standard on Fire Safety in Race Track Stables
61 ²	1995	Standard for the Prevention of Fire and Dust Explosions in Agricultural and Food Processing Facilities	170 ¹	1996	Standard for Firesafety Symbols
65	1993	Standard for the Processing and Finishing of Aluminum	211 ¹	1996	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances
69 ¹	1997	Standard on Explosion Prevention Systems	214 ¹	1996	Standard on Water-Cooling Towers
70 ¹	1999	National Electrical Code	220 ¹	1995	Standard on Types of Building Construction
72 ^{1,3}	1996	National Fire Alarm Code	221	1994	Standard for Fire Walls and Fire Barrier Walls
73 ¹	1996	Residential Electrical Maintenance Code for One- and Two-Family Dwellings	231	1995	Standard for General Storage
75 ¹	1995	Standard for the Protection of Electronics Computer/ Data Processing Equipment	231C	1995	Standard for Rack Storage of Materials
79	1994	Electrical Standard for Industrial Machinery	231D	1994	Standard for Storage of Rubber Tires
80 ¹	1995	Standard for Fire Doors and Windows	231F ¹	1996	Standard for the Storage of Roll Paper
82	1994	Standard on Incinerators, Waste and Linen Handling Systems and Equipment	232 ¹	1995	Standard for the Protection of Records
86 ¹	1995	Standard for Ovens and Furnaces	241 ¹	1996	Standard for Safeguarding Construction, Alteration, and Demolition Operations
86C ¹	1995	Standard for Industrial Furnaces Using a Special Processing Atmosphere	302	1994	Fire Protection Standard for Pleasure and Commercial Motor Craft
88A ¹	1995	Standard for Parking Structures	303 ¹	1995	Fire Protection Standard for Marinas and Boatyards
88B	1991	Standard for Repair Garages	306	1993	Standard for the Control of Gas Hazards on Vessels
90A ¹	1996	Standard for the Installation of Air Conditioning and Ventilating Systems	307 ¹	1995	Standard for the Construction and Fire Protection of Marine Terminals, Piers and Wharves
90B ¹	1996	Standard for the Installation of Warm Air Heating and Air Conditioning Systems	312 ¹	1995	Standard for Fire Protection of Vessels During Construction, Repair and Lay-up
91	1995	Standard for Exhaust Systems for Air Conveying Materials	326	1993	Standard Procedures for the Safe Entry of Underground Storage Tanks
92A ¹	1996	Recommended Practice for Smoke-Control Systems	327	1993	Standard Procedures for Cleaning or Safeguarding Small Tanks and Containers Without Entry
92B ²	1995	Smoke Management Systems in Malls, Atria and Large Areas	385	1990	Standard for Tank Vehicles for Flammable and Combustible Liquids
96	1994	Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations	386	1990	Standard for Portable Shipping Tanks for Flammable and Combustible Liquids
99 ^{1,3}	1996	Standard for Health Care Facilities	395 ³	1993	Standard for Storage of Flammable and Combustible Liquids on Farms and Isolated Construction Projects
			407 ¹	1996	Standard for Aircraft Fuel Servicing
			408	1994	Standard on Aircraft Hand Portable Fire

		Extinguishers	654	1994	Standard for the Prevention of Fire and Dust Explosions in the Chemical, Dye, Pharmaceutical, and Plastics Industries
409 ¹	1995	Standard on Aircraft Hangars			
410	1994	Standard on Aircraft Maintenance			
415 ¹	1997	Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways	655	1993	Standard for Prevention of Sulfur Fires and Explosions
416	1993	Standard on Construction and Protection of Airport Terminal Buildings	664	1993	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities
417	1990	Standard on Construction and Protection of Aircraft Loading Walkways	703 ¹	1995	Standard for Fire-Retardant Impregnated Wood and Fire-Retardant Coatings for Building Materials
418 ¹	1995	Standard on Roof-top Heliport Construction and Protection	704 ¹	1996	Standard System for the Identification of the Fire Hazards of Materials for Emergency Response
430 ²	1995	Code for the Storage of Liquid and Solid Oxidizers			
480	1993	Standard for the Storage, Handling, and Processing of Magnesium Solids and Powders	750 ²	1996	Standard on Water Mist Fire Protection Systems
481 ¹	1995	Standard for the Production, Processing, Handling and Storage of Titanium	780 ¹	1995	Lightning Protection Systems Code
482 ¹	1996	Standard for the Production, Processing, Handling, and Storage of Zirconium	804 ²	1995	Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants
490	1993	Code for the Storage of Ammonium Nitrate	1122	1994	Code for Model Rocketry
495 ¹	1996	Explosive Materials Code	1123 ¹	1995	Standard for Public Display of Fireworks
496	1993	Standard for Purged and Pressurized Enclosures for Electrical Equipment	1124	1995	Code for the Manufacture, Transportation, and Storage of Fireworks
498 ¹	1996	Standard for Safe Haven and Interchange Lots for Vehicles Transporting Explosives	1125	1995	Code for the Manufacture of Model Rocket and High Power Rocket Motors
501A	1992	Standard for Firesafety Criteria for Manufactured Home Installations, Sites, and Communities	1126 ¹	1996	Standard for the Use of Pyrotechnics before a Proximate Audience
501C ¹	1996	Standard on Recreational Vehicles	1127 ²	1995	Code for High Power Rocketry
501D ¹	1996	Standard for Recreational Vehicle Parks and Campgrounds	1221	1994	Standard for the Installation, Maintenance, and Use of Public Fire Service Communications Systems
502 ¹	1996	Recommended Practice on Fire Protection for Limited Access Highways, Tunnels, Bridges, Elevated Roadways, and Air Right Structures	1231	1993	Standard on Water Supplies for Suburban and Rural Fire Fighting
505 ¹	1996	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Maintenance, and Operation	1961 ¹	1997	Standard on Fire Hose
513	1994	Standard for Motor Freight Terminals	1962	1993	Standard for the Care, Use, and Service Testing of Fire Hose Including Couplings and Nozzles
560 ²	1995	Standard for the Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigations	1963	1993	Standard for Fire Hose Connections
650	1990	Standard for Pneumatic Conveying Systems for Handling Combustible Materials	2001 ¹	1996	Standard on Clean Agent Fire Extinguishing Systems
651	1993	Standard for the Manufacture of Aluminum Powder			

¹ Updated Document

² New Document

³ Amended Document, See Annex B

Part I
Annex A
Adopted NFPA Codes & 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			
			416	1993	Airport Terminal Buildings, Standard on Construction and Protection
			651	1993	Aluminum Powder, Standard for the Manufacture
			65	1993	Aluminum, Standard for the Processing and Finishing of
			490	1993	Ammonium Nitrate, Code for the Storage of
			30A ^{1,3}	1996	Automotive and Marine Service Station Code
			220 ¹	1995	Building Construction, Standard for Types
			703 ¹	1995	Building Materials, Standard for Fire-Retardant Impregnated Wood and Fire-Retardant Coatings
			12	1993	Carbon Dioxide Extinguishing Systems, Standard on
			40	1994	Cellulose Nitrate Motion Picture Film, Standard for the Storage and Handling of
			654	1994	Chemical, Dye, Pharmaceutical, and Plastics Industries, Standard for the Prevention of Fire and Dust Explosions in the
			211 ¹	1996	Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, Standard for
			120	1994	Coal Preparation Plants, Standard for
			37	1994	Combustion Engines and Gas Turbines, Standard for the Installation and Use of Stationary
51A ¹	1996	Acetylene Cylinder Charging Plants, Standard for	1221	1994	Communications Systems, Public Fire Service, Standard for the Installation, Maintenance, and Use of
804 ²	1995	Advanced Light Water Reactor Electric Generating Plants, Standard for Fire Protection for	55	1993	Compressed and Liquefied Gases in Portable Cylinders, Standard for the Storage, Use, and Handling of
30B	1994	Aerosol Products, Code for the Manufacture and Storage of	52 ¹	1995	Compressed Natural Gas (CNG) Vehicular Fuel Systems, Standard for
61 ²	1995	Agricultural and Food Products Facilities, Standard for the Prevention of Fires and Dust Explosions in	75 ¹	1995	Computer/Data Processing Equipment, Electronics, Standard for the Protection of
90A ¹	1996	Air Conditioning and Ventilating Systems, Standard for the Installation of	241 ¹	1996	Construction, Alteration, and Demolition Operations, Standard for Safeguarding
90B ¹	1996	Air Conditioning Systems, Warm Air Heating and, Standard for the Installation of	96	1994	Cooking Operations, Commercial, Standard for the Ventilation Control and Fire Protection of
415 ¹	1997	Aircraft Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways, Standard on	51B	1994	Cutting and Welding Processes, Standard for Fire Prevention in use of
407 ¹	1996	Aircraft Fuel Servicing, Standard for	34 ¹	1995	Dipping and Coating Processes Using Flammable or Combustible Liquids Standard
408	1994	Aircraft Hand Portable Fire Extinguishers, Standard for	17	1994	Dry Chemical Extinguishing Systems, Standard for
409 ¹	1995	Aircraft Hangars, Standard on	32 ¹	1996	Drycleaning Plants, Standard for
417	1990	Aircraft Loading Walkways, Standard on Construction and Protection of			
410	1994	Aircraft Maintenance, Standard on			

560 ²	1995	Ethylene Oxide for Sterilization and Fumigations, Standard for the Storage, Handling, and Use of	11	1994	Foam, Low-Expansion, Standard for
			11A	1994	Foam Systems, Medium- and High-Expansion, Standard for
70 ¹	1999	Electrical Code, National	16 ¹	1995	Foam-Water Spray Systems, Deluge
496	1993	Electrical Equipment, Purged and Pressurized Enclosures, Standard for			Foam-Water Sprinkler Systems, Standard for the Installation of
73 ¹	1996	Electrical Maintenance, Residential, Code for One- and Two-Family Dwellings	16A	1994	Foam-Water Sprinkler Systems, Closed-Head, Standard for the Installation of
79	1994	Electrical Standard for Industrial Machinery	54 ^{1,3}	1996	Fuel Gas Code, National
			86C ¹	1995	Furnaces, Industrial, Special Processing Atmosphere Standard
75 ¹	1995	Electronics Computer/Data Processing Equipment, Standard for the Protection of	88B	1991	Garages, Repair, Standard for
91	1995	Exhaust Systems for Air Conveying of Materials, Standard for	51 ¹	1997	Gas Systems, Oxygen-Fuel, for Welding, Cutting, and Allied Processes, Standard for Design and Installation of
69 ¹	1997	Explosion Prevention Systems, Standard on	102	1995	Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures, Standard for
495 ¹	1996	Explosive Materials Code			
498 ¹	1996	Explosives, Standard for Safe Haven and Interchange Lots for Vehicles Transporting	12A	1992	Halon 1301 Fire Extinguishing Systems, Standard on
72 ^{1,3}	1996	Fire Alarm Code, National	704 ¹	1996	Hazards of Materials for Emergency Response, Standard System for the Identification of the
80 ¹	1995	Fire Doors and Windows, Standard for			
10	1994	Fire Extinguishers, Portable, Standard for	99 ^{1,3}	1996	Health Care Facilities, Standard for
10R	1992	Fire Extinguishing Equipment, Portable, in Family Dwellings and Living Units, Recommended Practice for	418 ¹	1995	Heliport Construction and Protection Standard
2001 ¹	1996	Fire Extinguishing Systems, Clean Agent, Standard on	1127 ²	1995	High Power Rocketry, Code for
			502 ¹	1996	Highways, Limited Access, Tunnels, Bridges, Elevated Roadways, and Air Right Structures, Recommended Practice on Fire Protection for
1961 ¹	1997	Fire Hose, Standard on			
1962	1993	Fire Hose Including Couplings and Nozzles, Standard for the Care, Use, and Service Testing of	50A	1994	Hydrogen Systems, Gaseous, at Consumer Sites, Standard for
1963	1993	Fire Hose Connections, Standard for	82	1994	Incinerators, Waste and Linen Handling Systems and Equipment, Standard for
20 ¹	1996	Fire Pumps, Centrifugal, Standard for the Installation of	505 ¹	1996	Industrial Trucks, Powered, Including Type Designations, Areas of Use, Maintenance, and Operation, Fire Safety Standard for
170 ¹	1996	Firesafety Symbols, Standard for			
221	1994	Fire Walls and Fire Barrier Walls, Standard for	45 ¹	1996	Laboratories Using Chemicals, Standard on Fire Protection for
1124	1995	Fireworks, Code for the Manufacture, Transportation, and Storage of			
1123 ¹	1995	Fireworks, Standard for Public Display of	101 ^{1,3}	1997	Life Safety Code (Code for Safety to Life from Fire in Buildings and Structures)
30 ^{1,3}	1996	Flammable and Combustible Liquids Code	780 ¹	1995	Lightning Protection Systems Code
395 ³	1993	Flammable and Combustible Liquids on Farms and Isolated Construction Projects, Standard for Storage of	50B	1994	Liquefied Hydrogen Systems at Consumer Sites, Standard for
386	1990	Flammable and Combustible Liquids, Portable Shipping Tanks, Standard for	59A ¹	1996	Liquefied Natural Gas (LNG), Standard for the Production, Storage, and Handling of
385	1990	Flammable and Combustible Liquids, Tank Vehicles, Standard for	57 ²	1996	Liquefied Natural Gas (LNG) Vehicular

59	1995	Fuel Systems, Standard for Liquefied Petroleum Gases at Utility Gas Plants, Standard for Storage and Handling of	501C ¹	1996	Recreational Vehicles, Standard on
			231F ¹	1996	Roll Paper, Standard for the Storage of
			231D	1994	Rubber Tires, Standard for Storage of
58 ³	1995	Liquefied Petroleum Gases, Standard for the Storage and Handling of	92A ¹	1996	Smoke-Control Systems, Recommended Practice for
480	1993	Magnesium Solids and Powder, Standard for the Storage, Handling, and Processing	92B ²	1995	Smoke Management Systems in Malls, Atria and Large Areas, Guide for
501A	1992	Manufactured Home Installations, Sites, and Communities, Standard for Firesafety Criteria for	36 ¹	1997	Solvent Extraction Plants, Standard for
			33 ¹	1995	Spray Application Using Flammable and Combustible Materials
303 ¹	1995	Marinas and Boatyards, Fire Protection Standard for	13 ^{1,3}	1996	Sprinkler Systems, Standard for the Installation of
307 ¹	1995	Marine Terminals, Piers and Wharves, Standard for the Construction and Fire Protection	13D ^{1,3}	1996	Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, Standard for the Installation of
1125	1995	Model Rocket and High Power Rocket Motors, Code for the Manufacture of	13R ^{3,3}	1996	Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height, Standard for the Installation of
1122	1994	Model Rocketry, Code for			
302	1994	Motor Craft, Fire Protection Standard for Pleasure and Commercial	14 ^{1,3}	1996	Standpipe and Hose Systems, Standard for Installation of
31 ¹	1997	Oil-Burning Equipment, Standard for the Installation of	231	1995	Storage, General, Standard for
35	1995	Organic Coatings, Standard for the Manufacture of	231C	1995	Storage, Rack, of Materials, Standard for
43B	1993	Organic Peroxide Formulations, Standard for the Storage of	655	1993	Sulfur Fires and Explosions, Standard for Prevention of
86 ¹	1995	Ovens and Furnaces, Standard for	327	1993	Tanks and Containers, Small, Standard Procedures for Cleaning or Safeguarding Without Entry
430 ²	1995	Oxidizers, Liquid and Solid, Code for Storage of	326	1993	Tanks, Underground, Standard Procedures for the Safe Entry of
50 ¹	1996	Oxygen Systems, Bulk, at Consumer Sites, Standard for	513	1994	Terminals, Motor Freight, Standard for
88A ¹	1995	Parking Structures, Standard for	481 ¹	1995	Titanium, Standard for the Production, Processing, Handling and Storage of
43D	1994	Pesticides in Portable Containers, Standard for the Storage of	306	1993	Vessels, Standard for the Control of Gas Hazards on
650	1990	Pneumatic Conveying Systems for Handling Combustible Materials, Standard for	312 ¹	1995	Vessels, Standard for Fire Protection of During Construction, Repair and Lay-up
110 ¹	1996	Power Systems, Emergency and Standby, Standard for	25 ¹	1995	Water-Based Fire Protection Systems, Inspection, Testing, and Maintenance, Standard for the
24 ¹	1995	Private Fire Service Mains and Their Appurtenances, Standard for the Installation of	214 ¹	1996	Water-Cooling Towers, Standard on
			750 ²	1996	Water Mist Fire Protection Systems, Standard on
1126 ¹	1996	Pyrotechnics before a Proximate Audience, Standard for the Use of	15 ¹	1996	Water Spray Fixed Systems for Fire Protection, Standard for
40E	1993	Pyroxylin Plastic, Code for the Storage of	1231	1993	Water Supplies for Suburban and Rural Fire Fighting, Standard of
150 ¹	1995	Race Track Stables, Standard on Fire Safety	22 ¹	1996	Water Tanks for Private Fire Protection, Standard for
232 ¹	1995	Records, Standard for the Protection of	17A	1994	Wet Chemical Extinguishing Systems,
501D ¹	1996	Recreational Vehicle Parks and Campgrounds, Standard for			

		Standard for
18 ¹	1995	Wetting Agents, Standard on
664	1993	Wood Processing and Woodworking Facilities, Standard Prevention of Fires and Explosions in
482 ¹	1996	Zirconium, Standard for the Production, Processing, Handling, and Storage of

¹ Updated Document

² New Document

³ Amended Document, See Annex B

Part I Annex B

Additions, Deletions, & Changes To Codes & Standards Listed in Annex A

The following additions, deletions, or changes to the codes and standards listed in Annex A are hereby adopted.

MODIFY NFPA 13, 1996, Standard for the Installation of Sprinkler Systems.

Chapter 4, Installation Requirements.

4-15 System Attachments.

4-15.2.3 Arrangement.

4-15.2.3.5 Fire Department Connection.

Amend §4-15.2.3.5 by deleting the existing §4-15.2.3.5 and inserting a new section to read as follows:

4-15.2.3.5 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 an automatic sprinkler 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 sprinkler systems shall be designated by a sign having raised letters at least 1 in. (25.4 mm) in height cast on plate or fitting, reading service design, e.g., "AUTOSPRK", "OPEN SPRK AND STANDPIPE." A sign shall also indicate the pressure required at the inlets to deliver the greatest system demand. Exception to (c): The sign is not required where the system demand pressure is less than 150 psi (10.3 bars).

Chapter 6, Plans and Calculations.

6-4 Hydraulic Calculation Procedures.

6-4.4 Calculation Procedures.

AMEND §6-4.4, Calculation Procedures, by adding a new subsection to read as follows:

6-4.4.9 A hydraulically designed sprinkler system shall be designed to provide a 10 PSI safety factor over and above the system demand.

MODIFY NFPA 13D, 1996, Standard for the Installation of Sprinkler Systems In One- And Two-Family Dwellings And Manufactured Homes.

Chapter 3, System Components.

3-6 Alarms.

AMEND §3-6, Alarms, by deleting the existing Exception and adding the following to §3-6:

The alarm shall be of sufficient intensity to sound an alarm at 15 dBA above ambient noise level inside the protected property.

MODIFY NFPA 13R, 1996, Standard for the Installation of Sprinkler Systems In Residential Occupancies Up To And Including Four Stories.

Chapter 2, Working Plans, Design, Installation, Acceptance Tests, and Maintenance.

2-4 System Components.

AMEND §2-4.2, by deleting existing §2-4.2 and inserting a new section to read as follows:

2-4.2 At least one 1 1/2 inch or 2 1/2 inch fire department connection shall be provided.

2-4.6 Alarms.

AMEND §2-4.6, Alarms, by deleting existing §2-4.6 and inserting a new section to read as follows:

2-4.6 All residential (13R) sprinkler systems shall have a water flow alarm installed that will provide an audible sound. The alarm shall be of sufficient intensity to sound an alarm at 15 dBA above ambient noise level both inside and outside the residence.

MODIFY NFPA 14, 1996, Standard for the Installation of Standpipe and Hose Systems.

Chapter 4, Installation Requirements.

4-3 Fire Department Connections.

4-3.5 Location and Identification.

AMEND §4-3.5.2 by deleting the existing §4-3.5.2 and inserting a new section to read as follows:

4-3.5.2 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.

MODIFY NFPA 30, 1996 Flammable And Combustible Liquids Code.

Chapter 2, Tank Storage.

2-3 Installation Of Outside Aboveground Tanks.

2-3.2 Location with Respect to Property Lines, Public Ways, and Important Buildings on the Same Property.

AMEND §2-3.2, by adding a new Exception to Subsection 2-3.2.1, 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, 1996, Automotive And Marine Service Station Code.

Chapter 2, Storage.

2-1 General Provisions.

AMEND §2-1, General Provisions, by adding new subsections to read as follows:

2-1.8 All underground petroleum storage tank fill pipes shall be marked and maintained with colors and symbols consistent with API Recommended Practice 1637.

2-1.9 The seasonal exchange of product shall be prohibited in underground storage tanks.

2-1.10 No change of class of product within storage tanks shall be made without prior approval of the State Fire Marshal.

Chapter 4, Fuel Dispensing System.

4-2 Fuel Dispensing System.

AMEND §4-2, Fuel Dispensing System, by adding new subsections to read as follows:

4-2.10 Dispensing units for kerosene shall not be located on the same island with Class I liquid dispensing units.

4-2.11 Islands with dispensing units for kerosene shall be located a minimum of 10' from islands with Class I liquid dispensing units.

4-2.12 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 Dispensing Into Portable Containers.

RENUMBER Subsection 9-2.2, to 9-2.3 and insert a new

Subsection 9-2.2 to read as follows:

9-2.2 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.)

AMEND Chapter 9, Operational Requirements, by adding new §9-10 to read as follows:

9-10 Marine Dispensing Areas.

9-10.1 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.

9-10.2* The dispensing of Class I Liquids into the fuel tanks of self-propelled water craft shall be prohibited from a tank truck vehicle.

A-9-10.2 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.

9-10.3* 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-9-10.3 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, 1996, National Fuel Gas Code.

Chapter 6, Installation Of Specific Equipment.

6-24 Room Heaters.

AMEND §6-24.1, 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:

6-24.1 Prohibited Installations. Unvented room heaters shall not be installed in bathrooms and bedrooms.

MODIFY NFPA 58, 1995, Standard for the Storage and

Handling of Liquefied Petroleum Gases.
Chapter 1, General Provisions.

1-4 Notification Of Installations.

Amend §1-4.1, Fixed Installations, by deleting the existing section and inserting two new subsections to read as follows:

1-4.1* 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-1-4.1 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.

1-4.2* 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-1-4.1.2 Submission of plans for all LP Gas Installations where tanks are filled as a retail operation for the public.

Exception To 1-4.1 and 1-4-2: One- and Two-Family Dwellings are not required to comply with these sections.

Chapter 3, Installation Of LP-Gas Systems.

3-10 Fire Protection.

ADD New §3-10.4:

3-10.4 Fire Protection At Bulk Plants.

3-10.4.1 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 shall not apply to those facilities that fall within the definition of "REMOTE" with respect to location, as defined in §3-10.4.2. Under this exception, the requirements of §3-10.4.5, Water Supply for Fire Protection, are retained and required.

3-10.4.2 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* 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 water monitor nozzle(s) 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~~ [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).]

(ii) 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

(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.

A-3-10.4.3 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 No persons, other than the plant management or plant employees, shall have access to any bulk LP-Gas storage facility.

3-10.4.5 Water Supply For Fire Protection. Notwithstanding the 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 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 Fire Department Chief Officer.

3-10.4.6.1 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 Within ten working days of the Fire Department Chief Officer having received the plans and specifications as identified in §3-10.4.6.1 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 If the Fire Department Chief Officer does not respond within ten working days as required in 3-10.4.6.2 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, LP-Gas Liquid Transfer.

4-2 Operational Safety.

4-2.2 Containers To Be Filled Or Evacuated.

AMEND §4-2.2.1 by deleting the existing §4-2.2.1 and inserting a new §4-2.2.1 to read as follows:

4-2.2.1* Containers shall be filled only by the owner or upon the owner's authorization.

A-4-2.2.1 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, Storage Of Portable Containers Awaiting Use, Resale, Or Exchange.

5-4.2 Protection Of Containers.

AMEND §5-4.2.2 by deleting §5-4.2.2 and inserting a new §5-4.2.2 to read as follows:

5-4.2.2* 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 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 72, 1996, National Fire Alarm Code.

Chapter 1, Fundamentals Of Fire Alarm Systems.

1-5 Fundamentals.

1-5.7 Zoning and Annunciation

AMEND §1-5.7 by adding new §1-5.7.7 to read as follows:

1-5.7.7 When in the opinion of the State Fire Marshal, a building or protected property is of such size or complexity as to need visual zone alarm indication, the location of an operated initiating device shall be visually indicated by building, fire zone, floor, or other approved subdivision in a manner and location acceptable to the State Fire Marshal.

MODIFY NFPA 99, 1996, Health Care Facilities

Chapter 3, Electrical Systems.

3-4 Essential Systems.

3-4.2.2 Emergency System.

AMEND §3-4.2.2.2(b), Life Safety Branch, by adding a new subsection to read as follows:

3-4.2.2.2(b)(7) Electric Fire Pumps

MODIFY NFPA 101, 1997, The Life Safety Code.

Chapter 7, Building Service and Fire Protection Equipment.

7-2 Heating, Ventilating, and Air Conditioning.

AMEND §7-2.2, by adding a new §7-2.3, Unvented Fuel-

Fired Heating Equipment, and renumber the following sections, to read as follows:

7-2.3 Unvented Fuel-Fired Heating Equipment. Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas of educational occupancies.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 10, New Educational Occupancies.

10-5 Building Services.

10-5.2 Heating, Ventilating, and Air Conditioning Equipment.

AMEND §10-5.2.2 and the exception, so that §10-5.2.2 reads as follows:

10-5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

10-7 Operating Features.

AMEND §10-7.5 Unvented Fuel-Fired Heating Equipment, and the exception, so that §10-7.5 reads as follows:

10-7.5 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas of educational occupancies.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 11, Existing Educational Occupancies.

11-5 Building Services.

11-5.2 Heating, Ventilating, and Air Conditioning Equipment.

AMEND §11-5.2.2 and the exception, so that §11-5.2.2 reads as follows:

11-5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

11-7 Operating Features.

AMEND §11-7.5 Unvented Fuel-Fired Heating Equipment, by amending §11-7.5 and the exception, so that §11-7.5 reads as follows:

11-7.5 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas of educational occupancies.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 16, New Hotels and Dormitories.

16-5 Building Services.

16-5.2 Heating, Ventilating, and Air Conditioning.

AMEND §16-5.2.2 and the exception, so that §16-5.2.2 reads as follows:

16-5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 17, Existing Hotels and Dormitories.

17-5 Building Services.

17-5.2 Heating, Ventilating, and Air Conditioning.

AMEND §17-5.2.2 and the exception, so that §17-5.2.2 reads as follows:

17-5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 18, New Apartment Buildings.

18-3.4 Detection, Alarm, and Communication Systems.

AMEND §18-3.4.1, General, by deleting §18-3.4.1 and two

exceptions, and inserting a new §18-3.4.1 and exception to read as follows:

18-3.4.1 General. All new apartment buildings shall be provided with a fire alarm system in accordance with §7-6, except as modified by 18-3.4.2 through 18-3.4.4.

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 §18-3.4.4, Detection, by adding a new Subsection to read as follows:

18-3.4.4.3 A corridor smoke detection system in accordance with §7-6, shall be installed in all apartment buildings.

18-3.5 Extinguishing Requirements.

AMEND §18-3.5.2 by adding a new Exception to read as follows:

Exception No. 2: Buildings with less than 12 individual living units are not required to provide off-site monitoring by the fire alarm signaling system for the approved, automatic sprinkler system.

18-5 Building Services.

18-5.2 Heating, Ventilating, and Air Conditioning.

AMEND §18-5.2.2 and the exception, so that §18-5.2.2 reads as follows:

18-5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 19, Existing Apartment Buildings

19-5 Building Services.

19-5.2 Heating, Ventilating, and Air Conditioning.

AMEND §19-5.2.2 and the exception, so that §19-5.2.2 reads as follows:

19-5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 20, Lodging Or Rooming Houses.

20-3 Protection.

20-3.3 Detection, Alarm, And Communication Systems.

AMEND §20-3.3, Detection Alarm, And Communication Systems, by adding a new Subsection to read as follows:

20-3.3.5 A corridor smoke detection system in accordance with §7-6 shall be installed in all lodging or rooming houses.

20-5 Building Services.

20-5.2 Heating, Ventilating, and Air Conditioning.

AMEND §20-5.2.2 and the exception, so that §20-5.2.2 reads as follows:

20-5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 21, One- And Two-Family Dwellings.

21-1.1 Application.

AMEND §21-1.1, Application, by deleting the existing §21-1.1.2 and inserting a new §21-1.1.2 to read as follows:

21-1.1.2 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.

21-5 Building Services.

21-5.1 Heating, Ventilating, and Air Conditioning.

AMEND §21-5.1.2 and the exception, so that §21-5.1.2 reads as follows:

21-5.1.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 22, New Residential Board And Care Occupancies.

22-2 Small Facilities.

AMEND §22-2, Small Facilities, by adding new Subsections to read as follows:

22-2.2.7 Emergency Lighting. Emergency lighting shall be installed in accordance with §5-9.

22-2.2.8 Marking Of Means Of Egress. Means of egress shall be marked in accordance with §5-10.

22-2.2.9 Portable Fire Extinguishers. Portable fire extinguishers shall be provided near hazardous areas in accordance with §7-7.

22-2.3.4 Detection, Alarm, and Communication Systems.

AMEND §22-2.3.4, Detection, Alarm, and Communication Systems, by adding §22-2.3.4.4, Emergency Forces Notification, to read as follows:

22-2.3.4.4 Emergency Forces Notification. Fire department notification shall be accomplished in accordance with §7-6.4.

22-3 Large Facilities.

22-3.3.4 Detection, Alarm, and Communication Systems.

AMEND §22-3.3.4.6, Fire Department Notification, by deleting the existing §22-3.3.4.6 and inserting a new §22-3.3.4.6 to read as follows:

22-3.3.4.6 Fire Department Notification. Fire department notification shall be accomplished in accordance with §7-6.4.

Chapter 30, New Day Care Centers.

30-2 Means of Egress Requirements.

30-2.2 Means of Egress Components.

30-2.2.2 Doors.

AMEND §30-2.2.2.2, Panic Hardware or Fire Exit Hardware, by deleting the existing §30-2.2.2.2, and inserting a new §30-2.2.2.2 to read as follows:

30-2.2.2.2 Panic Hardware Or Fire Exit Hardware. Any door in a required means of egress may be provided with a latch or lock only if it is panic hardware or fire exit

hardware.

30-3 Protection.

30-3.4 Detection, Alarm, and Communication Systems.

AMEND §30-3.4.4, Emergency Forces Notification, by adding the following exception:

30-3.4.4 Emergency Forces Notification. Fire department notification shall be accomplished in accordance with §7-6.4.

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

30-5 Building Services.

30-5.2 Heating, Ventilating, and Air Conditioning.

AMEND §30-5.2.2 and the exception, so that §30-5.2.2 reads as follows:

30-5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

30-6 Day-Care Homes.

30-6.5 Building Services.

30-6.5.2 Heating, Ventilating, and Air Conditioning.

AMEND §30-6.5.2.2 and the exception, so that §30-6.5.2.2 reads as follows:

30-6.5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

30-7 Operating Features.

30-7.6 Unvented Fuel-Fired Heating Equipment.

AMEND §30-7.6, Unvented Fuel-Fired Heating Equipment, and the exception, so that §30-7.6 reads as follows:

30-7.6 Unvented Fuel-Fired Heating Equipment. Unvented fuel-fired heating equipment shall be prohibited in

bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

Chapter 31, Existing Day Care Centers.

31-6 Day-Care Homes.

31-6.5 Building Services.

31-6.5.2 Heating, Ventilating, and Air Conditioning.

AMEND §31-6.5.2.2 and the exception, so that §31-6.5.2.2 reads as follows:

31-6.5.2.2 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

31-7 Operating Features.

31-7.6 Unvented Fuel-Fired Heating Equipment.

AMEND §31-7.6, Unvented Fuel-Fired Heating Equipment, and the exception, so that §31-7.6 reads as follows:

31-7.6 Unvented Fuel-Fired Heating Equipment. Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas.

Exception: In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and/or modified by these Regulations.

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;

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

Statutory Authority: 24 Delaware Code,
Section 2509 (24 Del.C. 2509)

ORDER

Pursuant to the authority in 24 Del. C. §2509, the Board of Pharmacy, Division of Professional Regulation, Department of Administrative Services, has considered proposed changes to the Pharmacy Regulation V. Paragraphs A-7 & D-3-c and Regulation VI. D, and a new Regulation XIV proposed by the Pharmacy Regulatory Council of the Board of Medical Practice pursuant to its authority in 24 Del. C. §2502, along with public comments. The Board makes the following findings and conclusions to reach its order.

(1) Summary of the Evidence and Information Submitted.

(a) A letter dated May 7, 1999 from the Executive Director of the Board of Medical Practice suggested that protocols must be "physician-" not "practitioner-" approved to satisfy the statute, that the list of injectables should be narrowed and subject to review and amendment from time to time by the Council, that a written report of administration should be provided to the physician by the pharmacist, that all immunizations should be reported to the Department of Health and Social Services, and that adverse vaccination events should be reported to the Immunization Section of the Department of Health and Social Services.

(b) A letter dated June 8, 1999 from the Executive Director of the Pharmaceutical Society, Inc. (DPS) expressed its support for SB 339 allowing pharmacists to administer injectable medications to meet a public need. DPS supports the recommendation of the Pharmacy Regulatory [Council] and agreed that the list of injectable medications should be consistent with FDA listings of approved medications and indications that would allow the regulation to be applicable over time as medications change. In addition, DPS recommends that mandatory reporting of adverse reactions should be consistent in order to ensure the scientific validity of resulting data. Health care professionals are mandated to report adverse reactions when vaccines are obtained through a federal program.

(c) On June 9 and on August 11, 1999, public hearings were held and no verbal comment as received.

(2) Findings of Fact.

Based on the evidence and information received the Board finds that:

(a) Regulation V. Paragraphs A-7 & D-3-c should be amended to ensure compliance with federal law and

regulation.

(b) Regulation VI. should be amended to recognize the needs of patients in assisted care facilities using "Customized Patient Medication Packages" and to ensure compliance with federal law and regulation.

(c) The new Regulation XIV should be adopted as recommended by the Regulatory Council with certain changes. The language should clearly state the protocol for administration must be physician-approved. The list of approved classes of medications should better defined by including the name of the FDA publication. However, it would be inefficient to return to the Regulatory Council and amend the rules as new medications are approved by the FDA and the public would be better served using a recognized publication as the guide of approved medications. In addition, the Board concludes that the reporting of adverse affects to vaccination should be consistent among providers so that any data collected has scientific validity. Accordingly, the Regulation provides for reporting of significant adverse events to the primary care provider and to the Vaccine Adverse Event Reporting System when appropriate. Finally, the Board finds that the flexibility in reporting vaccinations to the Department of Health and Social Services "when appropriate" should remain. It should not be necessary to report all flu shots, for example.

(3) Text.

The text of the amended regulations is as published in the Delaware Register of Regulations, Vol. 3, Issue 1, July 1, 1999.

(4) Decision and Effective Date.

The Board of Pharmacy hereby adopts the changes to Regulation V. Paragraphs A-7 & D-3-c, Regulation VI. and new Regulation XIV to be effective ten days after publication in the Register of Regulations.

SO ORDERED THIS 11th day of August, 1999.

BOARD OF PHARMACY

Herbert E. Von Goerres
 Carl June
 Claude L. Massey, Jr.
 Ruth B. Melvin
 Mary Lou Hurd

*** Please note that no changes were made to the regulation as originally proposed and published in the July 1999 Register at page 8 (3 DE Reg. 8 (7/1/99)). Therefore the final regulation is not being republished. Please refer to the July 1999 issue of the Register of contact the Board of Pharmacy.**

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
 Section 10027 (3 Del.C. 10027)

ORDER

Pursuant to 29 Del. C. §10118, the Delaware Harness Racing Commission ("Commission") hereby issues this Order adopting proposed amendments to the Commission Rules in Chapter VII, Rule I-F and Chapter VI, Rule II-A-5. Following notice in the Delaware Register of Regulations, the Commission makes the following findings and conclusions.

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Commission posted notice of the proposed rule amendments in the Register of Regulations in the April 1, 1999 edition. The Commission received no written comments in response to the public posting of the rules.

FINDINGS OF FACT

2. The public was given notice and an opportunity to provide the Commission with comments in writing to the Commission's Rules. The Commission received no public comments in response to the proposed rules. The proposed amendment to Chapter VII, Rule I-F would revise the procedure for determination of preference dates. The proposed amendment to Chapter VI, Rule II-A-5 would revise the procedure for the selection of races in divisions.

3. These proposed amendments are revisions of previous rules considered at length by the Commission. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. §10027. The Commission deems these rules as amended necessary for the effective enforcement of 3 Del. C. Chapter 100 and for the full and efficient performance of its duties thereunder.

4. The Commission concludes that the adoption of the proposed rules would be in the best interests of the citizens of the State of Delaware and necessary to insure the integrity and security of the conduct of harness racing in the State of Delaware. The Commission adopts the rules as provided below

5. The Commission adopts these rules as amended pursuant to 3 Del. C. §10027 and 29 Del. C. §10113. These adopted rules replace in their entirety the former version of the Rules of the Delaware Harness Racing Commission and any amendments. The effective date of this Order shall be ten (10) days from the publication of this Order in the

Register of Regulations on September 1, 1999.

IT IS SO ORDERED this 10th day of June, 1999.

Anthony Flynn, Chairman
H. Terry Johnson, Commissioner
Beth Steele, Commissioner
Mary Ann Lambertson, Commissioner
Robert Kerr, Commissioner

Chapter VIII, I-(F)

F. Preference Dates

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

1. The date of the horse's last previous start in a purse race is its preference date with the following exceptions:

(a) The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

(b) When a horse is racing for the first time after August 1st, the date of its last qualifying race shall be considered its preference date.

(c) Wherever horses have equal preference in a race, the actual preferences of said horses in relation to one another shall be determined by lot.

(d) When an overnight race has been re-opened because it did not fill, all eligible horses declared into the race prior to the re-opening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates, excluding horses already in to go.

2. When a horse is racing for the first time ever, the date of its last qualifying race shall be considered its preference date.

3. This rule relative to preference is not applicable at any meeting at which an agricultural fair is in progress. All horses granted stalls and eligible must be given an opportunity to compete at these meetings.

Chapter VI, Rule II-A-5

II. Overnight Events

A. General Provisions

5. Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to subsequent racing program, subject to the following:

a) No such divisions shall be used in the place of regularly scheduled races which fill.

b) Where races are divided in order to fill a program, starters for each division must be determined by lot after preference has been applied, unless [the] conditions

provide for divisions based upon age, performance, earnings, or sex may be determined by the racing secretary.

c) However, where necessary to fill a card, not more than three races per day may be divided into not more than three divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races [that] are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.

DEPARTMENT OF EDUCATION

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

Regulatory Implementing Order School Safety Audit

I. Summary of the Evidence and Information Submitted

The Acting Secretary seeks the consent of the State Board of Education to adopt a new regulation requiring public school safety audits. The regulation requires each school to annually conduct a school safety audit following guidelines provided by the Department of Education. The need for the regulation comes from concerns expressed by the interagency work group on school safety and from a recent conference on school safety plus the reaction to the incidents in the state of Colorado.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 14, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to adopt this regulation because the safety of students in schools is of primary importance and must be addressed through preventative measures.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to adopt the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the Regulations of the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on July 29, 1999. 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 this 29th day of July, 1999.

Department of Education

Valerie Woodruff, Acting Secretary of Education

Approved this 29th day of July, 1999.

State Board of Education

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Mary B. Graham, Esq.

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

800.21 School Safety Audit

1.0 Each school year every Delaware public school including Charter Schools and Alternative Schools shall conduct a School Safety Audit. Such audit shall be conducted using guidelines provided by the Department of Education.

Regulatory Implementing Order **School Crisis Response Plans**

I. Summary of the Evidence and Information Submitted

The Acting Secretary seeks the consent of the State Board of Education to adopt a new regulation requiring each public school in the state to have a school crisis response plan following guidelines provided by the Department of Education, and to conduct at least one practice drill annually. The need for the regulation comes from concerns expressed by the interagency work group on school safety and from a recent conference on school safety plus the reaction to the incidents in the state of Colorado.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 14,

1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to adopt this regulation because the safety of students in schools is of primary importance and must be addressed through preventative measures.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to adopt the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the Regulations of the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on July 29, 1999. 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 this 29th day of July, 1999.

DEPARTMENT OF EDUCATION

Valerie Woodruff, Acting Secretary of Education

Approved this 29th day of July, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Mary B. Graham, Esq.

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

800.22 School Crisis Response Plans

1.0 Every Delaware public school including Charter

Schools and Alternative Schools shall develop a School Crisis Response Plan and shall conduct at least one practice drill annually. Such plan shall be developed using guidelines provided by the Department of Education.

Regulatory Implementing Order
Amendment to DSSAA By-laws

I. Summary of the Evidence and Information Submitted

The Acting Secretary recommends to the State Board of Education that the proposed changes to the Constitution and Bylaws of the Delaware Secondary School Athletic Association (DSSAA) be adopted. The attached proposals are the result of an annual review of the constitution and bylaws by the DSSAA Constitution and Bylaws Committee and the DSSAA Board of Directors. Approximately two-thirds of the proposals are editorial changes or minor revisions that received no opposition from member school representatives at the 54th Annual Membership Meeting. The proposed revisions were submitted to the Constitution and Bylaws Committee by either a member school, a conference, or the Executive Director. They were discussed at length by the Committee on November 4, 1998 and then submitted to the Board of Directors for initial review at the November 19, 1998 meeting. A formal vote on the proposed changes was not taken due to the lack of a quorum. The proposals were then forwarded to the member schools in December with an invitation to either attend the 54th Annual Membership Meeting on January 28, 1999 and participate in an open discussion of the proposed revisions or to submit written comments regarding the proposed changes. In a special session prior to the Annual Membership meeting, the Board reviewed the proposals for a second time and also discussed two new proposals which had been recommended by an ad hoc committee on event sponsorship and commercialism in high school athletics. With the exception of the two new proposals which were not included in the package previously sent to the member schools, all of the proposed revisions received initial approval from the Board. The entire package of proposals was then presented to the member school representatives in attendance for their consideration and comment. At the regularly scheduled session following the Annual Membership Meeting, all of the proposed changes, with the exception of the two new proposals, received a second affirmative vote. Those two proposals received initial approval and were then forwarded to the member schools for written comment. A second vote on those two proposals was taken at the March 25, 1999 Board meeting. Both proposals were approved and the thirty-one proposed changes which received two affirmative votes from the Board were forwarded to the Acting Secretary for her endorsement.

Changes to the bylaws which are more than word changes include:

- A change in the age eligibility cut off date from August 15 to June 15.
- An extension of the one-game suspension for a sportsmanship related ejection to the post-season all-star game for seniors.
- A clarification of the financial hardship exceptions to the transfer rule and a requirement that principals scrutinize such waiver requests and certify that they are not athletically motivated.
- The addition of wording to ensure that DSSAA residence and transfer rules are compatible with 14 Del. C., Chapter 6 Section 607, and 14 Del. C., Chapter 4 respectively.
- A deletion of the “reasonable efforts” requirement for an appeal of the forfeiture penalty for use of an ineligible athlete.
- An extension of the DSSAA Board’s authority over state championships to include approval of the selection and seeding procedures for the participating teams.
- A requirement that all head coaches hold a current CPR certification beginning with the 2000-01 school year and that all assistant coaches hold a current CPR certification beginning with the 2001-02 school year.
- The establishment of a “floating date” (first Friday in December) for the start of competition during the winter sports season.
- A clarification of “open gym” programs.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 14, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to amend these regulations because situations and conditions have changed and the rules need to reflect real needs of the athletic programs of the state.

III. Decision to Amend the Regulations

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 Del. C., Section 122(e), the amended regulations hereby shall be in effect for a period of five years from the effective date of this order as

set forth in Section V. below.

IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the Regulations of the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on July 29, 1999. 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 this 29th day of July, 1999.

DEPARTMENT OF EDUCATION

Valerie Woodruff, Acting Secretary of Education

Approved this 29th day of July, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Mary B. Graham, Esq.
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

Constitution and Bylaws Proposals

1. Article IV. Administration, Section 1. Board of Directors B.

B. A member who is absent from three (3) regularly scheduled meetings of the Board of Directors ~~three (3) or more times during a six month period during a given school year~~ shall be replaced by the appropriate nominating group provided in Section 1. A. above.

2. Article IV. Administration, Section 4. Election of Officers of Board of Directors A.

A. The officers of the Delaware Secondary School Athletic Association shall be selected by the Board of Directors at its regularly scheduled meeting in May. ~~initial meeting following the appointment or reappointment of members by the State Board of Education.~~

3. Article IV. Administration, Section 8. Executive Director B. 5.

5. Decide issues between meetings of the Board of Directors. ~~The Executive Director is authorized to initiate a review of or fully investigate~~ He/she is authorized to fully investigate or direct a member school or officials' association to investigate an alleged violation of the DSSAA Constitution and Bylaws which ~~he has seen, heard or read about,~~ he/she has observed or discovered or which has been reported to him/her. He/she is expected to report the findings of any such investigation to the Board of Directors. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposition of sanctions or ~~the~~ suspension from participation for a designated period of time of a ~~player, student, team,~~ coach, or official, spectator, team, school, or officials' association in order to ensure the necessary, orderly, and proper conduct of interscholastic ~~competition~~ athletics.

4. Article V. Vacancies on Board of Directors A.

A. Vacancies occurring on the Board of Directors shall be filled in accordance with the procedures set forth in Article IV., Section 1. and Section 3. The appropriate group shall submit nominations to the State Board of Education. The individual so appointed shall begin his/her term at the next regularly scheduled meeting of the Board of Directors following appointment by the State Board of Education.

5. Article VI. Meetings

~~N/A~~

F. Meetings shall be conducted in accordance with Roberts Rules of Order.

6. Article VIII. Responsibilities, Powers, and Duties of Administrative Head of School, Section 2. Powers and Duties of Administrative Head of School A.

A. ~~To have general control over all interscholastic athletic matters and the contests in which his/her school participates.~~

The administrative head of each member school shall exercise general control over all of the interscholastic athletic matters of his/her school which include, but are not limited to, the following:

(change B. - L. to 1. - 11.)

7. Sportsmanship Rule, Section 2. Processing Violations of the Sportsmanship Rule C. Penalties 1. Game Ejection c. (2)

2. Seniors shall fulfill their penalty in another sport during the same season or another sport during a subsequent

~~sports season. the post-season all-star game in that sport. If not chosen to participate in the all-star game, they shall fulfill their penalty in another sport during the same season or another sport in a subsequent season.~~ When a senior is disqualified from the last game of his/her high school career, the member school is requested to take appropriate administrative action to discipline the offending student.

8. Rule 1. Eligibility, Section 1. Age A

A. Students who become 19 years of age on or after June 15, 1999 shall be eligible for all sports during the ~~current school 1999-00~~ year provided all other eligibility requirements are met. Students who have attained the age of 19 prior to June 15, 1999 shall be ineligible for all sports.

9. Rule 1. Eligibility, Section 1. ~~Age A~~ **Residence B**.

B. Notwithstanding Rule 1. Section 4. Transfer, a student who reaches the age of majority (18), leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 180 school days commencing with the first day of official attendance. This provision shall not apply to a students participating in the Delaware School Choice Program as authorized by ~~House Bill 144 of the 138th General Assembly.~~ 14 Del. C., Chapter 4 provided the student's choice application was properly submitted prior to the his/her change of residence.

10. Rule 1. Eligibility, Section 3. Residence

N/A

6. A student who is a non-resident of Delaware shall be eligible at a public, vocational-technical, or charter school if, in accordance with 14 Del. C., Chapter 6 § 607, his/her custodial parent or legal guardian is a full-time employee of that district.

11. Rule 1. Eligibility, Section 4. Transfer E. 1.

N/A

e. Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in H. 1., H. 2., H. 3., and H. 4. below.

12. Rule 1. Eligibility, Section 4. Transfer E. 2. a.

a. Proof of extreme financial hardship caused by

~~significant loss of and unexpected reduction in income and/or increased increase in expenses.~~

b. Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in H. 1., H. 2., H. 3., and H. 4. below.

13. Rule 1. Eligibility, Section 4. Transfer F. 1.

1. The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade are required to be in attendance.

14. Rule 1. Eligibility, Section 4. Transfer K.

K. A student who transfers from a school of choice, as authorized by ~~House Bill 144 of the 138th General Assembly, to a public, private, vocational technical, or charter~~ 14 Del.C., Chapter 4, to either a private school or, after completing his/her two-year commitment, to a public, vocational technical, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in G. 1., G. 2., G. 3., and G. 4. Above F. 1., F. 2., F. 3., and F. 4. above.

15. Rule 1. Eligibility, Section 5. Amateur A. 4.

4. Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

16. Rule 4. Passing Work E. and F.

E. Local school boards and non-public schools may establish more stringent requirements over and above the minimums for academic eligibility than the minimum standards herein prescribed ~~for eligibility.~~

F. ~~With respect to the non-public member schools, only the preceding requirements shall be applicable for student participation. These requirements shall not preclude non-public schools from maintaining requirements beyond those herein prescribed.~~

17. Rule 10. Eligibility Lists C.

C. ~~A student not listed on the original eligibility report~~

~~or subsequent addenda on file in the Executive Director's office shall be ineligible.~~ In the case of a student who met all DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

18. Rule 13. Licensed Physician

~~Rule 13. Licensed Physician~~

Rule 13. Medical Supervision

A. Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service. ~~The athletic trainer and nurse shall be limited to rendering first aid service only.~~

19. Rule 14. Use of Ineligible Athlete A.4.

4. The offending school may appeal to the DSSAA Board of Directors for a waiver of the ~~forfeit or for the imposition of a lesser penalty~~ forfeiture penalty if the ineligible athlete had no tangible affect on the outcome of the contest(s), ~~and the offending school can document conclusively that it made a reasonable effort(s) to determine the eligibility of the athlete in question. "Reasonable effort(s)" shall include but not be limited to the following: If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, resides entirely with the offending school.~~

a. ~~Conduct meetings prior to summer vacation at the high school and the middle schools in the feeder pattern in order to review district and DSSAA eligibility requirements with students interested in participating in interscholastic athletics.~~

b. ~~Distribute prior to summer vacation the DSSAA physical examination form and the DSSAA student medical history/parental consent form, including the list of eligibility reminders, and have the signed forms on file before the start of practice.~~

c. ~~Distribute an athletic code or contract, including a residence check, which must be signed by the student and his/her custodial parent(s) or legal guardian(s) and have the signed forms on file before the start of practice.~~

d. ~~Compare the address listed on the athletic code or contract with school records when completing the DSSAA eligibility report.~~

20. Rule 18. Conferences and All-Star Games

~~Rule 18. Conferences and All-Star Games~~

A. Member schools may establish voluntary conference organizations according to the following rules:

1. Any such organization may be composed of public and non-public schools

2. Any conference so formed must submit its proposed membership and ~~bylaws~~ constitution and bylaws to the DSSAA Board of Directors and ~~these they~~ they must be approved prior to the schools entering into any contractual agreements.

a. All subsequent amendments to the ~~constitute~~ constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

~~B. Students of member schools, who have completed their eligibility in a sport, may participate in not more than one (1) all star game in that sport until they have graduated from high school. The game must be approved by DSSAA in accordance with the criteria listed below, and a full financial report must be filed with the Executive Director within thirty (30) days of the game. Failure to submit a financial report within the specified time period shall result in the coaches' association or other sponsoring organization being assessed a \$100.00 fine.~~

~~1. The game shall not be for determining a regional or national champion.~~

~~2. The game shall be sponsored by and all profits go to a nonprofit organization.~~

~~3. The awards given shall be symbolic in nature with no intrinsic value.~~

~~4. The travel distance shall not exceed 600 miles round trip.~~

Rule 19. All-Star Contests

A. An all-star contest shall be defined as an organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

B. Students who have completed their eligibility in a sport may participate in one all-star contest in that sport, if approved by DSSAA, prior to graduation from high school.

C. Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all-star contest is approved by DSSAA.

D. The all-star contest must be approved by DSSAA in accordance with the following criteria:

1. The contest shall not be for determining a regional or national champion.

2. The contest shall be organized, promoted, and

conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

3. The awards given shall be in compliance with Rule 1., Section 5. Amateur.

4. Exceptions to the adopted rules code for the sport shall require the approval of DSSAA.

5. A full financial report must be filed with the Executive Director within thirty (30) days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$50.00 fine.

6. The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

21. Rule ~~19~~ 20. Sponsoring Interscholastic Teams, Section 2. Sponsorship of Teams A. 1. and A. 2.

1. The governing bodies body of the participating districts or schools approved district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

2. The governing bodies body of the participating districts or schools control district or non-public school controls the funds needed to conduct support the proposed program team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions and donations of equipment or services from outside sources must be approved in writing by the administrative head of the school must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

22. Rule ~~20~~ 21. State Championships C. 1.

Each tournament format, as well as the criteria and procedures for selecting and seeding the participating teams, must be approved by the Board of Directors and any subsequent changes in format must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. In instances where If the Executive Director and the committee cannot agree, the proposed change must be presented to the Board of Directors for approval.

23. Rule ~~21~~ 22. Certified Coaches A. 2. and B. 4. c. (3)

2.E. All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DSSAA office. Beginning with the 2000-01 school year, head coaches at all levels of competition shall be required to hold a current certification in adult CPR.

~~B-3-1.~~ Beginning with the 2001-02 school year, assistant coaches at all levels of competition shall be required to hold a current certification in adult CPR.

24. Rule ~~21~~ 22. Certified Coaches B. 4. c. (1)

(1) He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

25. Rule ~~22~~ 23. Sports Seasons and Practices B. and D.

B. The regular winter sports season shall begin on November 15 with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament play in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

D. Practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day. Practice for any winter sport shall not begin earlier than November 15 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

26. Rule ~~24~~ 25. Baseball and Softball Pregame Warmup and Rule 25. Track and Field Events

Rule 24. Baseball and Softball Pregame Warmup

A. In baseball and softball the last twenty minute practice period on the field prior to game time shall be reserved for the visiting team.

Rule 25. Track and Field Events

A. The standard order of events, as prescribed in the National Federation official rules book, shall be followed by member schools in all track and field meets in which they participate, except that the javelin shall not be contested. Put in appendix under Playing Rules Adoptions/Modifications.

27. Rule ~~27~~ 28. Awards C. 1.

1. ~~Tournament sponsors shall be allowed to present the members of the participating teams with a complimentary T-shirt and event program.~~

28. Rule ~~27~~ 28. Awards D. 1.

1. With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards with utilitarian value are prohibited. The ~~cost~~ value of the award shall not exceed \$50.00.

29. Rule ~~36~~ 37. "Open Gym" Programs A. 3.

3. The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

a. A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate

Regulatory Implementing Order **School Health Tuberculosis (Tb) Control Program**

I. Summary of the Evidence and Information Submitted

The Acting Secretary seeks the consent of the State Board of Education to amend the regulation 801.16 The School Health Tuberculosis (TB) Control Program found in the document the Regulations of the Department of Education. The amendment is necessary in order to clarify the issue of testing of volunteers in the public schools for evidence of Tuberculosis. The present regulation requires that all volunteers, sharing the same air space with students, have or have proof of having a Mantoux tuberculin test in the past 12 months. The amended regulation requires that all volunteers take a screening test as a first step. This process is sanctioned by the Delaware Department of Health and Social Services and the Center for Disease Control. If any questions on the test are answered affirmatively, the school would then require that the individual have the tuberculin test. This screening process would prevent the school from having to test all volunteers.

The amended regulation does not change the definition of a volunteer, but it deletes the reference to "frequent contact with students", adds the reference to the questionnaire, maintains confidentiality and requires a retake of the screening test every five years. The regulation has also been revised for clarity and consistency and now has four parts, educators, volunteers, students and positive reactors.

Notice of the proposed amendment was published in the News Journal and the Delaware State News on June 14, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to amend this regulation because a system was needed to clarify the requirements for testing for evidence of Tuberculosis for those volunteering in the schools of the state.

III. Decision to Amend the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend this regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Del. C., Section 122(e), the amended regulation hereby shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the Regulations of the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on July 29, 1999. 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 this 29th day of July, 1999.

DEPARTMENT OF EDUCATION

Valerie Woodruff, Acting Secretary of Education

Approved this 29th day of July, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Mary B. Graham, Esq.

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

800.16 The School Health Tuberculosis (TB) Control Program May 1998, Amended July 1999

1.0 All school employees, substitutes, student teachers, and contract employees (including bus drivers) who are in frequent contact with students shall receive the Mantoux tuberculin skin test or show proof of being tested in the past 12 months during the first 15 working days of employment. Volunteers (those persons who give their time to help others for no monetary reward) shall show proof of Mantoux tuberculin skin test results taken within the last twelve months prior to assignment of tasks in the school environment where they share the same air space with students and staff on a regularly scheduled basis. Known positive reactors need verification from private physician or Division of Public Health Clinics for:

1.1 skin test reaction recorded in millimeters

1.2 completion of preventive therapy for TB infection or chemotherapy for TB disease

1.2.1 If documentation is available, the known positive reactor need not have this tuberculin skin test. When documentation is unavailable, the employee should be tested. If documentation does not exist and the employee refuses to be skin tested again, the employee shall be asked to provide a statement in writing that he or she has had a positive skin test result in the past, and that he/she has been counseled about the signs and symptoms of tuberculosis.

2.0 Present employees shall show proof of Mantoux tuberculin skin test results to the district designee by October 15, every fifth year of employment.

3.0 Newly infected positive reactors will be referred to the public health clinic or their private physicians for further evaluation. Known positive reactors who have appropriate documentation and are asymptomatic are not required to have another skin test or a chest x-ray.

4.0 All new school enterers shall show proof of a Mantoux tuberculin skin test results within the past 12 months or follow the recommendations of the American Academy of Pediatrics (AAP) 1997. Physicians must send documentation of the decisions. Multi-puncture skin tests will not be acceptable. A school enterer is any child between the ages of one year and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools. Known positive reactors need verification from their private physician or Division of Public Health clinics for:

4.1 skin test reaction recorded in millimeters

4.2 completion of preventive therapy for TB infection or chemotherapy for TB disease

4.2.1 Tuberculin skin test requirements may be waived for children whose parent(s) or guardian(s) present a notarized document that tuberculin skin testing is against their religious beliefs.

5.0 School nurses shall record the results of the Mantoux tuberculin skin test in the School Health Record.

1.0 School Employees, Substitutes, Student Teachers, and Contract Employees - All school employees, substitutes, student teachers, and contract employees (including bus drivers) shall receive the Mantoux tuberculin skin test or show proof of being tested in the past 12 months during the first 15 working days of employment.

1.1 Present employees, substitutes, and contract employees shall show proof of Mantoux tuberculin skin test results to the district designee by October 15, every fifth year of employment.

1.2 Student teachers need not be retested if they move from district to district as part of their student teaching assignments.

2.0 Volunteers - Volunteers, those persons who give their time to help others for no monetary reward and who share the same air space with students and staff on a regularly scheduled basis, shall complete the Delaware Department of Education's Health Questionnaire for Volunteers in Public Schools prior to their assignment. Should the volunteer answer affirmatively to any of the questions, he/she must provide proof of a Mantoux tuberculin skin test in the past 12 months before beginning their assignment.

2.1 Volunteers shall complete the Delaware Department of Education's Health Questionnaire for Volunteers in Public Schools every fifth year.

2.1.1 The district designee(s) shall collect and monitor the volunteer questionnaires. These questionnaires will be stored in the School Nurse's office in a confidential manner.

3.0 Students - All new school enterers shall show proof of a Mantoux tuberculin skin test results within the past 12 months or follow the recommendations of the American Academy of Pediatrics (AAP). Health Care Providers must send documentation of the decisions. Multi-puncture skin tests will not be accepted. A school enterer is any child between the ages of one year and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools.

3.1 School nurses shall record the results of the Mantoux tuberculin skin test in the School Health Record.

3.2 Tuberculin skin test requirements may be waived for children whose parent(s) or guardian(s) present a notarized document that tuberculin skin testing is against their religious beliefs.

4.0 Positive Reactors - Positive reactors (those currently identified and those with a history) need verification from a Health Care Provider or Division of Public Health indicating:

- skin test reaction recorded in millimeters
- current disease status, i.e. contagious or non-contagious
- current treatment, completion of preventive treatment for TB infection, or chemotherapy for TB disease
- date when the individual may return to their school assignment without posing a risk to the school setting.

4.1 If documentation of the test is available, the known positive reactor need not have this tuberculin skin test but provide the above information related to disease status and treatment.

4.1.1 Verification from a Health Care Provider or Division of Public Health shall be required only once if treatment was completed successfully.

4.2 If documentation of the test is unavailable, the individual should be tested. If the individual refuses to be skin tested again, the individual shall provide from a Health Care Provider or the Division of Public Health information related to disease status and treatment.

4.3 Updated information regarding disease status and treatment shall be provided to the district designee by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.

initiated proceedings to amend existing Rules and Regulations Governing the Statewide Trauma System. The DHSS's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 16 Delaware Code Chapter 97.

On July 1, 1999, the DHSS published in the Delaware Register of Regulations Volume 3 Issue 1 (page 14) its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by August 4, 1999 or be presented at public hearing on August 4, 1999, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations.

No oral or written comments were received.

Findings of Fact:

The Department finds that the proposed changes as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing the Statewide Trauma System are adopted and shall become effective September 11, 1999, after publication of the final regulation in the Delaware Register.

Gregg C. Sylvester, Md, Secretary
August 10, 1999

Summary of Evidence

State of Delaware Rules and Regulations Governing the Statewide Trauma System

Public hearing was held on August 4, 1999 at the WIC Office Conference Room in Dover, Delaware before Steven Blessing, Hearing Officer, to discuss the proposed DHSS Rules and Regulations Governing the Statewide Trauma System. The announcements regarding the hearings were advertised in the Delaware State News, The News Journal and the Delaware Registry of Regulations in accordance with Delaware law. MarySue Jones and Dr. Elsburgh Clarke, Chairperson of the Trauma System Committee, made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. No comments from the public were received.

There were no changes made to the draft Regulations.

The public comment period was open from July 1, 1999 to August 4, 1999.

Verifying documents are attached to the Hearing Officer's record. The regulations have been approved by the

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

OFFICE OF EMERGENCY MEDICAL SERVICES

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

In the Matter Of:

Revision of State of Delaware
Rules and Regulations Governing
The Statewide Trauma System

Nature of the Proceedings:

Delaware Health and Social Services ("DHSS")

Delaware Attorney General's office and the Cabinet Secretary of DHSS.

*** Please note that no changes were made to the regulation as originally proposed and published in the July 1999 Register at page 14 (3 Del. Reg. 14 (7/1/99)). Therefore the final regulation is not being republished. Please refer to the July 1999 issue of the Register of contact the Department of Health and Social Services.**

DIVISION OF SOCIAL SERVICES

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

A Better Chance Program

The Delaware Health and Social Services / Division of Social Services has, following consideration of written comments submitted in response to its proposal to change the time limit from forty-eight (48) cumulative months to twenty-four (24) cumulative months and revise its Work for Your Welfare policy to reflect the time limit change, published on pages 1730-1734 of the April 1, 1999 issue of the Delaware Register of Regulations, decided to withdraw those proposals.

DIVISION OF SOCIAL SERVICES

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

In the Matter Of: |

Revision of the Regulations |
Of Delaware's a Better Chance |
Welfare Reform Program |

Nature of the Proceedings

The Delaware Health and Social Services / Division of Social Services / Delaware's *A Better Chance Welfare Reform* Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3002. These changes arise from Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option.

On June 1, 1999, the DHSS published in the Delaware Register of Regulations page 2231, its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be

delivered to DHSS by June 30, 1999, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations. There were written comments to the proposed regulation. The comments were in opposition to implementing a twenty-four (24) month time limit for new applicants on or after October 1, 1999, not in opposition to the exception to the lifetime time limit. The Department has decided to withdraw the reduction of the time limit regulation. The Department is proceeding with implementing an exception to the lifetime time limit.

Summary of Proposed Revision:

Exempting months in which a person working twenty hours or more per from counting toward the lifetime time limit.

Findings of Fact:

The Department finds that the proposed change, as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed regulation of the Delaware's *A Better Chance Welfare Reform* is adopted and shall become effective ten days after publication of the final regulation in the Delaware Register.

Gregg C. Sylvester, MD, Secretary
August 9, 1999

3002.9 EXCEPTIONS TO THE TIME LIMIT COUNTER

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 calls for a maximum sixty (60) month lifetime limit on the receipt of Temporary Assistance to Needy Families (TANF) benefits. A family that has an employable adult will be able to receive cash benefits that do not count to the State's ~~twenty-four (24) or~~ forty-eight (48) month time limit if:

The adult is working for twenty (20) hours or more per week; and

The countable income of the family is still below the need standard.

The Federal time limit would still apply in these cases. If the family reaches the Federal sixty (60) month time limit but has not reached the State's ~~twenty-four (24) or~~ forty-eight (48) month time limit the family will continue to receive Delaware's A Better Chance Welfare Reform cash assistance.

DIVISION OF SOCIAL SERVICES

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

In the Matter Of:

Revision of the Regulations
Of Delaware's A Better Chance
Welfare Reform Program

Nature of the Proceedings:

The Delaware Health and Social Services / Division of Social Services / Delaware's *A Better Chance* Welfare Reform Program is proposing to implement a policy change to the Division of Social Services' Manual adding Section 3032. These changes arise from Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option and was first announced in January 1995, as part of the original Delaware's *A Better Chance (ABC) Welfare Reform* waiver design.

On April 1, 1999, the DHSS published in the Delaware Register of Regulations pages 1734-1735, its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 31, 1999 at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations. There were written comments to the proposed regulation. The comments were in opposition to implementing a twenty-four (24) month time limit for new applicants on or after October 1, 1999. The Department has decided to withdraw that regulation. The Department is proceeding with implementing a Diversion Assistance program.

Findings of Fact:

The Department finds that the proposed change, as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed regulation of the *A Better Chance* are adopted and shall become effective ten days after publication of the final regulation in the Delaware Register.

Gregg C. Sylvester, MD, Secretary
August 9, 1999

* Please note that no changes were made to the regulation as originally proposed and published in the April 1999 Register at page 1734 (2 DE Reg. 1734 (4/1/99)). Therefore the final regulation is not being republished. Please refer to the April 1999 issue of the Register of contact the Department of Health and Social Services.

DIVISION OF SOCIAL SERVICES

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

In the Matter Of:

Revision of the Regulations
Of the Child Care Regulations

Nature of the Proceedings:

Delaware Health and Social Services/ Division of Social Services proposed in the July 1999 issue of the Delaware Register (page 42) to make a new regulation regarding the waiving of child care fees for caretakers who need care and who are not part of the ABC or GA grant, but who are caring for children who are receiving ABC or GA assistance. Public comments were invited by the July 31, 1999 deadline. It was determined that no written materials or suggestions had been received from any individual or the public.

Findings of Fact:

The Department finds that the proposed regulation as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the waiving of child care fees for caretakers of children receiving ABC or GA assistance be adopted and shall become effective ten days after publication of the final regulation in the Delaware Register.

Gregg C. Sylvester, MD, Secretary
August 9, 1999

* Please note that no changes were made to the regulation as originally proposed and published in the July 1999 Register at page 42 (3 DE Reg. 42 (7/1/99)). Therefore the final regulation is not being republished. Please refer to the July 1999 issue of the Register of contact the Department of Health and Social Services.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

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

Secretary's Order No. 99-A-0044

**RE: Amendments to Regulation #38 – Emission Standards
for Hazardous Air Pollutants for Source Categories**

Effective Date of Regulatory Provisions: 09/11/99

I. BACKGROUND

On July 26 and 27, 1999 hearings were held in DNREC's Office at Grantham Lane in New Castle and at DelTech in Georgetown, respectively, to receive public comment on two proposed amendments to Regulation #38 pertaining to Hazardous Air Pollutants.

The amendment to Subpart A is being proposed to maintain consistency with recent changes to corresponding Federal Language. The other amendment, Subpart N, is being proposed to add a MACT Standard (Maximum Achievable Control Technology) to reduce the emission of Hazardous Air Pollutants from chromium electroplating facilities. Department staff provided an overview of these proposed amendments and introduced 16 exhibits into the record, including an exhibit which summarizes the effects of exposure to chromium emissions.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Proper notice of the hearing was provided as required by law.
2. Regulation #38 embodies the Department's efforts to apply MACT standards to various source categories.
3. Revisions to Subpart A of Regulation #38 are necessary to remain consistent with recent changes in the Federal counterpart.
4. A new Subpart N is being proposed to implement MACT standards for chromium electroplating facilities in a manner identical to EPA's requirements.
5. Two public workshops were held in early June 1999 to explain in detail the substance of the above proposals.
6. No one attended either public hearing or submitted any written comments regarding these proposed amendments.

III. ORDER

In view of the above findings it is hereby ordered that the proposed amendments to Regulation #38 be adopted and promulgated in the manner prescribed by law.

IV. REASONS

These amendments are designed to maintain and achieve consistency with corresponding Federal requirements and to reduce the emission of Hazardous Air Pollutants in Delaware in furtherance of the policies and purposes of 7 Del C CH 60.

Nicholas A. DiPasquale, Secretary

*** Please note that no changes were made to the regulation as originally proposed and published in the July 1999 Register at page 59 (3 DE Reg. 59 (7/1/99)). Therefore the final regulation is not being republished. Please refer to the July 1999 issue of the Register of contact the Department of Natural Resources and Environmental Control.**

DIVISION OF WATER RESOURCES

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

Secretary's Order No. 99-W-0041

**RE: Revisions to Guidance and Regulations Governing the
Land Treatment of Wastes**

I. BACKGROUND FINDINGS OF FACT

A public hearing was held on June 14, 1999 to receive comments on proposed revisions to Part III, B, of the Guidance and Regulations Governing the Land Treatment of Wastes. These changes are necessary to make the State's regulations consistent with Federal requirements in Title 40 of the Code of Federal Regulations, Part 503, Standards for the Use and Disposal of Sewage Sludges, that have been in effect since February, 1993.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Proper notice of the hearing was provided as required by law.
2. The following exhibits were entered into the record
 - a) Start Action Notice #98-33 to Division Directors dated December 21, 1998 (Exh. #1)
 - b) Start Action Notices #98-32 and 98-33 to the

Governor's Office, Members of the Senate to Natural Resources and Environmental Control Committee, and Members of the House Environment and Natural Resources Committee dated January 5, 1999 (Exh. #2).

c) Register Notice, dated April 12, 1999 (Exh. #3).

d) Newspaper notice of public hearing as it appeared in the News Journal on May 16, 1999 (Exh. #4)

e) Text of proposed revisions to the Regulations Governing the Use and Disposal of Wastewater Sludge, dated July 1998 (Exh. #5)

3. No members of the public, or anyone else, offered any comments for the record regarding these proposed revisions.

4. The record supports promulgation of the proposed revisions.

III. ORDER

In view of the above findings, and in the absence of any opposition to this rulemaking, it is hereby ordered that the proposed revisions in the record be issued as final regulations, according to the customary procedure required by law.

IV. REASONS

These revisions will help Delaware achieve consistency with Federal requirements regarding the same subject matter in such a manner as to further the policies and purposes of Del C Ch. 60.

Nicholas A. DiPasquale, Secretary

*** Please note that only those changes made to the Regulations Governing the Land Treatment of Wastes after the regulation was originally proposed and incorporated as part of the final regulation are being reprinted here. The entire regulation can be found in the June 1999 issue of the Register at page 1971 (2 DE Reg 1971 (6/1/99)) or is available from the Department of Natural Resources and Environmental Control.**

SECTION 400. PROCEDURES FOR STATE REVIEW AND APPROVAL.

Subsection 401. Proposal for a Sludge Utilization Permit.

Any person who intends to utilize sludge or sludge products must submit a letter of intent to the Department. The letter shall indicate the projected location, size, and anticipated utilization method. The steps in ~~Table 402-1~~ [subsection 403] provide the prospective permit applicant with an overview of the entire Department process. Whenever the preparation of reports or other documents required by these regulations involves the practice of engineering, geology or other recognized profession under Delaware law, sufficient evidence of appropriate

certification or registration in accordance with Title 24 of the Delaware Code must be submitted by the preparer. The guidance document included with these regulations should be used to tailor the design criteria for the specific waste, process, use, or site under consideration.

Subsection 402. Project Development Report: General Requirements.

(1) A Project Development Report must be prepared. After this report is submitted for Department review, and accepted, it becomes the basis for the permit application. In any event, the applicant must demonstrate that the proposed facility, site or use will meet the regulatory objectives set forth in these regulations and will not cause violations of State or Federal drinking water standards on an average annual basis or State water quality standards for streams.

Upon receipt of a Project Development Report, the Department will schedule a public information meeting to inform interested citizens of the proposed utilization project. The Department may consider local zoning or other locally required meetings as sufficient for satisfying this requirement. After the Department has fixed the date, place and time for a public information meeting, the Department shall notify by certified mail owners and occupants of land contiguous to the site of the proposed facility or site and of the scheduled meeting. A copy of the Project Development Report will be available for review and discussion at the public meeting. The applicant for the permit shall also be present at the public meeting to present information on the proposed project.

The Department will accept and consider all comments, concerns and suggestions received during the public meeting. If the concerns raised at the public meeting cannot be reasonably addressed, a permit will not be issued for the proposed project.

(2) Project Development Reports for all proposed facilities, land application sites and sludge uses must provide a chemical analysis of the sludge to be produced or utilized which includes the following:

(a) Results of three chemical analyses of the sludge from each treatment facility or other source of sludge. The Department will waive this requirement for domestic septage that is land applied in accordance with the State's Septage Management Plan. Chemical analyses include:

- (i) Moisture content.
- (ii) Percent total nitrogen (moist and dried).
- (iii) Percent organic nitrogen (moist and dried).
- (iv) Ammonia and nitrate concentration (moist and dried).
- (v) pH.
- (vi) Percent volatile solids.
- (vii) PCB's.
- (viii) The following, as reported on a dry weight basis: cyanide, sodium, calcium, magnesium,

phosphorous, potassium, cadmium, zinc, copper, nickel, lead, chromium, mercury, arsenic, molybdenum and selenium.

(ix) Such other components or constituents which may be required by the Department, including but not limited to TOC, COD, FOG, and boron.

(b) Sludges are to be analyzed as a composite sample for the priority pollutants. If the organics are higher than the typical municipal sludge range in the U.S. (see Table 402-1) then the Department shall require the applicant to submit a detailed sludge analysis for those elevated organic constituents to assess their fate in a soil matrix.

(c) Sludges are to be analyzed as a composite sample using the Toxicity Characteristic Leaching Procedure (TCLP). Any sludge that fails the TCLP test shall be deemed to be hazardous and will then be subject to regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

(d) For septage, a specific plan for obtaining representative samples may be required.

(e) No sludge or sludge product which exceeds the Ceiling Concentrations in Table 402.2 will be permitted for land application in the State. Sludge or sludge products which exceed the Pollutant Concentrations in Table 402.3 will not be permitted for marketing and distribution in the State. Application rates for any sludge may not exceed the values in Tables 402.4 and Table 402.5.

(f) The analyses shall be conducted on composite samples of the waste to be applied, and shall be reported in a tabular form that lists the range of the three samples. Each of the composite samples shall be taken at intervals of more than 30 days unless otherwise approved by the Department in writing. Sampling and analytical procedures shall be approved by the Department and be consistent with Section ~~1200~~[1000] of these Regulations.

Subsection 403. Project Development Reports: Specific Requirements for Facilities.

A permit is required for the construction and operation of any sludge handling, storage, processing or treatment operation. Such facilities include, but are not limited to: composting, alkaline stabilization or heat drying facilities, storage lagoons or tanks, and disposal sites. Information required for the Project Development Report includes:

(1) Maps and related information.

(a) A topographic map or maps on a scale not less than a USGS 7.5 minute series or equivalent, including any necessary narrative descriptions, which show the following:

(i) All boundaries and names of present owners of record of land and including easements, rights of way, and other property interests, for the proposed permit area and contiguous area; and a description of all title, deed, or usage restrictions affecting the proposed permit area.

(ii) Latitude and longitude of site

(iii) The boundaries of any land where sludge or sludge product will be stored at various times over the estimated total life of the proposed operation.

(iv) The location and name of any domestic wells within 1000 feet and irrigation, commercial, industrial and public wells within 2500 feet of the outer edge of the buffer zone as defined in 701(4). Information may be obtained (for a fee) through the Department from the Delaware Water User Data System (DWUDS).

(v) Other information that the Department deems relevant or necessary.

(b) A soil map which shows the locations and types, and engineering properties of soils found within the proposed permit area and which includes a report on the field investigations conducted by a registered Engineer or Professional Soil Scientist depicting soils conditions on the site. This element should be prepared and submitted to the Department early in the process so that unsuitable sites/areas can be eliminated from further analysis.

(2) Ground water information. The Project Development Report shall contain a description of the ground water hydrology of the proposed site and adjacent area.

The following information shall be prepared by a Geologist, Hydrologist or a Professional Engineer qualified in hydrology and licensed to practice in the State of Delaware.

(a) A map of the site and surrounding area showing all potential contamination sources (such as large on-site systems, feedlots, bulk storage facilities, etc.). Surface water bodies within 1,000 feet of the site boundary of the proposed sludge application area shall also be located.

(b) Description of the geology of the area, including the lithology and thickness of the outcropping and subcropping or underlying formations. Any unique or important geomorphological features which could influence ground water flow directions should also be indicated.

(c) The following hydrogeological information should be provided to the Department:

(i) The thickness, saturated thickness, and depth to water (DTW) of the water table aquifer. The depth to water measurement should indicate the level of the local seasonal high water table.

(ii) The DTW of the seasonal high water table formed by a perched water table when these water table types exist.

(iii) The thickness, lithology, and name of the geological formation which forms the first aquitard of aquiclude beneath the water table aquifer.

(iv) The name of the first confined aquifer beneath the ground surface including the name(s) of the formation(s) composing this aquifer.

(d) A description of the ground water flow patterns under the proposed site. A hydraulic head contour map with

ground water flow lines should be included in the description. When the direction of the ground water flow cannot be determined with any degree of confidence, observation wells (piezometers) in numbers sufficient enough to determine ground water flow direction will be required.

(e) Reference must be provided for all the geological and hydrogeological information which was researched.

(3) Surface water information.

(a) Each Project Development Report shall contain a description of the surface waters in the proposed site and adjacent area, including the name of the watershed which will receive any water discharges, the location of all surface water bodies such as streams, lakes, ponds, and descriptions of major surface drainage systems within the proposed permit area and adjacent areas.

(b) Each Project Development report shall also include a plan to manage runoff and control erosion during the lifetime of the facility. These plans will use best management practices for nonpoint source pollution control such as developed by the USDA Natural Resources Conservation Service (NRCS).

(4) Detailed Construction Specifications - Each Project Development Report shall include drawings of proposed site layout, plan and elevation view of structures, equipment layout, facility access, and construction site erosion and sediment controls, stamped by an engineer registered in the state of Delaware.

(5) Plan of Operation and Management - Each plan shall contain a narrative description of the following:

(a) Explaining the type of operation to be conducted at the proposed facility.

(b) Detailing the operation and processing steps of the proposed facility; the expected life of the operation; and the origin, dry weight and volume of sludge that are proposed to be utilized during the operation.

(c) The equipment to be used at the facility for handling, storage, processing and treatment (including mixing, air control, bagging and monitoring the sludge or sludge products), or site preparation and land disposal of sludge.

(d) The closure plan and future use of the site if the facility ceases operation.

(e) A control plan to prevent health hazards or nuisances.

(f) For disposal sites, a crop nitrogen balance, the proposed application rate per acre and management scheme, crops to be grown; phosphorus and other constituent loading rates; determination of land limiting constituent; acreage needed and required storage volume, if any; and the dates (or climatic conditions) when the applicant proposes to apply sludge.

(g) Material Safety Data Sheets

(6) Endangered Species Assessment - No facility may be constructed or operated in a manner likely to adversely affect a threatened or endangered species listed under section 4 of the Endangered Species Act or its designated critical habitat. An endangered or threatened species and impact report is required.

(7) Additional requirements for land disposal sites

(a) Each Project Development Report shall contain a description of:

(i) Soils within the proposed permit area, including a description of the depth, matrix, color, texture, structure, pH, consistency, degree of mottling and, if present mottled colors and coarse fragment content for each horizon of soil from the surface to a depth of at least five (5) feet or bedrock, whichever is shallower.

(ii) Any subsurface conditions adversely affecting lateral or vertical drainage of the land.

(iii) A delineation of soil areas at the site which are not suitable for land application of sludge.

The applicant shall base the description on a sufficient number of pits, hand augerings, or excavations to allow an accurate characterization of the soils within the proposed permit area. As a minimum, however, the Department requires that at least one sample be taken for every 5 to 10 acres of each soil series to confirm NRCS.

(b) All classifications and interpretations of soil materials required by this section shall be based on criteria specified in the United States Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual).

(c) The Project Development Report shall include a minimum of three chemical analyses for each major soil series at the proposed facility. Soil chemistry testing must be in accordance with the Methods of Soil Analysis published by the American Society of Agronomy, or otherwise shall be consistent with Department guidance and the requirements of Section ~~1200~~[1000]. Results are to be expressed on a dry soil basis. The constituents to be tested are pH, cation exchange capacity, percent organic matter, plant nutrient status, total cadmium, total copper, total lead, total nickel, total zinc, total arsenic, total selenium and total molybdenum.

(d) For sites where sludge was previously applied within 5 years to the proposed permit area, the application shall also describe background concentrations for all constituents identified above for similar soils where sludge has not been applied.

(e) The information required by this section shall be prepared by qualified persons in soil science or land treatment.

(8) Additional requirements for sludge storage facilities are identified in section 900.

Subsection 904. Application for a Storage Permit.

Applications for permits to store sludge shall include the following information:

(1) Written permission from the landowner or landowners and evidence of zoning approval as required by 7 Del. Code 6003(c) and Section ~~[1300]~~ [1100] of these regulations.

(2) Results of a laboratory analysis of a representative sample of the sludge which was obtained not more than 6 months before submission of the application. The analysis shall include, as a minimum, the metals and nutrients parameters found in Section 400 of these regulations. The Department may require more frequent analyses and analyses for other sludge constituents if considered necessary to adequately assess the potential public health and environmental impacts of the project.

(3) A site specific topographic map of sufficient scale to include:

- (a) The areal extent of the site;
- (b) The property boundaries;
- (c) The size and location of the storage facility;
- (d) The location of any streams, springs, or seeps in the area;
- (e) The residences or buildings on the site or bordering on the site;
- (f) Any roads on the site;
- (g) The location of any wells on the site or within 1/2 mile of the site; and
- (h) The location of all soil tests, soil borings, or test pits (attach test results).

(4) A tax map of the site showing the owner's name, site acreage, and property identification number.

(5) Evidence showing the frequency of flooding at the site based on available flood maps and other information along with an evaluation of stormwater management for the facility.

(6) The source and volume of sludge to be stored.

(7) Design volume calculation.

(8) For facilities constructed of earthen material, and for facilities constructed or installed below grade, the following information shall be submitted:

(a) Soil permeability test results both on the soil used to construct side slopes and at the proposed depth of the facility.

(b) Representative test borings or test pits on the site, to include a description of the texture, color, and evidence of mottling of the soils encountered, and the depth to the ground water. The interpretation of test pit or boring information shall be made by a qualified person.

(9) Evidence showing the maximum seasonal high ground water elevation.

(10) The specifications of any liners or soil sealants, if required.

(11) Detailed construction specifications.

(12) Method of restricting public access to the site.

(13) An operations plan to include a description of all sludge handling equipment, daily operating procedures, days and hours of operation, an odor and nuisance control plan, emergency plans, and recordkeeping procedures.

(14) A description of the truck cleaning facility.

(15) For permanent facilities constructed of earthen materials, or for facilities constructed or installed below grade, the following information shall be submitted:

(a) Adequate test boring logs, at a minimum of three per 10 acres. These shall be specific as to the soil, sediment, and rock types encountered, depth of groundwater at completion and at 24, 48, and 72 hours after completion, and depth of auger refusal, if applicable. The location of each boring shall be accurately mapped.

(b) Description of the geology at the site, including a discussion of the geologic formations directly involved, the present and future use of these formations as a ground water source and their relationship to underlying formations, providing cross sections based on the information compiled from borehole data.

(c) Hydraulic characteristics of the site, including a ground water contour map, superimposed on a topographic map, showing the location of the water table and the direction and rate of ground water flow, a discussion of the infiltration capacity of surface soils, and the percolation capacity of subsurface soils.

(d) A proposed ground water monitoring program consisting of at least three wells, one upgradient and two downgradient of the facility.

(e) A sediment and erosion control plan for the site.

(16) For manufactured facilities, the following information shall be submitted:

(a) Information on the structural materials to be used;

(b) Design specifications, such as structural capacity, maximum load, restrictions on use, and dimensions;

(c) Installation or construction techniques and procedures;

(d) A plan for cleaning and periodic inspection of the facility for leaks or other structural defects;

(e) A contingency plan for repairs of the facility, if necessary.

(17) For above ground enclosed facilities, a plan for controlling emission gases.

(18) Other relevant information requested by the Department.

Subsection 1001. Sample collection and Analysis

(1) Sample Collection. All sludge generators and preparers shall develop a sludge sampling program which addresses random and cyclic variations within the sludge

stream. The generator or preparer must receive Department approval prior to execution of this program. The EPA publication *POTW Sludge Sampling and Analysis Guidance Document* may be helpful in establishing a sampling and analysis program. Specifically, the program shall address, with respect to both stabilized and unstabilized sludges, the following:

- (a) Sampling equipment, personnel, and containers, including set-up, tear-down and cleaning procedures
- (b) Representative sampling (collection points, compositing method, frequency and timing of sampling)
- (c) Sample preservation
- (d) Recordkeeping/logbook
- (e) Transfer and Chain-of-Custody Samples

(2) Methods in the publications listed below shall be used to analyze samples of sewage sludge. The publications are listed as they existed on the effective date of this Regulation. Notice of and change in the listed methods will be published in the *Federal Register*. The Department will make a sincere effort to notify permittees of any testing method changes; however, it is the responsibility of all parties governed by these regulations to perform analysis using current EPA approved testing methods.

(a) Enteric viruses. ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges", 1992 Annual Book of ASTM Standards: Section 11 - Water and Environmental Technology.

(b) Fecal coliform. Part 9221 E. or Part 9222 D., "Standard Methods for the Examination of Water and Wastewater", 19th Edition, 1992.

(c) Helminth ova. Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges", EPA 600/1-87-014, 1987.

(d) Inorganic pollutants. "Test Methods for Evaluating Solid Waste, Physical; Chemical Methods", EPA Publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987).

(e) Salmonella sp. bacteria. Part 9260 D., "Standards Methods for the Examination of Water and Wastewater" 18th Edition, 1992. Kenner, B.A. and H.P. Clark, or "Detection and Enumeration of Salmonella and Pseudomonas aeruginosa", Journal of the Water Pollution Control Federation, Vol. 46, No. 9, September 1974, pp. 2163-2171.

(f) Specific oxygen uptake rate. Part 2710 B., "Standard Methods for the Examination of Water and Wastewater" 18th Edition, 1992.

(g) Total, fixed, and volatile solids. Part 2540 G., "Standard Methods for the Examination of Water and Wastewater", 18th Edition, 1992.

(3) All laboratory results submitted to the Department

must list the method used for analysis. The laboratory may be required to submit a documented Quality Assurance (QA) program for Department approval; the QA program must identify sampling and test procedures in sufficient detail so as to allow a technical evaluation. All sludge generating facilities shall submit a description of the proposed sludge analysis program, which shall address:

- (a) Laboratories used, addresses, qualifications
- (b) Parameters analyzed at each laboratory for each medium (water, soil, sludge)
- (c) QA/QC procedures utilized, results of procedures
- (d) Methodologies employed, citation for methodologies

The applicant must receive Department approval prior to execution of this program.

~~(4) Where the regulations require a soils analysis to be performed in order to determine cumulative metals loading a complete digestion process is required, and the specific testing method shall be referenced in the report; leachate tests would only be appropriate when testing to determine exchangeable cations uptake of metals by the plant-root system.~~

The Department requires that the laboratories utilized for sludge, soil, and ground water analyses to be certified and may charge an annual fee for certification.

(5) Where the regulations require a soils analysis to be performed in order to determine cumulative metals loading, a complete digestion process is required, and the specific testing method shall be referenced in the report; leachate tests would only be appropriate when testing to determine exchangeable cations uptake of metals by the plant-root system.

[TABLE 402-1RANGE OF ORGANIC PRIORITY POLLUTANTS TYPICAL OF MUNICIPAL SLUDGE IN THE U.S.]

VOLATILE COMPOUNDS (PURGEABLE)	Parts Per Million Concentration (Dry Weight Basis)
Benzene	0.29- 7.3
Carbon tetrachloride	0.9 - 22
Chlorobenzene	0.23- 5.8
Chloroform	0.17- 4.2
1,2-Dichloroethane	5 - 125
Methylene Chloride	1.7 - 43
Tetrachloroethylene	0.69- 17
Toluene	340 - 8,600
Trichloroethylene	1.8 - 46
Vinyl chloride	7.1 - 180

**ACID COMPOUNDS
(ACID EXTRACTABLE)**

Pentachlorophenol	2.1 - 52
Phenol	39 - 96
2,4,6-Trichlorophenol	0.46- 12

**BASE/NEUTRAL COMPOUNDS
(BASE/NEUTRAL EXTRACTABLE)**

Benzo(a)anthracene	1.8 - 46
Benzo(a)pyrene	51 - 1300
bis(2-Ethylhexyl)phthalate	32 - 790
Chrysene	1.7 - 42
3,3-Dichlorobenzidine	0.33- 8.2
Hexachlorobenzene	0.25- 6.2
Hexachlorobutadiene	0.9 - 22
n-Nitrosodimethylamine	0.008- 0.2
Phenanthrene	1.2 - 30
Pyrene	1.4 - 34

PESTICIDES AND PCB'S

Aldrin	0.03- 0.75
Gamma-BHC (Lindane)	0.004- 0.01
Chlordane	0.6 - 15
2,4-D	- 23
4,4-DDT	0.056- 1.4
4,4-DDE	0.0012- 0.3
4,4-DDD	0.042- 1
Dieldrin	0.004- 0.1
Endrin	ND
Heptachlor	0.004- 0.1
Malathion	0.13- 3.2
PCB's	6 - 50*
Toxaphene	1.6 - 39

Range encompasses 50% of data for organic compounds found in several U.S. analytical studies (adopted from Fricke, C., C. Clarkson, E. Lomnitz, and T. O'Farrell, 1985. Comparing priority pollutants in municipal sludges, Biocycle, Jan/Feb: 35-37).

Note: * Sludges containing more than 10 ppm of PCB's must be incorporated into the soil upon application, and sludges containing more than 50 ppm of PCBs are subject to TOSCA requirements.

Table 402.2 CEILING CONCENTRATIONS

Pollutant	Ceiling concentration (milligrams per kilogram) ¹
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

¹Dry weight basis

Table 402.3 POLLUTANT CONCENTRATIONS

Pollutant	average concentration (milligrams per kilogram)
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	18
Nickel	420
Selenium	36
Zinc	2800

¹Dry weight basis

Table 402.4 CUMULATIVE POLLUTANT LOADING RATE

Pollutant	Cumulative pollutant loading rate (kilograms per hectare)
Arsenic	41
Cadmium	39
Chromium	3000
Copper	1500
Lead	300
Mercury	17
Molybdenum	18
Nickel	420
Selenium	100
Zinc	2800

**Table 402.5 ANNUAL POLLUTANT LOADING
RATES**

Pollutant	Annual pollutant loading rate (kilograms per hectare per 365 day period)
Arsenic	2.0
Cadmium	1.9
Chromium	150
Copper	7
Lead	15
Mercury	0.85
Molybdenum	0.95
Nickel	21
Selenium	5.0
Zinc	140]

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER SIXTY-ONE**

TO: HEADS OF ALL STATE DEPARTMENTS,
AGENCIES AND AUTHORITIES, AND ALL
POLITICAL SUBDIVISIONS AND
GOVERNMENTAL UNITS OF THE
STATE OF DELAWARE

RE: DECLARATION OF DROUGHT WARNING;
EXTENDING VOLUNTARY WATER
CONSERVATION MEASURES; AND OTHER
RELATED ACTION

WHEREAS, Delaware and the region has experienced an extended period of below normal precipitation and stream flow;

WHEREAS, extremely warm weather in recent weeks has also increased the demand for water;

WHEREAS, the Commonwealth of Pennsylvania recently declared a drought emergency and imposed measures that will reduce water supplies for Delaware;

WHEREAS, the current drought conditions experienced in Delaware are adversely affecting fresh water supplies and have created a condition of relative water scarcity which will likely result in conflicts among competing water users;

WHEREAS, the increased demand and diminishing water supply may lead to a water shortage in the State of Delaware thereby necessitating a drought warning and aggressive conservation measures;

WHEREAS, such measures are essential to avoid or mitigate the adverse impact of a drought;

WHEREAS, any mandatory directive to reduce water use during drought conditions will likely have a substantial impact on the State's environment and economy, thereby affecting a wide range of water users and interests;

WHEREAS, any directive must also address water quality standards and instream water needs sufficient to protect fish and wildlife;

WHEREAS, a high degree of cooperation among the various water users of Delaware will be necessary during a drought and will require input from persons representing

and/or regulating these interests; and

WHEREAS, the State's Comprehensive Water Resources Management Plan establishes a phased approach for implementing drought contingency measures.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, pursuant to 20 Del.C. §3116(a)(5), do hereby proclaim as follows:

1. This Executive Order shall constitute a drought warning for the State of Delaware with a specific goal for northern New Castle County (north of the Chesapeake and Delaware Canal) of achieving a 15 percent reduction in water use.

2. State facilities shall impose a ban on all non-essential use of water as more fully set forth in Paragraph 3 of this Order below. Each agency shall also ensure that it continues to implement best management practices for agency water use as required by previous Executive Orders.

3. All citizens are urged to voluntarily restrict the non-essential use of water including, but not limited to, the following:

(a) The use of fresh water for non-agricultural irrigation and watering of lawns and outdoor gardens, landscaped areas, athletic fields, trees, shrubs, and outdoor plants by the use of hand-held containers or hand-held low-pressure perforated hoses whether used in attendance or controlled by an automatic timer; and by watering only between the hours of 5:00 p.m. and 9:00 a.m., unless otherwise requested by the water purveyor;

(b) The use of freshwater for watering golf courses, trees, greens and fairways by reducing water to the minimum amount necessary for survival and by only watering such areas between the hours of 5 p.m. and 9 a.m. As an exception to the above hourly restriction, syringing of heat sensitive grasses during daytime stress periods, not to exceed 70 percent of the prevailing application rates, is permissible;

(c) The use of water for washing paved surfaces such as streets, roads, sidewalks, driveways, garages, parking areas, tennis courts, and patios;

(d) The use of water for ornamental purposes including fountains, artificial waterfalls, and reflecting pools;

(e) The use of water for non-commercial washing

of automobiles, trucks, and other motor vehicles and trailers, by using hand-held buckets and hand-held hoses with manual flow control nozzles;

(f) The use of water from a fire hydrant for any purpose except for fire fighting;

(g) The use of water for flushing sewers and hydrants except as deemed necessary in the interest of public health and safety;

(h) The use of water in restaurants, clubs, and eating places by serving water only at the request of a customer; and

(i) Taking other measures to save water where possible, including repairing leaky water fixtures, flushing toilets only when necessary, minimizing splashing from pools, avoiding evaporation by covering pools when not in use, and installing shower flow restrictors, toilet tank dams, and faucet aerators.

4. Delaware water suppliers are requested to consider the adoption of such other water conservation measures as may be practicable.

5. Major industrial users in New Castle County north of the Chesapeake and Delaware Canal that are self supplied and that are water customers of municipalities or private utilities, should update their water contingency plans and prepare to implement such plans in the event a drought emergency is declared. These facilities are also urged to implement any and all water conservation measures practicable in order to achieve a 15 percent reduction in water use.

6. The Department of Natural Resources and Environmental Control (DNREC) shall immediately implement the drought warning directives set forth in the Comprehensive Water Resources Management Plan.

7. The Drought Advisory Committee shall consult with municipalities and other relevant agencies and organizations, both public and private, in carrying out the above-described activities.

Approved this 23rd day of July, 1999.

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER SIXTY-TWO

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE.

RE: PROCLAMATION OF STATE OF EMERGENCY DUE TO DROUGHT EMERGENCY; ISSUING AN EMERGENCY ORDER IMPOSING MANDATORY WATER CONSERVATION MEASURES; AND OTHER RELATED ACTION.

WHEREAS, on July 23, 1999, by Executive Order Number Sixty-One, I proclaimed a drought warning for the State of Delaware and urged specific voluntary conservation measures;

WHEREAS, Delaware and the region continue to experience severe drought conditions, including below normal precipitation and stream flow;

WHEREAS, the demand for fresh water has only diminished marginally since the imposition of voluntary conservation measures;

WHEREAS, the current supply of fresh water in northern New Castle County is low and is barely meeting current demand;

WHEREAS, the supply of fresh water in northern New Castle County will likely diminish further in the coming days and weeks if drought conditions continue;

WHEREAS, without a significant decrease in demand, fresh water supplies will be adversely affected thereby creating a condition of relative water scarcity which will likely result in conflicts among competing water users;

WHEREAS, the problem of water supply is most acute in northern New Castle County;

WHEREAS, to mitigate against and avert a serious water shortage, which could jeopardize public health and safety, it is necessary to impose aggressive mandatory conservation measures;

WHEREAS, in addition to reducing demand, it is necessary for the protection of public health to monitor water quality standards and to ensure that the instream water needs are sufficient to protect fish and wildlife; and

WHEREAS, a high degree of cooperation among the various water users of Delaware will be necessary during a drought and will require input from persons representing and/or regulating these interests.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, pursuant to 20 Del.C. §3115 and §3116(a)(5), do hereby proclaim as follows:

1. This Executive Order shall constitute a State of Emergency due to drought, limited to northern New Castle County (north of the Chesapeake and Delaware Canal).

2. All State facilities in northern New Castle County are banned from all nonessential use of water as more fully set forth in Paragraph 4 of this Order below. Each agency shall also continue to implement best management practices for agency water use as required by previous Executive Orders.

3. All municipalities are hereby ordered pursuant to 20 Del.C. §3116 and §3122 to issue directives consistent with this Order.

4. Pursuant to 20 Del.C. §3115(a)(5), the following uses of water are prohibited in northern New Castle County effective 3:00 p.m. August 5, 1999, except where specifically indicated to the contrary:

(a) The use of potable water for non-agricultural irrigation and watering of lawns and outdoor gardens, landscaped areas, athletic fields, trees, shrubs, and outdoor plants with the following exceptions, which are nevertheless only permissible between the hours of 5:00 a.m. and 8:00 a.m.:

(i) Potable water applied for irrigation to domestic vegetable and fruit gardens by hand-held containers or hand-held hoses with manually operated flow control nozzles or by low-pressure perforated hoses with user in attendance; and

(ii) Potable water applied in the minimum amount necessary for revegetation of land following earth moving where necessary to prevent soil erosion.

(b) The use of potable water for watering golf course trees, greens and fairways by reducing water to the

minimum amount necessary for survival and by only watering such areas between the hours of 5 a.m. and 8 a.m.;

(c) The use of fresh water for watering of nursery trees, shrubs, and other outdoor plants to the extent that sources of water other than fresh water adequate to supply needs are not available or feasible to use, fresh water may be:

i) Used by means of handheld container or handheld hose with manually operated flow control nozzles or by low-pressure perforated hoses with the user in attendance at the minimum rate necessary between the hours of 5 p.m. and 9 a.m. to establish and maintain newly planted gardens, trees, shrubs or other outdoor plants. This includes work in progress at the time of this Order.

ii) Used by commercial and retail nurseries in the minimum amount necessary to maintain stock and prevent loss with the application limited to no more than six hours daily which may be divided into no more than two periods of watering. Syringing of drought stressed plants is permitted as required between the hours of 12 Noon and 3 p.m. with no more than 10 minutes of watering allowed in any one area.

(iii) Used by arboretums and public gardens of National, State, or regional significance at the minimum rate necessary to preserve specimens.

iv) Sources of water, other than fresh, shall be used where available, such as from on-site storm water retention basins or ponds, and may be applied as conservatively as possible to prevent loss of outdoor plants.

(d) The use of potable water for washing paved surfaces such as, but not limited to, streets, roads, sidewalks, driveways, garages, parking areas, tennis courts, and patios, with the exception of clay tennis courts which may be watered only between the hours of 5:00 a.m. and 9:00 a.m.;

(e) The use of potable water for ornamental purposes, including but not limited to, fountains, artificial waterfalls, and reflecting pools;

(f) The use of potable water for non-commercial washing of automobiles, trucks, and other motor vehicles and trailers;

(g) The use of water from a fire hydrant for any purpose except fire fighting;

(h) The use of water for flushing sewers and hydrants except as deemed necessary in the interest of public

health and safety; and

(i) The serving of water in restaurants, clubs, and eating places by serving water only at the request of a customer.

5. Industrial and commercial water users in northern New Castle County are directed to reduce their level of water usage by twenty percent, wherever practical, through the implementation of effective water conservation practices and the use of alternative water supplies which reduce demand on the potable water supplies of water utilities. Upon request by the Department of Natural Resources Environmental Control (DNREC), industrial and commercial water users in northern New Castle County shall produce records and reports certifying the water usage reductions achieved.

6. Law enforcement authorities of this State and of the political subdivisions of this State shall enforce this Emergency Order and may issue citations for violations thereof pursuant to 20 Del.C. §3125. Law Enforcement officers may, in addition to issuing a summons for any such violation, provide the violator with a voluntary assessment pursuant to the prescribed procedure under 7 Del.C. §6061.

7. Water allocation permit holders who are providing or who hereafter commit to provide potable water to utilities which provide water for domestic purposes in northern New Castle County shall, on a case-by-case basis as determined by DNREC, have said permit limits suspended for the purpose of maximizing public water supply. Such suspensions shall remain in effect until further Order of the Governor or of the Secretary of DNREC.

8. The Drought Advisory Committee shall continue to consult with municipalities and other relevant agencies and organizations, both public and private, in carrying out the above-described activities.

9. All citizens of Delaware are urged to follow the conservation practices set forth in Paragraph 4 of this Order in order to avoid shortages similar to those being experienced in northern New Castle County.

Approved this day of August 5, 1999.

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council for Mental Health Parity	Mr. C. Malcolm Cochran, IV	Pleasure of the Governor
Board of Pilot Commissioners	Ms. Bonnie Benson Mr. Kevin N. Moore Mr. Charles F. Macintire Mr. Gary B. Patterson Ms. Glenda Scott	7/30/04 4/30/02 7/12/01 8/03/04 7/30/04
Child Death Review Commission	Dr. James J. Cosgrove Mr. Allan J. Daul Dr. John Forest Ms. Jonnie M. Green-Stubbolo Ms. Kathleen L. Peeke Dr. Michael L. Spear	7/30/02 7/30/02 7/30/02 7/30/02 7/30/02 7/30/02
Commission on National and Community Service	Ms. Margaret S. Dee Ms. Islanda Finamore	7/22/02 7/22/02
Council on Game and Fish	Mr. Garrett H. Arai Mr. J. Richard Berry Mr. Joseph E. Calhoun Mr. David J. Healey Ms. Verna Price Mr. John W. Stewart	7/30/02 7/30/02 7/30/02 7/30/02 7/30/02 7/30/02
Council on Housing	Ms. Constance C. McCarthy	7/22/02
Council on Volunteer Services	Mr. Timothy S. McLaughlin	7/22/01
Delaware Commission on Interstate Cooperation	The Honorable Brian J. Bushweller Mr. Gary Patterson	8/16/01 8/16/01
Delaware Commission for Women	Ms. Vivian M. Longo	5/27/01
Delaware Harness Racing Commission	Ms. Beverly H. Steele	7/30/05
Delaware Nutrient Management Commission	Mr. Mark Isaacs	7/22/00
Delaware Perinatal Board	Ms. Maureen C. Byrnes Mr. David E. Hollowell	Pleasure of the Governor Pleasure of the Governor
Delaware Qualified Tuition Savings Board	The Honorable Jack A. Markell, Chairperson	Pleasure of the Governor
Delaware Thoroughbred Racing Commission	Mr. Bernard Daney	8/07/05

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Environmental Appeals Board	Ms. Joan H. Donoho, Acting Chairperson	Pleasure of the Governor
Farmland Evaluation Advisory Committee	Mr. James H. Baxter	7/01/02
Foster Care Review Board	Ms. Jane J. Fox	7/03/01
Governor's Council on Agriculture	Mr. Douglas Corey Mr. Richard G. Papen Mr. Richard L. Sapp	7/30/02 7/30/02 7/30/02
Human Relations Commission	Ms. James E. Gray	7/30/03
Merit Employee Relations Board	Mr. John F. Schmutz, Chairperson	7/15/00
Organ & Tissue Donor Awareness Board	The Honorable Gerald A. Buckworth	8/03/02
Public Assessment and Accountability Advisory	Mr. Paul R. Fine, Chairperson	Pleasure of the Governor
State Board of Accountancy	Mr. Brian F. Dolan	8/03/02
State Election Commissioner	Mr. Thomas J. Cook	7/22/03

DEPARTMENT OF TRANSPORTATION**Motor Fuel Tax Administration**

DelDOT Motor Fuel Tax Administration presents proposed revisions to the following four applications. The revisions are proposed to gain additional information from applicants. The applications are for

1. Special Fuel User License;
2. Special Fuel Dealer License;
3. Special Fuel Supplier License;
4. Gasoline Distributor License.

For more information please contact Ron Pinkett, Motor Fuel Tax Administrator, at 302-739-5218.

[CLICK HERE TO VIEW THE INDIVIDUAL FORMS](#)

DEPARTMENT OF FINANCE**DIVISION OF REVENUE****AUGUST 13, 1999****TECHNICAL INFORMATION MEMORANDUM 99-2****SUBJECT: PERSONAL INCOME TAX CHANGES:
RATES, DEDUCTIONS & CREDITS****CONTACT: JOHN J. MACIEJESKI, JR.
(302) 577-8450**

411 increased the standard deduction of a resident spouse to \$3,250 filing separately and to \$6,500 if a joint return is filed. Senate Bill 244 increased the credit for each personal exemption from \$100 to \$110.

New Withholding Regulations booklets will be updated and mailed to all withholding agents.

William M. Remington
Director of Revenue

This Technical Information Memorandum is intended to publish the rate reductions for personal income tax.

Senate Bill 243 and House Bill 414 reduced the personal income tax rates effective January 1, 2000. These new rates are noted below.

Taxable Income Between Pay Plus On Amounts Over

\$ 0 - \$ 2,000	\$0.00	0.00%	0
\$ 2,000 - \$ 5,000	\$0.00	2.20%	\$ 2,000
\$ 5,000 - \$10,000	\$66.00	3.90%	\$ 5,000
\$ 10,000 - \$20,000	\$261.00	4.80%	\$ 10,000
\$ 20,000 - \$25,000	\$741.00	5.20%	\$ 20,000
\$ 25,000 - \$60,000	\$1,001.00	5.55%	\$ 25,000
\$ 60,000 & over	\$2,943.50	5.95%	\$ 60,000

The following House and Senate Bills are also effective for tax years beginning after December 31, 1999. House Bill

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION

The Delaware Thoroughbred Racing Commission proposes to amend the Commission's existing Regulations. The Commission proposes these amendments pursuant to 3 Del.C. §10103 and §10128.

The Commission proposes two rule amendments which are summarized below:

1. Amend Rule 10.04 and Rule 15.02(f) to amend the restrictions for when bleeding horses may race. Under the proposed rules, a horse that bleeds for a third time will no longer be barred from further racing but will instead be barred for a ninety (90) day period. A horse that bleeds for the fourth time will be barred from further racing except under limited circumstances when the bleeding incidents occur outside of a twelve month period.

Copies of the existing regulations and proposed regulations as amended may be obtained by the public from the Commission's Office, 2320 S. DuPont Highway, Dover, DE 19901; phone (302) 739-4811. The Commission will accept written comments from the public from September 1, 1999 through September 30, 1999. A public hearing will be held at Delaware Park, 777 Delaware Park Blvd., Stanton, DE on September 28, 1999, at 10:00 a.m.

DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, September 16, 1999 at 11:00 a.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
DELAWARE'S A BETTER CHANCE WELFARE REFORM PROGRAM

The Delaware Health and Social Services / Division of Social Services / Delaware's *A Better Chance Welfare Reform* Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3002 and 3031. These changes arise from Public Law 104-193, the

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option and was first announced in January 1995, as part of the original Delaware *A Better Chance (ABC) Welfare Reform* waiver design.

SUMMARY OF PROPOSED REVISIONS:

- Changing the time limit from forty-eight (48) cumulative months to thirty-six (36) cumulative months for all households headed by an employable adult applying on or after January 1, 2000.
- Revising language in the Work For Your Welfare provision to require up front Work For Your Welfare for individuals applying on or after January 1, 2000.

The time limit is a lifetime time limit.

INVITATION FOR PUBLIC COMMENT

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P. O. Box 906, New Castle, DE, by September 30, 1999.

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
Medicaid / Medical Assistance Program

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by September 30, 1999.

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****Medicaid / Medical Assistance Program**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by September 30, 1999.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION****1. TITLE OF THE REGULATIONS:**

Regulation 37 - NOx Budget Program

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

The ambient air in Delaware does not meet the national ambient air quality standard (NAAQS) for the pollutant ozone. It has been determined that NOx, a pollutant that contributes to the formation of ozone, must be reduced in order for Delaware to support its Rate of Progress Plan and ozone attainment demonstration. The Department is herein amending an existing regulation that requires boilers and indirect heat exchangers rated at 250 MMBTU/hr, or greater, heat input and electric generating units with an electrical output rating of 15 MW, or greater, to meet NOx emissions cap limitations that collectively reflect substantial reductions in NOx emissions. To aid industry in making the necessary reductions in a more cost effective manner, the regulation includes provisions that facilitate compliance through participation in a regional cap and trade program administered by the USEPA. The amendments to the regulation give the Department, at its discretion and upon a showing by the non-compliant source that all reasonable efforts were made to comply with the regulation, the authority to impose a phased-in emission offset penalty on a

non-compliant source in lieu of a mandatory 3-for-1 penalty.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

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

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing on this regulation will be held on Thursday, September 23, 1999, at 6:00 P.M. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware.

7. PREPARED BY:

Robert Clausen (302) 323-4542, August 15, 1999

**DEPARTMENT OF STATE
OFFICE OF THE STATE BANKING
COMMISSIONER****NOTICE OF PROPOSED AMENDMENT OF
REGULATIONS OF THE STATE BANK
COMMISSIONER****Summary:**

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001. Proposed amended Regulation Nos. 5.2112.0001 ("Mortgage Loan Brokers Operating Regulations"), 5.2111(a).0002 ("Mortgage Loan Brokers Minimum Requirements for Content of Books and Records") and 5.2113.0004 ("Mortgage Loan Brokers Minimum Disclosure Requirements") are amended to delete provisions for non-processing or originating mortgage brokers and to make other technical and conforming changes. Proposed amended Regulation No. 5.2115.0003 ("Mortgage Loan Broker Regulations - Itemized Schedule of Charges") is amended to provide that an informational screen with the capability for an affirmative acknowledgment by the consumer shall satisfy the requirement that the consumer be provided a copy of the regulation in the case of Internet transactions, to specify that

all fees shall be customary and reasonable, and to make other technical and conforming changes. Proposed amended Regulation Nos. 5.2111(b).0005 ("Report of Delaware Loan Volume" for mortgage brokers), 5.2210(e).0005 ("Report of Delaware Loan Volume" for licensed lenders), 5.2318.0001 ("Report of Delaware Sale of Checks, Drafts and Money Orders Volume"), and 5.2906(e).0003 ("Report of Delaware Loan Volume - Motor Vehicle Installment Contracts") are amended to add provisions for the licensees to specify the periods for which they are currently reporting. Proposed amend Regulation No. 5.2213.0002 ("Licensed Lenders Minimum Requirements for Content of Books and Records") is amended to delete the requirement for an index of borrowers, endorsers, co-makers, etc., and to make other technical and conforming changes. Proposed amended Regulation No. 5.2218/2231.0003 ("Licensed Lenders Regulations -Itemized Schedule of Charges") is amended to provide that an explanation shall satisfy the requirement that the consumer be provided a copy of the regulation in the case of a telephonic transaction and that an informational screen with the capability for an affirmative acknowledgment by the consumer shall satisfy the requirement that the consumer be provided a copy of the regulation in the case of an Internet transaction, to conform provisions for interest and fees to recent statutory changes, to specifically authorize loan discount points to reduce the periodic interest rate applicable to a mortgage loan, to specifically authorize tax certification and service fees, flood hazard certification or determination fees, property survey fees, pest inspection fees and other miscellaneous fees, to specify that all fees shall be customary and reasonable, and to make other technical and conforming changes. Proposed amended Regulation Nos. 5.2906(e)/122(b).0001 ("Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records") and 5.2906(e).0002 ("Motor Vehicle Sales Finance Companies Operating Regulations") are amended to conform to a recent statutory change by specifically providing for the financing of negative equity in a trade-in, and to make other technical and conforming changes. Proposed amended Regulation No. 5.3404/3409.0001("Preneed Funeral Contract Regulations Governing Revocable and Irrevocable Trust Agreements") is amended to require that licensees provide annual statements for both revocable and irrevocable preneed funeral trust agreements, to provide for an irrevocable trust document to include a provision for the transfer of trust funds to a new trustee at the consumer's election, and to make other technical and conforming changes. Proposed amended Regulation Nos. 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001 would be adopted by the State Bank Commissioner on or after October 4, 1999. Other

regulations issued by the State Bank Commissioner are not affected by the proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

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

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received before the public hearing on October 4, 1999.

Public Hearing:

A public hearing on the proposed revised regulations will be held in Room 112, Tatnall Building, William Penn Street, Dover, Delaware on Monday, October 4, 1999 at 10:00 a.m.

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

PUBLIC SERVICE COMMISSION

NOTICE OF PUBLIC HEARING ON PROPOSED CHANGES AND AMENDMENTS TO MINIMUM FILING REQUIREMENTS

In 1981, the Delaware Public Service Commission (the "Commission" or "PSC") adopted "Minimum Filing Requirements" ("MFR") for general rate increase applications. These requirements, which were last modified in 1984, govern the filing and content of rate increase applications made by utilities under the Commission's jurisdiction.

By Order No. 5051, dated March 23, 1999, the Commission reactivated this proceeding to receive comments upon and to consider certain modifications to the MFR proposed by the Commission Staff. According to Staff, these proposed modifications have become necessary to

meet the increase in the administrative burdens involved in Staff's review of utility applications occasioned the significant increase in the filing of such applications. Staff also asserts that its proposals are necessary to improve the efficiency of the rate review process.

The Commission has solicited and has received from interested persons written comments, suggestions, compilations of data, and other written materials concerning Staff's proposed changes and additions to the Minimum Filing Requirements.

PLEASE TAKE NOTICE THAT the Staff proposals, the materials submitted in response to the Commission's solicitations, and the oral testimony of witnesses presented by the participants who have filed comments will be the subject of a public hearing which will be conducted, beginning at 10 a.m. on Wednesday, September 22, 1999, in the Commission's Dover office, located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. Time will also be allotted during the hearing to receive comments from interested members of the public who are present.

The Commission's decision concerning this matter will be based upon the record developed at such hearing. The Commission has authority to issue such rules, and to effect the proposed changes and additions, under 26 Del. C. § 209(a).

The Minimum Filing Requirements, Staff's proposed changes and additions to the same, and all the materials submitted in connection therewith are or 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.

Any individual with disabilities who wishes to attend or 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, by writing, by telephone (using the regular telephone or the Telecommunications Relay Service), or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. Persons with questions concerning this docket may contact the Commission's Secretary, Karen J. Nickerson, by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by e-mail at knickerson@state.de.us

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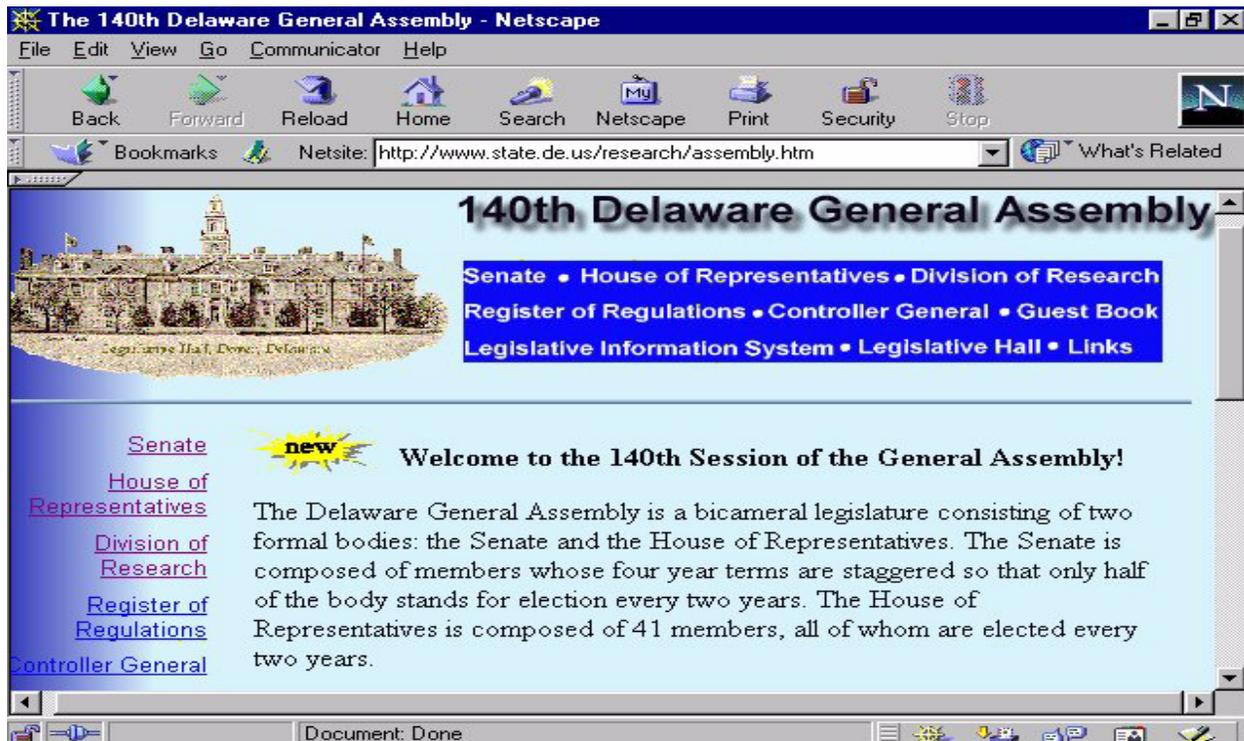
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GENERAL NOTICES

12. Has the applicant ever applied for a Delaware Distributor license in the past?
 Yes No If yes, please specify which calendar year: _____

13. Has the applicant's individual partners or corporate officers ever applied for a Delaware Distributor license in the past?
 Yes No N/A If yes, under what name: _____
 Please specify which calendar year: _____

14. Does the applicant operate only in Delaware? Date business started in Delaware:
 Yes No MONTH DAY YEAR

15. List below each location that is owned and/or leased by the applicant within Delaware. Please classify each location as Manufacturer/Refinery, Wholesale Distribution Plant, or Retail Facility. Use the letter "M" for Manufacturer/Refinery, "W" for Wholesale Distribution Plant, and "R" for Retail. Please note that more than one letter may be used for each location. In addition, please classify the shipment method of each location as: Own Vehicle, Pipeline, Barge, Vessel, Or Common Carrier.

LOCATION LETTER	PHYSICAL LOCATION OF PROPERTY (STREET, CITY, STATE)	INDICATE SHIPMENT METHOD :		GASOLINE STORAGE CAPACITY
		RECEIPTS	DISTRIBUTION	
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

16. What type of fuel business does the applicant operate in Delaware? Check all that apply:

	GASOLINE	AVIATION GASOLINE
Refinery/Manufacturing	<input type="checkbox"/>	<input type="checkbox"/>
Terminal rack sales	<input type="checkbox"/>	<input type="checkbox"/>
Tank wagon sales to residential & commercial accts.	<input type="checkbox"/>	<input type="checkbox"/>
Transport sales to residential & commercial accts.	<input type="checkbox"/>	<input type="checkbox"/>
Company owned retail service stations	<input type="checkbox"/>	<input type="checkbox"/>
Company owned convenience store stations	<input type="checkbox"/>	<input type="checkbox"/>
Sales to commissioned/consignment retail stations	<input type="checkbox"/>	<input type="checkbox"/>
Exchange agreement transactions	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>

17. Will the applicant be importing gasoline and/or aviation gasoline into Delaware? Yes No

If yes, will the applicant be hiring a common carrier to import the product? Yes No

If yes, please list the name, federal identification number, and telephone number of the common carrier:

Carrier Name	FEI Number	Telephone Number
_____	_____	□□□-□□□-□□□□
_____	_____	□□□-□□□-□□□□
_____	_____	□□□-□□□-□□□□

GENERAL NOTICES

18. List the states from which the applicant will import gasoline and/or aviation gasoline into Delaware, & the applicant's license number in that state:

<u>State Name</u>	<u>License Number</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

19. List the states to which the applicant will export gasoline and/or aviation gasoline from Delaware supply points, & the applicant's license number in that state:

<u>State Name</u>	<u>License Number</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

20. Provide the following information about suppliers & exchange partners from whom the applicant purchases gasoline and/or aviation gasoline. Attach another page if more space is required:

<u>Company Name</u>	<u>Shipping Point</u>	<u>Shipping Dest.</u>	<u>Type of Relationship</u>	
			<u>Supplier</u>	<u>Exchange Partner</u>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

21. Indicate the number of retail service stations owned & operated by the applicant in Delaware _____

22. Indicate the number of retail service stations the applicant supplies in Delaware _____

23. Does the applicant transport gasoline and/or aviation gasoline for hire in Delaware? Yes No

24. List the number & type of gasoline powered licensed vehicles that will be traveling in Delaware:

<u>Vehicle Type</u>	<u>Number of Vehicles</u>
Road Tractors	_____
3 Axle Trucks	_____
2 Axle Trucks	_____
Other	_____

GENERAL NOTICES

25. List below all of the applicant's off highway gasoline powered equipment fueled in DE. Attach a list if more space is needed.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

26. Estimate the number of gallons of gasoline and/or aviation gasoline that will be sold or used by the applicant during an average month:

	<u>Taxable Gasoline</u>	<u>Taxable Aviation Gas</u>
Average Gallons Per Month - Sales	_____	_____
Average Gallons Per Month - Use	_____	_____
Average Total Gallons - Sales & Use	_____	_____

27. Please record the date that the applicant began using and/or selling taxable gasoline in Delaware. _____

28. Does this application involve a change in the company's legal name or federal identification number? Yes No
 If yes, list the previous name and number.
 Company name _____
 Federal employer identification number or social security number: _____

29. Does the application involve the takeover and continuation of another business? Yes No
 If yes, list the following:
 Company name _____
 Federal employer identification number or social security number: _____

30. Attach a statement describing the applicant's proposed business in Delaware.

31. Have all persons responsible for reportable fuel activity read the Motor Fuel Tax Law (Chap. 51, Title 30, DE. Code) and do these persons understand its provisions? Yes No

32. Have any individuals identified in Item 11 of this application ever been convicted of a felony? Yes No
 Please provide copies of the criminal history records that detail the nature of the felony and the current status of any related sentencing provision. Please note that a "Yes" response to this question will not necessarily disqualify the applicant.

Before signing, please read the following statement carefully: Any false or substantive omission of information may be cause for rejection of application, or revocation of license (if license approval has been granted).

I (we), certify under penalty provided by law, that the statements made and the information furnished in this application are true, correct, and complete to the best of my knowledge and belief.

_____	_____
Authorized Name (Please Print)	Authorized Signature
_____	_____
Authorized Individual Title	Date of Application

GENERAL NOTICES

FOR DEPARTMENT USE ONLY
 ACCOUNT NUMBER: _____
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STATE OF DELAWARE
 DEPARTMENT OF TRANSPORTATION
 MOTOR FUEL TAX ADMINISTRATION
 P. O. DRAWER E
 DOVER, DE 19903-1565

FOR DEPARTMENT USE ONLY
 FEE \$10.00
 YEAR ENDING: JUNE 30, 2000

APPLICATION FOR SPECIAL FUEL SUPPLIER LICENSE

Please check the appropriate box: New application Renewal application

PLEASE NOTE: ALL QUESTIONS MUST BE ANSWERED AND NECESSARY ADDITIONAL DOCUMENTATION ATTACHED TO PROCESS THIS LICENSE APPLICATION. PLEASE PRINT ALL ANSWERS CLEARLY.

1. Legal name of applicant: _____

2. Trade name, if different from legal name: _____

3. Primary physical business location address (Not P.O. Box):
 Street: _____ City: _____ State: _____

4. Mailing address (if different from business location):
 Street or P. O. Box: _____ City: _____ State: _____

5. Location of records (if different from business location):
 Street: _____ City: _____ State: _____

6. Federal employer identification number or individual proprietor's SSN: _____

7. Telephone number: - Fax number: -

8. If we have questions regarding this application, who should we contact?
 Name: _____ Telephone number: -

9. Business type: (check one) Individual Corporation General Partnership Limited Partnership
 Limited Liability Company S Corporation

10. If the applicant business is incorporated under the laws of another state, please attach a certified copy of the certificate issued by the Delaware Secretary of State showing that the corporation is authorized to transact business in Delaware.

11. If individual, give proprietor name, address, & SSN. If partnership, give name, address, & SSN of each partner. If corporation, give names, titles, addresses, & SSN's of corporate officers (President, Vice President, Secretary, Treasurer)

Name/Title	Address	Social Security #
_____	_____	<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
_____	_____	<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
_____	_____	<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
_____	_____	<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

GENERAL NOTICES

12. Has the applicant ever applied for a Delaware Special Fuel Supplier license in the past?
 Yes No If yes, please specify which calendar year: _____

13. Has the applicant's individual partners or corporate officers ever applied for a Delaware Special Fuel Supplier license in the past?
 Yes No N/A If yes, under what name: _____
 Please specify which calendar year: _____

14. Does the applicant operate only in Delaware? Date business started in Delaware:
 Yes No MONTH _____ DAY _____ YEAR _____

15. List below each location where special fuel is maintained that is owned and/or leased by the applicant within Delaware. Please include all storage facilities for low sulfur clear diesel, low sulfur dyed diesel, high sulfur dyed diesel, kerosene, jet fuel, propane, compressed natural gas, etc. In addition, please check the box which applies to how the special fuel is used and/or sold for each tank.

<u>PHYSICAL LOCATION OF TANK</u>	<u>FUEL TYPE</u>	<u>TANK CAPACITY</u>	<u>STORAGE TANK DISTRIBUTION</u>	
			<u>TAXABLE USE/SALES</u>	<u>NON TAXABLE USE/SALES</u>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

16. What type of fuel business does the applicant operate in Delaware? Check all that apply:

	<u>CLEAR DIESEL</u>	<u>DYED DIESEL</u>	<u>CLEAR KERO</u>	<u>DYED KERO</u>	<u>JET FUEL</u>	<u>LP GAS</u>	<u>CN GAS</u>	<u>OTHER</u>
Refinery/Manufacturing	<input type="checkbox"/>							
Terminal rack sales	<input type="checkbox"/>							
Tank wagon sales to residential & commercial accts.	<input type="checkbox"/>							
Transport sales to residential & commercial accts.	<input type="checkbox"/>							
Company owned retail service stations	<input type="checkbox"/>							
Company owned convenience store stations	<input type="checkbox"/>							
Sales to commissioned/consignment retail stations	<input type="checkbox"/>							
Exchange agreement transactions	<input type="checkbox"/>							
Other: _____	<input type="checkbox"/>							

GENERAL NOTICES

17. Will the applicant be importing special fuel into Delaware? Yes No

If yes, will the applicant be hiring a common carrier to import the product? Yes No

If yes, please list the name, federal identification number, and telephone number of the common carrier:

<u>Carrier Name</u>	<u>FEI Number</u>	<u>Telephone Number</u>
_____	_____	□□□-□□□-□□□□
_____	_____	□□□-□□□-□□□□
_____	_____	□□□-□□□-□□□□

18. List each state from which the applicant will import special fuel into Delaware, & the applicant's license number in that state:

<u>State Name</u>	<u>License Number</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

19. List the states to which the applicant will export special fuel from Delaware supply points, & the applicant's license number in that state:

<u>State Name</u>	<u>License Number</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

20. Provide the following information about suppliers & exchange partners from whom the applicant purchases special fuel. Attach another page if more space is required:

<u>Company Name</u>	<u>Shipping Point</u>	<u>Type of Fuel Purchased</u>	<u>Type of Relationship</u>	
			<u>Supplier</u>	<u>Exchange Partner</u>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

21. Indicate the number of retail service stations owned & operated by the applicant in Delaware _____

22. Indicate the number of retail service stations the applicant supplies in Delaware _____

GENERAL NOTICES

23. Does the applicant transport special fuel for hire in Delaware?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
24. List the number & type of diesel powered licensed vehicles that will be traveling in Delaware:		
<u>Vehicle Type</u>	<u>Number of Vehicles</u>	
Road Tractors	_____	
3 Axle Trucks	_____	
2 Axle Trucks	_____	
Other	_____	
25. Please indicate the number of diesel powered off highway equipment the applicant operates in Delaware. _____		
26. Estimate the number of gallons of taxable special fuel that will be sold or used by the applicant during an average month:		
	<u>Taxable Special Fuel</u>	
Average Gallons Per Month - Sales	_____	
Average Gallons Per Month - Use	_____	
Average Total Gallons - Sales & Use	_____	
27. Please record the date that the applicant began using and/or selling taxable special fuel in Delaware: _____		
28. Does this application involve a change in the company's legal name or federal identification number? Yes <input type="checkbox"/> No <input type="checkbox"/>		
If yes, list the previous name and number.		
Company name	_____	
Federal employer identification number or social security number:	_____	
29. Does the application involve the takeover and continuation of another business? Yes <input type="checkbox"/> No <input type="checkbox"/>		
If yes, list the following:		
Company name	_____	
Federal employer identification number or social security number:	_____	
30. Attach a statement describing the applicant's proposed business in Delaware. _____		
31. Have all persons responsible for reportable fuel activity read the Motor Fuel & Special Fuel Tax Law (Chap. 51, Title 30, DE. Code)? In addition, have all persons responsible for reportable fuel activity read the Delaware Policy Directive regarding the "Taxation of Low Sulfur Clear Diesel"? Do these persons understand these provisions? Yes <input type="checkbox"/> No <input type="checkbox"/>		
32. Have any individuals identified in Item 11 of this application ever been convicted of a felony? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Please provide copies of the criminal history records that detail the nature of the felony and the current status of any related sentencing provision. Please note that a "Yes" response to this question will not necessarily disqualify the applicant.		
Before signing, please read the following statement carefully: Any false or substantive omission of information may be cause for rejection of application, or revocation of license (if license approval has been granted).		
I (we), certify under penalty provided by law, that the statements made and the information furnished in this application are true, correct, and complete to the best of my knowledge and belief.		
Authorized Name (Please Print)	_____	
Authorized Signature	_____	
Authorized Individual Title	_____	
Date of Application	_____	

GENERAL NOTICES

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FOR DEPARTMENT USE ONLY

ACCOUNT NUMBER: _____

LICENSE NUMBER: _____

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
MOTOR FUEL TAX ADMINISTRATION
P. O. DRAWER E
DOVER, DE 19903-1565

FOR DEPARTMENT USE ONLY

FEE \$10.00

YEAR ENDING: JUNE 30, 2000

APPLICATION FOR SPECIAL FUEL DEALER LICENSE

Please check the appropriate box: New application Renewal application

PLEASE NOTE: A SEPARATE LICENSE APPLICATION IS REQUIRED FOR EACH DELAWARE SPECIAL FUEL BULK TANK LOCATION. ALL QUESTIONS MUST BE ANSWERED AND NECESSARY ADDITIONAL DOCUMENTATION ATTACHED TO PROCESS THIS LICENSE APPLICATION. PLEASE PRINT ALL ANSWERS CLEARLY.

1. Legal name of applicant: _____

2. Trade name, if different from legal name: _____

3. Primary physical business location address (Not P.O. Box):

Street: _____

City: _____

State: _____

4. Mailing address (if different from business location):

Street or P. O. Box: _____

City: _____

State: _____

5. Location of records (if different from business location):

Street: _____

City: _____

State: _____

6. Federal employer identification number or individual proprietor's SSN: _____

7. Telephone number: - Fax number: -

8. If we have questions regarding this application, who should we contact?

Name: _____

Telephone number: -

9. Business type: (check one) Individual Corporation General Partnership Limited Partnership
Limited Liability Company S Corporation

10. If the applicant business is incorporated under the laws of another state, please attach a certified copy of the certificate issued by the Delaware Secretary of State showing that the corporation is authorized to transact business in Delaware.

11. If individual, give proprietor name, address, & SSN. If partnership, give name, address, & SSN of each partner. If corporation, give names, titles, addresses, & SSN's of corporate officers (President, Vice President, Secretary, Treasurer)

Name/Title

Address

Social Security #

-
 -
 -
 -

GENERAL NOTICES

12. Has the applicant ever applied for a Delaware Special Fuel Dealer license in the past?
Yes No If yes, please specify what calendar year: _____

13. Has the applicant's individual partners or corporate officers ever applied for a Delaware Special Fuel Dealer license in the past?
Yes No N/A If yes, under what name: _____
Please specify what calendar year: _____

14. Please list the physical address of the Delaware special fuel bulk location for which this license will be applicable:

15. Please list below the size of the tank, number of pump hoses, type of special fuel delivered to the tank, and the supplier name/address that will be delivering special fuel to this tank.

Type of Special Fuel:	Size of Delaware Bulk Tank: _____
Low Sulfur Clear Diesel <input type="checkbox"/>	Number of Pump Hoses: _____
Low Sulfur Dyed Diesel <input type="checkbox"/>	
Propane <input type="checkbox"/>	
Compressed Natural Gas <input type="checkbox"/>	
Other: _____ <input type="checkbox"/>	

Supplier Name:	Supplier Address:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

16. Will this bulk storage location be used to fuel licensed vehicles owned and/or operated by the applicant? Yes No

17. Will this bulk storage location be selling special fuel to licensed vehicles not owned and/or operated by the applicant?
Yes No

18. Please list the name of the customers that will be purchasing special fuel from this Delaware bulk storage location. Please note that if the applicant is planning to sell special fuel to more than five customers, please record the following statement on the line below: "Various customers sales".

GENERAL NOTICES

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19. Will special fuel be sold in a nontaxable manner from this bulk storage location? Yes No

20. If the box in line #19 was checked "Yes", please list the type of non taxable sales that will be occurring from this bulk storage location. (For example: reefer tanks, farm equipment, construction equipment, etc.)

21. Please record the date that the applicant began selling taxable special fuel in Delaware: _____

22. Estimate the number of gallons of taxable special fuel that will be sold by the applicant from this tank during an average month:

Average Gallons Per Month	Taxable Special Fuel Sales
_____	_____

23. Does this application involve a change in the company's legal name or federal identification number? Yes No
If yes, list the previous name and number.
Company name _____
Federal employer identification number or social security number: _____

24. Does the application involve the takeover and continuation of another business? Yes No
If yes, list the following:
Company name _____
Federal employer identification number or social security number: _____

25. Have all persons responsible for reportable fuel activity read the Motor Fuel & Special Fuel Tax Law (Chap. 51, Title 30, DE Code)? In addition, have all persons responsible for reportable fuel activity read the Delaware Policy Directive regarding the "Taxation of Low Sulfur Clear Diesel"? Do these persons understand these provisions? Yes No

26. Have any individuals identified in Item 11 of this application ever been convicted of a felony? Yes No
Please provide copies of the criminal history records that detail the nature of the felony and the current status of any related sentencing provision. Please note that a "Yes" response to this question will not necessarily disqualify the applicant.

Before signing, please read the following statement carefully: Any false or substantive omission of information may be cause for rejection of application, or revocation of license (if license approval has been granted).

I (we), certify under penalty provided by law, that the statements made and the information furnished in this application are true, correct, and complete to the best of my knowledge and belief.

Authorized Name (Please Print) _____	Authorized Signature _____
Authorized Individual Title _____	Date of Application _____

GENERAL NOTICES

FOR DEPARTMENT USE ONLY
 ACCOUNT NUMBER: _____
 LICENSE NUMBER: _____

STATE OF DELAWARE
 DEPARTMENT OF TRANSPORTATION
 MOTOR FUEL TAX ADMINISTRATION
 P. O. DRAWER E
 DOVER, DE 19903-1565

FOR DEPARTMENT USE ONLY
 FEE \$10.00
 YEAR ENDING: JUNE 30, 2000

APPLICATION FOR SPECIAL FUEL USER LICENSE

Please check the appropriate box: New application Renewal application

PLEASE NOTE: A SEPARATE LICENSE APPLICATION IS REQUIRED FOR EACH DELAWARE SPECIAL FUEL BULK TANK LOCATION. ALL QUESTIONS MUST BE ANSWERED AND NECESSARY ADDITIONAL DOCUMENTATION ATTACHED TO PROCESS THIS LICENSE APPLICATION. PLEASE PRINT ALL ANSWERS CLEARLY.

1. Legal name of applicant: _____

2. Trade name, if different from legal name: _____

3. Primary physical business location address (Not P.O. Box):
 Street: _____ City: _____ State: _____

4. Mailing address (if different from business location):
 Street or P. O. Box: _____ City: _____ State: _____

5. Location of records (if different from business location):
 Street: _____ City: _____ State: _____

6. Federal employer identification number or individual proprietor's SSN: _____

7. Telephone number: -- Fax number: --

8. If we have questions regarding this application, who should we contact?
 Name: _____ Telephone number: --

9. Business type: (check one) Individual Corporation General Partnership Limited Partnership
 Limited Liability Company S Corporation

10. If the applicant business is incorporated under the laws of another state, please attach a certified copy of the certificate issued by the Delaware Secretary of State showing that the corporation is authorized to transact business in Delaware.

11. If individual, give proprietor name, address, & SSN. If partnership, give name, address, & SSN of each partner. If corporation, give names, titles, addresses, & SSN's of corporate officers (President, Vice President, Secretary, Treasurer)

Name/Title	Address	Social Security #
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>

GENERAL NOTICES

12. Has the applicant ever applied for a Delaware Special Fuel User license in the past?
Yes No If yes, please specify what calendar year: _____

13. Has the applicant's individual partners or corporate officers ever applied for a Delaware Special Fuel User's license in the past?
Yes No N/A If yes, under what name: _____
Please specify what calendar year: _____

14. Please list the physical address of the Delaware special fuel bulk location for which this license will be applicable:

15. Please list below the size of the tank, number of pump hoses, type of special fuel delivered to the tank, and the supplier name/address that will be delivering special fuel to this tank.

Type of Special Fuel:	Size of Delaware Bulk Tank: _____
Low Sulfur Clear Diesel <input type="checkbox"/>	Number of Pump Hoses: _____
Low Sulfur Dyed Diesel <input type="checkbox"/>	
Propane <input type="checkbox"/>	
Compressed Natural Gas <input type="checkbox"/>	
Other: _____ <input type="checkbox"/>	

Supplier Name:	Supplier Address:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

16. Will the bulk storage location be used to fuel licensed vehicles only? Yes No

17. Will the bulk storage location be used to fuel non licensed equipment only? Yes No

18. Please list the type of non licensed equipment that will be fueling from this bulk storage location.

19. Will special fuel be sold from this bulk storage location? Yes No Note: The Delaware Special Fuel Law does not authorize special fuel to be sold to third parties under a Special Fuel User license.

GENERAL NOTICES

20. List the number & type of licensed vehicles that will be fueling from this bulk storage tank:

<u>Vehicle Type</u>	<u>Number of Vehicles</u>
Road Tractors	_____
3 Axle Trucks	_____
2 Axle Trucks	_____
Other	_____

21. Estimate the number of gallons of taxable special fuel that will be used by the applicant from this tank during an average month:

	<u>Taxable Special Fuel</u>
Average Gallons Per Month	_____

22. Does this application involve a change in the company's legal name or federal identification number? Yes No
If yes, list the previous name and number.

Company name _____

Federal employer identification number or social security number: _____

23. Does the application involve the takeover and continuation of another business? Yes No
If yes, list the following:

Company name _____

Federal employer identification number or social security number: _____

24. Have all persons responsible for reportable fuel activity read the Motor Fuel & Special Fuel Tax Law (Chap. 51, Title 30, DE. Code)? In addition, have all persons responsible for reportable fuel activity read the Delaware Policy Directive regarding the "Taxation of Low Sulfur Clear Diesel"? Do these persons understand these provisions? Yes No

25. Have any individuals identified in Item 11 of this application ever been convicted of a felony? Yes No
Please provide copies of the criminal history records that detail the nature of the felony and the current status of any related sentencing provision. Please note that a "Yes" response to this question will not necessarily disqualify the applicant.

Before signing, please read the following statement carefully: Any false or substantive omission of information may be cause for rejection of application, or revocation of license (if license approval has been granted).

I (we), certify under penalty provided by law, that the statements made and the information furnished in this application are true, correct, and complete to the best of my knowledge and belief.

Authorized Name (Please Print)

Authorized Signature

Authorized Individual Title

Date of Application