Title 3

Agriculture

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Part I
Department of Agriculture
Chapter 1
GENERAL PROVISIONS

§ 101 Powers.

The Department of Agriculture may:

(1) Abate, suppress, eradicate and prevent, by such means as shall be prescribed and provided by law or by rule, order or regulation of the Department of Agriculture, the San Jose Scale, peach yellows, pear blight and all other contagious and infectious and injuriously dangerous diseases of fruit trees, plants, vegetables, cereals, horses, cattle, cultured aquatic stock and other farm animals;

(2) Devise and execute measures necessary for the development of the agricultural interests of the State;

(3) Make and adopt rules for the government of the Department of Agriculture, and may change, alter and modify the same from time to time, as the Department of Agriculture may wish, provided however, that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof;

(4) Employ and discharge such inspectors, officers, employees, agents and servants as in its opinion may be necessary to carry out the provisions of this title; provided, however, that the remuneration or wages to be paid to any such inspectors, officers, employees or agents in any year shall not, together with the other expenses of the Department of Agriculture, exceed the appropriation annually made to the Department of Agriculture by the General Assembly in and for that year;

(5) Make rules for the proper government of all inspectors, officers, employees, agents and servants who may be employed by the Department of Agriculture;

(6) Collect samples of foods, dairy and other feeds, and insecticides and have them analyzed by the State Chemist, and cooperate with the United States Department of Agriculture in enforcing the laws on these subjects as prescribed by the Congress of the United States;

(7) Compel all growers of fruit to stamp or mark the baskets, boxes, packages, crates, parcels or other receptacles used by them for the shipment of any fruit or fruits with the name or names of the growers, initial or initials, or with some distinguishing device or mark which may be readily and easily read and seen on the same, and the Department of Agriculture may adopt rules and regulations to carry this into effect;

(8) Exercise authority and make and adopt regulations covering the possession, control, care, and maintenance of, and take measures necessary to control disease in and ensure the welfare of, the following domesticated species: poultry and livestock, including but not limited to bovine, camilid, cervidae, equine, swine, ruminants, ratites, rabbits, poultry, and other animals harvested for food, fiber, fur or leather;

(9) Devise and execute measures necessary to mitigate disease occurrences in animal species, if such disease is able to affect poultry or livestock, or is capable of causing disease in humans. For rabies refer to Chapter 82 of this title.

(10) The Department of Agriculture may issue an administrative inspection warrant for the purpose of conducting an inspection of, and seizure of property at, any location within the State where race horses are stabled or otherwise located, except those horses stabled or otherwise located at facilities licensed pursuant to § 4805(b)(13) of Title 29, upon proper application for an administrative warrant by the Harness Racing Commission or the Thoroughbred Racing Commission. The issuance of an administrative inspection warrant by the Secretary of Agriculture shall be for the sole purpose of determining whether a violation has occurred pursuant to Chapter 100 or 101 of this title or the regulations promulgated thereunder.

a. An application for an administrative inspection warrant shall:

1. Specifically identify the premises and property to be inspected and shall be limited to the stabling area where racehorses are housed, specifically the stalls, aisleways, feed room, tack room, tack trunks, and other common areas in the shedrow specified in the application. An administrative warrant shall not provide the authority to permit the inspection of dwelling areas and out buildings where racehorses are not housed;

2. Specifically state the items or types of items to be seized if found;

3. Specifically state the full name and address of the Delaware Harness Racing Commission or Delaware Thoroughbred Racing Commission licensee who is believed to be in violation of Chapter 100 or 101 of this title or the regulations promulgated thereunder;

4. Issue only upon an affidavit by an employee of the Commission applying for the administrative inspection warrant who has knowledge of the facts alleged and sworn to before the Secretary of Agriculture. The warrant shall state the specific purpose of the inspection, the basis for issuing the warrant and the name, address and telephone number of each affiant supporting the issuance of the warrant;

5. Direct the Commission's employee or designee thereof who is a police academy graduate to be accompanied by a Commission or State veterinarian and to inspect the premises and property so specified and to seize, if appropriate, the property specified in the warrant; and

6. Direct that the warrant shall only be served and executed during normal business hours and shall be returned as completed to the Secretary of Agriculture as soon as immediately practicable. Normal business hours shall mean between 6:00 a.m. and 6:00 p.m. Monday through Sunday.

b. Proper application for an administrative inspection warrant shall be based on a reasonable articulable suspicion that:

1. "Blood-doping"—the process where prohibited substances which abnormally enhance oxygenation of equine body tissue are being, or have been, carried within the body of a race horse—has occurred; or

2. A Class 1 or Class 2 drug is being, or has been, carried in the body of a race horse in violation of Chapter 100 or 101 of this title or the regulations promulgated thereunder.

Unauthorized possession of a hypodermic needle, syringe or injectable of any kind on the premises of a facility licensed pursuant to § 4805(b)(13) of Title 29 shall constitute reasonable articulable suspicion that blood-doping has occurred or a Class 1 or Class 2 drug is being, or has been, carried in the body of a race horse. Reasonable articulable suspicion exists where the totality of the circumstances if corroborated, indicates that the information provided is reliable. Reliability of the information is based on the specificity of the facts alleged and the degree to which the information is corroborated by other independent evidence or information.

c. Service of an administrative inspection warrant shall only be made upon a person who has reached the age of 18 at the time the warrant was served and who has authority to accept service of the warrant by virtue of his or her relationship to the property as the owner of the premises, a family member of the owner of the premises, the lessor of the premises who is the subject of the administrative inspection warrant, the operator or manager of the premises, or any other person authorized by the owner or operator of the premises to accept service of an administrative inspection warrant.

d. The administrative inspection warrant shall be executed and returned to the Secretary of Agriculture within 5 days after being issued and must state the name and age of the person upon whom the warrant was served, the relation of the person to the property being inspected, the date and time the inspection occurred, the buildings inspected, and the specific property seized as a result of the inspection. A written inventory of any property seized as a result of the execution of the administrative inspection warrant shall accompany the return warrant and shall affirm that the inventory was made in the presence of the person executing the warrant and the person(s) from whom the property was seized.

e. No inspection authorized pursuant to this section shall be the basis for criminal prosecution.

f. An administrative inspection warrant shall not be required where a licensee who is the subject of an inspection consents to the inspection of his or her property. Consent to the inspection of the property shall only be valid where the licensee who is the subject of the inspection has been advised that he or she does not have to consent to an inspection without being presented with an administrative warrant issued by the Secretary of Agriculture.

g. In the absence of a finding that a violation under Chapter 100 or 101 of this title or the regulations promulgated thereunder has occurred, any property seized pursuant to the execution of the administrative inspection warrant shall be returned to the person from whom the property was seized within 30 days from the date of execution of the warrant.

(21 Del. Laws, c. 216 §§ 3, 22; 22 Del. Laws, c. 101 § 1; 22 Del. Laws, c. 332 § 1; Code 1915 §§ 652, 668, 708H; 30 Del. Laws, c. 51 § 1; Code 1935 §§ 570, 586, 707; 3 Del. C. 1953 § 103; 57 Del. Laws, c. 784 § 1B; 67 Del. Laws, c. 344 § 1; 69 Del. Laws, c. 69 § 1; 69 Del. Laws, c. 103 § 1; 70 Del. Laws, c. 109 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 283 § 1; 79 Del. Laws, c. 135 § 1; 79 Del. Laws, c. 377 § 4.)

§ 102 Entry on lands.

In order to accomplish the purposes of this title, the Department of Agriculture, its officers, employees, agents and servants, may enter upon any public or private premises, parks or cemeteries, or upon any lands of any person within this State, for the purpose of inspecting, examining, destroying, treating or experimenting upon insects and diseases.

(21 Del. Laws, c. 216 § 6; Code 1915 § 655; Code 1935 § 573; 3 Del. C. 1953 § 105; 57 Del. Laws, c. 764 § 1B.)

§ 103 Periodic examination.

The Department of Agriculture shall send at least one of its officers, agents or employees at least once a year into each county of the State, for the purpose of examining and determining thereby the healthfulness and general condition of the horticultural and agricultural interests.

(Code 1935 § 574; 3 Del. C. 1953 § 106; 57 Del. Laws, c. 764 § 1B.)

§ 104 Failure to mark packages of fruit.

Whoever, being a grower of any fruits, neglects or fails, after 10 days' notice by the Department of Agriculture, to comply with any order, rule or regulation of the Department of Agriculture shall be fined $5.00.

(21 Del. Laws, c. 216 § 22; 22 Del. Laws, c. 101 § 1; Code 1915 § 668; Code 1935 § 586; 3 Del. C. 1953 § 108; 57 Del. Laws, c. 764 § 1B; 77 Del. Laws, c. 359 § 1.)

§ 105 Appropriations for agricultural societies.

All moneys appropriated for the Delaware Crop Improvement Association, shall be payable only on warrants drawn by the Secretary of the Department of Agriculture. The Department of Agriculture shall examine into and verify all the items of expenditure proposed for any of such appropriations and nothing shall be paid out of any of such appropriations unless approved by the Department of Agriculture.

(32 Del. Laws, c. 33 § 10; Code 1935 § 606; 3 Del. C. 1953 § 109; 57 Del. Laws, c. 764 § 1C; 70 Del. Laws, c. 283 § 2.)

Part I
Department of Agriculture
Chapter 3
MARKETING

§ 301 Duties.

The Department of Agriculture shall:

(1) Investigate the cost of production and marketing in all its phases;

(2) Gather and disseminate information concerning supply, demand, prevailing prices, and commercial movements, including common and cold storage of food products;

(3) Promote, assist and encourage the organization and operation of cooperative and other associations and organizations for improving the relations and services among producers, distributors and consumers of food products;

(4) Investigate the practice and methods and any specific transactions of commission merchants and others who receive, solicit, buy, handle on commission, or otherwise, food products;

(5) Act as mediator or arbitrator, when invited, in any controversy or issue that arises between producers and distributors and which affects the interest of the consumer;

(6) Act on behalf of the consumer in conserving and protecting the consumer's interests against excessive prices;

(7) Act as market adviser for producers and distributors, assisting them in economical and efficient distribution of food products at fair prices;

(8) Encourage the establishment of retail municipal markets and develop direct dealing between producers and consumers;

(9) Encourage the consumption of Delaware grown products within the State;

(10) Inspect and determine the grade and condition of farm produce both at collecting and receiving centers; and

(11) Take such means and use such powers, relative to shipment, transportation and storage of foodstuffs of any kind, as may be necessary and as it deems advisable or desirable in case of an emergency creating or threatening to create a scarcity of food within the State.

(Code 1915 § 697I; 32 Del. Laws, c. 33 § 8; 33 Del. Laws, c. 50; Code 1935 § 624; 3 Del. C. 1953 § 302; 57 Del. Laws, c. 764 § 2B; 70 Del. Laws, c. 186 § 1.)

§ 302 Powers; fees; Department of Agriculture's Inspection Fund; annual reports.

(a) The Department of Agriculture may:

(1) Make rules and regulations for the grading, packing, handling, storage and sale of all food products within the State, not contrary to law;

(2) Enforce its rules and regulations by actions or proceedings in any court of competent jurisdiction;

(3) Provide official inspection upon request, to fix according to established trade custom; and collect fees for such inspection of farm products, and issue certificates showing the grade or other classification of such product at the time of inspection, which certificates shall be accepted in any court in this State as evidence of the true grade or other classification at the time inspected; and

(4) Provide testing of feeds, fertilizers, liming materials, frozen desserts, milk and milk products for the public and charge for the cost of these services.

(b) The fees collected by the Department of Agriculture for its inspection service shall be paid into the State Treasury and the State Treasurer shall deposit the same to the credit of a special fund entitled "Department of Agriculture Inspection Fund," from which necessary expenses of the Department of Agriculture for fruit, vegetable, poultry and grain inspections and the testing of feeds, fertilizers, liming materials, frozen desserts, milk and milk products shall be paid, upon proper vouchers signed by the Secretary of the Department of Agriculture. The Department of Agriculture's Inspection Fund shall be a revolving fund and no funds deposited therein shall revert to the General Fund of the State Treasury, except for funds appropriated by the 117th General Assembly to begin said Fund, which funds shall be paid back to the State Treasurer out of said Department of Agriculture's Inspection Fund on or before June 30, 1955. The Department of Agriculture shall annually, on or before January 31st, make a report to the Governor of all income and expenditures made from said Fund. A copy of said reports shall be given biannually, on or before January 31st, to the members of the General Assembly.

(33 Del. Laws, c. 50; Code 1935 § 624; 3 Del. C. 1953 § 303; 49 Del. Laws, c. 367 § 1; 57 Del. Laws, c. 601; 57 Del. Laws, c. 764 §§ 2B-D; 66 Del. Laws, c. 78 §§ 1, 2.)

§ 303 Expenses.

All expenses incurred by the Department of Agriculture in the performance of its duties and powers except as provided by subsection (b) of § 302 of this title, shall be paid from funds appropriated for use of the Department of Agriculture.

(Code 1915 § 697I; 32 Del. Laws, c. 33 § 8; 33 Del. Laws, c. 50; Code 1935 § 624; 3 Del. C. 1953 § 304; 49 Del. Laws, c. 367 § 2; 57 Del. Laws, c. 764 §§ 2B, D.)

§ 304 Employees.

Federal certificate clerks, federally licensed grain inspectors, and other federally licensed inspectors and graders who are permanent state employees, whether or not the State is reimbursed by the federal government for their services, shall be classified employees subject to Chapter 59 of Title 29.

(59 Del. Laws, c. 555 § 2.)

§ 305 Delaware Agriculture Marketing Fund.

(a) There is established a Delaware Agriculture Marketing Fund to which shall be credited all funds appropriated by the General Assembly of this State for the administration of this chapter, and all funds received through the sale of promotion and marketing products under this chapter.

(b) All revenues derived from the sale of promotion and marketing products under the administration of the Delaware Department of Agriculture shall be paid to the State Treasurer and credited to the Delaware Agriculture Promotion Fund for use in connection with agricultural promotion or marketing.

(65 Del. Laws, c. 166 § 1.)

§§ 311 -314. [Reserved.]

Part I
Department of Agriculture
Chapter 4
DELAWARE AQUACULTURE ACT

§ 401 Short title.

This chapter shall be known and may be cited as the "Delaware Aquaculture Act."

(67 Del. Laws, c. 439 § 1.)

§ 402 Declaration of purpose.

The General Assembly finds and declares it to be in the interest of the general welfare and economic prosperity of the State to have a comprehensive and ongoing program to promote and encourage aquacultural activities. The General Assembly further declares aquaculture in a closed system to be an agricultural activity under the authority of the Department of Agriculture which shall coordinate these types of aquacultural activities in the State.

(67 Del. Laws, c. 439 § 1; 79 Del. Laws, c. 178 § 1.)

§ 403 Definitions.

As used in this chapter:

(1) "Aquaculture" means the controlled propagation, growth, harvest and subsequent commerce in cultured aquatic stock by an aquaculturist.

(2) "Aquaculture facility" means any water system and associated infrastructures capable of holding and/or producing cultured aquatic stock.

(3) "Aquaculture registration" means the formal registration by application to the Department of Agriculture of an aquaculture facility by a person, partnership or corporation.

(4) "Aquaculturist" means an individual, partnership or corporation involved in the production of cultured aquatic stock or parts thereof.

(5) "Aquatic organism" means an animal or plant of any species or hybrid thereof, and includes gametes, seeds, egg, sperm, larvae, juvenile and adult stages, any one of which is required to be in water during that stage of its life.

(6) "Broodstock" means sexually mature aquatic organisms, either domesticated or wild, used to propagate cultured aquatic stock.

(7) "Closed system" means an aquaculture facility with water discharge(s) that does not connect in any way to the waters of the State prior to the discharged water being screened, filtered or percolated to prevent cultured aquatic stock from escaping.

(8) "Cultured aquatic stock" means aquatic organisms, lawfully acquired by an aquaculturist that are held and grown in a registered aquaculture facility.

(9) "Department" means the Department of Agriculture.

(10) "Domesticated" means an animal or plant trained, adapted and/or bred to live in a human controlled environment.

(11) "Fee fishing" means removing cultured aquatic stock from a registered aquaculture facility in a sportsman-like manner for a payment of a fee.

(12) "Fee fishing operation" means a registered aquaculture facility where a person may fish for cultured aquatic stock.

(13) "Native species" means any species or hybrid thereof of any plant or animal which naturally occurs in the waters of the State.

(14) "Naturalized species" means any species or hybrid thereof of any plant or animal which has been introduced to the waters of this State and has become established by reproducing in the waters of this State.

(15) "Non-native species" means any species or hybrid thereof of any plant or animal which does not occur naturally in the waters of the State.

(16) "Open system" means an aquaculture facility with a water discharge(s) that connects to the waters of this State without being screened, filtered or percolated prior to discharge to prevent cultured aquatic stock from escaping.

(17) "Registered aquaculture facility" means an aquaculture facility which has a valid aquaculture registration issued by the Department of Agriculture.

(18) "Secretary" means the Secretary of the Department or his or her designee.

(19) "Waters of the State" means all the tidal waters under the jurisdiction of the State where the lunar tide regularly ebbs and flows and all nontidal waters under the jurisdiction of this State except for nontidal waters contained in aquacultural facilities registered with the Department of Agriculture.

(20) "Wild" means an animal or plant that is not trained, adapted and/or bred to live in a human controlled environment.

(67 Del. Laws, c. 439 § 1; 69 Del. Laws, c. 103 §§ 2, 3.)

§ 404 Aquaculture technical assistance and marketing program.

The Department shall develop and implement a technical assistance and marketing program to assist owners and operators of aquacultural facilities and to promote Delaware aquaculture products. This program will be done in conjunction with, and shall be consistent with, the Department's responsibilities as defined in Chapter 3 of this title. The Department's program shall include, but not be limited to, the following:

(1) Maintain a complete list of aquaculturalists engaged in the production of any aquacultural product and shall maintain a separate list of closed system aquaculture operations;

(2) Coordinate with Delaware Department of Natural Resources and Environmental Control to maintain a complete list of aquaculturalists;

(3) Encourage the viability and profitability of aquaculture operations and to promote consumption of Delaware grown aquaculture products within and outside the State.

(67 Del. Laws, c. 439 § 1; 69 Del. Laws, c. 103 § 4; 79 Del. Laws, c. 178 § 1.)

§ 405 Limitations.

Aquaculture activities shall not promote the introduction of any nonindigenous species that harbor disease, parasites or are capable of surviving and adversely competing with indigenous plant or animal species.

(67 Del. Laws, c. 439 § 1; 79 Del. Laws, c. 178 § 1.)

§ 406 Authority of the Department.

(a) The Department, in accordance with the administrative procedures and provisions set forth in Chapter 101 of Title 29, shall have the authority to promulgate regulations, which shall have the force and effect of law, to enhance and control closed system aquaculture in this State.

(b) Any authorized employee of the Department, after determining there is probable cause that there has been a violation of this chapter or any regulation promulgated by the Department, may do the following without obtaining a warrant beforehand:

(1) Search, examine and/or inspect any vehicle or conveyance in which cultured aquatic stock may be present for the purpose of determining compliance with Chapter 4 of this title or any regulation promulgated by the Department;

(2) Detain any person and/or person's vehicle for a reasonable length of time to conduct any search, examination and/or inspection thereof for the purpose of determining compliance with Chapter 4 of this title; and

(3) Inspect, search and/or examine any registered aquaculture facility in the presence of any occupant of said facility to determine compliance with Chapter 4 of this title or any regulation promulgated by the Department.

(69 Del. Laws, c. 103 § 5; 79 Del. Laws, c. 178 § 1.)

§ 407 Fee fishing operations.

(a) It shall be lawful for any person to fish, without being licensed to fish in this State, within an aquaculture facility designated as a fee fishing operation and registered as same with the Department of Agriculture.

(b) The owner(s) of a fee fishing operation shall apply to the Department of Agriculture to register his or her fee fishing operation. The fee fishing operation shall meet with the following requirements, subject to inspection and approval by the Department of Natural Resources and Environmental Control, prior to the Department of Agriculture approving the registration:

(1) The fee fishing operation shall be a closed system; and

(2) The fee fishing operation shall not contain any wild finfish.

(c) When authorized by the owner of a fee fishing operation, it shall be lawful for a person to take and/or possess those species or hybrids thereof permitted according to § 903(j) of Title 7, without regard to any seasonal restrictions, size limits or creel limits.

(d) Any person in possession of cultured aquatic stock lawfully taken from a fee fishing operation shall be issued a receipt for same by the owner or owner's agent of that fee fishing operation. This receipt shall include the name and address of the fee fishing operation, the date the cultured aquatic stock were taken, the identification and number of each species of cultured aquatic stock taken, and the signature of the person to whom the receipt is issued. This receipt shall remain in the possession of the person who took the cultured aquatic stock from the fee fishing operation until that person enters his or her personal abode or temporary or transient place of lodging. The owner or owner's agent of the fee fishing operation shall maintain a copy of each receipt for a period of at least 1 year from the date of issuance.

(e) Unless otherwise authorized, it shall be unlawful for any person to possess any cultured aquatic stock that remain alive after legally taking same from a fee fishing operation.

(69 Del. Laws, c. 103 § 5; 79 Del. Laws, c. 178 § 1.)

§ 408 Aquaculture registration.

The owner(s) of an aquaculture facility shall register same with the Department of Agriculture on forms and in accordance with procedures established by the Department of Agriculture. The Department of Agriculture shall promulgate regulations to establish criteria for the registration of an aquaculture facility. The Department of Agriculture shall maintain a registry of aquaculture facilities to assist in the administration of the State aquaculture program. Aquaculture facility registration shall be valid for 5 years from the date of issue. The owner of an aquaculture facility shall renew the registration of the facility in the event of any change in ownership or a significant change in operations.

(69 Del. Laws, c. 103 § 5; 79 Del. Laws, c. 178 § 1.)

§ 409 Suspension or revocation of registration.

The Department of Agriculture may, after due notice, suspend or revoke any aquaculture registration which does not comply with the requirements of this chapter or the regulations promulgated by the Department of Agriculture. A person affected by such suspension or revocation may request a hearing before the Department of Agriculture. A hearing shall be held within 30 days after the request. Within 30 days after the hearing, the Department of Agriculture shall affirm, withdraw or modify its action by an order based upon the record of the hearing. An appeal from that order may be taken to the Superior Court within 30 days of the suspension or revocation order. If no request for a hearing is made within 30 days of the suspension or revocation order, the suspension or revocation will be effective and the registration is suspended or revoked. All fines and penalties for violations of this subsection shall be paid to the Department of Agriculture and deposited in the general fund account.

(69 Del. Laws, c. 103 § 5; 79 Del. Laws, c. 178 § 1.)

§ 410 Aquaculture facility protection.

It shall be unlawful for any person, without the written consent of the owner, to remove, destroy or release cultured aquatic stock from a registered aquaculture facility or introduce any toxic substance directly or indirectly into the waters of a registered aquaculture facility.

(69 Del. Laws, c. 103 § 5; 79 Del. Laws, c. 178 § 1.)

§ 411 Aquaculture facility protection.

Transferred to § 410 of this title by 79 Del. Laws, c. 178, § 1, effective August 28, 2013.

Part I
Department of Agriculture
Chapter 5
STATE CHEMIST

§ 501 Appointment.

The Department of Agriculture shall appoint a suitable person to serve as State Chemist.

(29 Del. Laws, c. 48 § 1; Code 1935 § 688; 3 Del. C. 1953 § 501; 57 Del. Laws, c. 764 § 3.)

§ 502 Compensation.

The State Chemist shall receive such compensation for his services and expenses as may be fixed by the Department of Agriculture, to be paid out of funds of the State Treasury, in the same manner as other necessary expenses of the State are now paid, as provided by law.

(Code 1915 § 705; 29 Del. Laws, c. 48 § 1; Code 1935 § 696; 3 Del. C. 1953 § 502; 57 Del. Laws, c. 764 § 3.)

§ 503 False analysis, penalty.

Whoever, being the State Chemist, wilfully makes any false or untrue analysis, shall be fined not more than $100, and shall be imprisoned until the fine is paid.

(16 Del. Laws, c. 348; 17 Del. Laws, c. 438 § 13; Code 1915 § 709; Code 1935 § 708; 3 Del. C. 1953 § 503.)

§ 504 [Reserved.]

Part I
Department of Agriculture
Chapter 6
DELAWARE VITICULTURE ACT

§ 601 Short title.

This chapter shall be known and may be cited as the "Delaware Viticulture Act."

(68 Del. Laws, c. 338 § 1.)

§ 602 Declaration of purpose.

The General Assembly finds and declares it to be in the interest of the general welfare and economic prosperity of the State to have a comprehensive and ongoing program to promote and encourage viticultural activities. The General Assembly further declares viticulture an agricultural activity and that the Department of Agriculture shall coordinate viticultural activities in the State.

(68 Del. Laws, c. 338 § 1.)

§ 603 Definitions.

As used in this chapter:

(1) "Department" means the Department of Agriculture.

(2) "Commission" means the Alcoholic Beverage Control Commission.

(3) "Secretary" means the Secretary of the Department of Agriculture.

(4) "Viticulture" means the cultivation, production or marketing of any grape variety that is cultivated, produced or marketed as a cultivated crop in this State.

(68 Del. Laws, c. 338 § 1.)

§ 604 Viticulture technical assistance and marketing program.

The Department shall develop and implement a technical assistance program to assist the owners and operators of viticultural facilities and to promote Delaware viticulture products. This program will be done in conjunction with, and shall be consistent with, the Department's responsibilities as defined in § 103 of this title. The Department's program shall include, but not be limited to, the following:

(1) Maintain a complete list of viticulturalists engaged in the production of any viticultural product for the purpose of certifying those viticulturists as bonafide Delaware viticulture producers.

(2) Develop and administer procedures for possession, processing, sale, delivery, transportation or exporting of viticulture products that comply with all federal and state laws, except where production of viticulture products into wine is regulated by the Commission.

(3) Encourage the viability and profitability of viticulture operations and to promote the consumption of Delaware-grown viticulture products within and outside the State.

(68 Del. Laws, c. 338 § 1.)

§ 605 Delaware Viticulture Council.

A Delaware Viticulture Council is hereby created for the purposes of assisting the Department with the enhancement and promotion of viticulture activities and operations within the State. Duties of the Council shall include, but not be limited to, the following:

(1) Examine the impact of laws and regulations on the viticulture industry and recommend to the Secretary methods to simplify regulatory processes or otherwise enhance the regulatory climate with respect to the efficient siting and operation of viticulture operations;

(2) Examine the viticulture incentive programs used by other states, determine those programs used, determine programs that would best enhance viticulture operations and report to the Secretary on what actions are required to address these needs;

(3) Examine research and educational needs as they relate to the improvement of management and operations of viticulture operations and report to the Secretary on what actions are required to address these needs;

(4) Respond to requests of the Secretary to examine other issues relating to the enhancement of viticulture activities and operations in Delaware.

The Council shall be composed of no less than 12 members. Members shall include:

(1) The Secretary of the Department of Natural Resources and Environmental Control or the Secretary's designee;

(2) The Director of the Delaware Economic Development Office or the Director's designee;

(3) A representative of the University of Delaware to be appointed by the President of the University;

(4) A representative of Delaware State University to be appointed by the President of the University;

(5) A representative of the Delaware Farm Bureau to be appointed by the President of the Delaware Farm Bureau;

(6) Three individuals that are actively involved in commercial viticulture activities or operations to be appointed by the Chairperson of the Council;

(7) Three individuals with an interest in viticulture activities to be appointed by the Chairperson of the Council.

The Secretary shall act as chairperson of the Council, or may appoint a designee.

(68 Del. Laws, c. 338 § 1; 69 Del. Laws, c. 67 § 2; 69 Del. Laws, c. 458 § 1; 70 Del. Laws, c. 186 § 1.)

Part I
Department of Agriculture
Chapter 7
AGRICULTURAL COMMODITIES DEVELOPMENT ACT

§ 701 Short title.

This chapter shall be known and may be cited as the "Delaware Agricultural Commodities Development Act."

(62 Del. Laws, c. 176 § 1.)

§ 702 Purpose; construction.

(a) It is hereby declared to be in the interest of the public welfare that Delaware farmers who produce agricultural commodities for domestic and foreign markets shall be permitted to act separately or jointly in cooperation with handlers, dealers and processors of such products, with the Delaware Department of Agriculture, the University of Delaware's College of Agricultural Sciences and any other qualified agencies, to provide funds to assist in education, research, production and market development related to such commodities. It is further declared that provisions for the establishment of Agricultural Commodity Advisory Boards are deemed an appropriate means to accomplish the purpose.

(b) This chapter shall not be construed to abrogate or limit in any way the rights, powers, duties and functions of the Secretary of Agriculture or any other agency of the State, but shall be supplementary thereto, and in aid and cooperation therewith.

(62 Del. Laws, c. 176 § 1.)

§ 703 Definitions.

For the purpose of this chapter:

(1) "Agricultural commodity" means any agricultural product, including, but not limited to, plants and animals and plant and animal products, grown, raised or produced within the State for use as food, feed, seed or any aesthetic, industrial or chemurgic purpose.

(2) "Commercial channels" means the processes of the sale of any agricultural commodity to any commercial buyer, dealer, processor, cooperative or to any person, public or private, who resells such commodity or any product produced from such commodity for storage, slaughter, processing or distribution.

(3) "Person" means any individual, corporation, association, cooperative, partnership or organized group of persons whether incorporated or not.

(4) "Board" or "Advisory Board" means the boards created under this chapter in connection with the organization of producers as herein provided.

(5) "First purchaser" means any person that buys agricultural commodities for movement into commercial channels from the producer; or any lienholder, secured party or pledgee, public or private, or assignee of said lienholder, secured party or pledgee, who gains title to the agricultural commodity from the producer as the result of exercising any legal rights by the lienholder, secured party, pledgee or assignee thereof, regardless of when the lien, security interest or pledge was created.

(6) "Secretary" means the Secretary of Agriculture of the State.

(7) "Producer" means any person who owns or operates an agricultural producing or growing facility for the agricultural commodity under consideration for referendum and shares in the profits and risks of loss from such facility, and who grows, raises, feeds or produces said agricultural commodity in Delaware during the current marketing year.

(8) "Qualified voter" means any person who would be subject to the payment of fees imposed to finance the activities described in this chapter.

(9) "Development order" means an order issued by the Secretary with the advice and consent of an Agricultural Commodity Advisory Board pursuant to this chapter.

(10) "Sale" means any passing of commodity title from the producer to the first purchaser. Sale includes any pledge, security interest or lien.

(62 Del. Laws, c. 176 § 1.)

§ 704 Agricultural Commodity Advisory Boards — Creation; membership; election; term; organization.

(a) An Agricultural Commodity Advisory Board is hereby created for the producers of each agricultural commodity who file with the Secretary a petition requesting that the producers of such commodity be subjected to the sections of this chapter. The petition is to be signed by at least 100 producers or at least 10 percent of the producers of such commodity whichever is less. Such petition shall be certified by at least 2 producers to have been signed only by producers of the commodity involved.

(b) Upon petition of the required number of producers, the Secretary shall, after consultation with the various agricultural or commodity organizations petitioning for a referendum, determine the size of the Agricultural Commodity Advisory Board and distribution of the Board membership. The Advisory Board may designate agricultural industry, Department of Agriculture and University of Delaware personnel,

either by name or by office, to serve as consultants to the Board.

(c) Within 30 days after the filing of the petition by the required number of the producers, the Secretary shall appoint a nominating committee of 5 persons from the involved agricultural or commodity organizations who shall, within 60 days from the filing of such petition, nominate at least 2 candidates for each Advisory Board position and certify the names of such nominees to the Secretary. Nominees shall be selected with a view to establishing a fair representation of all producers throughout the area to be organized, which shall comprise the entire State unless otherwise determined by the Secretary after consultation with agricultural and commodity organizations, in which event the Secretary shall define such area following county lines. Upon receipt of the nominations, the Secretary shall promptly arrange an election to be held at places designated by the Secretary, reasonably convenient to all producers in the organized area, and give at least 14 days' notice of such election in at least 1 newspaper having a general circulation in the organized area. Ballots setting forth the names of nominated candidates and providing for write-in candidates shall be made available at all polling places. Only producers of the particular commodity shall be qualified to elect members of that commodity's Advisory Board. Polling procedures shall be established to avoid voting by others than those qualified to vote. An impartial committee appointed by the Secretary shall tabulate the votes and the candidates receiving the most votes shall be declared elected to the first Advisory Board. In each calendar year following the one in which the first Board is elected, candidates shall be selected and an election shall be held to elect a successor or successors to the Board member or members whose term or terms expire in that year. Nominations shall be made and the elections shall be held in the same manner as prescribed for the first Board except that the choice of nominating committee members, the time of nominations and the time and place of elections shall be fixed by the Secretary with the consent of the Advisory Board.

(d) At the first meeting of the first Advisory Board the Secretary shall determine by lot one third of the Board members whose terms shall expire June 30 in the calendar year following the year of the first election, one third of the Board members whose terms shall expire June 30 in the second calendar year and the remaining Board members whose terms shall expire June 30 in the third calendar year. In the event the Secretary has designated specific areas for representation on the Advisory Board, the terms of Board members in any one area shall not expire in the same year. All elected successor Board members shall be elected for 3-year terms and each shall serve until the member's successor is elected and qualified. No Board member shall succeed himself or herself after serving 2 full terms. In the event a Board member ceases to have any of the qualifications herein established, the member's office shall be deemed vacant. Any interim vacancy on the Board shall be filled by appointment of the Board for the remainder of the term vacated.

(e) The Secretary of Agriculture shall serve as secretary of the Advisory Board without vote. The Board shall elect, from its own membership, a chairperson, and a vice chairperson who shall act in the absence of the chairperson, and such other officers as the Board may deem appropriate. The terms of such officers shall expire on June 30 of each year and their successors shall be elected at the first meeting following that date.

(62 Del. Laws, c. 176 § 1; 70 Del. Laws, c. 186 § 1.)

§ 705 Same — Meetings; quorum.

Subject to the requirements of this chapter, the Advisory Board shall meet at such time and place as it may determine or upon call of the chairperson or of any 3 members of the Board. A majority of the voting members of the Board shall constitute a quorum for the transaction of all business in carrying out the duties of the Board.

(62 Del. Laws, c. 176 § 1; 70 Del. Laws, c. 186 § 1.)

§ 706 Same — Formulate and submit development order.

(a) Within 30 days after the election of an Agricultural Commodity Advisory Board by the producers of a particular commodity, the Advisory Board shall meet and formulate a development order establishing a program to assist such functions as education, research, production and market development relating to such commodity or commodities and establishing fees to be paid by producers to finance the proposed activities.

(b) The Secretary, with the advice and consent of the Advisory Board, shall hold a public hearing or public hearings on the proposed development order in an area or areas and at a time or times affording reasonable opportunities to producers to attend. The Advisory Board together with the Secretary shall determine after such hearings whether or not the development order shall be amended, modified or supplemented. If changes or additions of substance are made, the Advisory Board and the Secretary shall hold like public hearings on the amended or supplemented development order.

(c) Following the hearing, or hearings, the Advisory Board and Secretary shall conduct a referendum on the proposed final development order. At least 14 days' notice of the time and places of such referendum shall be published in a legal newspaper of general circulation in each county affected. In addition, direct written notice thereof shall likewise be given to each county extension office in any county involved in the referendum. Such notice shall include details of the development order to afford all producers access to complete information about the development order. The development order shall become effective if it is approved by a majority of those voting in the referendum, and such order shall be applicable only to those producers of the subject commodity within the area of the State organized pursuant to this chapter. Upon completion of the referendum, the Secretary shall make findings and issue an appropriate order based on said findings.

(62 Del. Laws, c. 176 § 1.)

§ 707 Same — Additional powers and duties.

(a) The Agricultural Commodity Advisory Board shall:

(1) Adopt and administer rules and regulations for the administration of the development order;

(2) Recommend amendments to the order, such amendments to be adopted only after a referendum in which a majority of the producers voting favor such adoption;

(3) Prepare an annual estimated budget for the operation of the development order; and

(4) Prepare an annual report on the programs of the order, said report to be made available to the producers concerned.

(b) The Advisory Board shall provide a procedure for collection of the producer assessments to finance the development order and for the proper administration of the order.

(c) The Advisory Board shall provide for the refund of any fees or assessments paid by the producer who objects to payments of said fees or assessments.

(d) The Advisory Board is authorized to accept donations of funds, property, services or other assistance from public or private sources for the purpose of furthering the objectives of this chapter.

(e) The Advisory Board shall have the right to investigate and prosecute in the name of the State any action or suit to enforce the collection or insure payment of fees or assessments authorized by this chapter, and to sue and to be sued in the name of the Board and to do all other things necessary to the administration and implementation of this chapter.

(f) The Advisory Board shall be responsible for the collection and expenditure of all funds provided for under this chapter and shall provide for an annual audit of funds to be made by a certified auditing firm. An annual financial statement shall be available to any participant upon request.

(62 Del. Laws, c. 176 § 1.)

§ 708 Powers and duties of Secretary.

(a) The Secretary, with the advice and consent of the Advisory Board, will contract and cooperate with the University of Delaware's College of Agricultural Sciences, or with other qualified agencies, persons or organizations, to meet the purpose of the development order.

(b) The Secretary, with the advice and consent of the Advisory Board, may appoint, employ, provide necessary bond, discharge, fix compensation for and prescribe the duties of such administrative, clerical, technical and other personnel and agencies as may be deemed necessary.

(c) In administering this chapter, the Secretary shall have such other powers as may be conferred upon him by law not inconsistent with this chapter.

(d) In the organization and operation of a development order for any agricultural commodity coming under the sections of this chapter, the Secretary shall follow the rules and regulations as developed by the Advisory Board pursuant to this chapter.

(62 Del. Laws, c. 176 § 1.)

§ 709 Fees to defray expenses.

(a) For the purpose of providing funds to defray the necessary expenses incurred by the Secretary and the Advisory Board in formulating, submitting to referendum, issuing, administering and enforcing an agricultural commodity development order, the development order shall provide for assessing and collecting fees in amounts sufficient to defray such expenses. Any increase in the maximum assessment provided for in the development order must be within the limit herein prescribed and must be approved by the majority of voting, participating producers in a referendum held for that purpose after reasonable notice of such proposed increase.

(b) The Agricultural Commodity Advisory Boards together with the Secretary shall establish the procedure for the payment of the assessment by the producer and such procedure shall be clearly outlined in the proposed development order. Such procedure must be fair, reasonable and shall be deducted by the first purchaser at the time of sale. The first purchaser shall submit to the Advisory Board through the Secretary's office any fees so deducted once every 30 days. When proof of payment of the fee assessed can be furnished, it shall not be necessary for any subsequent buyer to deduct the fee at time of purchase.

(c) The Secretary shall require producers petitioning for a development order to deposit with him in advance such amount as he deems necessary to defray the expense of electing the first Board formulating an order, submitting it to referendum and issuing the order. If the order is issued, such persons shall be reimbursed when funds are available from assessments. If the order is not issued the Secretary shall refund only that portion of the deposit remaining after payment of expenses incurred on a pro rata basis.

(d) Fees collected pursuant to this chapter shall be deposited in a bank or banks or other depository approved by the Secretary of Finance of the State and shall be disbursed by such officers and employees as may be approved by the Advisory Board for the necessary expenses incurred in the administration of this chapter. Fees collected shall be used exclusively for the purpose collected and not for legislative or political activities.

(62 Del. Laws, c. 176 § 1.)

§ 710 Compensation of Board.

Each member of the Advisory Board, except the Secretary, shall be entitled to a reasonable per diem to be fixed in the development order and actual expenses incurred while attending Board meetings, but only actual expenses incurred while engaged in official business of the Advisory Board.

(62 Del. Laws, c. 176 § 1.)

§ 711 Legal counsel.

The Advisory Board may appoint an attorney who shall act for the Board and the Secretary when required. The Board shall fix the compensation and terms of employment of such attorney.

(62 Del. Laws, c. 176 § 1.)

§ 712 Records of Advisory Board.

All of the records of the Advisory Board shall be public records and shall be available for inspection for any lawful purpose; provided, however, that the Advisory Board shall be empowered to make reasonable rules and regulations concerning the time or place of such inspection, as provided in the Freedom of Information Act, Chapter 100 of Title 29.

(62 Del. Laws, c. 176 § 1.)

§ 713 Refund of fees.

Any producer, by the use of forms to be provided by the Secretary and upon presentation of such proof as the Secretary and Advisory Board may require by rule or regulation, may have the fee paid pursuant to this chapter refunded to him or her. Such request for refund must be received in the office of the Secretary or the Advisory Board within 60 days following the payment of such fee, but in no event shall these requests for refund be accepted more often than 12 times per year and must be made at least once each year. Refund shall be made by the Secretary or Advisory Board within 30 days of the request for refund provided that the fee sought to be refunded has been received. Rules and regulations governing the refund of fees for the commodity involved shall be formulated by the Board together with the Secretary and shall be fully outlined at the hearing, or hearings, and be available for the information of all persons concerned with the referendum.

(62 Del. Laws, c. 176 § 1; 70 Del. Laws, c. 186 § 1.)

§ 714 Termination of order.

(a) The Advisory Board shall suspend or terminate a development order whenever it finds, after a public hearing or hearings, that an order is contrary to or does not tend to effectuate the purposes or provisions of this chapter, provided that such suspension or termination shall not become effective until the expiration of the current marketing year. The current marketing year described under this chapter shall be determined by the Board together with the Secretary.

(b) Upon petition of the same number of producers as required to initiate the development order, the Secretary with the advice and consent of the Advisory Board shall within 60 days conduct a referendum to determine whether or not the development order shall be continued. The Secretary shall terminate the order at the end of the current marketing year if a majority of the persons voting in the referendum vote in favor of termination. Such petitions of producers shall include a certification statement that the signatures are those of qualified producers of the commodity involved.

(62 Del. Laws, c. 176 § 1; 70 Del. Laws, c. 186 § 1.)

§ 715 Expenditure of funds upon termination of order.

Any funds remaining with the Advisory Board after the termination of a development order shall be expended to meet existing legal obligations of the Board. Any surplus remaining shall be expended for research purposes or other lawful purposes under this chapter at the discretion of the Board.

(62 Del. Laws, c. 176 § 1.)

§ 716 Association not illegal.

No activity, including meetings, undertaken in pursuance of the sections of this chapter that are intended to benefit the procedures, handlers and processors of such agricultural commodity shall be deemed or considered illegal or in restraint of trade.

(62 Del. Laws, c. 176 § 1.)

§ 717 Penalty.

Any person who violates any provision of this chapter or rule or regulation of an Agricultural Commodity Advisory Board promulgated pursuant to the sections of this chapter is guilty of a class C misdemeanor. Justices of the peace shall have jurisdiction over all offenses under this chapter.

(62 Del. Laws, c. 176 § 1.)

Part I
Department of Agriculture
Chapter 9
DELAWARE AGRICULTURAL LANDS PRESERVATION ACT
Subchapter I
Establishment of Foundation, Advisory Boards and Fund

§ 901 Purpose, policy and intent.

It is the declared policy of the State to conserve, protect and encourage improvement of agricultural lands within the State for the production of food and other agricultural products. It is also the declared policy of the State to encourage, promote and protect farming as a valued occupation. Preservation of the State's farmlands and forestlands is considered essential to maintaining agriculture as a viable industry and important contributor to Delaware's economy. It is a finding of the General Assembly that valuable and irreplaceable farmlands and forestlands are being lost due to nonagricultural development pressures and that, to insure the long-term utilization of the State's most viable agricultural lands, it is necessary to adopt and implement an effective program and infrastructure for permanent agricultural land preservation. To the maximum extent possible, State agency action, particularly action involving the exercise of powers of eminent domain, which has an adverse impact on viable agricultural lands, should be avoided or minimized. It is further recognized that a need exists to create sufficient economic incentives and benefits to encourage agricultural landowners to voluntarily place viable agricultural lands under protective restrictions through the creation of and participation in agricultural preservation districts and the sale of development rights. It is the purpose and intent of the General Assembly to provide for the creation of permanent agricultural areas comprised of viable farmlands and forestlands to serve the long-term needs of the agricultural community and the citizens of the State. It shall be a priority to create agricultural preservation districts and purchase development rights in those areas located near and adjacent to designated growth zones.

(68 Del. Laws, c. 118 § 2; 71 Del. Laws, c. 378 § 93.)

§ 902 Definitions.

The following terms shall have the meanings ascribed to them in this chapter:

(1) "Advisory Board" or "Advisory Boards" means the Farmland Preservation Advisory Boards established and appointed by the respective legislative bodies of each county.

(2) "Agricultural lands" means farmlands and forestlands.

(3) "Agricultural use" means all forms of farming, including agriculture, horticulture, aquaculture, silviculture and activities devoted to the production for sale of food and other products useful to humans which are grown, raised or harvested on lands and waters.

(4) "Agricultural value" means the value of the land when subject to the District restrictions set forth in § 909 of this title and the requirements imposed under § 914(a)(2) of this title.

(5) "County" means New Castle County, Kent County and Sussex County as referenced.

(6) "Forestlands" means a contiguous area of trees or forest cover at least 10 acres in size which is capable of being timbered and reforested as determined by the State Forester.

(7) "Forestland preservation agreement" means an agreement executed by an owner or owners creating a forestland preservation area and binding forestlands to forestland preservation area restrictions for a period of 10 years and any extended period.

(8) "Forestland preservation easement" means the perpetual easement acquired by the Foundation on forestlands.

(9) "Foundation" means the Delaware Agricultural Lands Preservation Foundation.

(10) "Fund" means the Delaware Farmland Preservation Fund.

(11) "Growth zone" means the areas designated by the Foundation recognizing planned future development.

(12) "LESA" means the Land Evaluation and Site Assessment system adopted by the Department of Agriculture to determine the quality of farmland and forestland and the long-term agricultural viability of such lands.

(13) "Owner" or "owners" means the person or persons holding fee simple title to farmlands and/or forestlands.

(14) "Person" or "persons" means any individual or individuals, partnership, joint venture, corporation, association, trust, institution, cooperative enterprise or duly established legal entity capable of holding title to real property in the State.

(15) "Preservation easement" means perpetual agricultural land preservation easements acquired by the Foundation.

(16) "Professional forester" means an individual who possesses at least a bachelor's degree in forestry or a closely related field.

(17) "Unimproved land" means the open space, the area of land under structures used for agricultural purposes and the land under lakes, dams, ponds, streams and irrigation ditches, but shall not include the land used for dwelling housing.

(18) "Usable" means available and capable of being used for agricultural, horticultural, aquacultural and forestry production activities.

(68 Del. Laws, c. 118 § 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 378 § 94; 75 Del. Laws, c. 201 § 1.)

§ 903 Delaware Agricultural Lands Preservation Foundation.

(a) There is hereby established and created a statewide agricultural lands preservation foundation, a body politic and corporate constituting a public instrumentality of the State established and created for the performance of an essential public and governmental function, to be known as the Delaware Agricultural Lands Preservation Foundation. The Foundation shall be comprised of 13 trustees, all of whom shall be resident of and qualified to vote in the State. The President Pro Tem shall appoint 1 member from the Senate and the Speaker of the House shall appoint 1 member from the House of Representatives each of whom shall serve an indefinite term. The Governor shall appoint the remaining 11 Trustees and shall designate 1 Trustee as Chairperson, which Trustee shall serve at the pleasure of the Governor and be confirmed with the advice and consent of the Senate. The composition of the 11 members appointed by the Governor to the Board of Trustees of the Foundation shall be as follows:

(1) The Secretary of the Department of Agriculture or authorized designee to serve an indefinite term.

(2) The Secretary of the Department of Natural Resources and Environmental Control or authorized designee to serve an indefinite term.

(3) The State Treasurer or authorized designee to serve an indefinite term.

(4) A member and representative of the Delaware Farm Bureau, to be selected from a list of 3 nominees submitted by the Delaware Farm Bureau, who shall serve an initial term of 2 years.

(5) A member and representative of the Delaware State Grange, to be selected from a list of 3 nominees submitted by the Delaware State Grange, who shall serve an initial term of 2 years.

(6) An individual actively engaged in farming or some other form of agribusiness who is a resident of New Castle County and who shall serve for an initial term of 3 years.

(7) An individual actively engaged in farming or some other form of agribusiness who is a resident of Kent County and who shall serve for an initial term of 3 years.

(8) An individual actively engaged in farming or some other form of agribusiness who is a resident of Sussex County and who shall serve for an initial term of 3 years.

(9) An individual actively engaged in farming or some other form of agribusiness who may reside in any county of the State.

(10) An individual who is a resident of the State who is designated as Chairperson.

(11) The Chair of the Council on Forestry or authorized designee to serve an indefinite term.

(b) Upon the expiration of the terms of the original Trustees having designated terms, the terms of such Trustee positions thereafter shall be 3 years. For the 5 Trustees appointed to the positions indicated in paragraphs (a)(6) through (a)(10) of this section, Trustees registered in either major political party shall not exceed the other major political party by more than 1.

(c) In the event of death, permanent disability, resignation or failure to perform duties of a Trustee, the Governor shall appoint an interim Trustee to serve the unexpired term of the departing Trustee, or, in the case of the Chairperson, an interim term not to exceed 6 months, unless the Chairperson is confirmed with the advice and consent of the Senate.

(d) For purposes of conducting business of the Foundation, 7 Trustees shall constitute a quorum. A majority vote of members constituting the quorum shall be required for action on any matter before the Foundation. All votes on matters before the Foundation shall be conducted at meetings open to the public, and such meetings shall be timely noticed. Nothing shall prevent the Trustees of the Foundation from meeting at executive sessions which are closed to the public for purposes of discussing Foundation matters.

(e) The Trustees shall not be entitled to compensation for the services they provide to the Foundation; however, each Trustee shall be entitled to reimbursement for actual and necessary expenses incurred to enable the performance of official duties.

(f) No Trustee shall be entitled to vote on any matter before the Foundation if such Trustee knowingly has a financial interest in the outcome of such matter. In the event a Trustee knowingly has a financial interest, such Trustee shall indicate to the Chairperson the nature of the interest and the Chairperson shall note for the record that the Trustee did not vote by reason of conflict of interest. In situations in which a Trustee or Trustees do not vote by reason of conflict of interest, the matter pending before the Foundation shall be decided on the basis of a majority vote of the remaining Trustees present who do not have a conflict of interest. A Trustee or Trustees having a conflict of interest as set forth herein shall be counted for purposes of establishing a quorum provided such Trustee or Trustees are present at the meeting. The fact that a Trustee or Trustees have not voted by reason of conflict of interest shall in no way affect the validity of an act or actions taken regarding the matter before the Foundation.

(g) The Foundation shall continue until its existence shall be terminated by law. Upon termination of the existence of the Foundation, all of its rights, properties and liabilities shall pass to and be assumed by the State.

(68 Del. Laws, c. 118 § 2; 68 Del. Laws, c. 371 § 7; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 98 § 134; 75 Del. Laws, c. 201 §§ 2, 3; 80 Del. Laws, c. 198 §§ 1-3.)

§ 904 Duties and authority of Foundation.

(a) The Foundation shall be responsible for the following:

(1) The adoption, after public hearing, of criteria for establishment and maintenance of Agricultural Preservation Districts, which criteria shall supplement and be consistent with the standards set forth in this chapter;

(2) The adoption, after public hearing, of criteria for the purchase of agricultural lands preservation easements, which criteria shall

supplement and be consistent with the standards set forth in this chapter;

(3) The adoption, after public hearing and consultation with the Department of Agriculture, the Department of Natural Resources and Environmental Control, and the Farmland Preservation Advisory Boards and Planning and Zoning Commissions of each county, of a statewide agricultural lands preservation strategy which specifically identifies the areas of the State in which valuable productive agricultural lands are located and which are considered best suited for long-term preservation, and by specifically identifying the growth zone;

(4) The administration, operation and supervision of the Delaware Farmland Preservation Fund;

(5) The monitoring and enforcement of the requirements and restrictions imposed by and under the provisions of this chapter, any duly adopted regulations and legally binding instruments;

(6) The establishment of a program of cooperation and coordination with the governing bodies of the counties, municipalities and other units of general government below the State level and with private nonprofit or public organizations to assist in the preservation of agricultural lands for agricultural purposes;

(7) The acquisition of available federal funding, including application for eligible loans under the Farms for the Future Act of 1990 (7 U.S.C. § 4201 et seq.) and for undertaking all other necessary actions required for receipt of such funding, and deposit of any such moneys received into the Delaware Farmland Preservation Fund;

(8) The performance of an annual audit of the Foundation's accounts, prepared by an independent certified public accountant qualified to perform such an audit, which annual audit shall be part of the Foundation's Annual Report;

(9) The preparation of an Annual Report of the Foundation's proceedings and activities for the annual period ending June 30, which report shall include the annual audit, an inventory of farmlands and forestlands located in Agricultural Preservation Districts, an inventory of preservation easements acquired during the period, the status of the Fund and such other information deemed appropriate, which Annual Report shall be submitted to the Governor and the General Assembly of the State;

(10) The establishment of a program of education and promotion of agricultural lands preservation;

(11) The development of an effective program to fully implement the provisions of this chapter;

(12) The establishment and implementation of a forestland preservation program; and

(13) The adoption of rules of practice and procedure for acquiring forestland preservation easements.

(b) The Foundation shall have the authority to do the following:

(1) Adopt an organizational structure to implement this chapter;

(2) Employ a staff subject to the availability of funding;

(3) Establish an office in the State;

(4) Retain by contract auditors, accountants, appraisers, legal counsel, surveyors, private consultants, financial advisors or other contractual services required by the Foundation;

(5) Sue and be sued;

(6) Utilize a seal;

(7) Conduct such hearings, examinations and investigations as may be necessary and appropriate to the conduct of its operations and the fulfillment of its responsibilities;

(8) Procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify and save itself harmless and its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function of the Foundation;

(9) Purchase, sell, manage, lease or rent such real and personal property for use of the Foundation as deemed necessary, convenient or desirable;

(10) Act on and approve applications for the establishment of Agricultural Preservation Districts consistent with the provisions of this chapter and duly adopted regulations;

(11) Acquire by gift or purchase agricultural land preservation easements;

(12) Seek, obtain and utilize federal and private funding for the purposes of this chapter;

(13) Make short- and long-range plans for the protection and preservation of agricultural lands;

(14) Enter upon lands as may be necessary to perform surveys, appraisals and investigations to accomplish the purposes of this chapter;

(15) Accept gifts, grants or loans of funds, property or service from any source, public or private, and comply, subject to this chapter, with the terms and conditions of any agreements entered and related thereto;

(16) Receive funds from the sale of general bonds, revenue bonds or other obligations of the State or under the name of the Foundation;

(17) Recover reasonable costs for service provided;

(18) Delegate to 1 or more of its Trustees, its Executive Director or its agents such powers and duties as it may deem necessary and proper for the conduct of its authorized business;

(19) Select an Executive Director, who shall be a member and chief executive officer of the staff of the Foundation, subject to the availability of funding for such position, and provided further that the Executive Director shall be a resident of the State, have an

undergraduate degree from an accredited institution of higher learning and possess at least 5 years experience in the administration of agricultural programs, land use planning or agribusiness activities;

(20) Adopt procedural rules to govern the manner in which internal affairs of the Foundation are conducted;

(21) Adopt, after notice and public hearing, rules and regulations to fulfill the Foundation's responsibilities and fully effectuate the authority, purposes, intent and activities contemplated under this chapter; and

(22) Engage in all the activities specified in this subsection (b) of this section as they may relate to the forestland preservation program set forth in subchapter V of this chapter.

(c) The members of the staff of the Foundation shall be afforded protections comparable to those provided under the State Merit System and shall be included under and subject to Chapter 55 of Title 29.

(68 Del. Laws, c. 118 § 2; 71 Del. Laws, c. 221 § 2; 71 Del. Laws, c. 378 § 95; 75 Del. Laws, c. 201 §§ 4, 5.)

§ 905 Delaware Farmland Preservation Fund.

(a) The Delaware Farmland Preservation Fund is created and shall be maintained, administered, operated and supervised by the Foundation to implement the provisions of this chapter.

(b) All moneys received by the Foundation or designated for deposit into the Fund shall be placed in such accounts established by and for the use of the Foundation. To the extent moneys in the Fund are not needed on a current basis, the Foundation shall be entitled to invest such moneys on a long-term or short-term basis; provided, however, that the policies governing any such investment of moneys by the Foundation shall be subject to the approval of the Cash Management Policy Board.

(c) All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of the State are authorized to do business with the Foundation and to give security for the safekeeping and prompt payment of moneys of the Foundation deposited by it with them. The Foundation shall be entitled to establish such accounts as deemed appropriate for the conduct of its business.

(68 Del. Laws, c. 118 § 2.)

§ 906 Farmland Preservation Advisory Boards.

(a) Each county legislative body shall establish a Farmland Preservation Advisory Board which shall consist of 4 active farmers or agribusinessmen residing within the county and 1 member of the county legislative body, who shall serve as the Chairperson of the Board. The members of such Board shall be appointed by the county legislative body. The members shall serve without salary, but the county legislative body may entitle each such member to reimbursement of his actual and necessary expenses incurred in the performance of official duties. A quorum of the Board for conducting business shall be 3 members and a majority vote of the quorum shall be necessary to take action on matters before the Board.

(b) The Chairperson of the Board shall serve for an indefinite term and the 4 other members shall serve for terms of 4 years each; provided further, that Board members registered in either major political party shall not exceed the other major political party by more than 1. Any member of the Board may be reappointed for a succeeding term without limitations as to the number of terms served.

(c) The Board shall advise the Foundation in relation to any regulations proposed for adoption by the Foundation. The Foundation shall provide a draft of proposed regulations to the Board at least 60 days in advance of the time that proposed regulations are released for public notice in order to allow for comment of the Board and possible amendment. The Board may request the Foundation to review any adopted regulation which the Board identifies as having an adverse effect on the furtherance of the purpose and intent of this chapter. Upon receipt of any such request, the Foundation shall submit in writing to the Board a response indicating the Foundation's position on the matter and the action, if any, which is contemplated in response to the request.

(d) Whenever an application for establishment of an Agricultural Preservation District is received by the Foundation and the Foundation determines that the eligibility criteria have been satisfied, the Foundation shall submit the application to the Board for the county in which the proposed District is located for a recommendation. The Board shall act on an application by recommending in favor or against approval within 60 days of receipt of the application, and the Board may include reasons for its decisions. In the event that the Board fails to make its recommendation within the specified 60-day period, or if the Board is not duly established or constituted, the decision required of the Board under the Agricultural Preservation District application process as specified hereunder shall be deemed an approval.

(68 Del. Laws, c. 118 § 2; 70 Del. Laws, c. 186 § 1.)

Subchapter II

Agricultural Preservation Districts

§ 907 Establishment of Agricultural Preservation Districts.

(a) Any owner or owners of contiguous farmland and/or forestland containing at least 200 usable acres of such lands located in the State may submit on a voluntary basis, on such forms as the Foundation prescribes, an application for establishment of an Agricultural Preservation District. Upon receipt of a completed application, the Foundation shall review within 45 days the application to determine if it satisfies the criteria for eligibility established under § 908 of this title and any regulations adopted and related thereto. The Foundation shall, following its review to determine eligibility, notify the applicant of its findings. The Foundation shall be entitled to provide assistance to

potential applicants regarding the completion of necessary application forms.

(b) If an application for establishment of an Agricultural Preservation District satisfies the criteria for eligibility, the Foundation shall submit the application to the Board and Planning and Zoning Commission for the county in which the farmlands and/or forestlands are located for purposes of obtaining a recommendation. The application shall be reviewed by the Board in accordance with the procedures set forth under § 906(d) of this title. The Planning and Zoning Commission, upon receipt of an application from the Foundation, shall timely notice consideration of the application at its next regularly scheduled meeting, and shall recommend in favor or against approval, and include any reasons for its decision. If the Planning and Zoning Commission fails to render a decision on an application within 90 days of receipt, the application shall be deemed approved.

(c) The Foundation shall consider applications for establishment of Agricultural Preservation Districts at its next noticed regularly scheduled meeting after the review process has been completed at the Board and Planning and Zoning Commission levels. The Foundation shall render a decision in favor or against approval of the application. An Agricultural Preservation District shall be established if the application is approved by any 2 of the 3 entities which considered the application, namely: The Foundation, the Board and the Planning and Zoning Commission.

(d) An owner of farmland and/or forestland consisting of less than 200 acres in the State may submit on a voluntary basis, on such forms as the Foundation prescribes, an application for expansion of an established Agricultural Preservation District if the application satisfies the criteria for eligibility established under § 908 of this title and any regulations adopted thereunder, as determined by the Foundation, and the farmland and/or forestland is either (1) contiguous to the established Agricultural Preservation District, or (2) located in whole or part within a 3-mile radius of an established Agricultural Preservation District. The Foundation shall render decisions in favor or against applications for expansions of Agricultural Preservation Districts at noticed regularly scheduled meetings.

(e) Upon the establishment of an Agricultural Preservation District or the expansion of an Agricultural Preservation District, the Foundation shall provide appropriate notice and a description of the established or expanded District to the Planning and Zoning Commission and Board of Assessment for the county in which such District is located. Upon receipt of such information from the Foundation, the Planning and Zoning Commission and the Board of Assessment shall provide appropriate reference in their real property records and notations on maps which are utilized and maintained that the subject farmlands and/or forestlands are included in an Agricultural Preservation District.

(68 Del. Laws, c. 118 § 2; 71 Del. Laws, c. 221 § 1.)

§ 908 Criteria for eligibility and review.

(a) In order to be considered eligible for inclusion in an Agricultural Preservation District, an application which qualifies under the requirements of § 907(a) or (d) of this title shall satisfy the following criteria:

(1) The owner or owners seeking inclusion of real property in the District shall hold fee simple title to such property;

(2) The real property proposed for inclusion in the District shall have an agricultural zoning designation and shall not be subject to any major subdivision plan;

(3) The real property shall consist of viable and productive farmlands and/or forestlands which meet the minimum LESA scoring requirements for eligibility established by the Foundation through adopted regulations;

(4) The owner or owners of the real property proposed for inclusion in the District execute a declaration in recordable form committing to the District restrictions set forth in § 909 of this title; and

(5) The real property proposed for inclusion in the District shall include all of the eligible real property located in the tax parcel or tax parcels subject to application, and no eligible real property shall be carved out or otherwise excluded from the application for establishment of an Agricultural Preservation District or the application to sell a preservation easement pursuant to subchapter III of this chapter.

(b) In reviewing applications for establishment of an Agricultural Preservation District the Foundation, the Board and the Planning and Zoning Commission shall consider the following factors:

(1) The viability and productivity of the farmlands and/or forestlands based on the LESA scoring system;

(2) The extent to which the farmlands and/or forestlands are being actively utilized for agricultural purposes;

(3) The extent to which the long-term preservation of the farmlands and/or forestlands would be consistent with land use plans adopted after public hearing at state and county levels;

(4) The potential for expansion of the District if established and compatibility with surrounding land uses;

(5) The ancillary benefit of creating additional open space adjacent to existing established and protected open space;

(6) The potential for acquisition of agricultural preservation easements under rating or ranking systems that may be adopted through regulations of the Foundation;

(7) The socio-economic benefits derived from an agricultural and historic perspective as a result of inclusion of the farmlands and/or forestlands in an Agricultural Preservation District; and

(8) Consistency with the statewide agricultural lands preservation strategy adopted pursuant to § 904(a)(3) of this title.

(68 Del. Laws, c. 118 § 2; 71 Del. Laws, c. 257 § 2.)

§ 909 District restrictions.

(a) The farmlands and forestlands included in an Agricultural Preservation District shall be subject to the following restrictions:

(1) No rezoning or major subdivision of the real property shall be allowed;

(2) Activities conducted on the real property shall be limited to agricultural and related uses, and residential use of the real property shall be limited as follows:

a. No more than 1 acre of land for each 20 acres of usable land owned in a District or an expansion of a District, to a maximum of 10 acres, shall be allowed for dwelling housing; and

b. The dwelling housing shall be limited to residential use of the owner, relatives of the owner and persons providing permanent and seasonal farm labor services; provided however, that the Foundation may, pursuant to regulations adopted after notice and public hearing, allow, from the effective date of an initial District Agreement, no more than a total of 3 dwellings or dwelling lots located in the Agriculture Preservation District to be transferred from an owner or relatives of an owner to any other person, subject to the following limitations and requirements:

1. The owner or relative of an owner seeking to make the transfer shall establish that a hardship condition exists, as defined pursuant to Foundation regulations, and obtain Foundation approval;

2. The dwelling or dwelling lot, after transfer, shall be used only for residential purposes;

3. The transferred property shall not qualify for District benefits or benefits of easement conveyance established under this chapter; and

4. If a preservation easement has been acquired by the Foundation on the real property subject to transfer, the owner or relatives of the owner shall, as a condition of Foundation approval, pay to the Foundation an amount equal to 25 percent of the then current fair market value of the land subject to transfer; and

c. Any transfer of real property in a District or an expansion of a District to another person shall be preceded by the execution by the transferee of a document, in recordable form and as prescribed by the Foundation, which sets forth the acreage allowed for dwelling housing and the restrictions which apply to the real property under this chapter and the regulations of the Foundation.

(3) The restrictions shall be deemed covenants which run with and bind the lands in the District for a period of 10 years or any extended period from the date of placement of the lands in the District.

(4) For any new District or expansion of a District approved after August 23, 2004, the provisions of paragraph (a)(2)b. of this section shall be replaced by the following restrictions:

a. With respect to the acreage allowed for dwelling housing pursuant to paragraph (a)(2)a. of this section, there shall be a limit of 3 dwelling houses for residential use placed on the allowable acreage at 3 locations designated by the owner, unless there exists more than 3 dwelling houses on the real property at the time of approval of the new district or expansion of a District, in which case the allowable acreage shall be allocated to the existing dwelling houses and no additional dwelling houses shall be allowed.

b. The dwelling housing utilized pursuant to paragraph (a)(4)a. of this section, above, for residential use shall not be restricted to owners, relatives of owners or persons providing permanent and seasonal farm labor services, and any person shall be entitled to use the dwelling housing for residential purposes.

c. The owners of real property in any District or expansion of a District, which District is in existence on August 23, 2004, shall be entitled to be released from the restrictions of paragraph (a)(2)b. of this section, provided such owner executes an amendment to their District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in paragraphs (a)(1), (a)(2)a., (a)(4)a. and (a)(4)b. of this section. If an owner of real property in any District or expansion of a District has before August 23, 2004, conveyed a preservation easement to the Foundation, such owner shall be entitled to be released from the restrictions of paragraph (a)(2)b. of this section as contained in the preservation easement, provided the owner executes an amendment to the preservation easement in a form designated and acceptable to the Foundation subjecting the real property to the restrictions set forth in paragraphs (a)(1), (a)(2)a., (a)(4)a. and (a)(4)b. of this section.

(5) The following uses shall be deemed "related uses" for purposes of paragraph (a)(2) of this section:

a. A farm market or roadside stand shall be allowed provided the products offered for sale are grown or produced on the property included within the District and such farm market or roadside stand complies with § 2601(b)(5), § 4901(b)(5), or § 6902(b)(5) of Title 9.

b. Hayrides, horseback riding, guided tours, and petting zoos shall be allowed, provided that said activities are limited to no more than 50 persons on the premises at a time. Notwithstanding the foregoing, educational tours and agricultural demonstration events shall not be subject to the 50-person limitation.

c. Horse stabling and training and caring for horses is permitted; provided however, quasi-public horse events such as polo fields and horse shows, shall not be permitted.

d. Hunting, trapping, and fishing shall be allowed provided said activities are limited to private noncommercial activities and do not adversely affect the agricultural use of the property.

e. Spray irrigation designed to replenish soil nutrients and improve the quality of the soil is allowed provided that the spray effluent is treated pursuant to the best available treatment technology, is disposed of on property utilized for the production of conventional cash crops, and all storage and treatment of the effluent disposed of on the District property takes place on property other than District property.

f. Easements, licenses and other property interests for utility, telecommunications, and access uses are allowed provided that:

1. The property subject to the easement, license or other property interest is limited to only the area necessary to accommodate the utility, telecommunications or access use;

2. The area affected by the use is located so as to minimize, to the maximum extent practicable, the impact on farming activities and operations;

3. No commercial advertising or commercial activities unrelated to the utility, telecommunications or access use shall be conducted on the area of the utility, telecommunications or access use;

4. Any document used to grant an easement, license or other property interest shall limit the activities to utility, telecommunications or access uses and shall contain the prohibitions of commercial advertising or commercial activities unrelated to the permitted use; and

5. The written approval of the Foundation shall be obtained in accordance with the rules and regulations of the Foundation.

g. Farm structures in existence at the time of approval of a District or expansion of a District that are no longer used in farming operations may be used for the enclosed storage of property belonging to others.

h. A restricted landing area utilized for the personal use of the owner or tenant of the owner is permitted provided that said use does not require any rezoning of the property or conditional use allowing for commercial use. As used herein, "restricted landing area" means any area of land, water or both which is used for the landing and takeoff of aircraft.

i. A "bed and breakfast" may be operated in any allowed dwelling located on the property.

j. A daycare center for the care of no more than 5 children under the age of 16 shall be allowed in any allowed dwelling located on the property.

k. Farm structures in existence at the time of approval of a District or expansion of a District that are no longer used in farming operations, and any related temporary ancillary structure used in conjunction with the existing farm structures, may be used for public and private gatherings, such as weddings, parties, conferences, fundraising ceremonies and other similar events, provided that all of the following requirements are satisfied:

1. The property with improvements on which the allowed activities are conducted must be owned by the person subject to the District Agreement or preservation easement.

2. The area on which the allowed activities are conducted cannot be subdivided from the agricultural lands.

3. The area on which the allowed activities are conducted shall be limited to the extent feasible to avoid impacts on current and beneficial agricultural use of the agricultural lands and the exterior dimensions of the existing farm structures shall not be increased in size.

4. The person seeking to conduct activities allowed under this paragraph (a)(5)k. shall submit to the Foundation Board, in advance and on an application form provided by the Foundation, a detailed description and plan of the proposed activities.

5. The application shall have been approved by the Foundation, subject to such terms and conditions deemed necessary and desirable to protect the agricultural value of the property, which terms and conditions shall be subject to the enforcement provisions set forth in § 920(a) of this title.

6. The person seeking to conduct activities allowed under this subsection shall have agreed, in writing, to comply with the terms and conditions set forth in the Foundation Board's approval.

l. Annual and semi-annual events related to agricultural commodities and agricultural enterprises during the growing season, and other annual and semi-annual events during the nonprimary growing season, subject to case by case review and approval by the Foundation Board, and if approved subject to such terms and conditions imposed to protect the agricultural value of the property, which terms and conditions shall be subject to the enforcement provisions set forth in § 920(a) of this title.

(b) Farmlands and/or forestlands included in an Agricultural Preservation District shall be released from such District at the expiration of 10 years from the date such lands are initially placed in the District if the owner of the farmlands and/or forestlands provides written notification to the Foundation of intent to withdraw such lands from the District at least 6 months prior to the expiration of the referenced 10-year period; otherwise, such lands shall remain in the District for additional 5-year periods until such time that the owner provides prior to the expiration date of any such additional period at least 6 months prior written notice to the Foundation of intent to withdraw the lands from the District.

(c) In event of a purchase of an agricultural lands preservation easement by the Foundation, the restrictions set forth in subsection (a) of this section shall become permanent and subject to release only under § 917 of this title, or in the case of the restrictions set forth in paragraph (a)(2)b. of this section, under paragraph (a)(4)c. of this section.

(68 Del. Laws, c. 118 § 2; 71 Del. Laws, c. 257 § 1; 74 Del. Laws, c. 423 §§ 1, 2; 80 Del. Laws, c. 233 § 1; 80 Del. Laws, c. 344 § 1.)

§ 910 Agricultural use protections.

(a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation

District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

"AGRICULTURAL PRESERVATION DISTRICT

This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees.

(68 Del. Laws, c. 118 § 2.)

§ 911 District benefits.

(a) Owners of real property located in an Agricultural Preservation District shall, with respect to such real property, be entitled to the following benefits:

All unimproved land shall be exempt from:

(1) Taxation otherwise imposed under Chapter 83 of Title 9 and Chapter 19 of Title 14; provided, however, that the amount of tax relief shall nonetheless be determined for the unimproved lands under established valuation and assessment procedures and taxation related to tax ditches under Chapter 41 of Title 7 shall in no way be affected;

(2) Taxation otherwise imposed under Chapter 54 of Title 30, and any county or municipal ordinance requiring payment of a realty transfer tax; provided, however, that the amount of tax relief shall nonetheless be determined and such tax relief shall be subject to recovery and placed in the Fund if within 5 years after the unimproved lands are released from a District pursuant to § 909(b) of this title, such unimproved lands are rezoned or subject to subdivision; and

(3) Any ad valorem tax imposed by the State, a county, a municipality and any quasi-governmental body.

(b) The Department of Natural Resources, Department of Finance, and the Board of Assessment and Recorder of Deeds for the respective counties shall coordinate, assist and cooperate with the Foundation to fully effectuate the applicable provisions of this chapter.

(c) [Deleted.]

(68 Del. Laws, c. 118 § 2; 70 Del. Laws, c. 51 § 1; 71 Del. Laws, c. 353 § 1.)

Subchapter III

Acquisition of Preservation Easements

§ 913 Acquisition of agricultural lands preservation easements.

(a) The Foundation, subject to the availability of funds and compliance with the requirements of this subchapter, shall be entitled to acquire, maintain and enforce agricultural lands preservation easements for lands which are located in Agricultural Preservation Districts. The purchase of preservation easements by the Foundation is purely a discretionary function and the Foundation shall be under no obligation to purchase a preservation easement from any applicant. The Foundation may utilize such method or methods of payment for preservation easements as may be available. Upon acquisition of a preservation easement the lands subject to such easement shall form a permanent Agricultural Preservation District. The acquisition of a preservation easement by the Foundation shall not grant the public any right of access or right of use of the real property subject to the easement.

(b) The Foundation shall be authorized to enter into installment purchase agreements and to execute all documents necessary or desirable thereto to qualify such agreements for exemption from federal or state taxation to the extent permitted by the tax laws. Pursuant to the installment purchase agreements, the Foundation shall acquire preservation easements, establish special accounts for each agreement from which principal and interest payments shall be made and deposit into such special accounts amounts necessary to fund the agreements. The special accounts may be administered by a bank, escrow agent or other qualified paying agent approved by the Foundation and the deposited funds may only be invested in a manner approved by the Secretary of Finance. The amounts to be paid under an agreement shall not exceed the amounts available from the special account related thereto, including earnings thereon. The Foundation may, under the terms of the agreement, impose on the seller through direct charge or installment payment reduction the costs associated with the agreement and

the special account. The Foundation is authorized to use all funds appropriated to it to acquire preservation easements through installment purchase agreements.

(68 Del. Laws, c. 118 § 2; 70 Del. Laws, c. 570 § 2[1].)

§ 914 Criteria for eligibility and evaluation.

(a) In order for the Foundation to acquire an agricultural lands preservation easement it shall be required that:

(1) The grantor of the preservation easement has fee simple title to the real property and conveys the easement free and clear of all liens and encumbrances; and

(2) The preservation easement is granted in perpetuity in a form acceptable to the Foundation and includes the restrictions set forth in § 909 of this title and such other terms and conditions as specified by the Foundation.

(b) In reviewing applications for the conveyance of agricultural lands preservation easements the Foundation shall consider:

(1) The criteria set forth in § 908(b) of this title; and

(2) The relative agricultural value of the lands and potential for conversion to nonagricultural use; and

(3) The relative cost of acquiring the easement giving due consideration to the extent to which an applicant is willing to discount the sale price below the Foundation's appraised easement value.

(c) The Foundation may adopt, after public hearing, a system for scoring, ranking and prioritizing consideration of applications submitted for the conveyance of agricultural lands preservation easements. Under any system adopted for consideration of applications submitted for the conveyance of agricultural lands preservation easements, the Foundation shall establish by regulation after public hearing means of creating a priority for acquisition of agricultural lands preservation easements in designated areas which are near or adjacent to growth zones, or border in part the growth zones.

(68 Del. Laws, c. 118 § 2; 71 Del. Laws, c. 378 § 97.)

§ 915 Procedure for acquisition easements.

The Foundation shall adopt, after public hearing, a uniform procedure for acquiring agricultural lands preservation easements. The procedure adopted by the Foundation may incorporate bidding and/or negotiation as part of the procurement process. The Foundation shall be entitled to establish separate methods or incentives to facilitate the acquisition of agricultural lands preservation easements in designated areas which are near or adjacent to growth zones, or border in part the growth zones.

(68 Del. Laws, c. 118 § 2; 71 Del. Laws, c. 378 § 96.)

§ 916 Valuation of easements.

(a) The maximum value of any preservation easement to be purchased shall be the difference between the fair market value of the land under its agricultural zoning designation and the agricultural value of the land. The fair market value of the land is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under this chapter. The agricultural value of land is the price as of the valuation date which a vendor, willing but not obligated to buy, would pay for the property as a farm unit, to be used for agricultural purposes. The value of the preservation easement shall be determined as of the date the application for conveyance of the preservation easement is received by the Foundation. The value shall be determined by the Foundation based on appraisal by an appraiser selected by the Foundation, which appraisal shall be provided to the owner. The owner shall be entitled to have an appraisal performed by a qualified appraiser and submit such appraisal to the Foundation for consideration. The value of the easement shall be determined by an appraisal on the entire contiguous acreage, less 1 acre per each dwelling structure; provided, however, the entire contiguous acreage, including the 1 acre per dwelling structure, is considered subject to the preservation easement restrictions.

(b) If the owner and Foundation do not agree on the value of the easement, as determined by appraisal, the owner shall be entitled to withdraw the application for conveyance without prejudice to any submission of an application in the future.

(68 Del. Laws, c. 118 § 2.)

§ 917 Termination of easement.

(a) Legislative intent. — It is the intent of the General Assembly that the preservation easements purchased under this subchapter be held by the Foundation for as long as profitable farming is feasible on the land subject to the easement but at a minimum for the period specified hereinafter. A preservation easement may be terminated only in the manner and at the time specified in this section.

(b) Request for review. — At any time after 25 years from the date of acquisition of a preservation easement, the owner may request that the easement be reviewed for possible termination of the easement.

(c) Inquiry and decision. — Upon a request for review of an easement for termination, an inquiry shall be conducted by the Foundation to determine the feasibility of profitable farming on the subject land. The inquiry shall be concluded and a decision reached by the Foundation within 180 days after the request for termination, and shall include:

(1) On-site inspection of the subject land; and

(2) A public hearing conducted by the Foundation within the county containing the subject land after adequate public notice; and

(3) A review of the subject land under the LESA scoring system; and

(4) Approval of termination by the Board of Trustees of the Foundation.

(d) Repurchase by owner. — If the request for termination is approved, an appraisal of the subject land shall be ordered by the Foundation at the expense of the owner requesting termination of the easement. Within a period of 180 days following the appraisal, the owner may repurchase the easement by paying to the Foundation the difference between the fair market value and the agricultural value of the subject land, as determined by the appraisal, but in no event shall the repurchase price be less than the amount paid by the Foundation for acquisition of the preservation easement. In addition, the owner shall also pay to the Fund an amount equal to any tax benefit realized under § 918 of this title. For purposes of this subsection, the term agricultural value shall also mean the price as of the valuation date which a buyer, willing but not obligated to buy, would pay for a farm unit with land comparable in quality and composition to the property being appraised, but located in the nearest location where profitable farming is feasible. For purposes of this paragraph, the term fair market value shall mean the price as of the valuation date which a buyer, willing but not obligated to buy, would pay for the land at its best and most beneficial use under any obtainable development zoning category.

(e) Subsequent request for termination after denial or failure to repurchase. — If the request for termination is denied, or if the owner fails to repurchase the easement within 180 days of the appraisal, the owner may not again request termination of the easement until 5 years after his last such request.

(68 Del. Laws, c. 118 § 2.)

§ 918 Benefits of easement conveyance.

In addition to the district benefits set forth in § 911 hereof of this title, the owner of real property subject to a preservation easement shall be entitled to exemption from taxation for the transfer of any interest in such real property by death otherwise subject to the estate tax under Chapter 15 of Title 30. The Department of Finance shall be entitled to adopt requirements to effectuate the exemption from taxation as provided hereunder.

(77 Del. Laws, c. 85 § 8; 79 Del. Laws, c. 11 § 1.)

Subchapter IV

Miscellaneous Provisions

§ 919 Right of rejection.

(a) Notwithstanding any provision contained herein to the contrary, the Secretary of the Department of Agriculture shall be entitled, within 30 days of the date of decision of the Foundation, to reject the establishment or expansion of any Agricultural Preservation District or the acquisition of a preservation easement, and the decisions of the Foundation on such matters shall be subject to right of rejection exercisable by the Secretary of the Department of Agriculture. If the right of rejection as provided herein is exercised, the Secretary of the Department of Agriculture shall notify the Foundation in writing of such decision and the reasons for it. The Secretary of the Department of Agriculture may waive the right to reject by providing notification to such effect to the Foundation. Failure to act on the part of the Secretary of the Department of Agriculture within the specified 30-day period shall constitute an affirmation of the decision of the Foundation.

(b) In the event of rejection of an application by the Secretary of the Department of Agriculture for establishment or expansion of any Agricultural Preservation District or the acquisition of a preservation easement, such application shall be considered denied and not subject to reconsideration for a period of at least 1 year.

(c) Notwithstanding any provision contained herein to the contrary, the Secretary of the Department of Agriculture shall be entitled, within 30 days of the date of adoption of criteria for establishment and maintenance of Agricultural Preservation Districts pursuant to § 904(a)(1) of this title, to reject in whole or in part such criteria as adopted by the Foundation. If the right of rejection as provided herein is exercised, the Secretary of the Department shall notify the Foundation in writing of such decision and the reasons for it. The Secretary of the Department of Agriculture may waive the right to reject by providing notification to such effect to the Foundation. Failure to act within the specified 30-day period shall constitute an affirmation of the decision of the Foundation. In response to the exercise of the right of rejection the Foundation shall be entitled to adopt alternative criteria, which action shall also be subject to the right of rejection provided herein.

(68 Del. Laws, c. 118 § 2.)

§ 920 Enforcement of restrictions.

(a) The Foundation shall be entitled to take action in any court of competent jurisdiction to enforce any restrictions or requirements imposed under this chapter, duly adopted regulations and binding legal instruments. In any such action the Foundation shall, if it prevails, be entitled to recover its reasonable costs and expenses, including reasonable attorney's fees.

The Foundation shall also be entitled to recover in any such action all tax benefits conferred under § 911 of this title, plus one and one-half percent per month of tax benefit amounts computed on a compound basis from the date the tax benefit was first realized to the date of judgment.

(b) Any person who violates a District restriction, requirement imposed in a preservation easement or the provisions of § 910(a) of this

title, shall, after notification and failure to correct the violation, be subject to a civil penalty of not less than $50 but not more than $200 for each completed violation. If the violation continues for a number of days, each day of such violation shall be considered a separate violation. Unless joined to an action under subsection (a) of this section, a civil penalty claim hereunder shall be filed in any Court of Common Pleas. Any civil penalties recovered shall be paid to the Fund.

(c) The Foundation shall be entitled to take action, including an action by monition, in any court of competent jurisdiction to enforce liens and to collect the Foundation's share of roll-back taxes, including penalties, which are due under the provisions of § 921(c) of this title. In any such action the Foundation shall be entitled to proceed through its legal counsel, without the need of obtaining any prior approval, and the Foundation shall, if it prevails, be entitled to recover its reasonable costs and expenses, including reasonable attorney's fees. Nothing contained herein shall preclude a county or school district from pursuing legal action to collect, on behalf of the Foundation, the Foundation's share of the roll-back tax through either independent action or as part of another action. Upon collection of the Foundation's share of the roll-back tax through such legal action the amount collected, after deduction of the seven and a half percent administration charge, shall be forwarded to the Foundation.

(68 Del. Laws, c. 118 § 2; 68 Del. Laws, c. 371 § 6.)

§ 921 Funding.

(a) The Director of the Office of Management and Budget and the Controller General are authorized to transfer the sum of $48,000 from the Office of Management and Budget Contingency Appropriation Salary, (10-02-04), contained in Senate Bill No. 500 of the 135th General Assembly (Fiscal Year 1991 Appropriation Act) for use by the Foundation to carry out the purposes of this chapter. Any Foundation funds not otherwise appropriated or encumbered as of June 30, 1991, shall be considered a continuing appropriation for Fiscal Year 1992.

(b) The Secretary of the Department of Agriculture is hereby authorized and directed, on behalf of the Foundation, to apply on or before August 1, 1991, for federal funding available to the State under the Farms for the Future Act of 1990 (7 U.S.C. § 4201 et seq.) by submitting any necessary applications and taking such other action to qualify for eligibility.

(c) All moneys collected by the respective county receiver of taxes, treasurer or director of finance as the Foundation's share of roll-back taxes under § 8335(d) of Title 9 shall, when collected and after deduction of the seven and a half percent administration charge, be transferred to the Foundation for use in carrying out the purposes of this chapter. The Foundation shall be entitled to adopt and impose procedures and requirements to assure collection of its share of roll-back taxes and the Foundation shall be entitled to notify county taxing authorities of lands subject to the agricultural lands preservation assessment and upon such notification such county taxing authorities shall include the amount due on the property tax statements submitted with respect to the converted lands. Nonpayment of the Foundation's share of the roll-back tax, including penalties, shall when payable result in the imposition of a lien on the land for nonpayment, which lien shall qualify for all purposes as a lien under § 2901 of Title 25.

(d) There is hereby established a Committee on Funding for Farmland Preservation, which shall consist of 2 members of the Delaware Senate as appointed by the President Pro Tem of the Senate, 2 members of the Delaware House of Representatives as appointed by the Speaker of the House of Representatives and 3 members appointed by the Governor. The Committee shall review and consider ways and means of providing reliable, short-term and long-term funding for the permanent preservation of viable agricultural lands. The Committee shall also review and consider ways and means of creating economic incentives for the establishment and expansion of Agricultural Preservation Districts and the acquisition of agricultural lands preservation easements, such as the use of tax credits for activities undertaken in Agricultural Preservation Districts which reduce or eliminate the impact of the release of pollutants to the environment. The Committee shall report its findings to the Governor and the General Assembly on or before March 1, 1993.

(e) All moneys directed to the Foundation under this chapter, either directly or indirectly, shall be for the exclusive benefit of the Foundation in carrying out the purposes of this chapter. Such funding shall be considered separate and distinct from any other funding authorization, even though the funding amount may be determined on the basis of tax rates, assessments or by other means used by other entities.

(68 Del. Laws, c. 118 § 2; 68 Del. Laws, c. 306 § 1; 68 Del. Laws, c. 371 §§ 4, 5; 75 Del. Laws, c. 88 § 21(2).)

§ 922 Condemnation of Preservation District lands.

Nothing contained in this chapter shall prohibit the exercise of powers of eminent domain or condemnation with respect to lands located in an Agricultural Preservation District; provided, however, that the compensation paid for such lands by the condemning authority shall be based on the highest and best development use of the property with no consideration given to the restrictions and limitations imposed under this chapter; and provided further, that the condemning authority shall also include in its taking such additional lands rendered unusable or unprofitable for intended agricultural uses. Payment of compensation shall be made to the owner or, in the event the property is subject to a preservation easement, to the owner and the Foundation in accordance with their respective interests.

(68 Del. Laws, c. 118 § 2.)

§ 923 Interim Foundation staffing.

(a) Until such time that funding is available to support a permanent Foundation staff, the staff support necessary for Foundation activities provided under this chapter shall be provided by the Agricultural Lands Preservation Section of the Department of Agriculture. Such Section shall, within 9 months of July 8, 1991, prepare in coordination with the Department of Natural Resources and Environmental

Control and the Planning and Zoning Commissions of the respective counties, for review and consideration of the Foundation, the following:

(1) Proposed additional criteria for establishment and maintenance of Agricultural Preservation Districts;

(2) A proposed selection system for scoring, ranking and prioritizing applications for conveyance of preservation easements;

(3) A draft statewide agricultural lands preservation strategy; and

(4) Proposed procedural rules and regulations for conduct of the internal affairs of the Foundation, including the development of draft application forms and procedures for conducting business.

(b) The Department of Agriculture shall provide to the Foundation the administrative support necessary for the organization of the Foundation, including accommodations for meetings until such time that an office is opened by the Foundation.

(c) The Foundation shall, from its sources of funding, reimburse the Department of Agriculture for any out-of-pocket costs expended by the Department of Agriculture on behalf of the Foundation which are related to efforts undertaken by the Department of Agriculture under this section.

(68 Del. Laws, c. 118 § 2.)

§ 924 Governmental cooperation.

All municipalities, political subdivisions and every department, agency or public body of the State is hereby authorized and empowered to cooperate with, aid and assist the Foundation in effectuating this chapter and any amendment hereof or supplement hereto.

(68 Del. Laws, c. 118 § 2.)

§ 925 Recording.

The Foundation shall submit executed documents for recording in order to fully implement and enforce the provisions of this chapter. The offices of the Recorder of Deeds for the respective counties shall receive and appropriately index any such documents submitted by the Foundation. No recording cost, fee or charge of any nature shall be imposed for the recording of any documents or other materials submitted by the Foundation for purposes of implementing the provisions of this chapter.

(68 Del. Laws, c. 118 § 2; 70 Del. Laws, c. 51 § 3.)

§ 926 Tax status.

The duties and functions exercised by the Foundation under this chapter, and any amendments hereof or supplements hereto, are and will be in all respects for the benefit of the people of the State and for the protection of their health and welfare. To this end, the Foundation shall be regarded as performing essential governmental functions in exercising such duties and functions and in carrying out this chapter and any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied either by the State or a political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The acquisition and transfer of preservation easements hereunder shall be exempt from all realty transfer tax imposed under Chapter 54 of Title 30 and any county or municipal ordinance requiring payment of a realty transfer tax.

(68 Del. Laws, c. 118 § 2.)

§ 927 Judicial review.

Judicial proceedings to review any rule, regulations or other action of the Foundation or to determine the meaning or effect thereof may be brought in the Superior Court of this State, provided such review is requested within 30 days from the date of the promulgation of the rule or regulation or other action of the Foundation.

(68 Del. Laws, c. 118 § 2.)

§ 928 Public hearings.

For any public hearing conducted under the provisions of this chapter, the Foundation shall provide at least 20 days advance notice published in a daily newspaper of general circulation throughout the State. For a public hearing on a regulation or plan proposed for adoption the notification shall include a brief description of the regulation or plan, the time and place of the hearing, and time and place where copies of the proposed regulation or plan may be obtained or reviewed. A record from which a verbatim transcript can be prepared shall be made of all public hearings and shall, along with the exhibits and other documents introduced, constitute the record.

(68 Del. Laws, c. 118 § 2.)

§ 929 Construction of chapter.

This chapter and the regulations promulgated thereunder shall be construed liberally to effectuate the legislative intent and as complete authority for the performance of each and every act and thing herein authorized.

(68 Del. Laws, c. 118 § 2.)

§ 930 Rules and regulations; investigations; review by Attorney General.

(a) The Secretary of the Department of Agriculture may establish and promulgate such rules and regulations as he deems necessary to enforce the state policy established under this chapter.

(b) Whenever the Secretary of the Department of Agriculture has reason to believe that a public agency's action will have an adverse

impact on agriculture without an ample finding of public need or is harmful to the maintenance and preservation of agricultural activities, the Secretary may conduct a hearing to investigate the actions and make recommendations consistent with this chapter to the public agency.

(c) Whenever the public agency disagrees with the Secretary's recommendations, the Secretary may request the Attorney General to review the record of the hearing on the matter and determine whether a Chancery Court action for injunctive relief consistent with this chapter is warranted.

(64 Del. Laws, c. 465 § 1; 68 Del. Laws, c. 118 § 1.)

Subchapter V

Forestland Preservation

§ 931 Purpose, policy and intent.

It is the declared policy of the State to conserve, protect and encourage the proper utilization of the State's forestland resources. The forestlands of the State are a renewable resource which provide economic, environmental and social benefits. There is a need to provide sufficient economic benefit to the owners of forestlands to voluntarily subject forestlands to protective restrictions through the sale of forestland preservation easements. The establishment of permanent forested areas throughout the State will serve the long term needs of the forest industry while providing invaluable wildlife and habitat protections and open space benefits to the citizens of the State.

(75 Del. Laws, c. 201 § 6.)

§ 932 Establishment of forestland preservation areas.

(a) Any owner or owners of contiguous forestland containing at least 10 acres of such lands located in the State and outside of a designated growth zone may submit on a voluntary basis, on such forms as the Foundation prescribes, an application for establishment of a forestland preservation area. Upon receipt of a completed application, the Foundation and the State Forester shall review the application to determine if it satisfies the criteria for eligibility established under § 933 of this title, and any rules of practice and procedure for acquiring forestland preservation easements adopted and related thereto. The Foundation shall notify the applicant of the findings, and may provide assistance to potential applicants regarding completion of necessary application forms.

(b) The Foundation shall consider approval of application at noticed regularly scheduled meetings. Upon Foundation approval of a forestland preservation area, and after the landowner or owners execute a forestland preservation agreement in a recordable form as provided by the Foundation, the Foundation shall provide appropriate notice and a description of the established forestland preservation area to the planning and zoning commission and board of assessment for the county in which the forestland preservation area is located. Upon receipt of such information from the Foundation, the planning and zoning commission and board of assessment shall provide appropriate reference in their real property records and notations on maps which are utilized and maintained that the subject real property is designated as a forestland preservation area.

(75 Del. Laws, c. 201 § 6.)

§ 933 Forestland preservation area criteria for eligibility and review.

In order to be considered eligible for inclusion in a forestland preservation area, an application which meets the requirements of § 932 of this title shall satisfy the following criteria:

(1) The owner or owners seeking inclusion of real property in a forestland preservation area shall hold fee simple title to such property;

(2) The real property shall be located outside a designated growth zone;

(3) The real property shall be zoned to allow for agricultural or open space uses and shall not be subject to any major subdivision plan;

(4) The real property consists of viable and potentially productive forestlands;

(5) The real property is not subject to an existing conservation or preservation easement or other restriction which prohibits development;

(6) The owner or owners of the real property proposed for inclusion in a forestland preservation area execute a forestland preservation agreement in recordable form as provided by the Foundation which contains the forestland preservation area restrictions set forth in § 934 of this title;

(7) The property proposed for consideration in the forestland preservation area shall include all of the eligible forestlands located in the tax parcels subject to the application. No eligible real property shall be carved out or otherwise excluded from the application to create a forestland preservation area or an application to sell a forestland preservation easement, except that 1 location containing no more than 1 acre of land may be designated for seasonal recreational dwelling usage provided that the property proposed for consideration in the forestland preservation area or proposed for sale of a forestland easement contains at least 30 acres and the use of the designated area does not adversely affect the forestland use of the property;

(8)a. No more than 1 acre of land for each 20 acres of usable land owned in a forest conservation area or forest conservation easement, to a maximum of 10 acres, shall be allowed for permanent dwelling housing. The establishment or existence of any seasonal housing will be counted against the total allowable permanent dwelling housing acreage; and

b. With respect to acreage allowed for dwelling housing there shall be a limit of 3 dwelling houses for residential use placed on

the allowable acreage at 3 locations designated by the owner. This includes any pre-existing dwelling housing and/or the seasonal housing pursuant to paragraph (7) of this section above, unless there exist 3 dwelling houses on the real property at the time of approval of the new forest conservation area or forest conservation easement, in which case the allowable total number of dwelling housing and the allowable acreage shall be allocated to be existing dwelling houses and no additional dwelling houses shall be allowed. Such dwelling housing locations must be designated at the time of establishing the forest conservation area; and

(9) The property shall have a forest management plan prepared by a professional forester that addresses the landowner's forest management goals for the property. The plan shall contain, at a minimum, aerial and soil maps of the property, a description and analysis of the forest by management unit, and silvicultural prescriptions for each management unit. The plan shall be made available for inspection by the State Forester's office and the plan shall be revised and updated at a minimum every 5 years.

(75 Del. Laws, c. 201 § 6.)

§ 934 Forestland preservation area restrictions.

(a) The forestlands included in a forestland preservation area shall be subject to the following restrictions:

(1) No rezoning or major subdivision of the real property shall be allowed;

(2) Activities conducted on the real property shall be limited to forestry production, forestry operations, forestry management and control, wildlife habitat management, and related activities;

(3) No residential use of the real property shall be allowed, except for the seasonal recreational dwelling usage designated pursuant to § 933(7) of this title hereof;

(4) No conversion of the forestland to cropland, pasture land, open space or other types of land uses shall be allowed.

(5) No permanent commercial or industrial structures shall be located on the real property; and

(6) No mining, commercial excavation or extractive uses shall be conducted on the property.

(7) No disposal, burial, storage, or stock piling of junk, vehicles, equipment, liquid waste, solid waste or other liquid or solid materials, except that wastewater spray irrigation shall be allowed utilizing best available treatment technology with storage and treatment facilities located on lands other than forestland preservation areas.

(b) Forestry management, control and related activities allowed on forestland preservations areas are:

(1) Hunting, trapping and fishing provided such activities are limited to private noncommercial activities and do not adversely affect the forestland use of the property, and provided further that leasing of the property for such noncommercial activities shall be allowed.

(2) Easements, licenses and other property interests for utility, telecommunications, and access uses subject to the requirements set forth in § 909(a)(5)f. of this title;

(3) The use of portable nonpermanent forest planting, harvesting and processing equipment;

(4) Conservation, educational and research activities related to forestlands;

(5) Ditching for drainage necessary to enhance or preserve forestlands; and

(6) The grazing of livestock, excluding housing or shelters, subject to prior approval by the State Forester;

(7) Timbering and reforestation;

(8) Noncommercial private recreational uses such as hiking, horseback riding, and primitive camping, provided such activities do not adversely affect the forestland use of the property; and

(9) Activities involving best forestland management practices.

(c) Any transfer of real property in a forestland preservation area or subject to a forestland preservation easement shall be preceded by the execution by the transferee of a document, in recordable form and as prescribed by the Foundation, which references the restrictions applicable to the real property.

(d) The restrictions set forth in a forestland preservation area agreement shall be deemed covenants which run with and bind the lands in the forestland preservation area for a period of 10 years or any extended period from the date of approval of the forestland preservation area. The real property in a forestland preservation area shall be released from the restrictions at the expiration of the 10-year period if the owner of the forestland provides written notification to the Foundation of the intent to withdraw such lands from the forestland preservation area at least 6 months prior to expiration of the referenced 10-year period; otherwise the real property shall remain as a forestland preservation area for additional 5-year periods until such time that the owner, provides prior to the expiration date of any such additional period, at least 6 months prior written notice to the Foundation of intent to withdraw.

(e) In the event of the purchase of a forestland preservation easement by the Foundation, the restrictions set forth under this section shall become permanent and not subject to release.

(75 Del. Laws, c. 201 § 6.)

§ 935 Forestland use protections and benefits.

(a) Owners of real property located in a forestland preservation area shall be entitled to the same protections provided to the owners of real property in Agricultural Preservation Districts under the provisions of § 910 of this title, and the term "Agricultural Preservation District(s)" as used in § 910 of this title, shall include a forestland preservation area.

(b) Owners of real property located in a forestland preservation area shall be entitled to the same benefits provided to owners of real property located in Agricultural Preservation Districts under the provisions of § 911 of this title, and the term "Agricultural Preservation

District(s)", as used in § 911 of this title, shall include a forestland preservation area.

(75 Del. Laws, c. 201 § 6.)

§ 936 Acquisition of forestland preservation easements.

(a) The Foundation, subject to the availability of funds, shall be entitled to acquire, maintain and enforce forestland preservation easements for lands which are located in forestland preservation areas. The purchase of forestland preservation easements by the Foundation is purely a discretionary function, and the Foundation shall be under no obligation to purchase a forestland preservation easement from any applicant. The Foundation may utilize such method or methods of payment for forestland preservation easements as may be available. Upon acquisition of a forestland preservation easement the lands subject to such easement shall form a permanent forestland preservation area. The acquisition of a forestland preservation easement by the Foundation shall not grant the public any right of access or right of use of the real property subject to the easement.

(b) The Foundation shall adopt rules of practice and procedure for the acquisition of forestland preservation easements which shall include the process and timeframe for submitting applications for the sale of forestland preservation easements, the establishment of the purchase price for the easements through use of appraisal information, the manner in which offers to sell easements are accepted, and the basis upon which offers for sale of easements are accepted. The rules of practice and procedure shall incorporate, to the extent necessary, provisions for utilizing federal, county or other funding.

(75 Del. Laws, c. 201 § 6.)

§ 937 Forestland preservation easement criteria for eligibility and evaluation.

(a) In order for the Foundation to acquire a forestland preservation easement it shall be required that:

(1) The grantor of the forestland preservation easement has fee simple title to the real property and conveys the easement free and clear of all liens and encumbrances; and

(2) The preservation easement is granted in perpetuity in a form acceptable to the Foundation, and includes the restrictions set forth in § 934 of this title, and such other terms and conditions as specified by the Foundation.

(b) In reviewing applications for the conveyance of forestlands preservation easements the Foundation shall consider the relative cost of acquiring the easement giving due consideration to the extent to which an applicant is willing to discount the sale price below the easement value established by the Foundation.

(c) The Foundation shall approve and announce the purchase price of forestland preservation easements at its regularly scheduled meetings.

(75 Del. Laws, c. 201 § 6.)

§ 938 Right of rejection.

The Secretary of the Department of Agriculture shall, with respect to the approval of a forestland preservation area or the approval of purchase of forestland preservation easements, be entitled to reject such approvals in the manner and subject to the provisions of § 919 of this title.

(75 Del. Laws, c. 201 § 6.)

§ 939 Enforcement of restrictions.

The Foundation is authorized to take those actions and exercise the authority and entitlements set forth under § 920 of this title to enforce the restrictions and other provisions which apply to forestland preservation areas, forestland preservation area agreements, forestland preservation easements, and the provisions of this subchapter.

(75 Del. Laws, c. 201 § 6.)

§ 940 Condemnations.

The provisions of § 922 of this title as they apply to land located in agricultural preservation districts shall also apply to the real property located in forestland preservation areas and real property subject to forestland preservation easements, and the terms "Agricultural Preservation District(s)", "agricultural uses," and "preservation easement," as used in § 922 of this title, shall include a "forestland preservation area," "forestry and related activities" and "forestland preservation easement" respectively.

(75 Del. Laws, c. 201 § 6.)

§ 941 Program participation.

The owners of farmlands and forestlands included in Agricultural Preservation Districts shall be entitled to apply to sell an agricultural lands preservation easement to the Foundation under the provisions of subchapter III of this chapter, and concurrently apply to sell a forestland preservation easement under the provisions of this subchapter. If the owner's offers to sell the agricultural lands preservation easement and a forestland preservation easement on the same agricultural lands are accepted by the Foundation, the owners shall be entitled to proceed with the offer to sell an agricultural lands preservation easement for the entire property, or to separately sell a forestland preservation easement under the accepted offer and sell an agricultural lands preservation easement for the balance of the property under the accepted offer, whichever is considered desirable by the owner, provided further that the separate sale of a forestland preservation easement shall not limit the residential use allowance for the entire property as utilized on the balance of the property.

(75 Del. Laws, c. 201 § 6.)

Subchapter VI

Farmland Purchase and Preservation Loan Program

§ 942 Purpose, policy and intent.

In furtherance of the declared policy of the State to conserve, protect and encourage use and improvement of agricultural lands and to encourage, promote and protect farming as a valued occupation it is important to provide a means of facilitating the acquisition of farmland by young farmers, while furthering the goal of permanently protecting the farmland which is acquired through the placement of permanent preservation easements on the acquired farmland property. To accomplish this objective it is desirable to establish a farmland purchase and preservation loan program in accordance with the provisions of this subchapter.

(78 Del. Laws, c. 157 § 1.)

§ 943 Loan program.

There is hereby established a farmland purchase and preservation loan program to be administered by the Foundation.

(78 Del. Laws, c. 157 § 1.)

§ 944 Loan program eligibility.

(a) In order to receive loan moneys from the Foundation for the purchase and preservation of farmlands the following eligibility criteria shall apply:

(1) The loan recipient shall be at least 18 years of age and no older than 40 years of age at the time a loan application is submitted to the Foundation.

(2) The loan recipient at the time of loan application shall have at least 3 years of farming or agriculturally related activity experience.

(3) The loan recipient at the time of loan application shall have a net worth of no more than $300,000.

(4) The loan recipient shall be required to take title to the farmland in an individual name.

(5) The farmland subject to purchase shall contain at least 15 tillable acres.

(6) The loan recipient prior to the receipt of loan moneys shall not own or have an ownership interest in more than twice the tillable acres of farmland than the amount of tillable acres subject to purchases with loan moneys.

(7) The farmland shall be located in the State of Delaware.

(8) Loan applicants shall be residents of the State of Delaware.

(9) The farmland subject to purchase may be comprised of a combination of tillable acres, forestlands or wetlands; provided however, that the farmland property is zoned for agricultural usage.

(10) The farmlands being purchased shall not be subject to an existing preservation easement, conservation easement or similar limitation which restricts residential or commercial development.

(11) Loan applicants shall contractually commit that they will be actively engaged in agricultural usage of the purchased farmland during the term of the Foundation loan.

(b) The Foundation shall be entitled to adopt a loan application form requesting information from the loan applicant which includes, but is not limited to, information regarding loan eligibility.

(78 Del. Laws, c. 157 § 1.)

§ 945 Loan requirements and approval.

(a) The following requirements and conditions shall apply to loans provided by the Foundation:

(1) The maximum total amount of loans provided to an individual recipient shall not exceed $500,000.

(2) The maximum loan amount for any loan shall not exceed 70% of the appraised preservation easement value of the farmland property which is being purchased and subject to perpetual preservation easement.

(3) A condition of the loan is that the eligible farmland being acquired is to be subjected at closing to a permanent preservation easement in the form determined by the Foundation, such easement to have priority status and not be subject to subordination.

(4) The loans provided by the Foundation shall be secured by notes and mortgages which allow for the following conditions:

a. Notes and mortgages will be subordinated to other loans provided for the purchase, in whole or in part, of the eligible farmlands; provided however, that the perpetual preservation easement placed on the eligible farmland property at the time of settlement shall not be subordinated.

b. The notes and mortgages shall bear no interest and the payback may be structured for final payback within 30 years, with initial payments to begin after the primary commercial or other financing for the purchase of the farmland property is satisfied or released.

c. The notes and mortgages shall contain a requirement for payment in full of the balance of the loan upon the sale or transfer of the secured farmland property; provided however, the Foundation shall have the discretion to allow for assumption of the loan by the transferee under such terms and conditions deemed advisable, provided the transferee satisfies the loan eligibility requirements set

forth in § 944(a) of this title above.

(5) Loans shall be limited to the purchase of farmland and farmland improvements only. Portions of the property subject to purchase which are used or proposed for use for residential purposes shall not be eligible for loans, provided further nonetheless, that those lands used or intended for use for residential purposes shall be subject to the limitations set forth in § 904(a)(4)a. and b. [sic] of this title.

(b) The approval of loans by the Foundation under this subchapter is purely a discretionary function and the Foundation shall be under no obligation to provide a loan to any applicant.

(78 Del. Laws, c. 157 § 1.)

§ 946 Preservation easements.

(a) The preservation easements provided as a condition for receiving a loan under this subchapter shall include, but not be limited to, the following conditions:

(1) The preservation easement binds and runs with the farmland in perpetuity, and is not subject to the termination provisions of § 917 of this title.

(2) No residential use is allowed on the farmland subject to the preservation easement.

(3) The farming and related uses as specified under § 909(a)(5)a. through h. inclusive of this title shall be allowed.

(4) Except as expressly provided otherwise, the farmland subject to a preservation easement under this subchapter shall have the same benefits, controls and restrictions as those preservation easements otherwise acquired pursuant to the provisions of this chapter, and provided further the Foundation shall be entitled to take enforcement action as provided in § 920 of this title.

(b) The preservation easements acquired under this subchapter shall not be affected by the payment status of the loan.

(78 Del. Laws, c. 157 § 1.)

§ 947 Preservation Loan Fund.

There is hereby established a Preservation Loan Fund to be maintained, operated, supervised and administered by the Foundation, and used for making loan payments and related transaction costs and expenses for the loans provided under this subchapter. Moneys for the Preservation Loan Fund may be derived from specific appropriations provided by the General Assembly, federal grants, county and municipal grants and private funding. The Fund shall be operated as a resolving fund, with moneys paid to the Foundation as repayment of loans or condemnation related compensation deposited in the Fund and used to make additional loans.

(78 Del. Laws, c. 157 § 1.)

§ 948 Administration.

(a) In carrying out the responsibilities of administering the loan program the Foundation shall be entitled to:

(1) Adopt an application and other forms for processing applications and closing loan transactions.

(2) Establish a prequalification system for potential loan applicants.

(3) Establish schedules and timelines for processing applications and making loan decisions.

(4) Require the submission by applicants of a farm plan which includes a loan repayment plan.

(5) Provide assurances to commercial or other lenders regarding willingness to subordinate Foundation loans to commercial or other loans needed to acquire farmland.

(6) Structure and restructure the payment provisions of loans, provided however, that payments due the Foundation under any loan shall not be forgiven in whole or in part.

(7) Have appraisals performed under an appraisal methodology approved by the Foundation to determine the fair market value and preservation easement value of loan eligible farmland property.

(8) Develop selection criteria for approving loans involving competing applicants, with emphasis on selecting on a priority basis the loan applicant or applicants who request a loan with the lowest percentage value of the appraised preservation easement value of the eligible farmland.

(9) Subordinate Foundation loans to commercial financing provided to support farming operations conducted on the purchased farmlands.

(10) Cooperate with commercial lenders and others providing financing for the purchase of eligible farmlands to facilitate the successful completion of purchase transactions.

(11) Establish a system for annual reporting by loan recipients to assure that the loan recipients are actively engaged in agricultural usage of the acquired farmlands.

(b) The Foundation shall be entitled to advertise and promote the loan program, and create public awareness of the agricultural land preservation, open space and environmental benefits which the program provides.

(c) The Foundation shall be entitled to adopt rules of practice and procedure for administering the loan program.

(78 Del. Laws, c. 157 § 1.)

§ 949 Secretary's veto.

With respect to any loan application approved by the Foundation under this subchapter, the Secretary shall be entitled to veto any such approval at the time that the approval is granted. In the event the Secretary fails to exercise the veto power at the meeting at which the

approval is granted, the veto power shall be deemed waived.

(78 Del. Laws, c. 157 § 1.)

Part I
Department of Agriculture
Chapter 10
STATE FORESTRY
Subchapter I
General Provisions

§ 1001 State agency to cooperate with individuals, public agencies and United States government.

The Department of Agriculture is the agency of the State assigned plenary authority and responsibility in public forestry functions, in the conduct of which it may cooperate with individuals and public agencies including agencies of the United States in programs concerned with:

(1) The protection of forest lands from fire, disease and insect damage, including the application of control measures therefor;

(2) Establishing forest growth on denuded or nonforested lands;

(3) Aiding private forest landowners, operators and processors of primary forest products in applying desirable woodland improvement, management and harvesting practices;

(4) Forest resource research, education and surveys; and

(5) Public recreation.

(72 Del. Laws, c. 235 § 2.)

§ 1002 State Forestry Fund.

(a) The State Forestry Fund is continued, to which shall be credited all amounts appropriated by the General Assembly of the State for the administration of Chapters 10, 26 and 91 of this title and all amounts received through cooperation with the United States government under the act of Congress known as the Clarke-McNary Act [16 U.S.C. § 471a et seq.], as well as all other moneys to which the Department of Agriculture or the State Forestry Fund is entitled.

(b) All revenue derived from the sale of products from state forests and from land under the administration of the Department of Agriculture, as well as all collected fees, shall be paid to the State Treasurer and credited by the Treasurer to the State Forestry Fund for use in connection with state forests.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1003 Disposition of fines; report by courts of forestry law cases.

(a) All moneys received from fines imposed under Chapter 10, 26 or 91 of this title or any laws enacted for the protection of forest lands shall be paid to the Department of Agriculture and shall be deposited to the State of Delaware General Fund.

(b) Any court before which any prosecution under the forestry laws of this State is finally concluded shall, within 20 days thereafter, report in writing to the Department of Agriculture the result thereof, the amount of fine or forfeit collected, if any, and the disposition thereof, and at the same time shall remit to the Department of Agriculture all moneys received from such fines and forfeitures.

(72 Del. Laws, c. 235 § 2.)

§ 1004 Agreements for prevention of forest fires.

(a) The Department of Agriculture may enter into agreements for the prevention and suppression of forest fires with county, municipal and private agencies owning or controlling woodlots, forest or wild lands, or whose activities in whole or in part are directed toward the prevention and suppression of forest fires. All expenditures shall be presented to the Department of Agriculture in monthly statements, in form and manner prescribed by the Department. The Secretary of the Department of Agriculture shall audit the same and transmit such statements to the Secretary of Finance in accordance with Chapter 65 of Title 29.

(b) The Secretary of the Department of Agriculture shall certify to the Secretary of Agriculture of the United States the amounts thus expended by the State and by private agencies and fulfill any other requirements to obtain the cooperation of the federal government toward forest protection.

(72 Del. Laws, c. 235 § 2.)

§ 1005 Educational and research activities.

The Department of Agriculture may, so far as other duties will permit, carry on educational lectures and conduct exhibits on forestry within this State in the various colleges and schools of this State, and may also advance forestry education by publication. All colleges and schools supported in whole or in part by the State shall furnish such aid to the Department of Agriculture as circumstances will permit. The Department of Agriculture may also conduct investigations on forestry matters and publish for distribution literature of a scientific or general interest pertaining thereto that may promote the objects of Chapter 10, 26 or 91 of this title.

(72 Del. Laws, c. 235 § 2.)

§ 1006 Distribution of tree seeds and seedlings.

The Department of Agriculture may procure, produce, sell and distribute forest tree seeds and seedlings for the purpose of establishing windbreaks and forest growth upon denuded or nonforested lands within this State, in such quantities and under such regulations as are prescribed by the Department.

(72 Del. Laws, c. 235 § 2.)

§ 1007 Sale of surplus trees.

The Department of Agriculture may sell to forestry departments, boards or commissions of neighboring states any surplus supply of young forest trees that it has on hand for which there is no demand within the State, under an understanding that the same shall be distributed under regulations substantially similar to those provided for in § 1006 of this title.

(72 Del. Laws, c. 235 § 2.)

§ 1008 State forests, parks, experimental stations and demonstration areas.

The Department of Agriculture may:

(1) Acquire in the name of the State, by purchase, gift or otherwise, lands for the establishment of state forests, state forest parks, experimental stations and demonstration areas, and to hold, manage, regulate, control, maintain and utilize the same, but the amount expended for the acquisition of such lands in any biennial period shall not exceed the amount appropriated for the purpose and not otherwise used;

(2) Sell or exchange such forest lands whenever it is of advantage to the state forest interests, if such sale or exchange is approved by the Governor of the State. Any deed or evidence of title necessary to be given shall be executed on behalf of the State by the Governor and shall be under the Great Seal of the State;

(3) Set aside within the state forests unusual or historic groves of trees or natural features particularly worthy of permanent preservation, make the same accessible and convenient for public use, and dedicate them in perpetuity to the people of the State for recreation and enjoyment;

(4) Lease or assign a right for any period not exceeding 10 years to any citizen, public service company, association, organization or public or private agency, on such terms and conditions as are approved by the Department, such portions of any state forest lands under the administrative control of the Department, together with such building, structure or improvement thereon as shall be deemed advisable by the Department; and

(5) Establish a program for issuing permits for various activities on state forest land. Said program shall include but is not limited to the authority to adopt standards and regulations for issuances of permits, including fees for the use of state forest property by private parties, by the Department of Agriculture. It is expressly provided that said fees collected by the Department shall be defined by Department rules and regulations and shall not affect the State appropriation or be deducted therefrom, but shall be so much additional moneys available for carrying out the provisions of this subsection, and said fees shall be paid to the State Treasurer and credited by him/her to the State Forestry Fund for carrying out the purposes of this subchapter.

(72 Del. Laws, c. 235 § 2.)

§ 1009 Receipt of gifts; leases; expenditures.

(a) The Department of Agriculture may, subject to the approval of the Governor:

(1) Receive gifts, donations, contributions and leases of land;

(2) Enter into long-term leases or cooperative agreements with private persons, groups of persons, or the federal government through any of its agencies or departments for desirable lands;

(3) Make expenditures from any funds available to the Department and not otherwise allocated for managing and developing such state forest areas as, in the judgment of the Department, further the forest interests of the State.

(b) All lands or rights appertaining thereto acquired in the name of the State by the Department of Agriculture and all lands turned over to the Department by gift, devise, grant, lease, agreement or otherwise shall be held, managed, regulated and controlled by the Department under Chapters 10, 26 and 91 of this title as state forest in accordance with law, and such grant, devise, lease or agreement as is entered into by the Department as in its judgment shall be to the best interest of the people of this State.

(72 Del. Laws, c. 235 § 2.)

§ 1010 Qualifications and appointment of State Forester.

The Department of Agriculture shall employ a State Forester, who shall be a technically trained forester of not less than 2 years' experience in professional forestry work.

(72 Del. Laws, c. 235 § 2.)

§ 1011 Powers and duties of Department generally.

The Department of Agriculture shall have direction of all forest interests and all matters pertaining to forestry and woodlands within the State. The Department of Agriculture shall execute all matters pertaining to forestry within the jurisdiction of the State; devise and

promulgate rules and regulations for the enforcement of the state forestry laws and for the protection of forest lands, and impose fines in furtherance thereof; direct the improvement of state forest lands; collect data relative to forest conditions, become familiar with and inquire into the locations of all timberland and cutover lands, and prepare maps showing the locations and areas of state forests and privately owned forests so far as available funds will permit; take such action as is authorized by law to prevent and suppress forest, brush and grass fires; enforce all laws pertaining to forest and brush covered lands and assist in the prosecution, in the name of the State, of violations of those laws; cooperate with landowners, counties and others in forest production and reforestation; and publish information on forestry as seems conducive to promoting the objectives of Chapters 10, 26 and 91 of this title.

(72 Del. Laws, c. 235 § 2.)

Subchapter II

State Forest Officers

§ 1021 Appointment; term; oath of office.

(a) The Department of Agriculture may appoint suitable persons to serve under its direction either voluntarily or under compensation as state forest officers. Each officer so appointed shall be issued a certificate of appointment under the hand of the Secretary and shall be issued a badge as an insignia of authority. The appointee shall hold office until the appointee resigns or the appointment is revoked by the Secretary. Upon termination of appointment, service or authority, the appointee shall surrender and deliver to the Department the certificate, badge and other Department property in the appointee's possession.

(b) Before entering upon the duties of the office, each state forest officer shall take and subscribe the oath or affirmation as prescribed by the Constitution of the State for public officers, and the oath, subscribed by the officer, shall be kept in the files of the Department of Agriculture. Each person appointed and sworn as aforesaid shall be officially known as a state forest officer.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1022 General powers and duties; powers and duties within assigned district; duties of owners and lessees.

(a) State forest officers shall have police powers similar to constables and other police officers throughout the State for the serving of warrants, summons, writs and other legal papers issued by any justice of the peace or court having jurisdiction in offenses against any law enacted for the protection of forest, brush, grass or wild lands, and they may arrest any person detected by them in the act of committing, or under such circumstances as warrant reasonable suspicion that such person is committing, or is about to commit an offense against any of the laws enacted for the protection of forest, brush, grass or wild lands in this State or any law, rule or regulation relating to the protection of any land, property, structure material or vegetation on lands under the administration or control of the Department. A state forest officer shall also have the power to make arrests of persons violating § 518 of Title 17 in the officer's presence or view or otherwise upon the issuance of an arrest warrant based on a showing of probable cause that the individual named in the warrant committed the violation.

(b) In addition to the powers and duties assigned in subsection (a) of this section, each state forest officer may, in any part of the State:

(1) Enter upon any land at any time for the purpose of performing duties in accordance with this title, and no action for trespass shall lie against a state forest officer or others employed by the officer while working under the officer's direction if in entering a property, they shall exercise due care to avoid doing unnecessary damage; and

(2) Arrest on sight, without first procuring a warrant, any person detected in the act of committing an offense against any of the laws enacted for the protection of forest, brush or wild lands from fire, or when the officer has a reasonable cause to suspect that such person is committing or is about to commit some such offense, and upon such arrest to take the accused before a justice of the peace of the county for hearing and trial.

(c) Each state forest officer shall have the control and direction of persons, material, equipment and property engaged in extinguishing forest fires within the district assigned to such officer, and such officer shall, upon discovering a fire on or approaching woodlands, forest or wild lands, or upon receiving report of such a fire has been reported to such officer take immediately such measures as are necessary to control and extinguish the same;

(d) Nothing in this title shall be construed so as to relieve the owner or lessee of lands upon which fires burn or are started from the duty of extinguishing such fires so far as it lies within the owner's or lessee's power, and no owner or lessee of land or anyone with a present vested interest in such land shall receive compensation from the State for helping or assisting in the extinguishment of fires upon the lands to which the owner's or lessee's interest is attached. No person who is responsible for starting a fire shall receive compensation for helping to extinguish such fire.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 266 § 8.)

§ 1023 Fish and Wildlife Agents and police officers as ex officio state forest officers.

Fish and Wildlife Agents and state police officers shall be state forest officers ex officio and shall have the same powers and authority assigned to state forest officers appointed under this subchapter.

(72 Del. Laws, c. 235 § 2.)

Subchapter III
Urban and Community Forestry Program

§ 1031 Findings and policy.

The General Assembly finds and declares that urban and community forests are a necessary and important part of community and urban environments and are critical to the environmental, social and economic welfare of the State. The General Assembly also recognizes that the ability of all county and municipal governments to care for and manage their tree resources could be enhanced through technical and financial assistance from a state urban and community forestry program and that properly planned and implemented local community forestry programs can provide the necessary basis for local governments to develop local tree care programs and improve quality of life. The General Assembly further declares that this chapter addresses only the tree resources on publicly owned lands, and shall in no way interfere with the ability of a landowner to manage and/or harvest his or her forested lands.

(72 Del. Laws, c. 235 § 2.)

§ 1032 Definitions.

As used in this subchapter:

(1) "Comprehensive community forestry plan" is a document that describes how a government or other organization will manage the tree resources located on publicly owned lands within its jurisdiction. This plan should be based on an accurate inventory of both tree and other resources, such as existing roads and infrastructure, include a map of the publicly owned areas and the mission and objectives for these lands, and define the strategies and budget needed to achieve these objectives.

(2) "Department" shall mean the Department of Agriculture.

(3) "Local government" shall mean a municipality, county or other political subdivision of the State or any agency thereof.

(4) "Secretary" shall mean the Secretary of Agriculture.

(5) "Tree resources" are those trees located in street right-of-ways, parks and other publicly owned lands.

(6) "Urban and community forestry" shall mean the planting, protection, care and management of trees and other related natural resources located on publicly owned lands within a city, town or municipality.

(72 Del. Laws, c. 235 § 2.)

§ 1033 Powers and duties.

The Delaware Department of Agriculture Urban and Community Forestry Program, under the supervision of the State Forester, shall:

(1) Assist local governments and public organizations in establishing and maintaining urban and community forestry programs and in encouraging persons to engage in appropriate and approved practices with respect to tree management and care;

(2) Advise local governments and public organizations in the development and coordination of policies, programs and activities for the promotion of urban and community forestry;

(3) Provide grants to local governments and public organizations applying for assistance in tree planting, tree management and the development and implementation of a comprehensive community forestry plan on publicly owned lands to the extent moneys are appropriated or otherwise made available therefor;

(4) Educate citizens on the importance of trees and forests and their role in the maintenance of a healthy environment;

(5) Provide technical assistance, planning and analysis for projects related to urban and community forestry;

(6) Provide training assistance to local governments and public organizations regarding urban and community forestry issues such as tree diseases, insect programs, tree planting and tree maintenance; and

(7) Provide volunteer opportunities for the State's citizens and public organizations interested in urban and community forestry activities.

(72 Del. Laws, c. 235 § 2.)

§ 1034 Community Forestry Council.

(a) There is established in the Department a Community Forestry Council, which shall consist of 13 members appointed by the Secretary. Membership shall include at least 1 representative each from the USDA Cooperative Extension System, the Governor's Forestry Advisory Council, the Master Gardener program and the Delaware Association of Nurserymen; an arborist or similar tree care expert; a county or municipal government official; a member of an institution of higher learning within the State who possesses urban forestry expertise; and a private citizen from each county. Each member shall be a citizen with expertise or interest in trees, forestry, or tree or forest management, maintenance or care. The Department's Urban Forestry Coordinator and State Forester shall serve as ex officio members.

(b) Each member shall serve for a period of 3 years, and may succeed himself or herself for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Council shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment, except that each member shall serve until a successor is duly appointed.

(c) A person who has never served on the Council may be appointed to the Council 2 consecutive times, but no such person shall thereafter be eligible for 2 consecutive appointments. No person who has been twice appointed to the Council or who has served on the

Council for 6 years within any 9-year period shall again be appointed to the Board until an interim period of at least 1 term has expired since such person last served.

(d) Five members of the Council shall be appointed each year for a 3-year term.

(e) A member of the Council shall be suspended or removed by the Secretary for misfeasance, nonfeasance, malfeasance or neglect of duty.

(f) Chapter 58 of Title 29 shall apply to all members of the Council and to all agents appointed or otherwise employed by the Council.

(g) A majority of the membership of the Council shall constitute a quorum for the transaction of Council business. Action may be taken and motions and resolutions adopted by the Council at any meeting thereof by the affirmative votes of a majority of the full membership of the Council.

(h) Members of the Council shall serve without compensation, but may be reimbursed for expenses necessarily incurred in the discharge of their official duties.

(i) The Council shall elect a chairperson, vice chairperson and other officers as may be necessary.

(j) The Council shall advise the State Forester and the Department on issues concerning community forestry and assist with such functions.

(72 Del. Laws, c. 235 § 2.)

§ 1035 Duties of State Forester.

The State Forester, with the advice and assistance of the Council, may establish minimum standards and provide a training skills and voluntary accreditation program for representatives of local governments and organizations, the content of which shall be the appropriate and approved methods for the planting, protection, care and management of trees and other related natural resources under their control.

(72 Del. Laws, c. 235 § 2.)

§ 1036 Development, distribution of comprehensive community forestry plan; approval.

(a) The State Forester, with the advice and assistance of the Council, may develop and make available to local governments and organizations a list of elements found within a comprehensive community forestry plan. These guidelines shall establish, but not limit, the basic framework of an approved plan.

(b) The State Forester, with the advice and assistance of the Council, shall develop and make available to local governments and organizations a procedure for submitting for approval a comprehensive community forestry plan.

(c) A local government may develop and submit to the State Forester for approval a comprehensive community forestry plan according to procedures established by the Department.

(d) The State Forester, after review and comment by the Council, shall approve a comprehensive community forestry plan if the plan contains the basic elements of an approved plan and adequately addresses the needs of the community and the tree resource.

(72 Del. Laws, c. 235 § 2.)

§ 1037 Annual report on the status of Delaware Urban and Community Forestry Program.

The State Forester's annual report shall contain a summary of the status of the Delaware Urban and Community Forestry Program, including any recommendations for legislative or administrative action to improve implementation of that program, and transmit that report to the Governor and the General Assembly.

(72 Del. Laws, c. 235 § 2.)

§ 1038 Rules, regulations.

The Department shall adopt, pursuant to the Administrative Procedure Act, Chapter 101 of Title 29, such rules and regulations as may be necessary to implement this chapter, including establishment of:

(1) Guidelines for development of a comprehensive community forestry plan;

(2) Criteria for proper selection, planting and care of tree resources;

(3) Procedures to accept and evaluate submitted comprehensive community forestry plans;

(4) Procedures for the review and approval of training and voluntary accreditation programs in tree care and management for local officials;

(5) Criteria for ranking grant applications received from local governments and community organizations applying for assistance in tree planting, tree improvement and the development and implementation of comprehensive community forestry plans.

(72 Del. Laws, c. 235 § 2.)

Subchapter IV

Offenses and Penalties as They Relate to Fires or Damage and Removal of Trees or Shrubs

§ 1041 Wilfully or maliciously starting fires.

(a) Whoever wilfully or maliciously sets fire to any woodlot, forest, wild land, property, material or vegetation being or growing upon the lands of another shall be fined not less than $200, nor more than $5,000, or imprisoned not more than 2 years, or both.

(b) This section shall not apply to the setting of a backfire under the direction of a state forest officer to extinguish a fire then burning, nor to persons setting fire under §§ 1042 and 1043 of this title.

(72 Del. Laws, c. 235 § 2.)

§ 1042 Carelessly starting fires; penalty.

Whoever carelessly sets on fire any forest land, brush land, grain stubble, grass or other combustible material being or growing on lands neither belonging to such person nor in such person's possession or control, or for any purpose whatsoever sets a fire on such person's own land or lands in such person's possession or control, and negligently allows said fire to escape from such person's control, to the damage of the property of another, shall be fined not less than $100, nor more than $500. Nothing in this title shall prohibit an owner from setting a backfire on the owner's own land to prevent the progress of a fire then burning.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1043 Setting fire to woodland; unseasonable marsh burning; penalty.

Whoever sets any woodland on fire, or, after April 1, sets on fire any marsh, shall be fined not less than $200, nor more than $1,000, and shall also be liable in damages to property owners for injury done by such fire. The burning of wood cut down or of brush in clearing land shall not, unless there be negligence, fall within this section.

(72 Del. Laws, c. 235 § 2.)

§ 1044 Obstructing person in performance of duty; penalty.

Whoever obstructs or prevents or attempts to obstruct or prevent any forest officer or ex officio forest officer or any person employed under the direction of the above-mentioned officers while in the performance of a duty assigned to such officer or required by Chapter 10, 26 or 91 of this title, or while exercising the right of entry, access or examination, shall be fined not less than $100, nor more than $500.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1045 Trees and shrubs of state forests; penalty.

(a) Notwithstanding any other provision of this title, whoever without the consent of the Department of Agriculture wilfully, negligently or maliciously cuts bark from or cuts down, injures, destroys or removes trees or shrubs or any part thereof growing in a state forest or wilfully, negligently or maliciously does or causes to be done any other act to the damage of such forest shall be fined not more than $1,000 or imprisoned not more than 3 months, or both.

(b) Any constable, police officer, forest officer or state officer may arrest without warrant any person found violating this section.

(72 Del. Laws, c. 235 § 2.)

§ 1046 Liability to State for expenses.

Notwithstanding any other provision of this title, whoever wilfully, maliciously or carelessly sets fire to forest lands, in addition to the penalties provided for such violation and the liability for damages to persons suffering loss thereby, shall be liable to the State for all expenses incurred in combating and extinguishing such fire.

(72 Del. Laws, c. 235 § 2.)

§ 1047 Jurisdiction of offenses.

The justices of the peace shall have jurisdiction of offenses under this subchapter except where jurisdiction of any such offenses is vested exclusively in another court.

(72 Del. Laws, c. 235 § 2.)

Subchapter V

Pine and Yellow-Poplar Tree Conservation and Reforestation

§ 1051 Findings; policy; purpose.

The General Assembly finds and declares that the pine and yellow-poplar forest resource of the State provides significant recreational, aesthetic, wildlife and environmental benefits as well as wood fiber essential to commerce and industry for the citizens of the State. The General Assembly has also determined that the pine and hardwood forest resources are being harvested at a greater rate than they are being replanted or reproduced and unless measures are instituted to ensure that the forest resources are sustained, this natural resource will be depleted to the detriment of the citizens of the State. It is, therefore, the declared public policy of this State to preserve and protect the pine and yellow-poplar forest resources of the State. The purpose of this subchapter is to regulate the maintenance and reproduction of the pine and yellow-poplar forest resources of the State in the public interest.

(72 Del. Laws, c. 235 § 2.)

§ 1052 Definitions.

As used in this subchapter:

(1) "Cutting operation" shall mean the cutting of timber for commercial purposes from 10 acres or more of land on which loblolly pine (Pinus taeda), shortleaf pine (Pinus echinata), pond pine (Pinus serotina) or yellow-poplar (Liriodendron tulipifera) singly or together occur and constitute 25 percent or more of the live trees on each acre.

(2) "Live tree" shall mean trees that have their crowns in the uppermost layers of the canopy (dominant and co-dominant trees) and are largely free growing, free of insect and disease infestation, windfirm and old enough to produce fertile seed crops.

(3) "Diameter" shall mean the diameter outside bark of a standing tree measured 4.5 feet above the ground.

(4) "Landowner" shall mean any person holding title to the land or possessing the right to contract for the cutting operation thereon.

(5) "Operator" shall mean any person, including a landowner, who conducts any cutting operation.

(6) "Person" shall mean the State, or any county, municipality, corporation or other political subdivision of the State or any of their units, or an individual receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind, or any partnership, firm, association or public or private corporation, or principal(s) in business ventures operating under more than 1 name, or any other entity.

(7) "Pine" shall mean any loblolly pine (Pinus taeda), shortleaf pine (Pinus echinata) or pond pine (Pinus serotina).

(8) "Secretary" shall mean the Secretary of the Department of Agriculture.

(9) "Seedling" shall mean a young pine or yellow-poplar plant less than 1 inch in diameter.

(10) "Tree" or "timber" shall mean any tree of a currently commercially valuable species that is 6 inches or more in diameter.

(11) "Free to grow" shall mean to increase the stem and crown diameter, basal area, height, volume and quality of an individual tree.

(72 Del. Laws, c. 235 § 2.)

§ 1053 Conservation or reforestation plan required; applicability; regulations.

(a) No person shall commence a cutting operation unless seed trees have been reserved pursuant to the natural regeneration method set forth herein or pursuant to an alternate management plan approved by the State Forester or his designee.

(b) This subchapter shall not apply to operations cutting timber from land being cleared for reservoirs, military installations, agriculture, residential, ditch and utility right-of-ways, industrial sites, or railroads, or to cutting operations undertaken pursuant to a contract executed prior to January 1, 1989.

(c) The Department of Agriculture shall have the authority to adopt, amend, modify or repeal such rules and regulations as it deems necessary to effectuate the policies and the purposes of this subchapter.

(72 Del. Laws, c. 235 § 2.)

§ 1054 Natural regeneration; notice required upon transfer.

(a) Operators and landowners shall leave uncut and uninjured at least 6 seed-bearing pine or yellow-poplar trees 14 inches in diameter or larger on each acre involved in a cutting operation. If an acre lacks 1 or more of the required seed trees, then 2 seed-bearing pines or yellow-poplars of the next smallest diameter shall be chosen to replace each missing tree.

(b) Trees reserved pursuant to subsection (a) of this section for the purpose of reseeding shall be healthy, windfirm, and well-distributed throughout each acre, and have well developed crowns possessing viable cones.

(c) Seed-bearing pine or yellow-poplar trees need not be reserved if at least 400 pine or yellow-poplar seedlings exist on each acre that are vigorous, well distributed throughout, and free to grow upon completion of the cutting operation.

(d) Any operators or landowners proposing to utilize the natural regeneration method shall notify the State Forester at the Delaware Department of Agriculture Forest Service of the proposed natural regeneration plan at least 10 working days prior to initiation of a cutting operation.

(1) Operators or landowners shall be responsible for having seed trees physically marked prior to notification of the State Forester.

(2) Within 10 working days, the State Forester or the State Forester's designated agent shall inspect the proposed site and provide the operator or landowner with approval, approval with modifications, or rejection of the natural regeneration plan.

(e) Once approval is given, but before the cutting operation begins, the landowner will agree, on a form furnished by the Department of Agriculture Forest Service, not to cut or permit to be cut any pine or yellow-poplar tree required to be reserved for reseeding for 2 years after completion of the cutting operation. The provisions of this subsection do not apply if the landowner places the land in any of the uses enumerated in § 1053(b) of this title.

(f) Prior to the sale or other transfer of rights of the land or perpetual timber rights subject to the obligation to reserve the trees, the transferor shall notify the transferee of the existence and nature of the obligation and the transferee shall sign a notice of the obligation indicating the transferee's knowledge thereof.

(1) The notice shall be on a form furnished by the Department of Agriculture Forest Service and shall be sent to the Department of Agriculture by the transferor at the time of sale or transfer of rights of the land or perpetual timber rights.

(2) If the transferor fails to notify the transferee about the obligation to reserve the trees, the transferor shall pay the transferee's costs related to fulfilling the obligation to reserve the trees or reforest all trees cut, including all legal costs and reasonable attorneys' fees incurred by the transferee in enforcing the obligation against the transferor.

(3) Failure by the transferor to send the required notice to the Department of Agriculture Forest Service at the time of transfer shall be prima facie evidence in any action by the transferee against the transferor for costs related to reserving the trees or reforesting all trees cut that the transferor did not notify the transferee of the obligation to reserve the trees prior to transfer.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1055 Reforestation method; notice required upon transfer.

(a) The land involved in a cutting operation may be reforested pursuant to an approved reforestation plan in lieu of the natural regeneration method. The plan shall be prepared by the landowner or the landowner's agent and shall be designed to assure the reproduction and maintenance of growth of young, vigorous pine or yellow-poplar trees.

(b) The reforestation plan shall be accompanied by a statement of the landowner, on a form furnished by the Department of Agriculture Forest Service, that the landowner will not perform any act or permit any act to be performed which prevents reforestation. This provision does not apply if the landowner places the land in any of the uses enumerated in § 1053(b) of this title.

(c) Ten working days prior to the initiation of the cutting operation, the landowner or the landowner's agent or operator shall notify the State Forester of the intention to reforest and shall submit a reforestation plan.

(d) The landowner or the landowner's agent or operator shall submit the reforestation plan to the State Forester at the Department of Agriculture Forest Service for approval.

(1) The Department of Agriculture Forest Service shall approve, approve with modifications, or reject any reforestation plan submitted within 10 working days.

(2) The determination of the Department of Agriculture Forest Service shall be in writing, setting forth the reasons for approval with modifications or rejection, and shall be forwarded to the operator or landowner.

(3) In cases where a reforestation plan has been rejected by the State Forester, the landowner or the landowner's agent or operator shall be required to submit another reforestation plan for approval. Under no circumstances shall a cutting operation begin prior to approval of a reforestation plan by the DDA Forest Service.

(e) Prior to the sale or other transfer of rights of land or perpetual timber rights subject to a reforestation obligation, the transferor of land shall notify the transferee of the existence and nature of the obligation and the transferee shall sign a notice of reforestation obligation indicating the transferee's knowledge thereof.

(1) The notice shall be on a form furnished by the Department of Agriculture Forest Service and shall be sent to the Department of Agriculture by the transferor at the time of sale or transfer of rights of land or perpetual timber rights.

(2) If the transferor fails to notify the transferee about the reforestation obligation, the transferor shall pay the transferee's costs related to reforestation, including all legal costs and reasonable attorneys' fees incurred by the transferee in enforcing the reforestation obligation against the transferor.

(3) Failure by the transferor to send the required notice to the Department of Agriculture at the time of the sale shall be prima facie evidence in any action by the transferee against the transferor for costs related to reforestation that the transferor did not notify the buyer of the reforestation obligation prior to sale.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1056 Prohibitions.

No person shall cut or permit to be cut any pine or yellow-poplar tree or seedling required to be reserved for reseeding or planted under a reforestation plan or perform any act or permit any act to be performed which prevents reseeding or reforestation of any area in which a cutting operation has been conducted.

(72 Del. Laws, c. 235 § 2.)

§ 1057 Right of entry.

The State Forester or the State Forester's duly authorized representative may enter at reasonable times upon any public or private property for the purpose of determining whether a violation of the provisions of this subchapter or any of the regulations promulgated thereunder exists upon giving verbal notice and after presenting official identification to the landowner, operator, custodian or agent of said property.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1058 Cease and desist orders.

The State Forester shall have the power to issue a cease and desist order to any person violating any provision of this subchapter or rules or regulations promulgated thereunder. Any such cease and desist order shall remain in effect until withdrawal of said order by the State Forester or until the order is superseded by an injunction, whichever occurs first.

(72 Del. Laws, c. 235 § 2.)

§ 1059 Injunctive relief.

Whenever it appears that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this subchapter or rules or regulations adopted pursuant to it, the State Forester may bring an action in the Court of Chancery to restrain or

to enjoin the acts or practices and to enforce compliance with this subchapter. The Court shall not require the Department of Agriculture to post a bond.

(72 Del. Laws, c. 235 § 2.)

§ 1060 Appeals.

(a) Any person whose interest is substantially affected by an action of the State Forester or the State Forester's designee may request a hearing to demonstrate compliance with this subchapter or any regulations promulgated thereunder.

(b) Such hearing shall be scheduled within 15 days of the request and shall be held by the Secretary or the Secretary's designee. The decision of the Secretary or the Secretary's designee may be appealed to the Superior Court on the record within 30 days of the decision.

(c) No appeal shall operate to automatically stay any action of the Secretary.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1061 Penalties.

(a) Any person who violates any provision of this subchapter or associated rules and regulations shall, upon conviction, be subject to a fine not exceeding $1,000 or imprisonment not exceeding 1 months, or both.

(b) Any person found guilty of a second or subsequent violation of any provision of this subchapter is subject to a fine not exceeding $2,000 or imprisonment not exceeding 3 months, or both. For the purposes of this subsection, a second or subsequent violation is one that has occurred within 2 years of any prior violation of this subchapter.

(c) The Justices of the Peace Court shall have original jurisdiction to hear and determine violations of this subchapter.

(72 Del. Laws, c. 235 § 2.)

Subchapter VI

Water Quality as It Relates to Silvicultural Systems and Sedimentation and Erosion Control

§ 1071 Findings; policy; purpose.

The State Forester shall provide for the protection of the waters of the State from pollution by sediment deposits resulting from silvicultural activities as provided in § 1078 of this title. Through the adoption of this subchapter, the State recognizes that water quality protection techniques for silvicultural practices are an integral component of properly managed forests. Further, the State recognizes the positive benefits that properly managed forest systems have on the environment, water quality and quality of life in Delaware.

(72 Del. Laws, c. 235 § 2.)

§ 1072 Definitions.

The following words, terms and phrases, as used in this subchapter, shall have the following meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Owner" shall mean any person that (a) owns or leases land on which silvicultural activity occurs or (b) owns timber on land which silvicultural activity occurs.

(2) "Operator" shall mean any person that operates or exercises control over any silvicultural activity.

(3) "Pollution" shall mean such alteration of the physical, chemical or biological properties of any waters of the State resulting from sediment deposition that will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as a present or possible future source of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural or other reasonable uses.

(4) "Silvicultural activity" shall mean any forest management activity, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation.

(5) "Reforestation" is the establishment of a tree crop on forest land.

(72 Del. Laws, c. 235 § 2.)

§ 1073 Conduct of silvicultural activities.

If the State Forester or the State Forester's designee determines that an owner or operator is conducting or allowing the conduct of any silvicultural activity in a manner that is causing or is likely to cause pollution, the State Forester or the State Forester's designee may advise the owner or operator of corrective measures needed to prevent or cease the pollution. Failure of the State Forester or the State Forester's designee to advise an owner or operator of such corrective measures shall not impair the State Forester's authority to issue cease and desist orders.

(72 Del. Laws, c. 235 § 2.)

§ 1074 Cease and desist orders.

The State Forester shall have the power to issue a cease and desist order to any person violating any provision of this subchapter or rules

or regulations promulgated thereunder. Any such cease and desist order shall remain in effect until withdrawal of said order by the State Forester or until the order is superseded by an injunction, whichever occurs first.

(72 Del. Laws, c. 235 § 2.)

§ 1075 Injunctive relief.

Whenever it appears that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this subchapter or rules or regulations adopted pursuant to it, the State Forester may bring an action in the Court of Chancery to restrain or to enjoin the acts or practices and to enforce compliance with this subchapter. The Court shall not require the Department of Agriculture to post a bond.

(72 Del. Laws, c. 235 § 2.)

§ 1076 Appeals.

(a) Any person whose interest is substantially affected by an action of the State Forester or the State Forester's designee may request a hearing to demonstrate compliance with this subchapter or any regulations promulgated thereunder.

(b) Such hearing shall be scheduled within 15 days of the request and shall be held by the State Forester or the State Forester's designee. The decision of the State Forester or the State Forester's designee may be appealed to Superior Court on the record within 30 days of the decision.

(c) No appeal shall operate to automatically stay any action of the State Forester.

(72 Del. Laws, c. 235 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1077 Penalties.

(a) Any person who violates any provision of this subchapter or associated rules and regulations shall, upon conviction, be subject to a fine not exceeding $1,000 or imprisonment not exceeding 1 months, or both.

(b) Any person found guilty of a second or subsequent violation of any provision of this subchapter is subject to a fine not exceeding $2,000 or imprisonment not exceeding 3 months, or both. For the purposes of this subsection, a second or subsequent violation is one that has occurred within 2 years of any prior violation of this subchapter.

(c) The Justice of the Peace Court shall have original jurisdiction to hear and determine violations of this subchapter.

(72 Del. Laws, c. 235 § 2.)

§ 1078 Hearings, notices.

Any hearing required under this subchapter shall follow the Administrative Procedures Act, Chapter 101 of Title 29.

(72 Del. Laws, c. 235 § 2.)

§ 1079 Civil penalties.

Any owner or operator who violates or fails or refuses to obey any special order, rule or regulation may be assessed a civil penalty by the State Forester. Such penalty shall not be less than $200 or more than $1,000 for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of assessing penalties. The Superior Court shall have jurisdiction of the offenses brought under this subchapter. In determining the amount of the penalty, consideration shall be given to the owner's or operator's history of noncompliance, the seriousness of the violation, including any irreparable harm to the environment and any hazards to the health or safety of the public, whether the owner or operator was negligent, and the demonstrated good faith of the owner or operator in reporting and remedying the pollution. A civil penalty may be assessed by the Superior Court only after the owner or operator has been given an opportunity for a hearing as specified in § 2981 of this title. Any person who intentionally, knowingly and after written notice to comply violates or refuses to comply with any notice issued pursuant to this chapter shall be fined not less than $500 or more than $5,000 for each offense. Each day the violation continues shall constitute a separate offense. The Superior Court shall have jurisdiction of offenses brought under this subchapter.

(72 Del. Laws, c. 235 § 2.)

§ 1080 State program.

In carrying out this chapter, the State Forester may, in cooperation with appropriate municipal, county, state and federal agencies, and with representatives from operators and owners groups:

(1) Develop and publish sediment control and storm water management techniques and guidelines for use by owners and operators;

(2) Provide technical and other assistance to owners and operators in the implementation of techniques and guidelines;

(3) Conduct and supervise educational programs for owners and operators with respect to sediment control and storm water management techniques and guidelines;

(4) Conduct studies and research and publish the results regarding the causes, effects and hazards of sediment and storm water originating from silvicultural activities;

(5) Cooperate with appropriate agencies of the United States or other states or any interstate agency with respect to silvicultural activities;

(6) Establish a means of communication, such as a newsletter, so that information regarding program development and implementation

can be distributed to interested owners and operators; and

(7) Establish a notification system whereby owners and/or operators inform the Delaware Department of Agriculture Forest Service of planned silvicultural activities prior to commencing the activities.

(72 Del. Laws, c. 235 § 2.)

Part II
Regulatory Provisions
Chapter 11
PLANT PESTS

§ 1101 Definitions.

The following words shall, for purposes of this chapter, be defined as follows:

(1) "Agriculture" — the production of plants and animals useful to humans, including all forms of farm products and farm production.

(2) "Biological control agent(s)" — any living organism which because of its parasitic, predatory or other biological characteristics, may be effective in the suppression or control of pests or plant pests.

(3) "Control (of a pest)" — to curb or hold in check and includes, but is not limited to, abatement, containment, eradication, extermination or suppression.

(4) "Dangerously injurious plant pest" — a plant pest that constitutes a significant threat to the agricultural, forest or horticultural interests of this State, or the State's general environmental quality.

(5) "Department" — the State of Delaware Department of Agriculture and its officers, inspectors, employees, agents or representatives .

(6) "Environment" — the land, air, water, animals, plants and other natural resources of the State, as they interact with or are affected by pests or plant pests.

(7) "Horticultural product" — those products stated in Group 18 of the United States Department of Labor Standard Industrial Classification Manual which are grown under cover or outdoors, including bulbs, flowers, shrubbery, florist greens, ferns, fruit stock, floral products, nursery stock, ornamental plants, potted plants, house plants, roses, seed, Christmas trees, fruits, food crops grown in greenhouses, vegetables and horticultural specialties not otherwise specified.

(8) "Infected" — a plant that has been determined by the Department to be contaminated with an infectious, transmissible or contagious plant pest or so exposed to the aforementioned that contamination can reasonably be expected to exist. This includes disease conditions, regardless of their mode of transmission, or any disorder of plants which manifest symptoms which, after investigation are determined by a federal or state pest prevention agency, to be characteristic of an infectious, transmissible or contagious disease.

(9) "Infested" — a plant that has been determined by the Department to be contaminated by a dangerously injurious plant pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist.

(10) "Mark" — to affix, for purposes of identification or separation, a conspicuous official indicator to, on, around or near, plants or plant material known or suspected to be infected or infested with or by a dangerously injurious plant pest. This includes, but is not limited to, paint, markers, tags, seals, stickers, tape, signs or placards.

(11) "Owner(s)" — includes, but is not limited to, the person, persons, family, group, firm, association, business, company, incorporated entity or organization with the legal right of possession, proprietorship of or responsibility for the property or place where any of the regulated articles defined in this chapter are to be found, or person(s) who are in possession of, in proprietorship of or have responsibility for the regulated articles.

(12) "Person(s)" — includes, but is not limited to, individual, family, group, firm, association, business, company, incorporated entity or organization.

(13) "Pest" — includes any biotic agent that is known to cause damage or harm to agriculture or the environment.

(14) "Plant" — includes, but is not limited to, any part of a plant, tree, aquatic plant, plant product, shrub, vine, fruit, rhizome, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft or fruit pit, including:

a. Agricultural commodities — plant products including any horticultural product.

b. Crop seed — the seed or seedlike fruit of grain, vegetables, fruits or fiber plants, or any other crop whether or not it is intended for planting purposes.

c. Farm product — every agricultural, horticultural, viticultural and vegetable product of the soil, bees and apiary products, hay, dried beans, honey and cut flowers.

d. Nursery stock — any plant for planting, propagation or ornamentation.

e. Noncultivated or feral plants gathered from the environment.

f. Plants produced by tissue culture, cloning or from stem cell cultures or other prepared media culture.

(15) "Plant Pest" — includes, but is not limited to, any pest of plants, agricultural commodities, crop seed, farm products, horticultural products, nursery stock or noncultivated plants. This includes, but is not limited to, insects, snails, nematodes, fungi, viruses, bacterium, microorganisms, mycoplasma-like organisms, weeds, plants or parasitic higher plants.

(16) "Quarantine" — a legal instrument duly imposed or enacted by the Department as a means for mitigating pest risk. These actions include, but are not limited to, confinement or restriction of entry, movement, shipment or transportation of plants known or suspected to be infected or infested with some dangerously injurious plant pests.

(17) "Secretary" — the Secretary of the State of Delaware Department of Agriculture or his or her designee.

(18) "Tenant(s)" — includes, but is not limited to, the person, persons, family, group, firm, association, business, company, incorporated entity or organization which rents or sublets, with the landlord's consent, the property or place where regulated articles, as defined in this chapter, are to be found.

(66 Del. Laws, c. 153 § 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 325 § 1.)

§ 1102 Regulations and fees.

(a) The Department of Agriculture may adopt reasonable regulations to implement and carry out the purposes of this chapter to eradicate, repress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State. The Department of Agriculture shall adopt regulations for eradicating such plant pests as it may deem capable of being economically eradicated, for repressing such as cannot be economically eradicated, and for preventing their spread within the State. Reasonable regulations for preventing the introduction of dangerously injurious plant pests from outside the State may also be adopted.

(b) The Secretary of the Delaware Department of Agriculture may set a fee up to the amount of $200 for each U.S. Department of Agriculture phytosanitary certificate.

(72 Del. Laws, c. 375 § 2.)

§ 1103 Discovery and suppression of plant pests.

(a) In order to prevent the introduction of or to control dangerously injurious plant pests in the State, the Department shall seek out all dangerously injurious plant pests destructive to the agricultural, forest or horticultural interests of this State or the State's general environmental quality. As it deems necessary, the Department shall conduct research to accomplish the aforementioned duty.

(b) In order to prevent the spread of dangerously injurious plant pests, the Department shall issue orders for any control measures it deems necessary. These control orders may indicate the type of control to be utilized, the compound or material and the manner or the time of application. Control shall be obtained by any of the methods approved in Chapter 12 (Pesticides) of this title or any other legal treatment.

(c) Upon knowledge of the existence of a dangerously injurious plant pest within the State, the Department may conspicuously mark all plants known or suspected to be infected or infested with the plant pest. The Department shall notify the person(s), owner(s) or the tenant(s) in possession of the premises in question of the existence of the dangerously injurious plant pest and of the prescribed control measures. The aforementioned person(s) must, within the prescribed time limit, implement the conditions of the Department's control order or be subject to civil penalties as stated in this chapter.

(d) The removal of markings placed by the Department, for the purpose of identification of plants infested or infected by dangerous injurious plant pests, by persons other than those authorized by the Department is an illegal act and punishable as a civil violation as prescribed in this chapter.

(e) Should the person(s) associated with or the owner(s) of the plants infested or infected with the dangerously injurious plant pests or the tenant(s) or owner(s) in possession of the premises wherein the plants are found, neglect, fail or refuse to apply the control measures prescribed by the Department, in the manner or at the times ordered and directed by the Department, then the Department may cause the prescribed control measures to be applied at the expense of the aforementioned person(s). The Department shall, when it deems necessary, cause pest infected or infested plants to be destroyed at the expense of the aforementioned person(s) and the loss to fall upon the person(s) without any form of compensation.

(f) The Department, in order to prevent the spread of dangerously injurious plant pests, may apply necessary control measures at the expense of the person(s), owner(s) or tenant(s) associated with any and all suspicious plants found to be in dangerous proximity to those infested or infected by the aforementioned plant pest. Any control measures enacted under this section may be applied in a manner and at a time the Department deems necessary.

(g) The Department may enter into cooperative agreements with organizations, including, but not limited to, persons, civic groups or governmental agencies to adopt and execute plans to control areas infested or infected with dangerously injurious plant pests. Such cooperative agreements may include provisions of joint funding of any control treatment.

(h) If a dangerously injurious plant pest occurs and cannot be adequately controlled by individual person(s), owner(s), tenant(s) or local units of government, the Department may conduct the necessary control measures independently or on a cooperative basis with federal or other units of government.

(i) The Department's methods of operations shall not be limited to those specifically listed in this section.

(21 Del. Laws, c. 216 § 4; Code 1915 § 653; Code 1935 § 571; 3 Del. C. 1953 § 1101; 57 Del. Laws, c. 764 § 4; 64 Del. Laws, c. 234 § 1; 66 Del. Laws, c. 153 § 3; 70 Del. Laws, c. 325 § 1; 72 Del. Laws, c. 375 § 1.)

§ 1104 Warning and information to farmers and other persons.

(a) The Department, upon confirmation of an actionable infestation or infection of any dangerously injurious plant pest(s), shall warn the farmers and other persons residing in the county of the nature of the aforementioned plant pest and the localities where it exists.

(b) The Department shall also furnish to farmers and persons of the county information and knowledge of the measures to be instituted to control the plant pest.

(21 Del. Laws, c. 216 § 8; Code 1915 § 657; Code 1935 § 575; 3 Del. C. 1953 § 1103; 57 Del. Laws, c. 764 § 4; 66 Del. Laws, c. 153 § 4; 70 Del. Laws, c. 325 § 1; 72 Del. Laws, c. 375 § 1.)

§ 1105 Failure to pay expenses of treating diseased plants and pests; penalty.

(a) The Department shall, within 90 days, provide notice of all expenses incurred while controlling a dangerous injurious plant pest infestation or infection to the person(s), owner(s) or tenant(s) associated with the aforementioned infected or infested plants.

(b) The Department shall, within 90 days, provide notice of all expenses incurred while controlling the spread of a dangerously injurious plant pest infestation or infection to plants found in dangerous proximity to the person(s), owner(s) or the tenant(s) associated with the aforementioned plants.

(c) If the aforementioned person(s), owner(s) or tenant(s) fail, neglect or refuse, after 30 days, to pay all the control expenses incurred by the Department or to establish a payment schedule approved by the Secretary, a civil penalty of not less than double the amount of the Department expenses incurred to control the dangerously injurious plant pest infestation or infection shall be imposed upon them.

(d) The aforementioned person(s), owner(s) or tenant(s) shall also be liable for the imposition of a civil penalty as prescribed in this chapter.

(70 Del. Laws, c. 325 § 1; 72 Del. Laws, c. 375 § 1.)

§ 1106 Establishment of quarantine restrictions.

(a) The Department may establish quarantine restrictions in areas infested or infected with dangerously injurious plant pests and areas adjacent thereto, and adopt, issue and enforce rules and regulations relative to such quarantine.

(b) Under such quarantine restrictions, the Department shall prevent the movement, shipment or transportation of agricultural, forest, horticultural or any other material capable of carrying the plant pest under restriction, in any state of its development.

(c) The Department shall, under such quarantine restrictions, detain for official inspection any person, car, vessel, truck, wagon or other conveyance suspected or known to carry any material in violation of any quarantine restriction or of any rules or regulations established by the authority of this chapter.

(d) Any person(s) who violates a quarantine duly imposed by the Department performs an illegal act and shall be liable for the imposition of a civil penalty as prescribed in this chapter.

(35 Del. Laws, c. 25 § 2; 36 Del. Laws, c. 90 § 2; Code 1935 § 631; 3 Del. C. 1953 § 1106; 57 Del. Laws, c. 764 § 4; 66 Del. Laws, c. 153 § 6; 70 Del. Laws, c. 325 § 1; 72 Del. Laws, c. 375 § 1.)

§ 1107 Shipment of plant pests and biological control agents.

(a) No person may sell, offer for sale, move, convey, transport, deliver, ship or offer for shipment any plant pest or biological control agent without a U.S. Department of Agriculture — Animal and Plant Health Inspection Service — Plant Protection and Quarantine — Application and Permit to Move Live Plant Pests and Noxious Weeds, PPQ Form 526, supplements thereto, or any publication revising or superseding the aforementioned, or its State equivalent. Permits may be issued only after the Department determines that the proposed shipment or use will not create a hazard to the agricultural, forest or horticultural interests of this State or the State's general environmental quality. The permit shall be affixed conspicuously and on the exterior of each shipping container, box, package, etc. or accompany each shipping container, box, package, etc. as the Department directs.

(b) The Department shall regulate and control the sale and use of biological control agents, as defined in this chapter, to assure their safety and effectiveness in the control of injurious plant pests and to prevent the introduction or use of biological control agents which may be injurious to persons, property, useful plant or animal life, nontarget species, agriculture, forest lands, horticultural interests or the State's general environmental quality.

(c) Any person(s) who ships plant pests or biological control agents without the knowledge of the Department performs an illegal act and shall be liable for the imposition of a civil penalty as prescribed in this chapter.

(70 Del. Laws, c. 325 § 1; 72 Del. Laws, c. 375 § 1.)

§ 1108 Violations and hearing procedures.

(a) Failure to comply with this chapter shall result in the assessment of a civil penalty.

(b) No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture or the Secretary's designee. No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with Chapter 101 of Title 29. The Secretary or the Secretary's designee shall mail a written decision to the alleged violator within 30 days after the conclusion of the administrative hearing. Failure to comply with the 30-day period shall have no effect on the Secretary's decision.

(c) The person(s) charged with a violation of this chapter will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel and to provide witnesses in his or her own behalf.

(d) The Secretary, for the purposes of investigation of a possible violation of this chapter and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.

(e) The Department shall preserve a full record of the proceedings and a transcript may be purchased by any interested person.

(70 Del. Laws, c. 325 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 375 § 1; 77 Del. Laws, c. 356 § 1.)

§ 1109 Appeal.

A person who feels aggrieved by the Department as a result of the administrative hearing held under the authority of this chapter may take appeal, within 30 days, to the Superior Court. After a full hearing, the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds therefor, shall be served upon the Secretary of the Department of Agriculture.

(70 Del. Laws, c. 325 § 1; 72 Del. Laws, c. 375 § 1.)

§ 1110 Civil penalties.

(a) Any person who interferes with the Department in the enforcement of this chapter, as determined in an administrative hearing, shall be assessed a civil penalty of no less than $100 nor more than $1,000 on each count.

(b) Any person who is not a Department employee or its authorized representative who removes markings placed by the Department for the purpose of identification of plants infested or infected by dangerous injurious plant pests is interfering with the Department's enforcement of this chapter, as determined in an administrative hearing, and shall be assessed a civil penalty of no less than $100 nor more than $1,000 on each count.

(c) Any person who wilfully or knowingly violates a quarantine duly imposed by the Department, as determined in an administrative hearing, shall be assessed a civil penalty of no less than $100 nor more than $1,000 on each count.

(d) Any person(s) who willfully or knowingly ships plant pests or biological control agents without the knowledge of the Department, as determined in an administrative hearing, shall be assessed a civil penalty of no less than $100 nor more than $1,000 on each count.

(e) Any person(s) who refuses to comply with this chapter shall be assessed a civil penalty of no less than $100 nor more than $1,000 for each infested or infected unit of plants or plant material.

(f) The payment of penalties assessed under this chapter may be made on a payment schedule approved by the Secretary.

(70 Del. Laws, c. 325 § 1; 72 Del. Laws, c. 375 § 1.)

Part II
Regulatory Provisions
Chapter 12
PESTICIDES
Subchapter I
General Provisions

§ 1201 Declaration of purpose.

The purposes of this chapter are:

(1) To regulate the sale, use and application of pesticides in the interest of the overall public welfare;

(2) To protect the consumer by requiring that pesticides sold in this State be correctly labeled with warnings and adequate directions for use; and

(3) To restrict the use of any pesticides which are found to be so hazardous to man or to his environment that restrictions are necessary in the overall public interest, weighing the benefits and the risks of that use.

(3 Del. C. 1953 § 1201; 58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

§ 1202 Definitions.

For the purposes of this chapter:

(1) "Active ingredient" means:

a. In the case of pesticides other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate insects, mites, nematodes, fungi, rodents, weeds or other pests;

b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from the plant; or

d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" shall apply to any pesticide if its strength or purity falls below the standard of quality expressed on labeling under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(3) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

(4) "Applicators":

a. "Certified applicator" means any individual who is certified under this chapter to use or supervise the use of any pesticide which is classified for restricted use.

b. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

c. "Commercial applicator" means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph b. of this subdivision. The Secretary may by regulation declare certain types of applicators, who use or supervise the use of any pesticide on property owned or rented by the applicator or the applicator's employer, to be commercial applicators.

d. "Under the direct supervision of a certified applicator" means unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(5) "Committee" means the Pesticide Advisory Committee.

(6) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(7) "Department" means the Department of Agriculture of the State.

(8) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(9) "Device" means any instrument or contrivance (other than firearm) which is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life (other than humans and other than bacteria, virus or other microorganism on

or in living humans or other living animals), but shall not include equipment used for the application of pesticides when sold separately therefrom.

(10) "Distributed" means to offer for sale, hold for sale, sell, barter or supply pesticides or devices within this State.

(11) "Environment" includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

(12) "E.P.A." means the United States Environmental Protection Agency.

(13) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. § 136 et seq.].

(14) "Fungus" means any nonchlorophyll-bearing thallophytes (that is, any nonchlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast and bacteria, except those on or in living humans or other animals, and except those on or in processed food, beverages or pharmaceuticals.

(15) "Ingredient statement" means a statement which contains:

a. The name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and

b. If the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

(16) "Inert ingredient" means an ingredient which is not an active ingredient.

(17) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising 6-legged, usually winged forms, as for example, beetles, bugs, bees, flies and to other allied classes of arthropods whose members are wingless and usually have more than 6 legs, as for example, spiders, mites, ticks, centipedes and wood lice.

(18) "Label" means the written, printed or graphic matter on, or attached to, the pesticide or device or its containers or wrappers.

(19) "Labeling" means all labels and all other written, printed or graphic matter:

a. Accompanying the pesticide or device at any time; or

b. To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the E.P.A., the United States Departments of Agriculture and Interior, the Department of Health, Education and Welfare, state experiment stations, state agricultural colleges and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(20) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(21) "License" is written permission issued by the Department to engage in the business of applying any pesticides to the lands of another.

(22) "Misbranded" shall apply:

a. To any pesticide or its container if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

b. To any pesticide:

1. If it is an imitation of or is offered for sale under the name of another pesticide;

2. If its labeling bears any reference to registration under this chapter and such pesticide has not been registered pursuant to this chapter;

3. If the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, together with any requirements imposed under § 3(d) of FIFRA [7 U.S.C. § 136a(d)], are adequate to protect health and the environment;

4. If the label does not contain a warning or caution statement which may be necessary, and if complied with, adequate to prevent injury to living humans and other vertebrate animals;

5. If the label or container of the product does not bear an ingredient statement that may be clearly read and understood when the unit for sale is displayed under customary conditions of purchase, handling, storage and use; or

6. If any word, statement or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or graphic matters in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

c. To any device or its container if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

(23) "Nematode" includes invertebrate animals of the phylum Nemathelminthes and class Nematoda, that is, unsegmented roundworms with elongated, fusiform or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be referred to as nemas or eelworms.

(24) "Permit" means a written certificate, issued by the Department, authorizing the purchase, possession and/or use of certain pesticides which are to be used for purposes designated as "state restricted pesticide uses" or for experimental use.

(25) "Person" means any individual, partnership, association, fiduciary, corporation or any organized group of persons whether

incorporated or not.

(26) "Pest" means:

a. Any insect, rodent, nematode, fungus, weed; or

b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism (except viruses, bacteria or other microorganisms on or in living man or other living animals) which is declared to be a pest under regulations pursuant to § 1203(f) of this title.

(27) "Pesticide" means:

a. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; or

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(28) "Plant regulator" means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

(29) "Registrant" means the person who has registered any pesticide pursuant to this chapter.

(30) "Restricted use pesticide" means any pesticide or pesticide use classified by the Administrator of E.P.A. for use only by a certified applicator or competent individual under the direct supervision of a certified applicator.

(31) "State restricted pesticide use" means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the Department determines, subsequent to a hearing, requires additional restrictions to prevent unreasonable adverse effects on the environment.

(32) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(33) "Weed" means any plant which grows where not wanted.

(34) "Wildlife" means all living things that are neither human, domesticated nor, as defined in this chapter, pests, including but not limited to, mammals, birds and aquatic life.

(35) "Secretary" means the Secretary of the Department of Agriculture of the State or his duly authorized designee.

(36) "Dealer permit" means a written certificate, issued by the Department, authorizing the sale of restricted use pesticides and/or state restricted use pesticides.

(3 Del. C. 1953 § 1202; 58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1; 64 Del. Laws, c. 189 §§ 1, 2; 67 Del. Laws, c. 51 § 1; 69 Del. Laws, c. 101 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter II

Regulation of Sale and Use of Pesticides and Devices

§ 1203 Regulation; duties and powers of Department.

(a) In order to regulate the sale and/or use of pesticides and devices in this State, the Department shall, by regulation, provide that every pesticide and device distributed and/or used within this State shall be duly registered with the Department. The Department, with the approval of the Secretary of Agriculture, shall establish a biennial registration fee, not to exceed $140, for each pesticide or device registered. The fee established by the Secretary of Agriculture shall approximate and reasonably reflect all costs necessary to defray the expenses of the Department's activities pursuant to this chapter. At the beginning of each calendar year, the Department shall compute the appropriate pesticide or device registration fee. All revenue generated by this fee shall be deposited in an appropriated special fund account in the Department of Agriculture.

(b) Any regulation adopted by the Department pursuant to its authority under § 1237 of this title may prescribe the methods to be used in application of pesticides, and may relate to the time, place, manner, materials and amounts and concentrations, in connection with the application of the pesticides, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the Department deems necessary to prevent damage or injury by drift or misapplication to:

(1) Plants, including forage plants, or adjacent or nearby lands;

(2) Wildlife in the adjoining or nearby areas;

(3) Fish and other aquatic life in waters in reasonable proximity to the areas to be treated; or

(4) Humans, animals or beneficial insects.

(c) The Department may also, by regulation, after a public hearing following due notice, determine "state restricted pesticide uses" for the State or for designated areas within the State, and may require a permit for purchase, possession and application of a pesticide labeled for a use which is designated as a "state restricted pesticide use."

(d) In issuing such regulations, the Department shall give consideration to pertinent research findings and recommendations of other agencies of the State, the federal government or other reliable sources.

(e) The Department shall adopt "restricted use pesticide" classifications. For the purpose of uniformity and in order to enter into

cooperative agreements, these classifications shall conform to all current and future classifications adopted by E.P.A.

(f) The Department, after notice and hearing, and in agreement with the Department of Natural Resources and Environmental Control of the State, is authorized to declare a pest any form of plant or animal life (other than humans and other than bacteria, virus and other microorganisms on or in living humans or other living animals) which is injurious to health or the environment.

(g) In order to comply with § 4 of FIFRA [7 U.S.C. § 136i(a)-(c)], the Department is authorized to make such reports to the E.P.A. in such form and containing such information as E.P.A. may from time to time require.

(h) The Department is authorized, by regulation, to determine standards of coloring or discoloring for pesticides.

(i) The Secretary shall have the power to issue an order to any person violating any rule, regulation or order, or provision under this chapter to cease and desist from such violation; provided that any cease and desist order issued pursuant to this section shall expire:

(1) After 30 days of its issuance; or

(2) Upon withdrawal of said order by the Secretary; or

(3) When the order is superseded by an injunction, whichever occurs first.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1; 64 Del. Laws, c. 189 §§ 3, 4; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 233 § 1; 78 Del. Laws, c. 258 § 1.)

§ 1204 Registration of pesticides which do not have E.P.A. registration for intended use.

(a) This section shall become effective upon certification of the State by the Administrator of E.P.A. pursuant to § 24(c) of FIFRA [7 U.S.C. § 136v].

(b) Every pesticide which does not have E.P.A. registration for the use intended and which is formulated for distribution and use within this State shall be duly registered with the Department in accordance with this section.

(c) Any application for the registration of a pesticide under this section shall be filed with the Department and include the information set forth pursuant to the regulations adopted under § 1203 of this title. The Department may register such pesticide if it determines that:

(1) Its composition is such as to warrant the proposed claim for it;

(2) Its labeling and other material required to be submitted comply with the requirements of this chapter;

(3) It will perform its intended function without unreasonable adverse effects on the environment;

(4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects upon the environment;

(5) The classification for general or restricted use is in conformity with § 3(d) of FIFRA [7 U.S.C. § 136a(d)]; and provided, that the Department shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where 2 pesticides meet the requirements of this paragraph, 1 should not be registered in preference to the other; or

(6) Special local needs exist.

(60 Del. Laws, c. 671 § 1.)

§ 1205 Revocation or suspension of registration.

(a) The Department may, after due notice, including notice to the registrant and opportunity for a hearing, revoke the registration of a pesticide registered pursuant to this chapter if the pesticide or its labeling does not comply with the requirements of this chapter or the regulations promulgated by the Department, or to prevent unreasonable adverse effects on the environment. A person affected by such revocation may request a hearing before the Department. A hearing shall be held within 30 days after request. Within 30 days after the hearing, the Department shall affirm, withdraw or modify its action by an order based upon the record of the hearing. An appeal from that order may be taken to the Superior Court within 30 days of the date of the order.

(b) The Department may suspend the registration of any pesticide pending the completion of revocation proceedings if the continued use of a pesticide during the time required for revocation proceedings would be likely to result in unreasonable adverse effects on the environment. A revocation order shall be issued with the suspension order so that the hearing procedure may be initiated as provided in cases of revocation of registration. If no request for a hearing is made within 30 days of the suspension order, the revocation order will be effective and the registration is revoked.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

§ 1206 Licensing — Required; classification.

(a) No person shall engage in the business of applying pesticides to the lands or personal property of another unless such person has been duly licensed by the Department. Further, no license shall be issued to any person, nor shall it remain valid, unless such person is certified or employs a certified applicator at all times. At least 1 person designated as a certified applicator under the license shall meet the experience requirement specified in § 1207(c) of this title. No license shall be required of any private applicator.

(b) The Department shall classify or subclassify licenses to be issued under this chapter. Such classifications may include, but are not limited to, pest control operators and ornamental, agricultural or right-of-way pesticide applicators. Separate subclassifications may be specified as to ground, aerial or manual methods used by any licensee to apply pesticides and to the use of pesticides to control pests (provided that no person shall be required to pay an additional license fee if such person desires to be licensed in 1 or all of the license classifications provided for by the Department under the authority of this chapter).

(60 Del. Laws, c. 671 § 1; 69 Del. Laws, c. 101 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 234 § 1.)

§ 1207 Same — Procedure.

(a) Application for a license shall be made in writing to the Department on a designated form obtained from the Department.

(b) The Department shall require a fee of $50 for an annual license or $100 for a biennial license.

(c) The Department shall issue a license limited to the classifications of pesticide use for which an applicant is qualified. To qualify for a license, the following conditions shall be met:

(1) The applicant must provide evidence that at least 1 applicator in his or her employ is certified to apply pesticides in the classification(s) of pest control for which he or she is applying. At least 1 of these certified applicators must have a minimum of 2 years practical experience under the supervision of a certified applicator. This experience shall have been acquired during the previous 3-year period and shall be related to the license classification at issue.

(2) The applicant files the proper proof of financial responsibility as required under § 1208(a) of this title.

(3) If the applicant is applying for a license to engage in the aerial application of pesticides, he or she shall have met all the requirements of the Federal Aviation Administration and any other applicable federal or state laws or regulations to operate the equipment described in the application.

(d) The Department may limit the license of the applicant to the use of certain pesticides, to certain areas or to certain types of equipment if the applicant is only so qualified. If a license is not issued as applied for, the department shall inform the applicant in writing of the reasons therefor.

(e) If the application for renewal of any license provided for in this chapter is not filed prior to the 1st day of January in any year, a penalty of 20 percent of the yearly fee shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal license shall be issued.

(60 Del. Laws, c. 671 § 1; 65 Del. Laws, c. 187 § 5; 67 Del. Laws, c. 137 § 1; 67 Del. Laws, c. 260 § 1; 72 Del. Laws, c. 233 § 2; 72 Del. Laws, c. 234 § 2.)

§ 1208 Same — Denial of license.

(a) The Department shall refuse to grant a license until the applicant has furnished evidence of financial responsibility with the Department consisting either of a surety bond or a liability insurance policy or certification thereof, or other evidence of financial responsibility acceptable to the Department within the financial capabilities of the industries involved. The Department may determine the insurance and surety requirements after due notice and a hearing.

(b) The Department may refuse to grant a license to any person who has committed any unlawful acts pursuant to § 1224 of this title.

(60 Del. Laws, c. 671 § 1; 72 Del. Laws, c. 234 § 3.)

§ 1209 Same — Suspension; modification; revocation.

(a) The Department may, after notice and opportunity for a hearing, suspend or modify any license granted under this chapter where the Department has reasonable grounds to believe that the licensee is responsible for any unlawful acts pursuant to § 1224 of this title. The Department shall furnish the licensee with notice of the time and place of the hearing, which notice shall be served personally or by registered mail directed to the licensee's place of business or last known address with postage fully paid within 10 days prior to the time fixed for the hearing.

(b)(1) The Department may, after notice and opportunity for hearing, revoke any license granted under this chapter if the licensee has been found to have committed any unlawful act under this chapter.

(2) Should the surety furnished for a license become unsatisfactory, the licensee shall, upon notice, immediately execute a new bond, insurance or other financial responsibility, or, should the licensee fail to furnish a new surety, the Department shall revoke the license and give the licensee notice of the revocation.

(3) Should the licensee no longer employ a certified applicator with 2 years practical experience, the department shall revoke the licensee's license and give the licensee notice of the revocation.

(60 Del. Laws, c. 671 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 234 § 3.)

§ 1210 Same — Renewal of license.

All licenses shall continue in effect until December 31 of the year in which the license expires, whereupon they shall become invalid unless renewed, except that a license for which a renewal application has been submitted to the Department by November 30 shall remain in full force and effect until such time as the Department gives written notice to the license holder of renewal or denial. Forms for renewal shall be mailed to all holders of current licenses by the Department by October 1 of the year in which they expire.

(60 Del. Laws, c. 671 § 1; 72 Del. Laws, c. 233 § 3.)

§ 1211 Exemptions.

This subchapter, relating to licenses and requirements for their issuance, shall not apply to research personnel applying pesticides to bona fide experimental plots. By regulation, the Department may exempt certain license applicants from the experience requirements specified in § 1207(c) of this title. Exemptions from the § 1207(c) requirements shall include, but not be limited to, persons applying pesticides to turf or ornamental plants.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1; 72 Del. Laws, c. 234 § 4.)

§ 1212 Registration of noncertified individuals; fee.

(a) The Department shall by regulation provide a program of registering noncertified individuals in the employ of licensees.

(b) The Department shall by regulation charge a fee not to exceed $25 for the registration of noncertified individuals in the employ of licensees.

(c) The employee registration fee shall not be required of a certified commercial applicator, provided that the applicator's certificate is valid.

(60 Del. Laws, c. 671 § 1; 67 Del. Laws, c. 275 §§ 1-3.)

§ 1213 Nonresidents; service of process.

Any nonresident applying for a license under this chapter shall appoint and constitute the Secretary of State of this State the nonresident's agent for the acceptance of legal process in any civil action against such nonresident. Any such process when so served shall be of the same legal force and validity as if served upon such nonresident personally within the State. Such appointment shall be irrevocable and binding on the nonresident's executor or administrator; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the Secretary of State as such agent. The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents. The Department shall be furnished with a copy of such designation of the Secretary of State or of a resident agent, such copy to be duly certified by the Secretary of State.

(60 Del. Laws, c. 671 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1214 Permits.

(a) The Department shall require that:

(1) No person may use a pesticide designated as a "state restricted use pesticide" until that person has a permit duly issued by the Department; and

(2) No person may sell a "restricted use pesticide" or a "state restricted use pesticide" unless that person has a dealer permit.

(b) Applications for permits shall be made to the Department on forms prepared by it. The Department shall grant a permit to purchase and/or use a pesticide designated for use as a "state restricted pesticide use" subject to such restrictions as it finds necessary in each case to protect the overall public interest and welfare. The permit may specify the area, time, amount or rate of application or such other conditions of use as the Department finds necessary to carry out the purposes of this chapter. Permits shall be issued on an annual basis.

(c) The Department shall promulgate such rules, regulations and fees necessary to carry into effect this section and to alter or uniformly suspend such rules, regulations and fees when necessary. Prior to the promulgation of any rules, regulations and fees, the Department shall hold public hearings following due notice. The hearings shall be conducted by the Department for the purpose of receiving evidence relevant and material to the issues, following the conclusion of which the Department shall issue such rules, regulations and fees as it sees fit, based on the evidence received at such hearings. An appeal from that order may be taken to the Superior Court within 30 days of the date of the order.

(d) The Department may require a permit fee.

(e) Provided the State is authorized by the Administrator of E.P.A. to issue experimental use permits, the Department may:

(1) Issue an experimental use permit to any person applying for an experimental use permit if it determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under § 1204 of this title. An application for an experimental use permit may be filed at the time of, or before or after an application for registration is filed;

(2) Prescribe terms, conditions and periods of time for the experimental use permit which shall be under the supervision of the Department; and

(3) Revoke or modify any experimental use permit, at any time, if it finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

(f) All permits, except experimental use permits, shall continue in full force and effect until December 31st of each year whereupon they shall become invalid unless renewed, except that a permit for which a renewal application has been submitted to the Department by December 31st shall remain in full force and effect until such time as the Department gives written notice to the permit holder of renewal or denial. Forms for renewal shall be mailed to all holders of current permits by the Department by October 1st of each year.

(g)(1) The Department may deny a permit to any person if it finds after a hearing that the public interest requires such denial.

(2) The Department may revoke a permit, after due notice to the permit holder and opportunity for hearing, if it finds that the permit holder has violated this chapter, or if an emergency creates a clear and present danger to the overall public interest and welfare from the uses authorized by the permit.

(3) A person whose permit is denied or revoked may request a hearing before the Department. A hearing shall be held within 30 days after request. Within 30 days after the hearing, the Department shall affirm, withdraw or modify its action by an order based upon the record of the hearing. An appeal from that order may be taken to the Superior Court within 30 days of the date of the order.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1; 67 Del. Laws, c. 51 § 2.)

Subchapter III

Certification of Applicators

§ 1215 Applicability of subchapter.

This subchapter shall become applicable upon approval by the Administrator of E.P.A. of the state plan submitted by the Governor pursuant to § 4(a)(2) of FIFRA [7 U.S.C. § 136i(a)(2)].

(60 Del. Laws, c. 671 § 1.)

§ 1216 Certification — Required.

In order to prevent unreasonable adverse effects on the environment, including injury to users of pesticides and others, no individual shall use any restricted use pesticide unless such individual has either been duly certified by the Department or is under the direct supervision of a certified applicator. An applicant for certification must be at least 18 years of age.

(60 Del. Laws, c. 671 § 1; 67 Del. Laws, c. 311 § 1.)

§ 1217 Same — Standards; classifications.

(a) The Department in promulgating regulations under this chapter shall prescribe standards for the certification of applicators of pesticides. Such standards shall relate to the use and handling of pesticides, or to the use and handling of the pesticides or class of pesticides covered by the individual's certification, and shall be relative to the hazards involved. In determining standards, the Department shall consider the characteristics of the pesticide formulation such as: The acute mammalian toxicity; the persistence, mobility and susceptibility to biological concentration; the use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information; the relative hazards of patterns of use such as granular soil applications, ultra low volume or aerial dust applications, or air blast sprayer applications; and the extent of the intended use. Further, the Department shall adopt by regulation the certification standards of the E.P.A.

(b) The Department shall classify or subclassify certifications to be issued under this chapter. Such classifications shall include commercial applicators and private applicators, and classifications and subclassifications may include, but not be limited to, pest control operators, ornamental, agricultural or right-of-way pesticide applicators. Separate subclassifications may be specified as to ground, aerial or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents or weeds. Each classification shall be subject to separate examination procedures and requirements.

(60 Del. Laws, c. 671 § 1.)

§ 1218 Same — Procedure.

(a) The Department, by regulation, shall provide for a certification procedure. Such procedure shall consist, in part, of an application and examination, except that the examination requirement may be waived in part or whole by the Department on a reciprocal basis with any other state which has substantially the same standards.

(b) The Department shall by regulation require an annual certification fee for commercial applicators.

(60 Del. Laws, c. 671 § 1; 64 Del. Laws, c. 189 § 5; 65 Del. Laws, c. 187 § 1.)

§ 1219 Same — Renewal of certification.

An applicator's certification shall automatically renew under the classification or subclassification for which such applicator is certified; provided, however, reexamination may be required by the Department:

(1) Of any applicator whose certification, license or permit has been suspended, revoked or modified;

(2) At any time if significant technological developments have occurred to require additional knowledge related to the classifications or subclassifications for which the applicator has been certified, and to assure a continuing level of competence and ability to use pesticides safely and properly; or

(3) When required by additional standards established by the E.P.A.

Such reexamination or special examination requirements may be waived by the Department when the applicator can furnish satisfactory evidence of completion of educational courses, programs or seminars approved by the Department relating to the applicator's certification.

(60 Del. Laws, c. 671 § 1.)

§ 1220 Same — Denial; revocation; suspension; modification.

(a) If the applicant is not certified under this subchapter, the Department shall notify such applicant, in writing, of the reasons therefor.

(b) The Department, after due notice and opportunity for hearing, may suspend, revoke or modify any provision of any certification, including reciprocal certification, issued under this subchapter if the Department finds that the certified applicator or any individual acting under the direct supervision of such certified applicator has committed any acts declared by this chapter to be unlawful, or the certified applicator has been convicted or is subject to a final order imposing a civil penalty under § 14 of FIFRA [7 U.S.C. § 136l].

(c) The Department shall deny the issuance of a certification to any person working under the direction or employment of an applicator whose certification has been suspended, revoked or modified. Such denial shall continue in effect until the term of the Department's final order has expired.

(60 Del. Laws, c. 671 § 1; 67 Del. Laws, c. 333 § 3.)

§ 1221 Hearing procedure.

All hearings which are held for the suspension, modification or revocation of license, permit or certification shall be conducted by the Secretary. The licensee, permit holder or certified applicator shall have the right to appear personally, and to be represented by counsel, and to produce evidence and witnesses in his own behalf. The Department shall preserve a full record of the proceeding. A transcript of the record may be purchased by any person interested in such hearing on payment to the Department the cost of preparing such transcript. The Department shall notify the licensee, permit holder or certified applicator of its decision in writing within 30 days after the conclusion of the hearing.

(60 Del. Laws, c. 671 § 1; 64 Del. Laws, c. 189 § 6.)

§ 1222 Appeals.

Any licensee, permit holder or certified applicator who feels aggrieved by an action of the Department in denying, suspending, modifying or revoking his or her license, permit or certification may take an appeal, within 30 days of such action, to the Superior Court, and after full hearing the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds therefor, shall be served upon the Secretary of the Department.

(60 Del. Laws, c. 671 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1223 Reinstatement.

Upon denial, suspension, modification or revocation of a license, permit or certification, any person may reapply to the Department after a time period set by the Department not to exceed 1 year.

(60 Del. Laws, c. 671 § 1.)

Subchapter IV

Unlawful Acts; Penalties; Jurisdiction

§ 1224 Unlawful acts; criminal penalties; jurisdiction.

(a) The following acts shall constitute a class A misdemeanor:

(1) Making a pesticide recommendation or use or application inconsistent with the labeling, the E.P.A., or state registration for the pesticide, or in violation of the E.P.A., or state restrictions of the use of that pesticide; except that the first offense shall constitute a class B misdemeanor;

(2) Making false or fraudulent records, invoices or reports;

(3) Engaging in the business of applying a pesticide on the lands of another without having a license granted by the Department;

(4) Applying a restricted use pesticide without a certified applicator in direct supervision;

(5) Using fraud or misrepresentation in making an application for, or renewal of, a license, permit or certification;

(6) Aiding or abetting a licensed or an unlicensed person to evade this chapter, conspiring with such a licensed or an unlicensed person to evade this chapter or allowing one's license, permit or certification to be used by another person;

(7) Distributing, selling or offering for sale within this State any of the following:

a. Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is visibly affixed to such container a label approved by the E.P.A. or by the Department, in the case of State registration; or

b. Any pesticide which is adulterated, not branded or misbranded, or any container which is misbranded or not branded;

(8) Detaching, altering, defacing or destroying, in whole or in part, any label or labeling prior to purchase by the ultimate consumer, provided for in this chapter or regulations promulgated hereunder or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter;

(9) Using for one's own advantage or to reveal any information relative to formulas of products acquired by authority of § 1203 or 1204 of this title; or

(10) Neglecting or, after notice, refusing to comply with this chapter, the rules adopted hereunder or any lawful order of the Department.

(b) The following acts shall constitute a class B misdemeanor:

(1) The first offense of paragraph (1) of subsection (a) of this section;

(2) Refusing or neglecting to comply with any limitations or restrictions on or in a duly issued license, permit or certification;

(3) Distributing, selling or offering for sale within this State any pesticide required to be colored or discolored by the E.P.A. under § 25(c)(5) of FIFRA [7 U.S.C. § 136w(c)(5)] unless such pesticide is so colored or discolored; or

(4) The use of fraud or misrepresentation in connection with the application of pesticides.

(c) The following acts shall constitute an unclassified misdemeanor:

(1) Operating in a faulty, careless or negligent manner;

(2) Refusing or neglecting to keep and maintain the records required by this chapter, or to make reports when and as required;

(3) Purchasing or using a restricted use pesticide except in accordance with a duly issued certification from the Department;

(4) Selling or offering to sell a restricted use pesticide unless the purchaser is a certified applicator and is certified to use that restricted use pesticide, and that certification is valid;

(5) Purchasing or using a pesticide designated for "state restricted pesticide use" except in accordance with a permit granted by the Department;

(6) Selling or offering to sell a pesticide designated for "state restricted pesticide use" unless the purchaser has a permit for its purchase and use and that permit is valid;

(7) Engaging in the business of applying pesticides to the lands of another without financial security which is currently in compliance with the requirements of § 1208 of this title;

(8) Distributing, selling or offering for sale within this State any pesticide which has not been registered pursuant to § 1203 or § 1204 of this title, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in this connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided, that in the discretion of the Department, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product; or

(9) Selling or offering to sell a "restricted use pesticide" or a "state restricted use pesticide" without a duly issued dealer permit.

(d) Justices of the Peace Courts and the Court of Common Pleas shall have concurrent jurisdiction over offenses under this chapter.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1; 64 Del. Laws, c. 189 §§ 7, 8; 65 Del. Laws, c. 187 §§ 2, 3; 67 Del. Laws, c. 51 §§ 3-5; 75 Del. Laws, c. 426 § 1.)

§ 1225 Civil penalties; exemptions.

(a)(1) In addition to proceeding under any other remedy available at law or in equity for a violation of this chapter or a rule or regulation adopted thereunder, or any order issued pursuant to, the Secretary may assess a civil penalty not to exceed $2,500 upon a person other than a private applicator for each offense. In the case of a private applicator, the Secretary may assess a civil penalty not to exceed $500 for each offense involving a violation of this chapter or a rule or regulation adopted thereunder, or any order issued pursuant thereto.

(2) No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with Chapter 101 of Title 29.

(3) In determining the amount of the penalty, the Secretary shall consider the appropriateness of such penalty to the size of the person's ability to continue in business and the gravity of the violation. Whenever the Secretary finds the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Secretary may issue a warning in lieu of assessing a penalty.

(4) In cases of inability to collect such civil penalty or failure of any person to pay all, or such portion of such penalty as the Secretary may determine, the Secretary shall refer the matter to the Attorney General's Office of the State who shall recover such amount by action in the appropriate court.

(b) The penalties provided by this chapter shall not apply to:

(1) Any carrier while lawfully engaged in transporting a pesticide or device within this State, if such carrier shall, upon request, permit the Department to copy all records showing the transactions in and movement of the pesticide or device;

(2) Any person who prepares or packs any pesticide or device intended solely for export to a foreign country according to the specifications or directions of the purchasers;

(3) The manufacturer or shipper of a pesticide for experimental use only:

a. By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of pesticides; or

b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only, not to be sold," together with the manufacturer's name and address; provided, however, that if an experimental use permit has been obtained from the Department, pesticides may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1; 65 Del. Laws, c. 187 § 4; 67 Del. Laws, c. 333 §§ 1, 2.)

Subchapter V

Inspection and Seizure

§ 1226 Inspection.

(a) For the purpose of carrying out this chapter, the Department may enter upon any public premises, and in the case of private premises, may enter with the written approval of the occupier of the premises, in order to:

(1) Inspect and sample lands actually or reported to be exposed to pesticides;

(2) Inspect storage or disposal areas;

(3) Inspect or investigate complaints of injury to humans or land;

(4) Sample pesticides being applied or to be applied;

(5) Observe the use of a restricted use pesticide or state restricted pesticide use;

(6) Inspect books and records relating to the shipment, sale or use of pesticides; or

(7) Sample pesticides being held for sale or distribution.

(b) Should the Department be denied access to any land where such an access was sought for the purposes set forth in this chapter, it may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application issue the search warrant for the purposes requested.

(60 Del. Laws, c. 671 § 1; 64 Del. Laws, c. 189 § 9.)

§ 1227 Seizure.

(a) Any pesticide or device that is distributed within this State may be liable to seizure and forfeiture by the Department upon application to the Superior Court in and for the county wherein the pesticide in question is located:

(1) In the case of a pesticide, the court shall order forfeiture without compensation:

a. If it is adulterated or misbranded;

b. If it has not been registered under § 1203 or 1204 of this title;

c. If it fails to bear on its label the information required by this chapter; or

d. If it is a white powder pesticide and is not colored as required under this chapter.

(2) In the case of a device, if it is misbranded.

(b) If the pesticide or device is forfeited or condemned, it shall, after entry of decree, be disposed of by destruction or sale as the Department may direct and the proceeds, if such pesticide or device is sold, less legal costs, shall be paid to the General Fund; provided, that the pesticide or device shall not be sold contrary to this chapter; and provided further, that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the Department may direct that said pesticide or device be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(c) When a decree of condemnation or forfeiture is entered against the pesticide or device, Department costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

Subchapter VI

Pesticide Advisory Committee

§ 1228 Established.

A Pesticide Advisory Committee is hereby established.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

§ 1229 Composition; appointments; terms; removal; vacancies.

(a) The Pesticide Advisory Committee shall consist of 4 pesticide applicators residing in the State, 1 qualified to operate ground equipment, 1 qualified to operate aerial equipment, 1 qualified for turf and ornamental pest control and 1 qualified for structural pest control; 1 entomologist in public service; 1 environmental health specialist from the State Department of Health and Social Services; 1 toxicologist in public service; 1 plant pathologist in public service; 1 member from the agricultural chemical industry; 1 member from the food processing industry; 1 producer of agricultural crops or products on which pesticides are applied or which may be affected by the application of pesticides; and 2 representatives of the Department of Natural Resources and Environmental Control — 1 who by employment is responsible for the protection of environmental control, and 1 who by employment is responsible for fish and wildlife protection.

(b) Such members shall be appointed by the Governor for terms of 3 years and may be appointed for successive 3-year terms at the discretion of the Governor, provided, however, that at the inception of this chapter, the current members of the Committee established by 58 Delaware Laws, Chapter 166, continue to serve until the expiration of their respective terms.

(c) The Governor may remove for cause any member of the Committee prior to the expiration of the member's term.

(d) Upon the death, resignation or removal for cause of any member of the Committee, the Governor shall fill such vacancy.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 233 § 4.)

§ 1230 Function.

The Committee shall advise the Department on any and all problems relating to the sale, use, disposal and storage of pesticides in the State.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

§ 1231 Meetings.

The Committee shall elect 1 of its members Chairman, and shall meet at such time and place as shall be specified by the Chairman, the Department or a majority of the members of the Committee.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

§ 1232 Compensation.

Each member of the Committee shall be reimbursed for all proper and necessary expenses but shall receive no compensation for time spent in attending the work of the Committee.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

Subchapter VII

Miscellaneous

§ 1233 Reports of pesticide accidents, incidents or loss.

(a) The Department may by regulation require the reporting of pesticide accidents or incidents to the Department.

(b) Any person claiming damages from a pesticide application shall have filed with the Department on a form prescribed by the Department a written statement claiming that he or she has been damaged. This report shall have been filed within 60 days after the date that damage occurred, except that if a growing crop is alleged to have been damaged, the report must be filed prior to the time that 25% of the damaged crop has been harvested. Such statement shall contain, but shall not be limited to, the name of the person allegedly responsible for the application of said pesticide, if known, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred and the date on which the alleged damage occurred. The Department shall prepare a form to be furnished to persons to be used in such cases and such form shall contain such other requirements as the Department may deem proper. The Department shall, upon receipt of such statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed, and furnish copies of such statements as may be requested. The Department shall inspect damages whenever possible and when it determines that the complaint has sufficient merit, it shall make such information available to the person claiming damage and to the person who is alleged to have caused the damage.

(c) The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

(d) Where damage is alleged to have occurred, the claimant shall permit the Department, the licensee and his representatives, such as bondsman or insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee.

(e) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the Department.

(60 Del. Laws, c. 671 § 1; 64 Del. Laws, c. 189 § 10; 70 Del. Laws, c. 186 § 1.)

§ 1234 Licensee to keep records; duration; submission to Department.

(a) The Department shall require the licensee or certified commercial applicators to maintain records with respect to applications of pesticides. Such relevant information as the Department may deem necessary may be specified by regulation. The Department may require the licensee to maintain records related to applications of certain "state restricted pesticide uses."

(b) Such records shall be kept for a period of 2 years from the date of the application of the pesticide to which such records refer.

(c) Such records shall be made available for inspection to the Department by the licensee or certified applicator upon request in writing by the Department.

(60 Del. Laws, c. 671 § 1.)

§ 1235 Storing and disposal of pesticides and pesticide containers.

No person shall transport, store or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or to pollute any waterway in a way harmful to any wildlife therein. The Department may promulgate rules and regulations governing the storing and disposal of such pesticides or pesticide containers. In determining these standards, the Department shall take into consideration any regulations issued by the E.P.A.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

§ 1236 Stop sale, use or removal orders.

When the Department has reasonable cause to believe a pesticide or device is being distributed or used in violation of any of the provisions of this chapter, or any of the prescribed regulations under this chapter, it may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. The pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing by the Department or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction. Any such "stop sale, use or removal" order shall remain in effect until the violation has been corrected. The owner or custodian of any such pesticide or device against whom a "stop sale, use or removal" order has been issued, may request a hearing to demonstrate that he or she is in compliance with this

chapter or any regulations promulgated thereunder. Such hearing shall be scheduled within 15 days of the request and shall be held by the Secretary of the Department of Agriculture or his or her designee. The burden shall be on the owner or custodian of any such pesticide or device to show compliance. The hearing shall be conducted in accordance with the Administrative Procedures Act of the State. The decision of the Department may be appealed to Superior Court on the record.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1; 64 Del. Laws, c. 189 § 11; 70 Del. Laws, c. 186 § 1.)

§ 1237 Enforcement of chapter.

This chapter shall be enforced by the State Department of Agriculture. The Department may establish regulations, but only after public hearing following due notice to carry out the purposes of this chapter, and all authority vested in the Department by virtue of this chapter may with like force be executed by such employees of the Department as may be designated for said purpose. Due notice shall be given under this section at least 10 days prior to the public hearing and shall consist of publication in newspapers of general circulation, a registered letter to the Pesticide Advisory Committee and may also be sent to representatives of pesticide application trade associations.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

§ 1238 Cooperative agreements.

The Department may cooperate, receive grants-in-aid and enter into agreements with any agency of the federal government, of this State or its subdivisions, or with any agency of another state, to obtain assistance in the implementation of this chapter, in order to:

(1) Secure uniformity of regulations;

(2) Cooperate in the enforcement of the federal pesticide control laws through the use of state and/or federal personnel and facilities and to implement cooperative enforcement programs;

(3) Develop and administer state plans for training and for certification of certified applicators consistent with the federal standards;

(4) Contract for training with other agencies for the purpose of training certified applicators;

(5) Contract for monitoring pesticides for the national plan;

(6) Prepare and submit state plans to meet federal certification standards, as provided for in § 4 of FIFRA [7 U.S.C. § 136i(a)-(c)]; or

(7) Regulate certified applicators.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

§ 1239 Information.

The Department may, in cooperation with the University of Delaware, Delaware State University, other educational institutions or trade associations, publish information and conduct short courses of instruction in the areas of knowledge required in this chapter.

(60 Del. Laws, c. 671 § 1; 69 Del. Laws, c. 67 § 2.)

§ 1240 Repeals.

Jurisdiction in all matters pertaining to the distribution, sale, use, application and transportation of pesticides and devices is by this chapter vested exclusively in the Department, and all acts and parts of acts inconsistent with this chapter, with the exception of Chapter 60 of Title 7, are hereby expressly repealed.

(58 Del. Laws, c. 166; 60 Del. Laws, c. 671 § 1.)

Part II
Regulatory Provisions
Chapter 13
NURSERIES AND NURSERY STOCK

§ 1301 Definitions.

The following words shall, for purposes of this chapter, be defined as follows:

(1) "Agent" — any person who performs services for another person under an express or implied agreement. A person may be an agent without receiving compensation for services.

(2) "Agriculture" — the production of plants and animals useful to man, including all forms of farm products and farm production.

(3) "Broker" — any person who negotiates the purchase or sale of any material. A broker may or may not handle either the material which is involved or the proceeds of a sale.

(4) "Certificate" — a document authorized or prepared by an authorized federal or state regulatory official that affirms, declares, or verifies that a plant or other regulated article meets phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other legal requirements. Such documents are known by their purpose of issuance: phytosanitary certificate [for the purpose of verifying compliance with phytosanitary (quarantine) requirements]; nursery stock certificate (for the purpose of verifying compliance with nursery inspection and pest freedom standards); registration or certification tags, seals (for the purpose of verifying compliance with registration or certification requirements); etc.

(5) "Certification" — the act by the Department of affirming, declaring, or verifying compliance with phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or any other set of legal requirements.

(6) "Chain store" — any business with 1 or more retail outlets that sells plants, plant material or nursery stock, and that are owned by a common parent business entity.

(7) "Commission merchant" — any person, who receives on consignment or solicits any material from a licensee, producer or his or her agent or accepts material in trust for purposes of sale and sells or resells any material on commission or for a fee.

(8) "Consignee" — any person to whom any plant, nursery stock, horticultural product, etc. is shipped for handling, sale, resale, or other purpose.

(9) "Consignor" — any person who ships or delivers to a consignee any plant, nursery stock, horticultural product, etc. for handling, planting, sale, resale, or any other purpose.

(10) "Dangerously injurious plant pest" — a plant pest that constitutes a significant threat to the agricultural, forest or horticultural interests of this State, or the State's general environmental quality.

(11) "Dealer" — any person who obtains title to, or possession, control, or delivery of, any plant, plant material or nursery stock, from a producer for the purpose of resale.

(12) "Department" — the State of Delaware Department of Agriculture and includes, but is not limited to, its officers, inspectors, employees, agents or representatives.

(13) "Florist(s)" — includes, but is not limited to, a person(s) or business(es) engaged in the production or sale, wholesale or retail of plants, plant materials or nursery stock for temporary, semi-permanent, seasonal or permanent, indoor or outdoor use.

(14) "Garden Center" — includes, but is not limited to, a business establishment engaged in the year round, retail sale of plants, plant material or nursery stock from a specific, permanent sales location.

(15) "Greenhouse" — includes, but is not limited to, an establishment or business engaged in the production of plants, plant material or nursery stock within a climate controlled structure, for distribution beyond on-site or personal use.

(16) "Grower" — includes but is not limited to, any person who raises, grows or propagates, for profit or other reasons, outdoors or indoors, any horticultural product, nursery stock, or plant.

(17) "Horticultural product" — those products stated in Group 18 of the United States Department of Labor Standard Industrial Classification Manual which are grown under cover or outdoors, including bulbs, flowers, shrubbery, florist greens, fruit stock, floral products, nursery stock, ornamental plants, potted plants, roses, seed, Christmas trees, fruits, food crops grown in greenhouses, vegetables, and horticultural specialties not otherwise specified.

(18) "Hold order" — an order or notice written by the Department to the owner(s) or person(s) in charge or in possession of a premises, plant, conveyance or article infested or infected with or exposed to infestation or infection of dangerously injurious plant pest(s), making it unlawful to move the aforementioned article(s) unless treated in accordance with the Department's prescribed procedures.

(19) "Infected" — a plant that has been determined by the Department to be contaminated with an infectious, transmissible or contagious pest or so exposed to the aforementioned that contamination can reasonably be expected to exist. This includes disease conditions, regardless of their mode of transmission or any disorder of plants which manifest symptoms which, after investigation are determined by a federal or state pest prevention agency, to be characteristic of an infectious, transmissible, or contagious disease.

(20) "Infested" — a plant that has been determined by the Department to be contaminated by a dangerously injurious plant pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist.

(21) "Landscaper(s)" — includes but is not limited to, any person(s) who keeps at a premises, or procures for transplantation, nursery stock for installation on the property of another person.

(22) "Mail-order merchant(s)" — includes but is not limited to, any person, dealer, or producer who sells or markets, wholesale or retail, any of its orders or business by drop shipment, catalog, telemarketing, telephone, mail-order or other indirect means.

(23) "Mark" — the Department shall affix, for purposes of identification or separation, a conspicuous official indicator to, on, around, or near, plants or plant material, known or suspected to be, infected or infested with a dangerously injurious plant pest. This includes, but is not limited to, paint, markers, tags, seals, stickers, tape, signs or placards.

(24) "Move" — to ship, offer for shipment, receive for transport, carry or, in any manner whatsoever, convey or relocate a regulated plant, plant material or nursery stock, from one place to another.

(25) "Nursery" — any location where nursery stock is grown, propagated, stored, or sold; or any location from which nursery stock is distributed direct to a customer. (See "Sales location")

(26) "Nursery industry license" — a document issued by the Department authorizing a person(s) to engage in a nursery or nursery related business at a particular location under a specified business name.

(27) "Nursery stock" — any plant for planting, propagation, or ornamentation, including, but not limited to:

a. All plants, trees, shrubs, vines, perennials grafts, cuttings and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants.

b. Any other plant or plant part, including cut Christmas trees or any non-hardy plant or plant part, including but not limited to, annuals, bedding plants and vegetable plants.

(28) "Owner(s)" — includes, but is not limited to, the person, persons, family, group, firm, association, business, company, incorporated entity or organization with the legal right of possession, proprietorship of, or responsibility for the property or place where any of the regulated articles as defined in this chapter are to be found, or person(s) who is in possession of, in proprietorship of, or has responsibility for the regulated articles.

(29) "Person(s)" — includes, but is not limited to, individual, family, firm, association, group, business, company, incorporated entity or organization.

(30) "Pre-clearance" — an agreement between quarantine officials of exporting and importing states to pass plants, plant material, etc., through quarantine by allowing the exporting state to inspect the plants pre-shipment, rather than the importing state inspecting the shipment upon arrival.

(31) "Pest" — includes any biotic agent (any living agent capable of reproducing itself) that is known to cause damage or harm to agriculture or the environment.

(32) "Plant" — includes, but is not limited to, any part of a plant, tree, aquatic plant, plant material, shrub, vine, fruit, rhizome, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, or fruit pit, including:

a. Agricultural commodities: plant materials including any horticultural product.

b. Nursery stock.

c. Non-cultivated or feral plants, gathered from the environment.

d. Plants produced by tissue culture, cloning or from stem cell cultures or other prepared media culture.

(33) "Plant pest" — includes, but is not limited to, any pest of plants, agricultural commodities, horticultural products, nursery stock, or non-cultivated plants. This includes, but is not limited to, insects, snails, nematodes, fungi, viruses, bacterium, microorganisms, mycoplasma like organisms, weeds, plants or parasitic higher plants.

(34) "Producer" — includes, but is not limited to, any person who raises, grows or propagates, for profit or other reasons, outdoors or indoors, any horticultural product, nursery stock, or plant.

(35) "Quarantine" — a legal instrument duly imposed or enacted by the Department as a means for mitigating pest risk. These actions include, but are not limited to, confinement or restriction of entry, movement, shipment or transportation of plants known or suspected to be infected or infested with some dangerously injurious plant pests.

(36) "Roadside market" — includes, but is not limited to a business engaged in the retail sale of plants, plant material or nursery stock on a seasonal basis and which may operate from a specific sales location or multiple mobile locations.

(37) "Registration" — the official recording of a growing location, person, plant, sales location or any other thing or place as one that has met specified requirements and therefore eligible for a particular activity, operation or purpose.

(38) "Sales location" — every location from which nursery stock is delivered directly to a customer.

(39) "Secretary" — the Secretary of the State of Delaware Department of Agriculture or his or her designee.

(40) "Sell" — includes offer for sale, expose for sale, possess for sale, exchange, barter or trade.

(41) "Shipment" — any article or thing which is, may be, or has been transported or conveyed from one place to another.

(65 Del. Laws, c. 491 § 1; 68 Del. Laws, c. 329 §§ 1, 2; 70 Del. Laws, c. 332 § 1.)

§ 1302 Nursery industry licensing requirements.

(a) Any person(s), grower(s), agent(s), broker(s), dealer(s), mail-order merchant(s), commission merchant(s), consignor(s), landscaper(s),

florist(s), greenhouse operator(s), chain store operator(s), garden center operator(s), roadside market operator(s), producer(s) or owner(s) engaged directly with the distribution of plants, plant products, plant material, nursery stock or horticultural products, is required to inform the Department of the existence of their operation and to obtain a nursery industry license prior to initiating business operations.

(b) The aforementioned person(s) are required to obtain a nursery industry license for each of their businesses or sale/retail locations where multiple businesses or sales/retail locations exist.

(c) The aforementioned person or persons are required to renew their nursery industry license each year that they remain in operation. Nursery industry licenses issued by the Department shall be valid for a period of 1 year, beginning January 1 and ending December 31 of the same year.

(d) A nursery industry license application must be filed with the Department on forms provided by the Department. The application for license shall include, as applicable, the following:

(1) Name and address of the owner(s) of the business to be licensed.

(2) Name and address of the business to be licensed.

(3) Location of all plant, plant material or nursery stock fields or storage areas.

(4) The number of acres in plant or nursery stock production or the square footage of the sales area devoted to plants, plant material or nursery stock.

(5) A list of the names, addresses, and plants, plant material, etc. received from all suppliers, producers, growers, etc. providing plants or nursery stock to the business. Upon request of the Department an updated list and/or invoices must be provided for the current year.

(e) Licenses issued by the Department shall be prominently displayed at the business location.

(21 Del. Laws, c. 216 § 9; Code 1915 § 658; Code 1935 § 576; 3 Del. C. 1953 § 1301; 57 Del. Laws, c. 764 § 5; 65 Del. Laws, c. 491 § 1; 68 Del. Laws, c. 329 §§ 3-5; 70 Del. Laws, c. 332 § 1; 77 Del. Laws, c. 358 §§ 1, 2.)

§ 1303 Inspection of nurseries and businesses, nursery stock certification.

(a) After receiving the nursery industry license application, the Department or its representatives shall examine or inspect all plants, plant material, or nursery stock located or grown on the business location or any other applicable location. Nurseries must maintain adequate weed control so a thorough inspection of the nursery stock can be made.

(b) The Department shall conduct the aforementioned inspection or examination yearly or as directed by the Secretary, at such time as it deems best, with or without notice. The Department reserves the right to conduct unannounced inspections as frequently as it deems necessary to insure compliance with all sections of this chapter.

(c) Upon the successful completion of an inspection, the Department shall issue a nursery stock certificate of inspection to any business licensed under § 1302 of this title. The nursery stock certificate shall state:

The nursery (or business premises) from which this shipment was made has been visually inspected and found to be in compliance with National Plant Board standards of pest freedom.

(d) The nursery stock certificate of inspection issued by the Department shall be valid for a period of 1 year, beginning January 1 and ending December 31 of the same year.

(70 Del. Laws, c. 332 § 1; 77 Del. Laws, c. 358 §§ 3, 4.)

§ 1304 Plant pest infestations.

(a) Any person(s) who has in their possession plants, plant materials or nursery stock infested or infected with dangerously injurious plant pests possesses a public nuisance.

(b) Upon discovery or notification of such nuisance the Department shall place a hold order on the aforementioned material. While under such a hold order it is an illegal action to sell, ship, transport, give away, destroy, or otherwise move, alter or tamper with the aforementioned plants.

(c) If the Secretary determines that the provisions of this chapter have been violated, he or she shall order and direct that the nuisance be abated by whatever means necessary (including, but not limited to, destruction, confiscation, treatment or return shipment). The abatement of this public nuisance shall be at the expense of all of the aforementioned person(s) and shall be without any form of compensation.

(70 Del. Laws, c. 332 § 1.)

§ 1305 Shipping, labeling and certification requirements.

(a) No person(s) shall sell, ship or give away, by private carrier, commercial carrier or any other means, any plants, plant materials or nursery stock from any nursery, business, or premises within the State, without an accompanying nursery stock certificate as prescribed in § 1303 of this title. The aforementioned information shall be plainly printed upon a tag, label, etc. that is not easily destroyed, which shall be firmly affixed on the exterior and in a conspicuous position upon each carload, box, container, package, etc. It is the responsibility of both the consignee and consignor to contact the Department to obtain a current nursery stock certificate and to examine all shipments for the presence of all certification requirements.

(b) Any person(s) or consignor who ships or moves plants, plant material or nursery stock out of state or internationally by private carrier, commercial shipper, or any other means, is required to contact the Department to obtain the phytosanitary certifications required by the consignee's location. When the Department finds the aforementioned shipment in compliance with the consignee's location phytosanitary requirements, it will issue the required phytosanitary certificate to the consignor. The consignor shall conspicuously affix a

copy of the phytosanitary certificate to the exterior of each carload, box, container, package, etc. It is the responsibility of both the consignee and consignor to contact the Department to obtain the necessary phytosanitary certificates and to examine all shipments for the presence of all required certifications.

(c) When applicable, all shipping containers must be conspicuously and appropriately marked on the exterior as to whether contents must be held for agricultural inspection or whether the contents have been pre-cleared by the Department, under the terms of a pre-clearance or interstate origin of inspection program (phytosanitary pre-clearance). It is the responsibility of both the consignee and consignor to obtain all required pre-clearances and to examine all shipments for the presence of all required certifications.

(21 Del. Laws, c. 216 § 10; Code 1915 § 659; Code 1935 § 577; 3 Del. C. 1953 § 1302; 65 Del. Laws, c. 491 § 1; 68 Del. Laws, c. 329 §§ 6, 7; 70 Del. Laws, c. 332 § 1.)

§ 1306 Shipment of nursery stock into state; labeling and certification.

When any plants, plant materials or nursery stock are shipped, sent or mailed into this State, to any person in this State, every carload, container, box, package, etc., shall be conspicuously labeled on the exterior with the name of the consignor, the state of origin and the name of the consignee. The aforementioned shipment shall have conspicuously affixed to its exterior, a nursery stock certificate from the state of origin showing that the contents have been examined by a qualified state or federal officer and found apparently free from all dangerously injurious plant pests. It is the responsibility of both the consignee and consignor to examine all shipments for the presence of current and applicable nursery stock certifications.

(21 Del. Laws, c. 216 § 13; Code 1915 § 662; Code 1935 § 580; 3 Del. C. 1953 § 1305; 65 Del. Laws, c. 491 § 1; 70 Del. Laws, c. 332 § 1.)

§ 1307 Transportation companies; receiving uncertified nursery stock; failure to notify Department.

Any person(s) who acts as the representative of a transportation company, private carrier, commercial shipper, common carrier, express parcel carrier or other transportation entity, and receives, ships or moves a carload, box, container, package, etc., of plants, plant materials or nursery stock, that does not have a nursery stock certificate or proper phytosanitary certificates attached as provided for in § 1303 or § 1305 of this title, and fails to immediately notify the Department shall be subject to §§ 1310 through 1313 of this title.

(21 Del. Laws, c. 216 § 15; Code 1915 § 664; Code 1935 § 582; 3 Del. C. 1953 § 1307; 57 Del. Laws, c. 764 § 5; 65 Del. Laws, c. 491 § 1; 70 Del. Laws, c. 332 § 1.)

§ 1308 Labeling and advertising of nursery stock.

(a) Plants, plant materials or nursery stock shall not be labeled or advertised with false or misleading information. This includes, but is not limited to, common name, scientific name, variety, place of origin and growth habit.

(b) A person(s) may not offer for sale, sell, give away, or in any way distribute plants, plant materials or nursery stock, represented by some specific or special form of notation, including, but not limited to: "free from", "grown free of", unless such plants are produced under a specific program accepted by the Department to address the specific plant properties addressed in the special notation claim.

(c) Before any person(s) advertises plants, plant materials or nursery stock for sale, a copy of their nursery business license must be provided to the publisher or producer of the advertisement. The nursery business license number must be included in the advertisement and if appropriate, be legible or audible. This requirement shall extend to all forms of advertising media, including but not limited to, radio, television, outdoor sign boards, telephone business directories (i.e., Yellow Pages), newspaper and magazine advertisements or vehicular identification/advertisement.

(21 Del. Laws, c. 216 § 10; Code 1915 § 659; Code 1935 § 577; 3 Del. C. 1953 § 1302; 65 Del. Laws, c. 491 § 1; 70 Del. Laws, c. 332 § 1.)

§ 1309 Reciprocal agreements.

The Department shall have the authority to make reciprocal agreements with the responsible officials of other states. Nursery stock or plants from any other state may be sold or delivered in Delaware under the same conditions required for sale, delivery, or distribution of Delaware nursery stock or plant materials. An official directory of certified nurseries and related nursery industry businesses will be accepted from other states in lieu of individual nursery licenses/certificates.

(65 Del. Laws, c. 491 § 1; 68 Del. Laws, c. 329 § 11; 70 Del. Laws, c. 332 § 1.)

§ 1310 Violations.

(a) Any person(s) who has in their possession plants, plant materials or nursery stock that is uncertified, uninspected, and/or falsely or misleadingly labeled or advertised possesses an illegal regulated commodity. The aforementioned plants shall be considered infested or infected with dangerously injurious plant pests and therefore deemed a public nuisance. Public nuisances shall be abated as prescribed in § 1304 of this title. If the Secretary determines that the provisions of this section have been violated, he or she shall order and direct that the nuisance be abated by the destruction of all of the plants in question, unless the aforementioned person(s)(as applicable):

(1) Submits to the nursery stock certification process.

(2) Provides proper phytosanitary pre-clearance, phytosanitary certification or nursery stock certification.

(3) Agrees to have the plants, plant materials or nursery stock returned to the consignor.

(4) Provides proper documentation, certification or compliance to support advertising claims.

The abatement of this public nuisance shall be at the expense of the aforementioned person(s) and shall be without any form of compensation.

(b) Under this chapter, any person(s) who wilfully or knowingly:

(1) Misrepresents or falsifies information on a nursery industry license application;

(2) Fails to obtain a nursery industry license;

(3) Fails to renew a nursery industry license, but continues business operations;

(4) Fails to display their nursery industry license;

(5) Falsely displays a nursery industry license;

(6) Misrepresents or falsifies their nursery industry license status;

(7) Misrepresents or falsifies information on a nursery stock certificate;

(8) Fails to submit to a nursery inspection;

(9) Fails to provide the cooperation necessary to conduct a successful nursery inspection;

(10) Fails to satisfactorily pass the nursery inspection, but continues business operations;

(11) Possesses uncertified plants, plant materials or nursery stock;

(12) Possesses an illegal regulated commodity;

(13) Defies a Department hold order;

(14) Violates a quarantine imposed by the Department;

(15) Fails to obtain nursery stock certification;

(16) Fails to obtain phytosanitary certification;

(17) Fails to obtain phytosanitary pre-clearance;

(18) Creates or possesses a public nuisance;

(19) Misrepresents or falsifies information to obtain nursery stock certification, phytosanitary certification or phytosanitary pre-clearance;

(20) Defaces, mutilates or destroys a nursery stock certificate, phytosanitary certificate or phytosanitary pre-clearance certificate or other Department mark;

(21) Fails to notify the Department of an uncertified shipment of plant, plant materials or nursery stock;

(22) Transports uncertified plants, plant materials or nursery stock;

(23) Misrepresents or falsifies plant advertisement or label information; or

(24) Fails to comply with the nursery industry license advertising requirements;

shall be subject to the assessment of a civil penalty, the confiscation or destruction of any and all plants, plant materials or nursery stock found on the premises or contained in the shipment in question, and/or the suspension or revocation of their current nursery industry license or any future operation privileges granted under this chapter.

(70 Del. Laws, c. 332 § 1.)

§ 1311 Hearing procedures.

(a) No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture and the Secretary's designee. No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with Chapter 101 of Title 29. The Secretary or the Secretary's designee shall mail a written decision to the alleged violator within 30 days of the conclusion of the administrative hearing.

(b) The person(s) charged with a violation of this chapter will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel, and to provide witnesses in his or her own behalf.

(c) The Secretary, for the purposes of investigation of a possible violation of this chapter and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.

(d) The Department shall preserve a full record of the proceedings and a transcript may be purchased by any interested person.

(70 Del. Laws, c. 332 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 358 § 5.)

§ 1312 Appeals.

A person who feels aggrieved by the Department as a result of the administrative hearing held under the authority of this chapter may take appeal, within 30 days, to the Superior Court. After full hearing, the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds, therefore, shall be served upon the Secretary of the Department of Agriculture.

(65 Del. Laws, c. 491 § 1; 66 Del. Laws, c. 152 § 1; 70 Del. Laws, c. 332 § 1.)

§ 1313 Civil penalties.

(a) The civil penalty for violation of any section of this chapter not already stated will be the assessment of a civil penalty, the

confiscation or destruction of any and all plants, plant materials or nursery stock found on the premises or contained in the shipment in question and/or suspension or revocation of the current nursery industry license or any future operation privileges granted under this chapter.

(b) Any person who violates any section of this chapter or interferes with the Department or its representatives in the enforcement of this chapter, as determined in an administrative hearing, shall be assessed a civil penalty of no less than $100 nor more than $1000 on each count.

(70 Del. Laws, c. 332 § 1.)

Part II
Regulatory Provisions
Chapter 14
AGRICULTURE AND FORESTAL NUISANCES

§ 1401 Agricultural and forestal operations not considered nuisances; exception.

No agricultural or forestal operation within this State which has been in operation for a period of more than 1 year shall be considered a nuisance, either public or private, as the result of a changed condition in or about the locality where such agricultural or forestal operation is located. For the purpose of this section, "agricultural operation" shall be defined as set forth in § 8141(a) of Title 10. In any nuisance action, public or private, against an agricultural operation or its principals or employees, including forestall activity, proof that the agricultural operation, including forestall activity, has existed for 1 year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits. If the operation is in compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with good agricultural practice. No state or local law-enforcement agency may bring a criminal or civil action against an agricultural operation for an activity that is in compliance with all applicable state and federal laws, regulations, and permits.

(62 Del. Laws, c. 347 § 1; 77 Del. Laws, c. 376 § 1.)

Part II
Regulatory Provisions
Chapter 15
SEEDS

§ 1501 Definitions.

As used in this chapter:

(1) "Person" includes any individual, partnership, corporation, company, society or association.

(2) "Agricultural seed" includes the seeds of grass, forage, cereal, and fiber crops and other kinds of seeds commonly recognized within this State as agricultural seeds, lawn seeds and mixes of such seeds, and may include noxious weed seeds when the Department determines that such seed is being used as agricultural seed.

(3) "Vegetable seeds" includes the seeds of those crops which are grown in gardens or truck farms and are generally known and sold under the name of vegetable seeds in this State.

(4) "Flower seeds" includes seeds of herbaceous plants grown for their blooms, ornamental foliage or other ornamental parts, and commonly known and sold under the name of flower seeds in this State.

(5) "Tree and shrub seeds" includes seeds of woody plants commonly known and sold as tree and shrub seeds in this State.

(6) "Weed seeds" includes the seeds of all plants generally recognized as weeds within this State and includes noxious weed seeds.

(7) "Noxious weed seeds" are divided into two classes, "prohibited noxious weed seeds" and "restricted noxious weed seeds" as defined in sub-subdivisions a. and b. of this subdivision:

a. "Prohibited noxious weed seeds" are the seeds of perennial weeds that not only reproduce by seed but also spread underground roots, stems and other reproductive parts, and which when well established, are highly destructive and difficult to control in this State by ordinary good cultural practice. Prohibited noxious weed seeds in this State are the seeds of:

1. Cirsium arvense, Canada thistle;
2. Agropyron repens, Quackgrass;
3. Sorghum specie, Johnson grass, Perennial Sweet Sudan Grass, Sorghum Almum and hybrids derived therefrom; and such other seeds or bulblets as the Department from time to time may designate as prohibited noxious seeds in the public interest.

b. "Restricted noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns and gardens of this State, but can be controlled by good cultural practices. Restricted noxious weed seeds in this State are the seeds of:

1. Cuscuta spp., Dodder;
2. Convolvulus arvensis, Bindweed;
3. Allium spp., Wild onion, Wild garlic;
4. Agrostemma githago, Corn Cockle;
5. Solanum Carolinense, Horse nettle;
6. Bromus secalinus, Cheat or Chess;
7. Poa Annua, Annual Bluegrass;
8. Setari faberi, Giant Foxtail;

and such other seeds or bulblets as the Department from time to time may designate as restricted noxious seeds in the public interest.

(8) "Labeling" includes all labels, and other written, printed or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers, and includes representations on invoices.

(9) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

(10) "Record" includes all information relating to the shipment or shipments involved and a file sample of each lot of seed. For tree and shrub seed, the record will also include all documents supporting the statement of origin and elevation of the seed.

(11) "Stop sale" means an administrative order provided by law, restraining the sale, use, disposition and movement of a definite amount of seed.

(12) "Seizure" means a legal process carried out by court order against a definite amount of seed.

(13) "Kind" means 1 or more related species or subspecies which singly or collectively is known by 1 common name, for example, corn, oats, alfalfa and timothy.

(14) "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind.

(15) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

(16) "Hybrid" first means the first generation seed of a cross produced by controlling the pollination and by combining:

a. 2 or more inbred lines;

b. 1 inbred or a single cross with an open pollinated variety; or

c. 2 varieties or species, except open pollinated varieties of corn (Zea mays). The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety means.

(17) "Pure seed," "germination," and other seed labeling and testing terms in common usage shall be defined as in the Rules for Testing Seeds published by the Association of Official Seed Analysts, effective July 1, 1955, and as subsequently amended.

(18) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(19) "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

(20) A "private hearing" may consist of a discussion of facts between the person charged and the enforcement officer.

(21) "Certifying agency" means:

a. an agency authorized under the laws of a state, territory, or possession to officially certify seed; or

b. an agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under sub-subdivision a. of this subdivision.

(22) "Certified seed," "registered seed" or "foundation seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official certifying agency.

(23) "List by Predominance" shall have the same meaning as defined in the rules and regulations under this chapter.

(24) "Tree seed collector's declaration" is a statement signed by a grower or person having knowledge of the place of collection for a lot of seed, giving the lot number, common or scientific name of the species (and subspecies, if appropriate), origin, elevation and quantity of tree and shrub seed.

(25) "Origin" for an indigenous stand of trees is the area on which the trees are growing; for a nonindigenous stand, it is the place from which the seeds as plants were originally introduced.

(36 Del. Laws, c. 91 §§ 1, 3, 11; Code 1935 §§ 655, 657, 665; 44 Del. Laws, c. 66 §§ 1, 2; 3 Del. C. 1953 § 1501; 52 Del. Laws, c. 70 § 1; 57 Del. Laws, c. 147 § 1; 57 Del. Laws, c. 764 § 6; 65 Del. Laws, c. 104 § 1.)

§ 1502 Label requirements — Agricultural, vegetable and flower seeds.

Each container of agricultural, vegetable and flower seeds which is sold, offered for sale or exposed for sale, or transported within this State for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement shall not be modified or denied in the labeling or on another label attached to the container:

(1) For all agricultural, vegetable and flower seeds treated as defined in this chapter (for which a separate label may be used):

a. A word or statement indicating that the seed has been treated;

b. The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used;

c. If the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not use for food, feed or oil purposes." The caution for mercurials and similarly toxic substances shall be a poison statement or symbol;

d. If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).

(2) For agricultural seeds, except for grass seed mixtures as provided in subdivision (3) of this section:

a. The name of the kind, or kind and variety for each agricultural seed component present in excess of 5% of the whole and the percentage by weight of each in the order of its predominance; provided, that if the variety of those kinds generally labeled as to variety as designated in the regulations is not stated, the label shall show the name of the kind and the words, "Variety Not Stated." Hybrids shall be labeled as hybrids. Where more than 1 component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label;

b. Lot number or other lot identification;

c. Origin (state or foreign country), if known, of alfalfa, red clover and field corn (except hybrid corn). If the origin is unknown, the fact shall be stated;

d. Percentage by weight of all weed seeds;

e. The name and rate of occurrence per pound of each kind of restricted noxious weed seed present singly or collectively in any amount whatsoever; provided, however, that the amount does not exceed 160 per pound in Group 1 and 10 per pound in Group 2. Except in lawn or turf seed, Poa Annua shall not exceed 256 per pound.

Group 1: Agropyron spp., Agrostis spp., alfalfa, Bermuda grass, Brassica spp., orchard grass, alsike and white clover, crimson clover, Dallis grass, fescues, flax, foxtail millet, lespedezas, poa spp., red clover, reed canary grass, Rhodes grass, rye-grass, sweet clover, smooth brome, timothy, and other agricultural seeds of similar size and weight, or mixtures within this group.

Group 2: Barley, buckwheat, oats, proso, rye, sorghums, Sudan grass, vetches, wheat and other agricultural seeds of a size and

weight similar to or greater than those within this group, or any mixtures within this group.

f. Percentage by weight of agricultural seed (which may be designated as "crop seeds") other than those required to be named on the label;

g. Percentage by weight of inert matter;

h. For each named agricultural seed:

1. Percentage of germination, exclusive of hard seed;

2. Percentage of hard seed, if present;

3. The calendar month and year the test was completed to determine the percentages.

Following subparagraphs 1. and 2. of this paragraph the "total germination and hard seed" may be stated as such, if desired.

i. Name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this State;

(3) For seed mixtures for lawn and/or turf purposes in containers of 50 pounds or less.

a. The word "mixed" or "mixture."

b. List as follows:

1. Common accepted name, in order of its predominance, of the kind, or kind and variety of each agricultural seed present in excess of 5% of the whole;

2. Percentage by weight of pure seed of each agricultural seed named;

3. For each agricultural seed named under clause 1. of this sub-subdivision:

A. Percentage of germination, exclusive of hard seed;

B. Percentage of hard seed, if present;

C. Calendar month and year the test was completed to determine the percentages.

c. The heading "other ingredients" and thereunder in type no larger than the heading;

1. Percentage by weight of all weed seeds;

2. Percentage by weight of all agricultural seeds other than those stated under subparagraph 1. of this paragraph;

3. Percentage by weight of inert matter;

d. Lot number or other lot identification;

e. Name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

f. Name and address of the person who labeled the seed or who sells, offers or exposes the seed for sale within this State;

g. Net weight.

(4) For vegetable seeds in containers of 1 pound or less:

a. Name of kind and variety of seed;

b. For seeds which germinate less than the standard last established by the Department under this chapter:

1. Percentage of germination, exclusive of hard seed;

2. Percentage of hard seed, if present;

3. The calendar month and year the test was completed to determine the percentages;

4. The words "below standard" in not less than 8-point type; and

c. Name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State;

(5) For vegetable seeds in containers of more than 1 pound:

a. The name of each kind and variety present in excess of 5% and the percentages by weight of each in order of its predominance;

b. Lot number or other lot identification;

c. For each named vegetable seed:

1. The percentage germination, exclusive of hard seed;

2. The percentage of hard seed, if present;

3. The calendar month and year the test was completed to determine the percentages.

Following subparagraphs 1. and 2. of this paragraph the "total germination and hard seed" may be stated as such if desired.

d. Name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this State;

e. The labeling requirements for vegetable seeds in containers of more than 1 pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser;

(6) For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes or other planting devices:

a. For all kinds of flower seeds:

1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules and regulations promulgated under this chapter;

2. The calendar month and year the seed was tested or the year for which the seed was packaged; and

3. The name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this State.

b. For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination

standard last established under this chapter:

1. The percentage of germination, exclusive of hard seed, and
2. The words "below standard" in not less than 8-point type.

c. For seeds placed in a germination medium, mat, tape, diluent or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, diluent or device, a statement to indicate the minimum number of viable seeds in the container;

(7) For flower seeds in containers other than packets prepared for use in home flower gardens or household planting and other than preplanted containers, mats, tapes, or other planting devices:

a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under this chapter;

b. The lot number or other lot identification;

c. The calendar month and year that the seed was tested or the year for which the seed was packaged;

d. The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State; and

e. For those kinds of seeds for which standard testing procedures are prescribed:

1. The percentage germinated, exclusive of hard seed; and
2. The percentage of hard seed, if present.

(36 Del. Laws, c. 91 § 2; Code 1935 § 656; 44 Del. Laws, c. 66 §§ 1, 3; 3 Del. C. 1953 § 1502; 52 Del. Laws, c. 70 § 1; 57 Del. Laws, c. 147 § 1; 57 Del. Laws, c. 764 § 6; 65 Del. Laws, c. 104 § 2.)

§ 1503 Same — Tree and shrub seeds.

Each container of tree and shrub seed which is sold, offered for sale, or exposed for sale, or transplanted within this State for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language giving the following information which statement shall not be modified or denied in the labeling or on another label attached to the container — except that labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number stenciled on the container or if the seed is in bulk. Each bag or container that is not so identified must carry complete labeling.

(1) For all tree and shrub seeds treated as defined in this chapter (for which a separate label may be used):

a. A word or statement indicating that the seed has been treated;

b. The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used;

c. If the substance in the amount present with the seed is harmful to human or other vertebrate animals a caution statement such as "Do not use for food or feed or oil purposes." The caution for mercurials and similarly toxic substances shall be a poison statement and symbol;

d. If the seed has been treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).

(2) For all tree and shrub seeds subject to this chapter:

a. Common name of the species of seed (and subspecies, if appropriate);

b. The scientific name of the genus and species (and subspecies if appropriate);

c. Lot number or other lot identification;

d. Origin;

1. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, or geographic description, or political subdivision such as state or county;
2. For seed collected from other than a predominantly indigenous stand, identify the area of collection and the origin of the stand or state "Origin not Indigenous";

e. The elevation or the upper and lower limits of elevation within which the seed was collected;

f. Purity as a percentage of pure seed by weight;

g. For those species for which standard germination testing procedures are prescribed by the department the following:

1. Percentage germination exclusive of hard seed;
2. Percentage of hard seed, if present;
3. Calendar month and year test was completed to determine the percentages.

h. In lieu of subparagraphs 1., 2. and 3. of paragraph g., the seed may be labeled "Test is in process, results will be supplied upon request";

i. For those species for which standard germination testing procedures have not been prescribed by the Department the calendar year in which the seed was collected;

j. The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State.

(3 Del. C. 1953 § 1502A; 57 Del. Laws, c. 147; 57 Del. Laws, c. 764 § 6.)

§ 1504 Prohibitions.

(a) No person shall sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, flower or tree and shrub seeds within this State:

(1) If subject to the germination requirements of § 1502 of this title, unless the test to determine the percentage of germination required by § 1502 of this title shall have been completed within a 14-month period exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation;

(2) Not labeled in accordance with this chapter or having false or misleading labeling;

(3) Pertaining to which there has been false or misleading advertisement;

(4) Consisting of or containing prohibited noxious weed seeds, subject to recognized tolerances;

(5) Consisting of or containing restricted noxious weed seeds per pound in excess of the number prescribed under this chapter, or in excess of the number declared on the label attached to the container of the seed or associated with the seed subject to recognized tolerances;

(6) Containing more than 11/2% by weight of all weed seeds;

(7) Containing more than 20% by weight of inert matter in lawn and turf seed;

(8) To which there is affixed the names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality, or origin of the seed;

(9) If any labeling, advertising or other representation subject to this chapter represents the seed to be certified or registered seed unless:

a. It has been determined by a seed certifying agency that the seed was produced, processed, and packaged, and conforms to the standards of purity as to kind, species (and subspecies, if appropriate), or variety, and also that tree seed was found to be of the origin and elevation claimed, in compliance with the rules and regulations of the agency; and

b. That the seed bears an official label issued by a seed certifying agency stating that the seed is certified or registered.

(b) It is unlawful for any person within this State to:

(1) Detach, alter, deface, or destroy any label provided for in this chapter or the rules and regulations made and promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purposes of this chapter;

(2) Disseminate any false or misleading advertisements concerning seeds subject to this chapter in any manner or by any means;

(3) Hinder or obstruct in any way, any authorized person in the performance of his duties under this chapter;

(4) Fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order or tags attached thereto, except with express permission of the enforcing officer, and for the purpose specified;

(5) Use the word "trace" as a substitute for any statement which is required;

(6) Use the word "type" in any labeling in connection with the name of any agricultural seed variety.

(36 Del. Laws, c. 91 § 8; Code 1935 § 662; 44 Del. Laws, c. 66 §§ 1, 4; 3 Del. C. 1953 § 1503; 52 Del. Laws, c. 70 § 1; 57 Del. Laws, c. 147 § 1; 77 Del. Laws, c. 355 § 1.)

§ 1505 Records.

Each person whose name appears on the label as handling agricultural or vegetable seeds subject to this chapter shall keep for a period of 2 years complete records of each lot handled; and keep for 1 year a file sample of each lot of seed after final disposition of the lot. All such records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the Department or its agent during customary business hours.

(3 Del. C. 1953 § 1504; 52 Del. Laws, c. 70 § 1; 57 Del. Laws, c. 147 § 1; 57 Del. Laws, c. 764 § 6.)

§ 1506 Exemptions.

(a) The provisions of §§ 1502, 1503 and 1504 of this title do not apply:

(1) To seed or grain not intended for sowing purposes;

(2) To seed in storage in, or being transported, or consigned to a cleaning or processing establishment for cleaning or processing; provided, that the invoice or labeling accompanying any shipment of the seed bears the statement "seed for processing," and provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this chapter;

(3) To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; provided, that the carrier is not engaged in producing, processing or marketing seeds subject to this chapter;

(4) To seed sold by 1 farmer to another if the seed has neither been advertised for sale nor delivered through a carrier;

(5) To grain sold by farmers for cover crop purposes and not delivered through a common carrier.

(b) No person shall be subject to the penalties of this chapter for having sold or offered for sale seeds subject to this chapter which were incorrectly labeled or represented as to kind, species (and subspecies, if appropriate), variety, type or origin, elevation and year of collection (if required) which seeds cannot be identified by examination, unless he has failed to obtain an invoice, genuine grower's or tree seed collector's declaration or other labeling information and to take such other precautions as may be reasonable to insure the identity to be that stated.

(c) The provisions of §§ 1503 and 1505 of this title do not apply to tree seed produced by the consumer.

(36 Del. Laws, c. 91 § 7; Code 1935 § 661; 44 Del. Laws, c. 66 §§ 1, 5; 3 Del. C. 1953 § 1504; 52 Del. Laws, c. 70 § 1; 57 Del. Laws, c. 147 § 1.)

§ 1507 Duties and authority of the Department.

(a) The duty of enforcing this chapter and carrying out its provisions and requirements is vested in the Department, who may act through its authorized agents:

(1) To sample, inspect, make analysis of, and test seeds subject to this chapter that are transported, sold or offered or exposed for sale within the State for sowing purposes, at such time and place and to such extent as it may deem necessary to determine whether the seeds are in compliance with this chapter, and to notify promptly the person who sold, offered or exposed the seed for sale and, if appropriate, the person who labeled or transported the seed of any violation, stop sale order, or seizure;

(2) To prescribe, amend, adopt and publish after public hearing following due public notice:

a. Rules and regulations governing the method of sampling, inspecting, analyzing, testing and examining seeds subject to this chapter and the tolerances to be used and such other rules and regulations necessary to secure efficient enforcement of this chapter;

b. Prohibited and restricted noxious weed seed deletions or additions;

c. Rules and regulations establishing reasonable standards on germination for vegetable seeds and flower seeds;

d. Rules and regulations for labeling flower seeds in respect to kind and variety or type and performance characteristics as required by § 1502 of this title;

e. A list of the kinds of flower seeds subject to the flower seed germination labeling requirements of § 1502 of this title;

f. A list of the tree and shrub seed species subject to germination labeling requirements of § 1503(2)g. of this title.

(b) Further, for the purpose of carrying out this chapter, the Department, through its authorized agents, is authorized:

(1) To enter upon any public or private premises during regular business hours in order to have access to seeds and the records connected subject to this chapter and rules and regulations thereunder, and any truck or other conveyor by land, water or air at any time when the conveyor is accessible, for the same purpose;

(2) To issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of seed subject to the provisions of this chapter which the Department finds is in violation of this chapter or rules and regulations promulgated thereunder, which order shall prohibit further sale, processing and movement of such seed, except on approval of the enforcing officer, until such officer has evidence that the law has been complied with, and he has issued a release from the "stop sale" order, provided that in respect to seed which has been denied sale, processing and movement as provided in this paragraph, the owner or custodian shall have the right to appeal from the order to a court of competent jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of the order and for the discharge of the seeds from the order prohibiting the sale, processing and movement in accordance with the findings of the court; and provided further, that this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this chapter;

(3) To establish and maintain or make provisions for seed testing facilities, to employ qualified persons, and to incur such expenses as may be necessary to comply with the provisions;

(4) To make or provide for making purity and germination tests of seed for farmers and dealers on request; to prescribe rules and regulations governing such testing; and to fix and collect charges for the tests made. Any fees shall be transferred to the State Treasurer and paid into the General Fund of the State;

(5) To cooperate with the United States Department of Agriculture and other agencies in seed law enforcement;

(6) To publish the results of analysis, tests and examinations made under this chapter, together with any other information deemed advisable;

(7) To conduct the seed certification program for the State; to prescribe rules and regulations governing seed certification; to fix and collect fees for inspection, grading and certification. Any fees collected shall be transferred to the State Treasurer and credited to the special fund entitled "Department of Agriculture Inspection Fund" to aid in defraying the expenses of the seed certification program; and

(8) To collect royalty fees on patented varieties where a royalty agreement is in force.

(c) [Repealed.]

(36 Del. Laws, c. 96 §§ 4-6, 10; Code 1935 §§ 658-660, 664; 44 Del. Laws, c. 66 §§ 1, 7; 3 Del. C. 1953 § 1506; 52 Del. Laws, c. 70 § 1; 57 Del. Laws, c. 147 § 1; 57 Del. Laws, c. 764 § 6; 61 Del. Laws, c. 245 §§ 1, 2; 68 Del. Laws, c. 269 § 1; 78 Del. Laws, c. 229 § 4.)

§ 1508 Seizure.

Any lot of seed not in compliance with this chapter shall be subject to seizure on complaint of the Department to a court of competent jurisdiction in the locality in which the seed is located. In the event the court finds the seed to be in violation of this chapter and orders the condemnation of the seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of in compliance with the laws of this State; provided, that in no instance shall the court order such disposition of the seed without first having given the claimant an opportunity to apply to the court for the release of the seed or permission to process or relabel it into compliance with this chapter.

(36 Del. Laws, c. 91 § 9; Code 1935 § 663; 44 Del. Laws, c. 66 §§ 1, 8; 3 Del. C. 1953 § 1507; 52 Del. Laws, c. 70 § 1; 57 Del. Laws, c. 147 § 1; 57 Del. Laws, c. 764 § 6.)

§ 1509 Injunction without bond.

No bond shall be required of the Department for the issuance of any injunction to restrain any violation of this chapter or any rule or regulation promulgated hereunder.

(3 Del. C. 1953 § 1508; 52 Del. Laws, c. 70 § 1; 57 Del. Laws, c. 147 § 1; 57 Del. Laws, c. 764 § 6.)

§ 1510 Violations and prosecutions.

(a) Every violation of this chapter shall be punishable by a fine not exceeding $100 for the first offense and not exceeding $250 for each subsequent similar offense.

(b) When the Department shall find that any person has violated this chapter, it or its duly authorized agent or agents may institute proceedings against such person in a court of competent jurisdiction in the locality in which the violation occurred; or the Department may offer evidence of such violation to the Attorney General with a view of prosecution; provided, however, that no prosecution under this chapter shall be instituted without the accused violator first having been given an opportunity to appear before the Department or its duly authorized agent to introduce evidence either in person or by agent or attorney at a private hearing. If, after the hearing, or without such hearing, the accused violator, or his agent or attorney fails or refuses to appear, the Department is of the opinion that the evidence warrants prosecution, it shall proceed as provided in this section.

(c) The Attorney General shall institute proceedings at once against any person charged with a violation of this chapter, if, in his judgment, the information submitted warrants such action.

(d) After judgment by the court in any case arising under this chapter the Department shall publish any information pertinent to the issuance of the judgment by the court in such media as it may designate from time to time.

(36 Del. Laws, c. 91 § 8; Code 1935 § 662; 44 Del. Laws, c. 66 §§ 1, 9; 3 Del. C. 1953 § 1508; 52 Del. Laws, c. 70 § 1; 57 Del. Laws, c. 147 § 1; 57 Del. Laws, c. 764 § 6.)

§ 1511 Enforcing agency.

This chapter shall be administered by the Department of Agriculture of this State, referred to as the "Department."

(3 Del. C. 1953 § 1510; 57 Del. Laws, c. 147 § 1; 57 Del. Laws, c. 764 § 6.)

§ 1512 Delegation of duties.

All authority vested in the Department of Agriculture by virtue of this chapter may with like force and effect be executed by the employees of the Department of Agriculture as may be designated for the purpose.

(3 Del. C. 1953 § 1511; 57 Del. Laws, c. 147 § 1; 57 Del. Laws, c. 764 § 6.)

Part II
Regulatory Provisions
Chapter 16
GRAIN INSPECTION, CERTIFICATION, AND GRAIN CONTRACTS
Subchapter I
Grain Inspector Licensing; Certification of Commercial Grain Elevators, Grain Warehouses, and Other Grain Storage Facilities

§ 1601 Definitions.

As used in this chapter:

(1) "Department" means the State of Delaware Department of Agriculture and includes, but is not limited to, its officers, inspectors, employees, agents or representatives.

(2) "Devices" means any grain moisture testing devices.

(3) "Grain" means includes, but is not limited to, corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans, mixed grain and any other food grains, feed grains, and oilseeds which standards have been established in the United States Grain Standards Act, 7 U.S.C. Chapter 3 [7 U.S.C. §§ 71-87k].

(4) "Grain Inspector" means anyone who operates grain moisture testing devices, follows standard grain inspection procedures and uses other grain inspection equipment.

(3 Del. C. 1953 § 1601; 55 Del. Laws, c. 68; 57 Del. Laws, c. 764 § 7; 72 Del. Laws, c. 471 § 1.)

§ 1602 Registration and approval.

(a) All grain moisture testing devices shall be registered with the Department, on forms supplied by the Department. The devices used in the buying of grain shall be required to pass such inspections, at any time, as the Department may determine. Such inspections shall be made at the commercial grain elevator, warehouse, or other grain storage facility. Upon approval, inspected devices shall bear the Department's seal, permitting their use.

(b) Devices which fail to pass the inspection of the Department shall be immediately removed from service and repaired. The Department shall reinspect and approve the repair of a failed device before it can be returned to service.

(3 Del. C. 1953 § 1602; 55 Del. Laws, c. 68; 57 Del. Laws, c. 764 § 7; 72 Del. Laws, c. 471 § 1.)

§ 1603 Installation and operation.

(a) The grain moisture testing devices shall be installed in such a manner that there will be no vibrations of indicating dials. Devices with moving parts shall be properly maintained, and kept free of dust and dirt.

(b) All devices shall be operated according to the manufacturer's instructions, or in accordance with instruction issued by the Department .

(3 Del. C. 1953 § 1603; 55 Del. Laws, c. 68; 57 Del. Laws, c. 764 § 7; 72 Del. Laws, c. 471 § 1.)

§ 1604 Licensed grain inspectors.

(a) Any person engaged in the operation of a commercial grain elevator, grain warehouse or other grain storage facility shall only utilize licensed grain inspectors for all grain sampling and testing.

(b) To obtain a Grain Inspector's License applicants shall be required to furnish satisfactory evidence of good character to the Department and to pass an examination conducted by the Department. The examination shall test the applicant's ability to operate grain moisture testing devices, to use grain inspecting equipment, and knowledge of grain inspection procedures.

(c) Upon attainment of a passing score on the examination, and payment of a $10 fee, the Department shall issue a Grain Inspector License to the applicant for 2 calendar years. The license shall be renewed biennially upon successful reexamination, if the Licensed Grain Inspectors duties have been performed satisfactorily during the previous 2-year period, and upon payment of a $10 fee. Grain Inspector Licenses shall be posted at the commercial grain elevator, grain warehouse or other grain storage facility in full view of the public.

(3 Del. C. 1953 § 1604; 55 Del. Laws, c. 68; 57 Del. Laws, c. 764 § 7; 65 Del. Laws, c. 515 § 1; 72 Del. Laws, c. 471 § 1.)

§ 1605 Certification of commercial grain elevators, grain warehouses and other grain storage facilities.

Every commercial grain elevator, grain warehouse or other grain storage facility shall be certified by the Department to meet minimum standards of performance. These standards shall be determined by the Department.

(72 Del. Laws, c. 471 § 1.)

§ 1606 Violations and penalties.

Failure to comply with the provisions of this chapter shall result in the assessment of a civil penalty of not more than $10 for the first violation and not less than $25 nor more than $100 for each subsequent violation.

(3 Del. C. 1953 § 1605; 55 Del. Laws, c. 68; 72 Del. Laws, c. 471 § 1.)

§ 1607 Enforcement; administrative rules and regulations.

The Department shall enforce this chapter, and prescribe and enforce administrative rules, regulations, definitions, penalties, fees and standards in accordance with the Administrative Procedures Act.

(3 Del. C. 1953 § 1605; 55 Del. Laws, c. 68; 57 Del. Laws, c. 764 § 7; 72 Del. Laws, c. 471 § 1.)

Subchapter II

Grain Contracts of Sale, Discount Rates and Test Weight Rates

§ 1611 Grain contracts of sale, discount rates and weight rates.

(a) Subject to any contractual provision to the contrary and based upon whatever market the contracting parties agree to:

(1) The discount rates for foreign material and moisture content may not be higher than the discount rates that prevail on the day the contract is formed;

(2) The test weight rates may not be higher than the test weight rates that prevail on the day the contract is formed.

(b) This section applies to any contract for sale of grain entered into in this State provided the date of delivery is less than 1 year after the date the contract is formed.

(70 Del. Laws, c. 399 § 1; 72 Del. Laws, c. 471 § 1.)

Part II
Regulatory Provisions
Chapter 17
COMMERCIAL FEEDS

§ 1701 Title.

This chapter shall be known as the "Delaware Commercial Feed Law of 1967."
(3 Del. C. 1953 § 1701; 56 Del. Laws, c. 69.)

§ 1702 Enforcing agency.

This chapter shall be administered by the Department of Agriculture of this State, hereinafter referred to as the "Department."
(3 Del. C. 1953 § 1702; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8.)

§ 1703 Definitions of words and terms.

When used in this chapter:

(1) "Person" includes individual, partnership, corporation and association;

(2) "Distribute" means to offer for sale, sell or barter, commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder;

(3) "Distributor" means any person who distributes pursuant to subdivision (2) of this section;

(4) "Sell" or "sale" includes exchange;

(5) "Commercial feed" means all materials which are distributed for the use as feed or for mixing in feed, for animals and cultured aquatic stock other than man except:

a. Unmixed or unprocessed whole seeds and meals made directly from the entire seed;

b. Unground hay, straw, stover, silage, cobs, husks and hulls when not mixed with other materials;

c. Individual chemical compounds when not mixed with other materials;

(6) "Feed ingredient" means each of the constituent materials making up a commercial feed;

(7) "Mineral feed" means a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients;

(8) "Customer-formula feed" means a mixture of commercial feeds and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder;

(9) "Brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others;

(10) "Product name" means the name of the commercial feed which identifies it as to kind, class or specific use;

(11) "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed;

(12) "Ton" means a net weight of 2,000 pounds avoirdupois;

(13) "Percent" or "percentage" means percentage by weight;

(14) "Official sample" means any sample of feed taken by the Department or its agent and designated as "official" by the Department;

(15) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(3 Del. C. 1953 § 1703; 56 Del. Laws, c. 69; 69 Del. Laws, c. 103 § 6.)

§ 1704 Registration.

(a) Each commercial feed shall be registered before being distributed in this State; provided, however, that customer-formula feeds are exempt from registration. The application for registration shall be submitted on forms furnished by the Department, and shall also be accompanied by a label or other printed matter describing the product. Upon approval by the Department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the information required by paragraphs (2), (3), (4), and (5) of subsection (a) of § 1705 of this title. The Department may permit on the registration the alternative listing of ingredients of comparable feeding value, provided that the label for each package shall state the specific ingredients which are in such package.

(b) A distributor shall not be required to register any brand of commercial feed which is already registered under this chapter by another person.

(c) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which

designed.

(d) The Department may refuse registration of any application not in compliance with this chapter and may cancel any registration subsequently found not to be in compliance with any provision of this chapter; provided, however, that no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard before the Department and to amend his application in order to comply with the requirements of this chapter.

(3 Del. C. 1953 § 1704; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8.)

§ 1705 Labeling.

(a) Any commercial feed distributed in this State shall be accompanied by a legible label bearing the following information:

(1) The net weight;

(2) The product name and brand name, if any, under which the commercial feed is distributed;

(3) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For all mineral feeds and for those commercial feeds containing a level of added mineral ingredients established by regulation, the list shall include the following, if added: Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum percentage of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the Department. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Department. The Department may by regulation designate certain commercial feeds which need not be labeled to show guarantees for crude protein, crude fat and crude fiber;

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the Department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined;

(5) The name and principal address of the person responsible for distributing the commercial feed.

(b) When a commercial feed is distributed in this State in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at the time of delivery.

(c) A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

(1) Name and address of the mixer;

(2) Name and address of the purchaser;

(3) Date of sale;

(4) The product name and brand name, if any, and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(d) If a commercial feed or a customer-formula feed contains a nonnutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or which is intended to affect the structure or any function of the animal body, the Department may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

(3 Del. C. 1953 § 1705; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8.)

§ 1706 Registration fees.

(a) There shall be paid to the Department for each commercial feed distributed in this State an annual registration fee of $23 per brand; provided, however, that the customer-formula feeds are exempt if the registration fee is paid on the commercial feeds which they contain.

(b) All registration fees shall be transferred to the State Treasurer and paid into the General Fund of the State.

(3 Del. C. 1953 § 1706; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8; 67 Del. Laws, c. 260 § 1.)

§ 1707 Adulteration.

No person shall distribute an adulterated feed. A commercial feed or customer-formula feed shall be deemed to be adulterated:

(1) If any poisonous, deleterious or nonnutritive ingredient has been added in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label;

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(3) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;

(4) If it contains added hulls, screenings, straw, cobs or other high fiber material unless the name of each such material is stated on the label;

(5) If it contains viable weed seeds in amounts exceeding the limits which the Department shall establish by rule or regulation.

(3 Del. C. 1953 § 1707; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8.)

§ 1708 Misbranding.

No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If it is distributed under the name of another feed;

(3) If it is not labeled as required in § 1705 of this title and in regulations prescribed under this chapter;

(4) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the Department; in the adopting of such regulations the Department shall give due regard to commonly accepted definitions such as those issued by the Association of American Feed Control Officials;

(5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under the customary conditions of purchase and use.

(3 Del. C. 1953 § 1708; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8.)

§ 1709 Inspections; sampling; analysis.

(a) The Department, individually or through its authorized agent, shall sample, inspect, make analyses of, and test commercial feeds and customer-formula feeds distributed within this State at such time and place, and to such an extent as it may deem necessary to determine whether such feeds are in compliance with this chapter. The Department, individually or through its agent, may enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution.

(b) The methods of sampling and analysis shall be those adopted by the Department from sources such as the Journal of the Association of Official Agricultural Chemists.

(c) The Department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in subdivision (14) of § 1703 of this title and obtained and analyzed as provided for in subsection (b) of this section.

(d) When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the Department to the distributor and the purchaser. Upon request within 30 days the Department shall furnish to the distributor a portion of the samples concerned.

(3 Del. C. 1953 § 1709; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8.)

§ 1710 Regulations.

The Department shall enforce this chapter, and after due publicity and due public hearing may promulgate and adopt such reasonable regulations as may be necessary in order to secure the efficient administration of this chapter. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.

(3 Del. C. 1953 § 1710; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8.)

§ 1711 Detained commercial feeds; "withdrawal from distribu tion" orders; condemnation and confiscation.

(a) When the Department or its authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of this chapter or of any of the regulations promulgated under this chapter, it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the Department or the Court. The Department shall release any lot of commercial feeds so withdrawn when such distributor has complied with this chapter and the regulations issued hereunder. If compliance is not obtained within 30 days, the Department may begin, or upon request of the distributor shall begin, proceedings for condemnation.

(b) Any lot of commercial feed not in compliance with this chapter or regulations promulgated hereunder shall be subject to seizure on complaint of the Department to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter or regulations promulgated hereunder and orders the condemnation of said commercial feed, the same shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the State; provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter.

(3 Del. C. 1953 § 1711; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8.)

§ 1712 Penalties.

(a) Any person convicted of violating any of the provisions of this chapter or any regulations hereunder or the rules and regulations issued thereunder, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent the Department or its duly authorized agent in performing duties prescribed by this chapter or regulations issued hereunder, shall be fined not more than $50 for the first violation, and not less than $50 for each subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the Department shall be accepted as prima facie evidence of the composition.

(b) Nothing in this chapter shall be construed as requiring the Department or its representative to report for prosecution or for the

institution of seizure proceedings as a result of minor violations of this chapter where the public interest will be best served by a suitable notice of warning in writing.

(c) When any violation of this chapter is reported to the Attorney General, he or she shall cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the Department reports a violation for prosecution, an opportunity shall be given the distributor to present his or her views to the Department.

(d) The Department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule or regulation promulgated thereunder notwithstanding the existence of other remedies at law. Any injunction shall be issued without bond.

(e) Any person adversely affected by an act, order or ruling made pursuant to this chapter may within 45 days thereafter, bring an action in the Superior Court in the county where the enforcement official has his office, for a new trial of the issues bearing upon such chapter, order or ruling, and upon such trial the Court may issue and enforce such orders, judgments or decrees as the Court may deem proper, just and equitable.

(3 Del. C. 1953 § 1712; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1713 Publications.

The Department shall publish at least semiannually, in such form as it may deem proper, a report of the results of the analyses of official samples of commercial feeds sold within this State as compared with the analyses guaran teed in the registration and on the label.

(3 Del. C. 1953 § 1713; 56 Del. Laws, c. 69; 57 Del. Laws, c. 764 § 8.)

Part II
Regulatory Provisions
Chapter 19
LIMING MATERIALS

§ 1901 Title.

This chapter shall be known as "The Delaware Agricultural Liming Materials Act."

(3 Del. C. 1953 § 1901; 57 Del. Laws, c. 690.)

§ 1902 Enforcing agency.

This chapter shall be administered by the Department of Agriculture of the State, hereinafter referred to as the "Department."

(3 Del. C. 1953 § 1902; 57 Del. Laws, c. 690.)

§ 1903 Definitions of words and terms.

(a) "Agricultural liming materials" means all suitable materials containing calcium or magnesium in chemical form, physical condition and quantity capable of neutralizing soil acidity.

(b) "Limestone" means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

(1) "Calcitic limestone" shall derive a minimum of 36% calcium from calcium carbonate and the calcium carbonate equivalent shall not be less than 90%;

(2) "Dolomitic limestone" shall derive a minimum of 10% of its neutralizing value from magnesium carbonate and a minimum of 20% calcium from calcium carbonate and calcium carbonate equivalent of 90%.

(c) "Burnt lime" means a material, made from limestone which consists essentially of calcium oxide or combination of calcium oxide with magnesium oxide.

(d) "Hydrated lime" means a material, made from lime, which consists essentially of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and/or magnesium hydroxide.

(e) "Brand" means the term, designation, trademark or other specific designation under which an individual agricultural liming material is offered for sale.

(f) "Fineness" means the percentage by weight of the material which will pass sieves of specified sizes. The fineness shall be measured in reference to 10 mesh and 60 mesh sieves of United States standard designation.

(g) The fineness guarantee is defined as:

(1) Minimum percentage passing through a 10 mesh sieve;

(2) Minimum percentage passing through a 60 mesh sieve.

Provided, however, that in lieu of this subsection, the Department may in its regulations set minimum standards for fineness for various grades of liming materials, and such grades, when stated, shall become the minimum guarantees of the liming materials so labeled.

(h) "Ton" means a net weight of 2,000 pounds avoirdupois.

(i) "Percent" or "percentage" means by weight.

(j) "Bulk" means in nonpackaged form.

(k) "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

(l) "Person" means individual, partnership, association, firm or corporation.

(3 Del. C. 1953 § 1903; 57 Del. Laws, c. 690; 57 Del. Laws, c. 764 § 9.)

§ 1904 Labeling.

(a) Agricultural liming materials sold, offered or exposed for sale in this State shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a delivery slip, setting forth at least the following information:

(1) The name and principal office address of the manufacturer or distributor;

(2) The brand or trade name of the material;

(3) The identification of the product as to the type of the agricultural liming material;

(4) The net weight of the agricultural liming material;

(5) The minimum percentage of calcium and magnesium.

(b) No information or statement shall appear on any package, label or delivery slip which is false or misleading to the purchaser as to the quality, analysis, type or composition of the agricultural liming material.

(c) In the case of any material which has been adulterated subsequent to packaging, labeling or loading and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or delivery slip to identify the kind and degree of such adulteration.

(d) At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statement required by this section for each product.

(e) At any time after July 1, 1970, when the Department finds, after public hearing following due notice, that the requirements for expressing the guaranteed analysis of calcium and magnesium in elemental form would not impose an economic hardship on distributors and users of liming materials by reason of conflicting labeling requirements among the States, the Department may require by regulation thereafter that the "guaranteed analysis" shall contain the minimum percentages of calcium (Ca) and magnesium (Mg) in elemental form and calcium carbonate equivalent.

(3 Del. C. 1953 § 1904; 57 Del. Laws, c. 690; 57 Del. Laws, c. 764 § 9.)

§ 1905 Prohibitions.

(a) No agricultural liming material shall be sold or offered for sale in this State unless it contains the minimum of calcium and magnesium, as stated in § 1903(b)(1) and (2).

(b) No agricultural liming material shall be sold or offered for sale in this State which contains toxic materials in quantities injurious to plants.

(3 Del. C. 1953 § 1905; 57 Del. Laws, c. 690; 57 Del. Laws, c. 764 § 9.)

§ 1906 Registration.

Before any person shall sell, offer or expose for sale in this State any agricultural liming material, such person shall for each separately identified product file annually with the Department, on forms supplied by the Department or its authorized agent, an application of registration for each such product setting forth the information required by § 1904 of this title.

(3 Del. C. 1953 § 1906; 57 Del. Laws, c. 690; 57 Del. Laws, c. 764 § 9; 70 Del. Laws, c. 186 § 1.)

§ 1907 Registration fees.

Each application filed pursuant to § 1906 of this title shall be accompanied by an annual registration fee of $11.50 per product. Upon compliance with the provisions of this chapter, the registration shall be approved for the period ending on June 30 of the year next following that in which it was issued. No person shall be required to register any agricultural liming material for which a certificate of registration has been filed by the manufacturer or other person responsible for the material.

(3 Del. C. 1953 § 1907; 57 Del. Laws, c. 690; 57 Del. Laws, c. 764 § 9; 67 Del. Laws, c. 260 § 1.)

§ 1908 Inspection fees.

Within the 30 day period following June 30 and December 31 of each year, each registrant shall submit, on a form furnished by the Department or its authorized agent, a semiannual statement setting forth the number of net tons of each agricultural liming material sold by him for use in this State during the previous 6 month period. Such statement shall be accompanied by payment of the inspection fee at the rate of 5 cents per ton. Such reports shall be confidential and no information therein shall be disclosed or published in any manner that will reveal the operation of any registrant.

(3 Del. C. 1953 § 1908; 57 Del. Laws, c. 690; 57 Del. Laws, c. 764 § 9.)

§ 1909 Sampling; analysis.

The Department is empowered, and it shall be the duty of its agent, to sample agricultural liming materials, to analyze them and to report to the registrant the results of its analysis. Results shall become official and public after 10 days. The Department or its authorized agent shall for the purpose of taking samples have full access during business hours to all places where agricultural liming materials are offered for sale. Methods of sampling and analysis shall be taken from among such sources as those recognized by the Association of Official Analytical Chemists. Upon written notice, the Department or its agent may remove from sale any lot of agricultural liming material until it has been determined that the material is in full compliance with this chapter.

(3 Del. C. 1953 § 1909; 57 Del. Laws, c. 690.)

§ 1910 Penalties.

Any person convicted of violating this chapter or the rules and regulations promulgated thereunder shall be fined not less than $50 nor more than $200 to be enforced by summary proceedings in a court of competent jurisdiction. Nothing in this chapter shall be construed as requiring the Department or its authorized agent to report for prosecution, or for the institution of seizure proceedings as a result of, minor violations of this chapter when they believe that the public interest will best be served by a suitable written warning.

(3 Del. C. 1953 § 1910; 57 Del. Laws, c. 690; 57 Del. Laws, c. 764 § 9.)

§ 1911 Assessment for deficiency.

(a) If the analysis of any agricultural liming material shall fall as much as, or more than, 10% in value below the value of the manufacturer's guarantee, the Department of Agriculture shall assess twice the value of such deficiency against the manufacturer, dealer or

agent who sold such agricultural liming material. The assessment shall be based upon the selling price of such agricultural liming material, and the Department of Agriculture shall require the manufacturer, dealer or agent to make good such assessment to all persons who purchased such lot of agricultural liming material from which such deficient sample or samples were drawn, take receipt therefor and forward it promptly to the Department of Agriculture. If the purchaser or purchasers cannot be found, the amount of such assessment shall be paid to the Department of Agriculture who shall transfer such funds to the State Treasurer to be credited to the General Fund of this State.

(b) The Department of Agriculture may seize any agricultural liming material belonging to such manufacturer, dealer or agent, if the assessment shall not be paid within 3 months after notice to such manufacturer, dealer or agent has been given by the Department of Agriculture.

(3 Del. C. 1953 § 1911; 57 Del. Laws, c. 690; 57 Del. Laws, c. 764 § 9.)

§ 1912 Rules and regulations.

The Department, after reasonable notice and hearing, is empowered to promulgate and enforce rules and regulations for the administration of this chapter and to grant exemptions from specific requirements of this chapter as, from time to time, may be deemed necessary.

(3 Del. C. 1953 § 1912; 57 Del. Laws, c. 690.)

§ 1913 Publications.

The Department shall publish at least semiannually, in such forms as it may deem proper, a report of the results of the analyses of official samples of liming materials sold within the State as compared with the analyses guaranteed in the registration and on the label.

(3 Del. C. 1953 § 1913; 57 Del. Laws, c. 690.)

§ 1914 Delegation of duties.

All authority vested in the Department of Agriculture by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of Agriculture as may be designated for such purpose.

(3 Del. C. 1953 § 1914; 57 Del. Laws, c. 690.)

Part II
Regulatory Provisions
Chapter 21
COMMERCIAL FERTILIZERS AND SOIL CONDITIONERS

§ 2101 Title.

This chapter shall be known as the Delaware Commercial Fertilizer and Soil Conditioner Law of 1971.
(3 Del. C. 1953 § 2101; 58 Del. Laws, c. 157.)

§ 2102 Enforcing agency.

This chapter shall be administered by the State Department of Agriculture of the State, hereinafter referred to as the Department.
(3 Del. C. 1953 § 2102; 58 Del. Laws, c. 157.)

§ 2103 Definitions of words and terms.

When used in this chapter:

(1) The term "commercial fertilizer" means any substance containing 1 or more recognized plant nutrient(s) which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and gypsum, and other products exempted by regulation of the Secretary;

a. A "fertilizer material" is a commercial fertilizer which either:

1. Contains important quantities of no more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

2. Has approximately 85% of its plant nutrient content present in the form of a single chemical compound, or

3. Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration;

b. A "mixed fertilizer" is a commercial fertilizer containing any combination of mixture of fertilizer materials;

c. A "specialty fertilizer" is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries;

d. A "bulk fertilizer" is a commercial fertilizer distributed in a non-packaged form.

(2) The term "brand" means a term, design, or trademark used in connection with 1 or several grades of commercial fertilizer.

(3) The term "Department" means State Department of Agriculture.

(4) The term "Secretary" means the Secretary of the State Department of Agriculture or the Secretary's duly authorized delegates.

(5) The term "open formula" means mixed fertilizer labeled so as to show in addition to requirements of § 2105 the name and grade of materials and the quantity of each used per ton in compounding or mixing.

(6) The term "soil conditioner" means any substance or mixture of substances imported, manufactured, prepared or sold for manurial soil-enriching or soil-corrective purposes or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or producing any chemical or physical change in the soil, except commercial fertilizer as defined in this chapter, and unmanipulated animal and vegetable manures, agricultural liming materials and gypsum.

(7) Guaranteed analysis:

a. Until the Department prescribes the alternative form of "guaranteed analysis" in accordance with paragraph b. hereof, the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

1. Total Nitrogen (N) — percent
Available Phosphoric Acid (P_2O_5) — percent
Soluble Potash (K_2O) — percent

2. For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphate materials, the total phosphoric acid and/or degree of fineness may also be guaranteed;

3. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the Secretary. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the Secretary and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the Secretary;

4. Potential bisicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton, when required by regulation;

b. When the Secretary finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by

reason of conflicting labeling requirements among the states, the Secretary may require by regulation thereafter that the "guaranteed analysis" shall be in the following form:

Total Nitrogen (N) — percent
Available Phosphorus (P) — percent
Soluble Potassium (K) — percent

Provided, however, that the effective date of said regulation shall be not less than 6 months following the issuance thereof; and provided, further, that for a period 2 years following the effective date of said regulation the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

(8) The term "grade" means the percentage of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis. Provided, however, that fertilizer materials, bone meal, manures, and similar raw materials may be guaranteed in fractional units.

(9) The term "official sample" means any sample of commercial fertilizer or soil conditioner taken by the Secretary or the Secretary's agent and designated as "official" by the Secretary.

(10) The term "ton" means a net weight of 2,000 pounds avoirdupois.

(11) The term "percent" or "percentage" means the percentage by weight.

(12) The term "person" includes individual, partnership, association, firm and corporation.

(13) The term "distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes or blends commercial fertilizer, or soil conditioner, or who offers for sale, sells, barters or otherwise supplies commercial fertilizer or soil conditioner in this State.

(14) The term "registrant" means the person who registers commercial fertilizer or soil conditioner under this chapter.

(15) The term "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a commercial fertilizer or soil conditioner.

(16) The term "labeling" means all written, printed or graphic matter, upon or accompanying any commercial fertilizer or soil conditioner or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such commercial fertilizers or soil conditioners.

(3 Del. C. 1953 § 2103; 58 Del. Laws, c. 157; 70 Del. Laws, c. 186 § 1.)

§ 2104 Registration.

(a) Each brand and grade of commercial fertilizer shall be registered before being distributed in this State. The application for registration shall be submitted to the Department on a form furnished by the Department, and shall be accompanied by a fee of $1.15 per brand and grade, except those fertilizers sold in packages of 10 pounds or less shall be registered at a fee of $28.75 each. Upon approval by the Department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

(1) The net weight;

(2) The brand and grade;

(3) The guaranteed analysis;

(4) The name and address of the registrant.

(b) Each soil conditioner before being distributed in the State will be registered. The application for this registration will include a label or facsimile thereof for said material, and the Department may require proof to substantiate claims made for the material.

(c) Notwithstanding subsections (a) and (b) of this section, a distributor shall not be required to register any commercial fertilizer or soil conditioner which is already registered under this chapter by another person, providing the label does not differ in any respect.

(d) Also, notwithstanding any other provision of this section, a distributor shall not be required to register each grade of commercial fertilizer or soil conditioner formulated according to specifications which are furnished by a consumer prior to mixing, but shall be required to register his firm in a manner and at a fee as prescribed in Department regulations and to label such fertilizer as provided in § 2105(b).

(e) All amendments to the terms of registration or application therefor are subject to fees specified in subsection (a) hereof and § 2106.

(3 Del. C. 1953 § 2104; 58 Del. Laws, c. 157; 67 Del. Laws, c. 260 § 1.)

§ 2105 Labels.

(a) Any commercial fertilizer distributed in this State in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by § 2104(a)(1)-(4) of this chapter. In case of bulk shipments, this information in written or printed form shall accompany delivery and be supplied to the purchaser at the time of delivery.

(b) A commercial fertilizer formulated according to the open formula method according to specifications furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis of each ingredient, and the name and address of the distributor; and after mixing, the guaranteed analysis on the label is to be determined by percentage of weight of a ton the same as is defined under grade in § 2103(8) of this chapter.

(3 Del. C. 1953 § 2105; 58 Del. Laws, c. 157.)

§ 2106 Inspection fees and tonnage reports.

(a) There shall be paid to the Department for all commercial fertilizers or soil conditioners distributed in this State an inspection fee at the rate of 10 cents per ton; provided that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be paid to the Department, which shall deposit the same in the General Fund.

On individual packages of commercial fertilizer or soil conditioners containing 10 pounds or less, there shall be paid in lieu of the annual registration fee of $1 per brand and grade and the 10 cents per ton inspection fee, an annual registration fee and inspection fee of $25 for each brand and grade of fertilizer and soil conditioners sold or distributed. Where a person sells commercial fertilizer or soil conditioners in packages of 10 pounds or less and in packages over 10 pounds, this annual registration and inspection fee of $25 shall apply only to that portion sold in packages of 10 pounds or less, and that portion sold in packages over 10 pounds shall be subject to the same inspection fee of 10 cents per ton as provided in this chapter.

(b) Every person who distributes a commercial fertilizer or soil conditioner in this State shall file with the Department on forms furnished by the Department a semiannual statement for the periods ending December 31, and June 30, setting forth the number of net tons of each commercial fertilizer or soil conditioner distributed in this State during that period. The report shall be due on or before the last day of the month following the close of each period and with such statement the inspection fee shall be filed according to the rate set forth in subsection (a) of this section.

If the tonnage report is not filed and the payment of inspection fee is not made within 30 days after the end of each period, a surcharge amounting to 10 percent (minimum $10) per month of the amount shall be assessed against the registrant, and the Department shall have a lien against the registrant for the amount owed, including surcharge.

(c) When more than one person is involved in the distribution of a commercial fertilizer or soil conditioner, the last person who has the fertilizer or soil conditioner registered and who distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment have already been submitted by a prior distributor of a fertilizer or soil conditioner.

(d) No information furnished the Department under this section shall be disclosed publicly in such a way as to divulge confidential information about the business operation of anyone.

(3 Del. C. 1953 § 2106; 58 Del. Laws, c. 157.)

§ 2107 Inspection; sampling; analysis.

(a) It shall be the duty of the Secretary to sample, inspect, and test commercial fertilizers or soil conditioners distributed within this State at any time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers or soil conditioners are in compliance with the provisions of this chapter. The Secretary, individually or through the Secretary's agent, is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers or soil conditioners subject to the provisions of this chapter and the rules and regulations pertaining thereto, and to the records relating to their distribution; provided, however, that the action of the Secretary or his or her agent hereunder shall be with the consent of the person having control over the property in which such fertilizer or soil conditioner is kept, and if without such consent, then the Secretary or his or her agent is to obtain a valid search warrant therefor, specifying the premises to be searched and the purpose of the search, and setting forth probable cause.

(b) The methods of analysis and sampling shall be those adopted by the Secretary from sources such as the Association of Official Analytical Chemists.

(c) The Secretary, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in § 2103(9), and obtained and analyzed as provided for in subsection (b) of this section.

(d) The results of official analysis of commercial fertilizers or soil conditioners and portions of official samples shall be distributed by the Secretary as provided in the regulations.

(3 Del. C. 1953 § 2107; 58 Del. Laws, c. 157; 70 Del. Laws, c. 186 § 1.)

§ 2108 Plant food deficiency.

(a) If analysis shows that a commercial fertilizer is deficient in 1 or more of its guaranteed primary plant foods (NPK) beyond the "investigational allowances" as established by published regulation, or if the overall index value of the fertilizer is below the level established by regulation, a penalty of 2.3 times the commercial value (as defined in § 2109) of such deficiency(s) shall be assessed.

(b) Deficiencies beyond the investigational allowances as established by regulation as provided in subsection (a) of this section in any other constituent(s) covered under § 2103(7)a.2., 3., and 4. of this chapter, which the registrant is required to or may guarantee, shall be evaluated and penalties prescribed therefor by the Secretary by published regulation.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of commercial fertilizer represented by the sample analyzed within 3 months after the date of notice from the Secretary to the registrant, receipts taken therefor and promptly forwarded to the Secretary. If said consumers cannot be found, the amount of the penalty shall be paid to the Department which shall deposit same in the General Fund.

(3 Del. C. 1953 § 2108; 58 Del. Laws, c. 157; 67 Del. Laws, c. 260 § 1.)

§ 2109 Commercial value.

For the purpose of determining the commercial values to be applied under the provisions of § 2108, the Secretary shall determine and publish annually the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this State. If guarantees are as provided in § 2103(7)b., the value shall be per unit of nitrogen, phosphorus and potassium. The values so determined and published shall be used in determining and assessing penalties.

(3 Del. C. 1953 § 2109; 58 Del. Laws, c. 157.)

§ 2110 Misbranding.

No person shall distribute misbranded fertilizer or soil conditioner. A commercial fertilizer or soil conditioner shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If it is distributed under the name of another fertilizer product or soil conditioner;

(3) If it is not labeled as required in § 2105 of this title and in accordance with regulations prescribed under this chapter;

(4) If it purports to be or is represented as a commercial fertilizer or soil conditioner or is represented as containing a plant nutrient or commercial fertilizer or soil conditioner, unless such plant nutrient or commercial fertilizer or soil conditioner conforms to the definition of identity, if any, prescribed by regulation of the Secretary; in the adopting of such regulations the Secretary shall give due regard to commonly accepted definitions and official fertilizer or soil conditioner terms such as those issued by the Association of American Plant Food Control Officials.

(3 Del. C. 1953 § 2110; 58 Del. Laws, c. 157.)

§ 2111 Adulteration.

No person shall distribute an adulterated fertilizer product or soil conditioner. A commercial fertilizer or soil conditioner shall be deemed to be adulterated:

(1) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life are not shown upon the label;

(2) If its composition falls below or differs from that which it is purported to possess by its labeling;

(3) If it contains unwanted crop seed or weed seed.

(3 Del. C. 1953 § 2111; 58 Del. Laws, c. 157.)

§ 2112 Publications.

The Secretary shall publish at least annually and in such forms as the Secretary may deem proper:

(1) Information concerning the distribution of commercial fertilizers and soil conditioners;

(2) Results of analyses based on official samples of commercial fertilizers distributed within the State as compared with the analyses guaranteed under §§ 2104 and 2105.

(3 Del. C. 1953 § 2112; 58 Del. Laws, c. 157; 70 Del. Laws, c. 186 § 1.)

§ 2113 Rules and regulations.

The Secretary may prescribe and enforce such rules and regulations relating to investigational allowances, definitions, records, and the distribution of commercial fertilizers and soil conditioners as may be necessary to carry into effect the full intent and meaning of this chapter. All regulations promulgated pursuant to this chapter shall be published and made available to all citizens.

(3 Del. C. 1953 § 2113; 58 Del. Laws, c. 157.)

§ 2114 Fertilizer and soil conditioner short in weight.

If any commercial fertilizer or soil conditioner in the possession of the consumer is found by the Secretary to be short in weight, the registrant of said commercial fertilizer or soil conditioner shall within 30 days after official notice from the Secretary pay to the consumer a penalty equal to 4 times the value of the actual shortage.

(3 Del. C. 1953 § 2114; 58 Del. Laws, c. 157.)

§ 2115 Cancellation of registrations.

The Department may cancel the registration of any brand of commercial fertilizer or soil conditioner or refuse to register any brand of commercial fertilizer or soil conditioner as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of this chapter or any rules and regulations promulgated thereunder; provided that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the Secretary.

(3 Del. C. 1953 § 2115; 58 Del. Laws, c. 157.)

§ 2116 "Stop sale" orders.

The Secretary may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lots of

commercial fertilizer or soil conditioner to hold such commercial fertilizer or soil conditioner at a designated place when the Secretary finds that it is being offered or exposed for sale in violation of any of the provisions of this chapter, until the law has been complied with and said commercial fertilizer or soil conditioner is released in writing by the Secretary, or said violation has been otherwise legally disposed of by written authority. Said "stop sale" orders shall remain effective for 30 days, or until an injunction is obtained pursuant to § 2118(e), or until voided by a court of competent jurisdiction, whichever occurs first. Provided, however, that no appeal from any "stop sale" order shall operate as a stay thereof. The Secretary shall release the commercial fertilizer or soil conditioner so withdrawn when the requirements of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

(3 Del. C. 1953 § 2116; 58 Del. Laws, c. 157.)

§ 2117 Seizure, condemnation, and sale.

Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the Secretary to a court of competent jurisdiction in the county in which said commercial fertilizer or soil conditioner is located. In the event one court finds the said commercial fertilizer or soil conditioner to be in violation of this chapter and orders the condemnation of said commercial fertilizer or soil conditioner, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil conditioner and the laws of the State. Provided that in no instance shall the disposition of said commercial fertilizer or soil conditioner be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or soil conditioner or for permission to process or relabel said commercial fertilizer or soil conditioner to bring it into compliance with this chapter.

(3 Del. C. 1953 § 2117; 58 Del. Laws, c. 157.)

§ 2118 Violations.

(a) If it shall appear from the examination of any commercial fertilizer or soil conditioner that any of the provisions of this chapter or the rules and published regulations issued thereunder have been violated, the Secretary shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken, and any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the Secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the Secretary may certify the fact to the Attorney General.

(b) Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be punished in the discretion of the Superior Court, which shall have exclusive original jurisdiction over offenses under this chapter.

(c) Nothing in this chapter shall be construed as requiring the Secretary or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when the Secretary believes that the public interests will be best served by a suitable notice of warning in writing.

(d) It shall be the duty of the Attorney General to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(e) The Secretary is hereby authorized to apply for and the Court of Chancery is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Injunctions shall be issued without bond.

(3 Del. C. 1953 § 2118; 58 Del. Laws, c. 157; 70 Del. Laws, c. 186 § 1.)

§ 2119 Hearing required.

If, after notification by the Secretary of the Department's order penalizing any person under §§ 2108 and 2114 of this title, denying registration under § 2104 of this title, or cancelling registration under § 2115 of this title, any aggrieved person shall so demand in writing, the Secretary shall hold a hearing. At such hearing a record shall be kept of all evidence and testimony, which shall be under oath, and of the Secretary's findings and decisions. Based on the evidence presented and the law set forth in this chapter, as well as regulations adopted pursuant thereto, the Secretary shall affirm, revoke or modify the Department's original order.

(3 Del. C. 1953 § 2119; 58 Del. Laws, c. 157.)

§ 2120 Appeals.

Nothing in this chapter shall be construed to prohibit appeals to a court of competent jurisdiction by persons aggrieved by a decision of the Secretary under § 2119. Such an appeal shall be on the record and confined to a determination as to whether the Secretary abused his or her discretion, provided that no appeal shall stay an order by the Department.

(3 Del. C. 1953 § 2120; 58 Del. Laws, c. 157; 70 Del. Laws, c. 186 § 1.)

§ 2121 Exchanges between manufacturers.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil conditioners to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

(3 Del. C. 1953 § 2121; 58 Del. Laws, c. 157.)

§ 2122 Delegation of duties.

All authority vested in the State Secretary of Agriculture by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of Agriculture as may be designated for said purpose.

(3 Del. C. 1953 § 2122; 58 Del. Laws, c. 157.)

Part II
Regulatory Provisions
Chapter 22
NUTRIENT MANAGEMENT
Subchapter I
General Provisions

§ 2201 Declaration of purpose.

The purposes of this chapter are:

(1) To regulate those activities involving the generation and application of nutrients in order to help improve and maintain the quality of Delaware's ground and surface waters and to meet or exceed federally mandated water quality standards, in the interest of the overall public welfare;

(2) To establish a certification program that encourages the implementation of best management practices in the generation, handling or land application of nutrients in Delaware;

(3) To establish a nutrient management planning program; and

(4) To formulate a systematic and economically viable nutrient management program that will both maintain agricultural profitability and improve water quality in Delaware.

(72 Del. Laws, c. 60 § 1.)

§ 2202 Definitions.

For the purposes of this chapter:

(1) "Agricultural commodity" means any agricultural product, including, but not limited to, plants, animals and plant and animal products grown, raised or produced within the State for use as food, feed, seed or any aesthetic, industrial or chemurgic purpose.

(2) "Animal unit" shall be as defined by the United States Department of Agriculture.

(3) "Applicant" means any person seeking a certificate from the Commission.

(4) "Best management practices" means those practices that have been identified as such by the Commission.

(5) "CAFO NPDES Program" means a regulatory program to issue a National Pollution Discharge Elimination System (NPDES) permit to a Concentrated Animal Feeding Operation (CAFO) in this State, and to undertake related activities. The CAFO NPDES Program is established pursuant to, among other authorities, the Clean Water Act [33 U.S.C. § 1251 et seq.] and Memorandum of Understanding between the Delaware Department of Natural Resources and Environmental Control (DNREC) and the Environmental Protection Agency (EPA) dated May 4, 1983, as amended.

(6) "Certification" means the recognition by the DNMC that a person has met the qualification standards established by the DNMC and has been issued a written certificate authorizing such person to perform certain functions.

(7) "Commercial processor" means an individual, partnership, corporation, association or other business unit that controls, through contracts, vertical integration or other means, several stages of production and marketing of any agricultural commodity.

(8) "Commission" or "DNMC" means the Delaware Nutrient Management Commission.

(9) "Commissioner" means a member of the DNMC.

(10) "Critical area targets" means watersheds, subwatersheds or sectors where water quality conditions merit special attention, where resources should be directed and for which incentives should be provided.

(11) "Environmental coordinator" means an employee of the Department of Agriculture who acts on behalf of the Commission as a liaison between the Commission and persons against whom a complaint for a violation of this chapter or Commission regulation has been brought.

(12) "Nutrient management plan" or "plan" means a plan by a certified nutrient consultant to manage the amount, placement, timing and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

(13) "Nutrients" means nitrogen, nitrate, phosphorus, organic matter and any other elements necessary for or helpful to plant growth.

(14) "Person" means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

(15) "Program administrator" or "NMPA" means the 1 exempt employee of the Department of Agriculture who is responsible for the operation of the State Nutrient Management Program.

(16) "Secretary" means the Secretary of the Delaware Department of Agriculture or his/her designee.

(17) "State nutrient management program" or "SNMP" means all the program elements developed by the Commission, including, but not limited to, establishing critical areas for targeting programs, establishing best management practices to reduce nutrient losses,

developing educational and certification programs, developing nutrient management plan requirements, developing incentive programs that encourage compliance, making recommendations for transportation of nutrients, and determining appropriate alternative uses.

(72 Del. Laws, c. 60 § 1; 78 Del. Laws, c. 37 § 1.)

Subchapter II

Delaware Nutrient Management Commission

§ 2220 Delaware Nutrient Management Commission; general powers and duties.

(a) The Delaware Nutrient Management Commission is hereby established. The Commission shall have the power to develop, review, approve and enforce regulations governing the certification of individuals engaged in the business of land application of nutrients and the development of nutrient management plans as set forth in this chapter. In addition, the Commission shall:

(1) Consider the establishment of critical areas for targeting of other voluntary or regulatory programs;

(2) Establish best management practices to reduce nutrient losses to the environment;

(3) Develop educational and awareness programs designed to voluntarily curtail use of nutrients by persons not otherwise covered by this chapter;

(4) Consider the development of a transportation and alternative use incentive program to move nutrients from areas with overabundance to areas needing nutrient sources;

(5) Make such other recommendations to the Secretary that it deems important for the furtherance of the goals of this Chapter; and

(6) Establish the elements and general direction of the State Nutrient Management Program.

(b) The Commission, in carrying out its duties under this chapter, shall consider comments from affected stakeholders and others interested in the activities of the Commission, including, but not limited to, the University of Delaware and other state and federal agencies, nonprofit groups, and others with an interest in nutrient management. In addition, the Commission shall consider prior work of the Governor's Agricultural Industry Advisory Committee on Nutrient Management.

(c) Notwithstanding the foregoing, the Commission shall not hold any person or persons certified pursuant to this chapter responsible for violations committed by another person.

(72 Del. Laws, c. 60 § 1.)

§ 2221 Adoption of regulations; voting; considerations.

(a) With the guidance, advice and consent of the Commission, the Secretary shall, by July 1, 2000, develop and adopt regulations to implement this chapter. A majority vote of the full Commission shall constitute consent for purposes of this subsection. Regulations shall be adopted in accordance with the provisions of the Delaware Administrative Procedures Act.

(b) In developing regulations concerning nutrient management planning, the Secretary and the Commission shall consider any waste management planning requirements imposed on animal producers or nutrient users through their commercial processor and shall, to the maximum extent possible, strive to reduce any duplication in effort on the part of the contractor or property owner.

(c) The Commission may not approve any regulation and the Secretary may not promulgate any regulation that requires tilled lands to be converted for grass filter strips, vegetated and/or forested buffer strips along Delaware's lakes, streams, rivers, ponds, drainage ditches or any other natural or artificial conveyance system.

(72 Del. Laws, c. 60 § 1.)

§ 2222 Composition; appointment; qualifications and term; compensation; vacancies; civil liability.

(a) The Delaware Nutrient Management Commission shall consist of 15 voting members and 4 ex officio members. The 15 voting members shall consist of the Director of the Division of Watershed Stewardship of the Delaware Department of Natural Resources and Environmental Control or his/her designee, 4 members appointed by the Governor, 3 members appointed by the President Pro Tempore of the Senate, 2 members appointed by the Senate Minority Leader, 3 members appointed by the Speaker of the House, and 2 members appointed by the House Minority Leader.

(b) The 14 appointed members of the Commission shall be residents of the State, shall have participated in the industry or organization they represent for at least 5 years, and shall consist of 7 full-time farmers (2 from New Castle County, 2 from Kent County, and 3 from Sussex County), 1 commercial/agricultural nutrient applicator, 1 member of the commercial nursery industry, 1 golf course/lawn care industry representative, 2 members from 1 or more community-based environmental advocacy groups, 1 nutrient consultant, and 1 public citizen. The 7 full-time farmers shall further consist of:

(1) One dairy farmer;

(2) One swine producer;

(3) One equine operation owner;

(4) Two poultry farmers; and

(5) Two row-crop farmers (1 grain and 1 vegetable).

(c) The Governor shall appoint 1 farmer from Sussex County, the representatives from the commercial nursery industry, the golf

course/lawn care industry and the public citizen. The Senate shall appoint 3 farmers (1 from each county), the nutrient consultant and 1 member from a community-based environmental group. The House shall appoint 3 farmers (1 from each county), the commercial applicator and 1 member from a community-based environmental advocacy group.

(d) The Governor shall appoint the Chairperson of the Commission from the 7 full-time farmers whose duty it will be to call, adjourn and preside over all Commission meetings.

(e) The term of office of each appointed member of the Commission shall be 3 years from the 15th day of March in the year of the member's appointment and until the member's successor shall qualify.

(f) Each appointed member of the Commission shall receive compensation of $100.00 per meeting. Commission members shall be compensated for no more than 16 meetings per year. Commission members shall be entitled to be paid reasonable expenses for traveling to and from any Commission or Commission sub-committee meeting or conference attended on official business for the Commission.

(g) Vacancies in any appointed position on the Commission for any reason other than the expiration of term of office shall be filled by the previous appointing authority for the unexpired term of any Commissioner. In each year where there are 5 appointed positions available, the Governor, the President Pro Tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House and the Minority Leader of the House shall each appoint 1 Commissioner to the Commission. In each year where there are 4 appointed positions available, the Governor shall appoint 2 Commissioners and the Speaker of the House and the President Pro Tempore of the Senate shall each appoint 1 Commissioner to the Commission.

(h) All appointed Commissioners shall remain eligible for reappointment upon the expiration of their term with the exception of the public citizen, who may serve only 1 term unless rendered ineligible for reappointment by the provisions of this Code or Commission regulations. The public citizen appointment shall be alternated between the 3 counties.

(i) Any appointed member of the Commission who misses 3 consecutive meetings or is otherwise recommended for removal by the Commission may be removed by the appointing authority.

(j) Appointed Commissioners shall be appointed to their 1st terms in the following manner:

(1) Five Commissioners shall be appointed for a term of 1 year;

(2) Five Commissioners shall be appointed for a term of 2 years; and

(3) Four Commissioners shall be appointed for a term of 3 years.

Thereafter, each appointed Commissioner shall be appointed for a term of 3 years.

(k) The Nutrient Management Program Administrator (NMPA) shall be a full-time, exempt state position selected by the Commission and created within the Department of Agriculture who shall act as the administrator of and be responsible for the operation of the State Nutrient Management Program.

(l) The 4 ex officio members of the Commission shall include the Secretary of the Department Agriculture, the Secretary of the Department of Natural Resources and Environmental Control, and the Secretary of the Department of Health and Social Services, or their respective designees, and the Nutrient Management Program Administrator.

(m) In any civil action against the Commission or any of its members, civil liability shall be determined pursuant to the provisions of Chapter 40 of Title 10.

(72 Del. Laws, c. 60 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 395 § 319; 77 Del. Laws, c. 430 § 1; 78 Del. Laws, c. 268 § 1.)

Subchapter III

State Nutrient Management Program

§ 2240 State Nutrient Management Program; powers and duties of the Commission.

The State Nutrient Management Program (SNMP) shall consist of:

(1) Certification of persons directly involved with the generation or application of nutrients within the State, as limited by § 2241 of this title;

(2) The development of and implementation of best management practices designed to improve water quality, optimize nutrient use and maintain a profitable agricultural industry in the State;

(3) Educational programs through which applicants shall be instructed in the best management practices established by the Commission;

(4) A method developed by the Commission and instituted prior to granting of any certificate to evaluate an applicant's comprehension of the best management practices established by the Commission; and

(5) Any other program elements instituted by the Commission.

(72 Del. Laws, c. 60 § 1.)

§ 2241 Requirement for certification; classifications.

(a) Beginning January 1, 2004, all persons who conduct the following activities shall be duly certified by the Commission in accordance with Commission regulations or shall utilize a duly certified person or firm:

(1) Operate any animal feeding operation in excess of 8 animal units;

(2) Apply nutrients to lands in excess of 10 acres or waters as a component of a commercial venture or lands that he or she owns, leases or otherwise controls; or

(3) Advise or consult with persons required by this chapter to be certified by the Commission.

(b) The Commission shall establish by regulation the following classifications for certification of nutrient handlers for use in the SNMP:

(1) Nutrient generator: a person within the State who operates a facility that produces organic or inorganic nutrients;

(2) Private nutrient handler: A person in this State who applies organic or inorganic nutrients to lands or waters he or she owns, leases or otherwise controls;

(3) Commercial nutrient handler: A person in this State who applies organic or inorganic nutrients to lands or waters as a component of a commercial or agricultural business in exchange for a fee or service charge;

(4) Nutrient consultant: A person in this State who is engaged in the activities of advising or consulting regarding the formulation, application or scheduling of organic or inorganic nutrients within the State.

(c) The Commission may subclassify any certificates described in subsection (b) of this section as necessary. Separate subclassifications may be specified as to the method used by nutrient handlers to apply nutrients, the use of specific quantities or types of nutrients, or any other identifiable characteristics of nutrient management the Commission deems necessary.

(d) These certification requirements shall not apply to individuals who are performing nutrient application services under the direct supervision of a certified person as a private or commercial nutrient handler.

(72 Del. Laws, c. 60 § 1.)

§ 2242 Certification; applications.

(a) Applications for certification shall be made to the Commission in writing on a form designated by the Commission.

(b) The Commission shall develop and approve minimum criteria for certification, which shall be included in regulations promulgated by the Secretary.

(c) The Commission may establish by regulation a yearly fee not to exceed $100 for each certificate.

(d) If the Commission finds the applicant qualified to handle nutrients in the classifications the applicant has applied for, the Commission may issue a certificate limited to the classifications for which the applicant is qualified. The Commission may limit the certificate of the applicant based on any subclassification the Commission has established. If a certificate is not issued as applied for, the Commission shall inform the applicant in writing of the reasons therefor.

(72 Del. Laws, c. 60 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2243 Same — Denial.

(a) The Commission may refuse to grant any certificate if the applicant fails to meet the minimum criteria for certification or has been found to have violated this chapter or Commission regulations related to the generation or application of nutrients in this State.

(b) All decisions of the Commission relating to the denial of a certificate shall be final and conclusive unless the person who was denied a certificate shall appeal that denial pursuant to provisions of § 2262 of this title.

(72 Del. Laws, c. 60 § 1.)

§ 2244 Same — Suspension, modification; revocation.

(a) The Commission may, after notice and opportunity for a hearing, suspend or modify any certificate granted under this chapter or fine any person against whom a complaint has been brought, or both, where the Commission has reasonable grounds to believe that the person against whom a complaint has been brought is responsible for any violations of this chapter or Commission regulations. The Commission shall furnish the person accused of a violation with notice of the time and place of hearing, which notice shall be served personally or by registered mail directly to such person's place of business or last known address with postage fully paid no sooner than 10 days but within 21 days of the time fixed for the hearing.

(b) The Commission may, after notice and opportunity for a hearing, suspend, modify or revoke any certificate granted under this chapter if the person certified has been found guilty of any violation of this chapter or Commission regulations.

(c) All decisions of the Commission relating to suspension, modification or revocation of a certificate shall be final and conclusive unless the person whose certificate was suspended, modified or revoked appeals according to the provisions of § 2263 of this title.

(72 Del. Laws, c. 60 § 1.)

§ 2245 Same — Renewal.

(a) The Commission shall establish the length of time that certificates shall remain in full force and effect, and if they are to expire, the procedure for renewal.

(b) All decisions of the Commission relating to the refusal of the Commission to renew a certificate shall be final and conclusive unless the person whose certificate was not renewed shall appeal pursuant to the provisions of § 2262 of this title.

(72 Del. Laws, c. 60 § 1.)

§ 2246 Commercial processors.

(a) On or before July 1, 2000, or prior to commencing operations, each commercial processor operating in the State shall file with the Commission a plan under which the commercial processor either directly or under contract with a third party shall:

(1) Provide or assist in providing technical assistance to growers with whom it contracts on the proper management and storage of waste in accordance with best management practices approved by the Commission;

(2) Provide or assist in providing continuing education programs on proper waste management that is protective of Delaware's environment for the growers with whom it contracts, as well as other persons who may handle or utilize such waste;

(3) Conduct or fund research and demonstration programs that will contribute to improved waste management practices;

(4) Formulate and implement nutrient reduction strategies that effectively minimize the addition of nutrients to the environment without having adverse health impacts on animals or reduction in the growth of animals; and

(5) Report annually to the Commission on the activities it has undertaken pursuant to its plan and any amendments thereto.

(b) This section is not to be construed as a mandate to involve commercial processors in farm activities not related to waste management.

(72 Del. Laws, c. 60 § 1.)

§ 2247 Nutrient management plans.

(a) All animal feeding operations with greater than 8 animal units or any person who owns, leases or otherwise controls property in excess of 10 acres upon which nutrients are applied shall develop and implement a nutrient management plan in accordance with the schedule outlined in this section. All nutrient management plans shall include, but not be limited to:

(1) Field maps showing reference points (such as buildings, stream, irrigation equipment, etc.), number of acres and soil types;

(2) Soil and organic waste analyses;

(3) Current and planned crop rotations;

(4) Expected yields based on best 4 out of 7 year data or, in the absence thereof, soil productivity charts; and

(5) Recommended rates, timing and methods of nutrient applications.

(b) Nutrient management plans shall specify the level of nutrient applications that are needed to attain expected crop yields as defined in paragraph (a)(4) of this section. Applications of phosphorus to high phosphorous soils cannot exceed a 3-year crop removal rate. Nitrogen applications cannot exceed the expected yield, as defined in paragraph (a)(4) of this section of the specific crop.

(c) All animal waste management plans, nutrient management plans and records of implementation shall be kept by the land owner or person responsible for the plans or records. Animal waste management plans, nutrient management plans and records of implementation shall not be considered as public records under the Freedom of Information Act and shall not be disclosed, except, however, that they shall be made available for inspection by the Delaware Department of Agriculture and the Commission. Records of implementation shall include:

(1) Soil test results and recommended nutrient application rates;

(2) Quantities, analyses and sources of nutrients applied;

(3) Dates and methods of nutrient applications;

(4) Crops planted, yields and crop residues removed; and

(5) Certification statement signed by the operator to document the intention of nutrient management and/or animal waste management plan implementation

Notwithstanding the foregoing, animal waste management plans, nutrient management plans and records of implementation may be retained, disclosed and made public as provided for in § 2248 of this title.

(d) Nutrient management plans shall be updated a minimum of every 3 years or upon significant alterations in facility operations, or upon a 25% or greater increase in facility operations. Such plans shall be reported to the Commission no later than December 15 of the year in which it must be updated.

(e) If a person implementing a nutrient management plan intends to store manure, other than in an approved manure storage structure or facility, such outdoor storage shall:

(1) Be reflected in the person's nutrient management plan;

(2) Be at least 100 feet from any body of water or drainage ditch;

(3) Be at least 100 feet from any public road;

(4) Be at least 200 feet from any residence that is not located on the person's property; and

(5) Be at least 6 feet high and in a conical shape.

(f) In situations where persons other than the land owner are responsible for nutrient applications, nutrient management plans as required in this section shall be the responsibility of the person actually managing the application of nutrients to that property.

(g) Upon completion and implementation of a nutrient management plan, the owner/operator/planner shall notify the Commission within 60 days of the completion of the plan.

(h) In the event of circumstances that are beyond the control of the person implementing a nutrient management plan pursuant to this section, such person shall notify the Department of any actions he or she intends to take as a result of those circumstances.

(i) In the case of animal feeding operations where no other nutrients are used for farming and the animal waste is not land-applied, the operator of the facility may substitute an animal waste management plan for a nutrient management plan. At a minimum, the animal waste management plan shall include:

(1) Information concerning how the waste is stored prior to transport;
(2) Records of where and to whom the animal waste was transported and the amount of such waste; and
(3) The mortality disposal method.

(j) The State shall make nutrient consultants available through the conservation districts to provide free nutrient management plans assistance to anyone requesting such assistance. For those persons wishing to hire private nutrient consultants, the State, through the conservation districts, shall reimburse any person establishing a nutrient management plan or updating an established nutrient management plan at a rate and amount that shall be determined annually by the Commission and subject to annual appropriations.

(k) County, municipal and industrial facilities discharging solid or liquid waste and permitted by the Department of Natural Resources and Environmental Control under The Guidance and Regulations Governing the Land Treatment of Wastes shall be exempt from the provisions of this chapter. Provided, however that they provide the Commission with an annual report as required by their land treatment permit.

(72 Del. Laws, c. 60 § 1; 78 Del. Laws, c. 37 § 2.)

§ 2248 Confined animal feeding operations subject to Clean Water Act § 402 requirements.

(a) Section 301(a) of the Clean Water Act (CWA) [33 U.S.C. § 1311] establishes statutory requirements for the discharge of pollutants from point sources to waters of the United States. Under CWA § 502(14) and implementing regulations "concentrated animal feeding operations" are point sources subject to the National Pollutant Discharge Elimination System (NPDES) program. The Regulations Governing the Control of Water Pollution, § 9.5 Concentrated Animal Feeding Operation, CDR 7-7000-7201 § 9.5, Del. Reg. 482 (November 2010), as may be amended, are hereby ratified and approved. Said regulations, together with the State Technical Standards, are fundamental components of the CAFO NPDES Program. Nothing in this section shall be construed to require ratification or approval of any additions, deletions, revisions or amendments of any regulations enacted pursuant to this section at any time.

(b) The Secretaries of the Delaware Department of Agriculture (DDA) and the Department of Natural Resources and Environmental Control (DNREC) shall have authority to jointly promulgate and amend regulations for the CAFO NPDES Program, including but not limited to the authority to determine the extent to which any nutrient management plan (NMP), annual report, or other documents required to be submitted by a concentrated animal feeding operation permitted under the CAFO NPDES Program, shall be made public or not, and the authority to require any concentrated animal feeding operation to apply for and obtain an NPDES CAFO permit.

(c) Each person or concentrated animal feeding operation covered by this section or identified as requiring an NMP by DDA and DNREC shall develop and submit the requisite, signed NMP, on such terms and conditions as may be specified by DDA or DNREC. The NMP shall be developed in accordance with the provisions of § 2247 of this title, provided, however, that DNREC and DDA may prescribe additional or different requirements for an NMP submitted under the CAFO NPDES Program. As necessary, the NMP shall also include but not be limited to, the following additional site specific handling and storage considerations:

(1) Diverting clean water from contacting animal waste or litter;
(2) Preventing storage, collection and conveyance systems from leaking organic matter, nutrients and pathogens to ground or surface water;
(3) Providing adequate storage to prevent polluted runoff;
(4) Handling manure and litter to reduce nutrient losses;
(5) Managing dead animals to protect ground and surface waters;
(6) Proper chemical handling; and,
(7) Tillage and crop residue management practices.

The NMP shall be amended pursuant to § 2247(d) of this title or whenever there is any significant change in the design, construction or operation which has a significant effect on the potential for the discharge of pollutants to state waters, or as may be otherwise required by regulation.

(d) The Memorandum of Agreement between DDA and DNREC dated December 16, 2010 (MOA), is hereby ratified and approved. DDA has authority to fulfill the terms of the MOA, to undertake all actions ancillary to the MOA, and otherwise to contribute to the CAFO NPDES Program.

(e) The Secretary shall notify a person in writing that an NPDES permit is required. Such notice shall include a brief statement of the reasons for the decision, an application form, a deadline for submission of the application and a statement regarding the effective date of coverage. A person's obligation to independently seek and secure an NPDES permit is not conditioned upon or qualified by the Secretary's duty to notify a person that an NPDES permit is required.

(72 Del. Laws, c. 60 § 1; 78 Del. Laws, c. 37 §§ 3-7.)

§ 2249 Nutrient Management Funding.

Funds appropriated to the Nutrient Transport Program, in the annual operating budget act are intended to support projects that transport poultry and animal waste, including litter, for alternative use projects and for transporting the poultry and animal waste to cropland showing a need for these nutrients as indicated by a nutrient management plan. It is intended that a portion of these funds will be use to remove the nutrients from Delaware and for farm to farm relocation within Delaware. Reimbursement of transportation shall not exceed $20 per ton of poultry or nonpoultry waste. The program shall be developed and implemented by the Delaware Department of Agriculture according to the

guidelines established by the Delaware Nutrient Management Commission as provided for under § 2220(a)(4) of this title. Any appropriation to the Nutrient Management Contingency shall be used for the sole purpose of nutrient relocation and/or nutrient management planning pursuant to these guidelines.

(73 Del. Laws, c. 322 § 3.)

Subchapter IV

Complaints, Hearings and Appeals

§ 2260 Complaints; investigations; enforcement.

(a) The Commission shall establish by regulation a process whereby any person may file a complaint with the Commission against any person for a violation of any of the provisions of this chapter or any regulations promulgated pursuant thereto.

(b) The Commission shall establish by regulation the procedure for investigating any complaints brought before the Commission and the manner in which those complaints shall be resolved.

(c) The Commission shall, when requested, keep confidential the names of complainants, and shall not investigate or respond to anonymous complaints.

(72 Del. Laws, c. 60 § 1.)

§ 2261 Hearings; procedural requirements.

(a) The Commission shall examine all complaints meeting the criteria of § 2260(a) of this title brought before it for violations of this chapter or Commission regulations within 60 days of receipt of the complaint. The Commission shall conduct a hearing on any matter that on its face presents a colorable claim that a violation has occurred.

(b) Hearings on violations shall be held within 120 days of the date the Commission received a complaint and shall be conducted in the county in which the alleged violation occurred.

(c) The Commission shall send 10 days' notice of any hearing to all named parties, together with a recital of the complaint or issue brought before the Commission. Such notice shall be sent via certified mail, and it shall be sufficient to send such notice to the attorneys of those who are represented by counsel.

(d) All hearings shall be conducted by the Commission. A record of each shall be kept by the Commission and shall include:

(1) A recitation of the evidence before the Commission;

(2) The Commission's findings of fact;

(3) The Commission's decision; and

(4) A brief statement of the reasons therefor.

(e) The Commission's decision shall recite:

(1) The manner in which the Commission construed the law and applied it to the facts;

(2) Any remunerative action a violator must take or has taken;

(3) Any fine a violator must pay pursuant to Department regulations and a reference to the applicable regulations; and

(4) Any revocation, suspension or modification to any certificate that has occurred.

(f) The Commission shall have the power to compel the attendance of witnesses whose testimony is related to the alleged violation under review and the production of records related to the alleged violation under review by filing a praecipe for a subpoena through the Attorney General or a Deputy Attorney General with the Prothonotary of any county of this State, such a subpoena to be made by any sheriff of the State; failure to obey said subpoena will be punishable according to the rules of the Superior Court.

(g) All decisions of the Commission pursuant to this subsection shall be final and conclusive unless a party to such hearing shall appeal pursuant to the provisions of § 2263 of this title.

(72 Del. Laws, c. 60 § 1.)

§ 2262 Certification appeals.

All decisions of the Commission pursuant to § 2243 or § 2245 of this title shall be final and conclusive unless within 15 days after notice thereof, the person who was denied a certificate or whose certificate was not renewed shall appeal to the Commission for a hearing on the matter. The Commission shall hold a hearing within 60 days of receipt of the appeal and develop a record on the case upon which they shall base their decision on the appeal. The Commission may uphold, modify or reverse their decision to issue or renew the certificate.

(72 Del. Laws, c. 60 § 1.)

§ 2263 Appeals to the Secretary.

(a) All decisions of the Commission pursuant to this chapter shall be final and conclusive unless within 15 days after notice thereof, the Secretary receives an appeal for a review of any Commission decision. Such appeal shall state the nature of the appeal, the reasons therefor, and the remedy sought. The Secretary may uphold the action of the Commission, remand the decision back to the Commission for further consideration, or repeal the action of the Commission. The Secretary may appoint a hearing officer, who shall hold a hearing pursuant to

the Administrative Procedures Act. The Secretary's decision shall be based solely on the record developed by the Commission at the hearing unless the Secretary finds that additional evidence should be taken. If the Secretary finds that additional evidence should be taken, the Secretary may take the additional evidence or remand the cause to the Commission for completion of the record.

(b) All decisions of the Secretary on appeals brought pursuant to this section shall be final and conclusive unless within 10 days after notice thereof, a party appeals to the Superior Court of the county in which the violation occurred. In every appeal from a decision of the Secretary, the cause shall be decided by the Court on the record without aid of the jury and may affirm, reverse or modify the Secretary's decision. The findings of fact made below shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may take the additional evidence or remand the cause to the Secretary for completion of the record. If the Court finds that an error of law has been made, the Court shall reverse or modify the Secretary's decision and render an appropriate judgment.

(72 Del. Laws, c. 60 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter V

Enforcement, Suits for Enforcement, and Incentives

§ 2280 Enforcement; fines and penalties.

(a) Whoever violates this chapter, any rule or regulation duly promulgated thereunder, any condition of a certificate issued pursuant to this chapter or any order of the Secretary issued pursuant to this chapter shall be subject to the following fines and penalties, as well as any other remedy described elsewhere in this chapter.

(1) A civil penalty shall be imposed by the Justice of the Peace Court of not less than $25 nor more than $1,000 for each violation. Each day of continued violation shall be considered as a separate violation up to a limit of $10,000. The Justice of the Peace Court shall have jurisdiction of a violation in which a civil penalty is sought. In setting penalty amounts under this section, consideration shall be given to offsetting any economic benefit from noncompliance or any delayed or avoided costs to any person. Further, penalty assessments shall be sufficient to deter recurrence of noncompliance. If there is a substantial likelihood that noncompliance will reoccur, the Commission may recommend that the Secretary also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery. Civil penalties imposed under this section may not be suspended.

(2) In its discretion, the Commission may recommend that the Secretary impose an administrative penalty of not more than $1,000 for each violation. Prior to assessment of an administrative penalty, written notice of the Secretary's proposal to impose such penalty shall be given to the violator, and the violator shall have 30 days from receipt of said notice to request a public hearing. Any public hearing, if requested, right of appeal and judicial appeal shall be conducted pursuant to this chapter. Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(b) Any expenses or civil administrative penalties collected by the Department of Agriculture under this chapter are hereby appropriated to the Department for use in assisting persons in achieving compliance or to demonstrate the application of research that may be of substantial benefit to many individuals seeking compliance with this chapter.

(72 Del. Laws, c. 60 § 1.)

§ 2281 Suits for enforcement.

Any person may file suit in Chancery Court for injunctive relief against:

(1) Any person found pursuant to § 2260 of this title to have violated this chapter or regulations promulgated thereunder;

(2) The Department of Agriculture, for any alleged failure to perform any act or duty mandated to the Department under this chapter; or

(3) The Commission, for any failure to perform any act or duty mandated to the Commission under this chapter or for failure to enforce the chapter or regulations promulgated thereunder.

(72 Del. Laws, c. 60 § 1.)

§ 2282 Protection from enforcement.

The Commission shall establish a list of best management practices for which funding is available from the Department and/or other local, state or federal agencies. Should any person be required under this chapter or regulations promulgated hereunder to undertake any of the activities for which funding is available and fail to receive funding due to insufficient funds available through those local, state or federal agencies, the Commission shall not begin any enforcement action under § 2280 of this title until such funding becomes available; provided, however, that the owner-operator must accept the first available funding after a period of 3 years, dated from nutrient management plan acceptance.

(72 Del. Laws, c. 60 § 1.)

Subchapter VI
Program Reports

§ 2290 Annual reports.

(a) The Commission shall prepare and submit an annual report of its activities and the environmental results that have accrued during the previous year for the Governor and the General Assembly by April 1 each year. Each annual report shall include:

(1) Specific recommendations for incentives to promote best management practices within the industry;

(2) A complete list and delineation of all critical areas identified jointly with the Secretary of the Department of Natural Resources and Environmental Control that will be targeted for action and the reasons therefor;

(3) A listing of all nutrient management training and education opportunities that were available in the State or within a reasonable travel distance, and any records of participation in those events; and

(4) Best management practices implemented and the amount of acres under nutrient management plans by watershed.

(b)(1) Each person required to maintain a nutrient management plan or animal waste management plan shall submit to the Commission by March 1 of every calendar year, on a form developed and supplied by the Commission, a report detailing, at a minimum, the following:

a. The amount of animal wastes applied to the land and the quantity of land it was applied to;

b. The amount of animal wastes transferred for alternative uses (if applicable); and

c. The amount of inorganic fertilizers applied to the land.

(2) All reports submitted under this subsection shall not be considered public records under Delaware's Freedom of Information Act and shall not be disclosed. Such data may be used for data compilation. Notwithstanding the foregoing, reports submitted by permitted concentrated animal feeding operations under this subsection or under the CAFO NPDES Program may be retained, disclosed and made public as provided for in § 2248 of this title.

(72 Del. Laws, c. 60 § 1; 78 Del. Laws, c. 37 § 8.)

Part II
Regulatory Provisions
Chapter 23
IRRIGATION PRESERVATION

§ 2301 Agricultural lands and use of treated wastewater effluent.

Notwithstanding any law or regulation to the contrary:

(1) Any agricultural lands which are actively being farmed shall have the right to receive and recycle to such land reclaimed water through irrigation systems.

(2) Any agricultural land receiving and applying reclaimed water pursuant to paragraph (1) of this section may also be leased to a private or public entity for irrigation systems to disperse said reclaimed water in accordance with the agronomic requirements of the agricultural land. Such leased irrigation systems shall only be subject to application and permitting of the irrigation systems by the Delaware Department of Natural Resources and Environmental Control.

(3) The receipt and application of reclaimed water for irrigation purposes on agricultural lands subject to agricultural lands preservation under Chapter 9 of this title shall be permitted subject to the provisions of § 909(a)(5)e. of this title.

(4) Agricultural land may be leased to a public or private entity for irrigation systems to disperse reclaimed water provided that, prior to entering any contractual agreement, and expressly included in the contractual agreement, the private or public entity advises the agricultural landowners of potential limitation, risk and loss regarding the use of reclaimed water on conventional crops for direct human consumption.

(77 Del. Laws, c. 123 § 2.)

Part II
Regulatory Provisions
Chapter 24
NOXIOUS WEED CONTROL

§ 2401 Declared public and common nuisance.

The existence of growth of a noxious weed is declared to be a public and common nuisance.

(3 Del. C. 1953 § 2401; 57 Del. Laws, c. 701; 63 Del. Laws, c. 360 § 1.)

§ 2402 Department of Agriculture — Investigations; designation of species; rules; programs of control; acceptance of grants; Weed Advisory Committee.

(a) The state Department of Agriculture may make such investigations, studies and determinations as it may deem advisable in order to ascertain the extent of growth and infestation of noxious weeds in this State, and the effect of such species on agricultural production.

(b) The Department shall designate species of weeds which adversely affect or threaten agriculture production as noxious weeds, and may promulgate such rules and regulations as in its judgment are necessary to carry into effect the provisions of this chapter and may alter or suspend such rules when necessary.

(c) The Department may institute programs of control and eradication.

(d) The Department may enter into agreements with any county or subdivision of this State, with any adjoining state, or with agencies of the federal or state government to effect a program of control and eradication.

(e) The Department may accept, use, or expend such aid, gift, grant, or loan as may from time to time be made available from any source, public or private, for the purposes of carrying out the provisions of this chapter.

(f) A Weed Advisory Committee consisting of 5 persons shall serve in an advisory capacity to the Secretary on matters concerning noxious weed control in the State. The Committee shall consist of a cooperative extension representative from the University of Delaware, chosen by the Director of Cooperative Extension Service; the Noxious Weed Specialist, State Department of Agriculture; and 1 person from each of the 3 counties to be chosen by the Governor's Council on Agriculture.

(3 Del. C. 1953 § 2402; 57 Del. Laws, c. 701; 63 Del. Laws, c. 360 §§ 2-4.)

§ 2403 Same — Agreements relating to eradication.

The state Department of Agriculture may enter into an agreement with any designated county in this State for the purpose of control and eradication of designated noxious weed within that county. When such an agreement is executed and certified in writing to the Secretary of State, the Department and the county may conduct surveys to determine the location and amount of infestations of designated noxious weed within that county, and may provide technical and financial assistance to landowners in a cooperative control or eradication program, and may effect a program of mowing, spraying, or other control or eradication practices on road rights-of-way, drainage ditch banks, parks, playgrounds, and other public or private lands. The agreement between the Department and county may be terminated by either party on 30 days written notice.

(3 Del. C. 1953 § 2403; 57 Del. Laws, c. 701; 63 Del. Laws, c. 360 § 5.)

§ 2404 Importation; transportation; elimination.

(a) It shall be unlawful to import designated noxious weeds into this State, or to transport designated noxious weeds within this State, in any form capable of growth, except for purposes of research with the prior written approval of the state Department of Agriculture. It shall be unlawful to knowingly contaminate any uninfested land or roadway with designated noxious weeds through the movement of rootstocks, seed, soil, mulch, nursery stock, farm machinery, or other medium.

(b) It shall be unlawful to knowingly allow designated noxious weeds to set seed on any land, or to allow any portion of a designated noxious weed plant to reach a height of 24 inches; and it shall be the duty of each landowner or person who has the present right to possess and/or use the land to mow, cultivate, treat with chemicals, or use such other practices as may be prescribed by the Department of Agriculture as effective in preventing seed set on designated noxious weed infestations or in elimination of the designated noxious weed plant.

(3 Del. C. 1953 § 2404; 57 Del. Laws, c. 701; 59 Del. Laws, c. 160 § 1; 63 Del. Laws, c. 360 §§ 6, 7.)

§ 2405 Prosecution of violations.

Failure to comply with the provisions of this chapter may result in the assessment of a civil penalty. No civil penalty shall be imposed until an administrative hearing is held before the Secretary or the Secretary's designee after due notice has been given to the landowner or person who possesses or has use of the land in accordance with § 10122 of Title 29. Provided, however, a landowner or person who possesses or has the use of that land may enter into a written agreement with the Department of Agriculture specifying terms and conditions of a program for the control and eradication of designated noxious weeds, and so long as all the terms and conditions are being complied with, there is no violation of this chapter as to the land covered by the agreement.

(3 Del. C. 1953 § 2405; 57 Del. Laws, c. 701; 63 Del. Laws, c. 360 § 8; 70 Del. Laws, c. 285 § 1.)

§ 2406 Hearing procedure and appeals.

All hearings which are held to enforce the provisions of this chapter shall be conducted by the Secretary or the Secretary's designee. The landowner or person who possesses or has use of the land shall have the right to appear personally, and to be represented by counsel, and to provide evidence and witnesses in the landowner's or person's own behalf. The Department shall preserve a full record of the proceeding. A transcript of the record may be purchased by any person interested in such hearing on payment to the Department the cost of preparing such transcript. The Department shall issue a decision in writing to the landowner or person who possesses or has use of the land within 30 days of the conclusion of the hearing. Any individual who feels aggrieved by an action of the Department as a result of an action resulting from a hearing held under this chapter may take an appeal, within 30 days of such action, to the Superior Court, and after full hearing the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds therefor, shall be served upon the Secretary of the Department.

(70 Del. Laws, c. 285 § 2.)

§ 2407 Penalties.

(a) Any person who interferes with the Department of Agriculture in the enforcement of this chapter as determined in an administrative hearing, shall be assessed a civil penalty of no less than $50 nor more than $500 on each count.

(b) Any person who refuses to comply with the provisions of this chapter shall be assessed a civil penalty of a minimum of $100 or $25 per acre of land upon which noxious weeds have set seed, whichever is greater.

(c) The proceeds of any fines or penalties imposed under this chapter shall be deposited into an appropriated special fund account in the Department of Agriculture. These funds shall be used to support the noxious weed eradication programs of the Department of Agriculture.

(70 Del. Laws, c. 285 § 3.)

§ 2408 Cutting and spraying of noxious weeds by the Department of Transportation.

The Department of Transportation shall cut down, or cause to be cut down, noxious weeds growing in the rights-of-way over which it has charge or supervision, as often in each year as shall be sufficient to prevent them from going to seed. When particular problem areas have been identified, they shall be sprayed to eradicate the weed.

(64 Del. Laws, c. 285 § 1; 70 Del. Laws, c. 285 § 3.)

Part II
Regulatory Provisions
Chapter 25
DEALERS IN AGRICULTURAL PRODUCTS

§ 2501 Definitions.

As used in this chapter:

(1) "Person" means any individual, firm, partnership, corporation, company, association, society, joint-stock company or syndicate, their lessees, trustees or receivers.

(2) "Dealer" means any person who solicits or receives any agricultural products from the producer or other supplier on consignment as a commission merchant, or who purchases agricultural products for resale at wholesale as a dealer, or who negotiates the purchase or sale of any agricultural product as a broker. The term "dealer" shall exclude the Southern Delaware Truck Growers Association Incorporated or similar organizations, and persons who operate as cash buyers.

(3) "Delaware broker" means any person whose principal place of business is in the State that has been engaged in the business of negotiating sales and purchases of any perishable agricultural products in the State for at least 5 years and has net assets in the State with value equal to or exceeding the bonding requirements of this chapter.

(4) "Cash buyer" means a dealer who pays for agricultural products in United States currency, certified checks, cashier's checks or drafts issued by a bank at the time the product is removed from a producer's and/or auction market's premises.

(5) "Producer" means any person in this State who produces agricultural products.

(6) "Agricultural products" means fruits and vegetables, and for the purpose of this chapter shall be construed to include, but not by way of limitation, apples, cabbage, cantaloupes, cucumbers, melons, potatoes, sweet corn and tomatoes.

(7) "Department" means the Delaware Department of Agriculture.

(8) "Secretary" means the Secretary of the Delaware Department of Agriculture.

(3 Del. C. 1953 § 2501; 56 Del. Laws, c. 456 § 1; 57 Del. Laws, c. 764 § 11; 58 Del. Laws, c. 557 § 1; 65 Del. Laws, c. 116 § 1.)

§ 2502 License required of dealer.

It shall be unlawful for any dealer in agricultural products to operate and conduct a business without first having obtained a license as provided in this chapter. The Department shall publish annually a list of licensed dealers under this chapter.

(3 Del. C. 1953 § 2502; 56 Del. Laws, c. 456 § 1; 57 Del. Laws, c. 764 § 11; 65 Del. Laws, c. 116 § 1.)

§ 2503 Dealers licensed annually.

Every dealer in agricultural products proposing to transact business with producers and/or auction markets in this State shall file a written application for a license or for the renewal of a license with the Department. The application shall be on a form furnished by the Department and shall contain the following information along with such other information as the Department shall require: (1) The name and address of the applicant and that of its local agents, if any, and the location of its principal place of business; (2) the kinds of agricultural products the applicant proposes to handle; (3) the type of produce business proposed to be conducted. All licenses shall expire on March 31 of each year.

(3 Del. C. 1953 § 2503; 56 Del. Laws, c. 456 § 1; 57 Del. Laws, c. 764 § 11; 58 Del. Laws, c. 557 § 2; 65 Del. Laws, c. 116 § 1; 73 Del. Laws, c. 120 § 1.)

§ 2504 License fee; bond required; exceptions to bond requirement.

All applications shall be accompanied by a license fee of $25 and a good and sufficient bond in the minimum sum of $25,000. In any event, the bond shall be equal to or greater than the maximum amount of gross business done in this State the previous calendar year, but in no event shall the amount of bond required exceed $50,000. After a hearing on any complaint against a licensee, a maximum bond of $100,000 may be required at the discretion of the Secretary. In lieu of the bond, applicants may deposit with the Secretary, United States government securities, irrevocable letters of credit, or appropriate certificate of deposit, satisfactory to the Secretary, to which every producer and/or auction market with whom the licensee does business has recourse on a claim filed in writing with the Department of Agriculture. In lieu of bond Delaware brokers may submit evidence satisfactory to the Secretary that they have net assets in the State with value equal to or exceeding the bonding requirements of this section.

(3 Del. C. 1953 § 2504; 56 Del. Laws, c. 456 § 1; 65 Del. Laws, c. 116 § 1.)

§ 2505 Execution of bond; bond form; action upon bond.

The bond referred to in this chapter shall be executed by the applicant and by a surety company authorized and qualified to do business in this State as surety in favor of the Secretary in his official capacity for the benefit of all producers with whom the applicant shall transact business, for the period that the license is in force. Such bond shall be upon a form prescribed or approved by the Department and shall be conditioned to secure the faithful accounting for payment to producers, agents or representatives, of all agricultural products purchased,

handled or sold by the dealer. Any producer claiming to be injured by the nonpayment, fraud, deceit or negligence of any dealer may bring action therefor upon the bond against the principal or the surety, or both, by the filing of a verified complaint. Such verified complaint shall be upon a form prescribed or approved by the Secretary.

(3 Del. C. 1953 § 2505; 56 Del. Laws, c. 456 § 1; 57 Del. Laws, c. 764 § 11; 58 Del. Laws, c. 557 § 3; 65 Del. Laws, c. 116 § 1.)

§ 2506 Renewal of license.

Upon proof of payment of the renewal premium continuing the bond required by this chapter in full force and effect, or proof that the applicant meets 1 of the exceptions to the bond requirement set forth in § 2504 hereof, and upon the payment of a fee of $25 on or before the expiration date of any license issued under this chapter, the applicant shall be entitled to a renewal of license for another year.

(3 Del. C. 1953 § 2506; 56 Del. Laws, c. 456 § 1; 65 Del. Laws, c. 116 § 1.)

§ 2507 Fees collected.

All sums received by the Department for license fees and renewals shall be paid into the State Treasury to the credit of the General Fund.

(3 Del. C. 1953 § 2507; 56 Del. Laws, c. 456 § 1; 57 Del. Laws, c. 764 § 11; 65 Del. Laws, c. 116 § 1.)

§ 2508 Dealer to keep records.

Every dealer who has received any agricultural product from a producer shall make and keep a correct record and retain the same for 2 years, showing in detail the following with reference to the handling or sale of such agricultural products, along with such other information as the Department by regulation may require:

(1) The name and address of the producer;

(2) The date received;

(3) The condition, grade (if officially graded) and quantity on receipt;

(4) The date of resale or transfer of the products to another;

(5) The price at which purchased and sold.

(3 Del. C. 1953 § 2508; 56 Del. Laws, c. 456 § 1; 57 Del. Laws, c. 764 § 11; 65 Del. Laws, c. 116 § 1.)

§ 2509 Secretary's authority to investigate; proceedings on complaints.

(a) Upon the verified written complaint of any producer or interested person or upon his own motion, the Secretary or assistant whom he may designate may investigate the books and records of any dealer in agricultural products pertaining to such complaint at any time during business hours and shall have free access to the place at which the business is operated.

(b) When a verified written complaint is filed with the Secretary, the Secretary or assistant whom he may designate may conduct a hearing thereon and shall furnish the holder of the license a copy of the complaint and a notice of the time and place of hearing, which notice shall be served personally or by registered mail directed to his place of business or last known address with postage fully paid at least 20 days prior to the time fixed for the hearing. In the hearing of any complaint, the Secretary or assistant whom the Secretary may designate may sign and issue subpoenas, administer oaths, examine witnesses, take depositions, receive evidence and require by subpoena the attendance and testimony of witnesses and the production of records, documents and memoranda as may be material for the determination of the matter alleged in the complaint.

(c) The Secretary or assistant whom the Secretary may designate shall report his or her findings and make his or her order upon the matters complained of and furnish a copy of same to the complainant and respondent and/or surety within 10 days of the conclusion of the hearing.

(d) The respondent and/or surety shall have 15 days in which to make effective and satisfy the Secretary's order. If the respondent and/or surety does not comply with the Secretary's order in 15 days, the Secretary shall bring an action at law to recover from the surety on said bond, or any other security provided by the dealer under § 2504 hereof, the amount necessary to satisfy such claims or such part thereof as shall equal the amount of the bond or security, which action may be instituted by the Secretary in his or her official capacity as such on behalf of said claimants, but without naming them as parties. The moneys obtained by action against the surety on the bond, or from the sale of any other security, shall be used for the satisfaction of such claims, and the Secretary shall make distribution thereof to the claimants in accordance with the amounts determined to be due thereon, and if less than the total amount of said claims shall be so obtained, distribution shall be made ratably to the creditors according to said amounts.

(e) If a creditor has reduced his or her claim to judgment, the judgment shall be presumptive of the amount due him.

(f) Nothing in this chapter shall be construed to limit the remedies that are otherwise available to a person at law or equity.

(3 Del. C. 1953 § 2509; 56 Del. Laws, c. 456 § 1; 57 Del. Laws, c. 764 § 11; 58 Del. Laws, c. 557 § 4; 65 Del. Laws, c. 116 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2510 Refusal or revocation of license; hearing.

(a) The Department may refuse to grant a license or may revoke any license already granted, as the case may be, when it is satisfied of the existence of any of the following causes:

(1) The dealer has suffered a money judgment to be entered against the dealer upon which execution has been returned unsatisfied;

(2) The dealer has failed promptly and properly to account and to pay for agricultural products;

(3) The dealer has made a false or misleading statement as to market conditions or the service rendered, if any, with the intent to defraud;

(4) The dealer has perpetrated a fraud or engaged in deceit in procuring the license;

(5) The dealer has engaged in any fraudulent or deceitful practices in dealings with producers.

(b) Before any license is refused or revoked, the Department or its authorized agents shall give the applicant or licensee at least 20 days' notice of the time and place of hearing on refusal or revocation of a license. At the time and place of hearing, the Department or its authorized agents shall receive evidence, administer oaths, examine witnesses and hear testimony and shall file an order either dismissing the proceeding or refusing or revoking the license.

(3 Del. C. 1953 § 2510; 56 Del. Laws, c. 456 § 1; 57 Del. Laws, c. 764 § 11; 58 Del. Laws, c. 557 § 5; 65 Del. Laws, c. 116 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2511 Penalty.

(a) The Secretary shall have the power to issue an order to any person violating any provision of this chapter to cease and desist from such violation; provided, that any cease and desist order issued pursuant to this section shall expire (1) after 90 days of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is suspended by an injunction, whichever should first occur.

(b) Whoever violates this chapter, or an order of the Secretary, shall be punishable as follows:

(1) For the 1st offense, be fined not less than $500 nor more than $1,000, or be confined in jail for a period not exceeding 6 months, or both;

(2) Upon conviction of a 2nd offense shall be fined not less than $2,000 nor more than $5,000, or be confined in jail for a period not exceeding 1 year, or both, in the discretion of the court.

(3 Del. C. 1953 § 2511; 56 Del. Laws, c. 456 § 1; 65 Del. Laws, c. 116 § 1; 70 Del. Laws, c. 282 § 1.)

Part II
Regulatory Provisions
Chapter 26
COMMERCIAL FOREST PLANTATIONS

§ 2601 Commercial forest plantation.

(a) A commercial forest plantation within the meaning and purpose of this chapter is a contiguous area of land of not less than 10 acres upon which the owner proposes to develop and maintain a forest either through planting or natural reproduction or both, to produce timber, pulpwood, poles, sawtimber or other wood products. Such land shall at the time of listing as a commercial forest plantation actually carry sufficient forest growth of suitable character and so distributed as to give reasonable assurance that a stand of merchantable timber will develop therefrom, as determined by the State Forester. The intent and purpose of this section is to exclude from classification as a commercial forest plantation land planted as a nursery, as an orchard, or for ornamental purposes.

(b) Any landowner who establishes a commercial forest plantation, as defined in this chapter, and otherwise complies with this chapter shall be entitled to a 30-year exemption from county property taxes on such plantation.

(72 Del. Laws, c. 235 § 3.)

§ 2602 Application for exemption; requirements; examination.

Any owner of a commercial forest plantation may make application to the Department of Agriculture to have such land listed for tax exemption. In making such application, such owner shall file with the Department of Agriculture a sworn statement of compliance with this chapter together with the location, description and acreage of the planted lands or the naturally reforested lands. Additionally, all applications for tax exemption must be accompanied by a forest management plan approved by the State Forester. The Department of Agriculture, upon receipt of such application, shall direct the State Forester to make or cause to be made a thorough examination of the property described in the application and report the findings to the Department of Agriculture.

(72 Del. Laws, c. 235 § 3; 70 Del. Laws, c. 186 § 1.)

§ 2603 Removal of exempt commercial forest plantation from county assessment books.

If the Department determines from the report of the State Forester that the owner has complied with the purpose of this chapter, namely, to develop and maintain upon the owner's land a commercial forest, the Department shall recommend to the assessment board in the county wherein the lands are situated that the enrolled forested lands be removed from the list of assessable property for the period of 30 years, and thereupon the enrolled forested property shall be removed from the list of assessable property for the exemption period, except as provided in this chapter. An owner that maintains a commercial forest plantation in compliance with this chapter for 30 years may reapply for county tax exemption on the plantation in accordance with § 2603 of this title. This will constitute a new 30-year period of tax exemption on the plantation.

(72 Del. Laws, c. 235 § 3; 70 Del. Laws, c. 186 § 1.)

§ 2604 Voluntary withdrawal of land from exempt status; requirements.

Any owner of land listed as commercial forest plantation desiring to withdraw said land from operation of this chapter shall make written application to the Department of Agriculture for such withdrawal. Such application shall be granted only upon evidence that the owner has paid to the county treasurer the amount of tax due on said land as determined by the county board of assessment. The board of assessment shall determine the average value per year of the lands, notwithstanding Chapter 83 of Title 9, during the current period of exemption from taxation and, further, shall determine the amount of tax due on the lands calculated according to the several yearly tax rates at the average valuation. Upon presentation to the Department of Agriculture of the application as provided in this section, the Department of Agriculture shall at once notify the county board of assessment of such action and thereupon the property described in the application shall be removed from classification and thereafter taxed as other property.

(72 Del. Laws, c. 235 § 3.)

§ 2605 Restrictions on use of timber.

The owner of any land listed under this chapter may fell and use any dead or injured timber and also cut and remove any live trees when such have been marked for removal with the approval and under the supervision of the Department of Agriculture.

(72 Del. Laws, c. 235 § 3.)

§ 2606 Inspections.

The State Forester shall make periodic inspections of classified forest plantations and shall report the findings in writing to the Department of Agriculture. If the State Forester finds that the owner of listed lands has violated this chapter or has neglected or refused to take proper precautions against damage by fire or grazing, or otherwise, the State Forester shall recommend to the Department the removal of said property from classification as commercial forest plantation land.

(72 Del. Laws, c. 235 § 3; 70 Del. Laws, c. 186 § 1.)

§ 2607 Removal of lands from exempt status by Department; notice; hearing; appeal.

(a) If the State Forester recommends the removal of any lands from classification as commercial forest land, the Department of Agriculture shall notify the owner of the time and place of hearing upon such recommendation, which shall not be less than 10 days from the date of notice. The owner of the lands shall be entitled to be heard before the Department in person or by attorney and shall be allowed to present any pertinent evidence. The Department shall thereupon determine the matter and shall either approve or disapprove the recommendation of the State Forester. If the recommendation of the State Forester is approved by the Department, the Department shall notify the county board in writing of assessment thereof, and the board of assessment shall immediately restore the lands to the assessment lists. The board shall also determine the amount of tax due upon the lands, notwithstanding Chapter 83 of Title 9, according to the average valuation of the lands at the tax rates prevailing during the current period of exemption. The total amount of taxes as calculated shall be certified to the receiver of taxes and county treasurer of the county for collection as other taxes are collected, but with no penalty attached thereto.

(b) The owner of such lands may appeal from the decision of the Department to the Superior Court of the county by filing with the Prothonotary a certified copy of the recommendation of the State Forester as filed with the Department and the determination of the Department with respect thereto. The certification shall be made by the State Forester. Such appeal shall be filed within 2 terms next after the determination of the matter by the Department, or the right of appeal shall be lost.

(c) Prior to the sale or other transfer of rights of land or perpetual timber rights subject to an approved forest management plan, the transferor of land shall notify the transferee of the existence and nature of the plan and the transferee shall sign a notice of forest management obligation indicating the transferee's knowledge thereof.

(1) The notice shall be on a form furnished by the Department of Agriculture Forest Service and shall be sent to the Department of Agriculture by the transferor at the time of sale or transfer of rights of land or perpetual timber rights.

(2) If the transferor fails to notify the transferee about the forest management obligation, the board of assessment shall immediately restore the lands to the assessment lists. The board shall also determine the amount of tax due upon the lands according to the average valuation of the lands at the tax rates prevailing during the period of exemption. The total amount of taxes as calculated shall be certified to the receiver of taxes and county treasurer of the county for collection as other taxes are collected, but with no penalty attached thereto. All taxes due for the period of exemption shall be assessed to the transferor.

(3) Failure by the transferor to send the required notice to the Department of Agriculture at the time of the sale shall be prima facie evidence that the transferor did not notify the buyer of the forest management obligation prior to sale.

(72 Del. Laws, c. 235 § 3.)

Part II
Regulatory Provisions
Chapter 27
NUISANCE PLANTS

§ 2701 Purpose.

The General Assembly finds and declares that nuisance plants within the State threaten significant recreational, aesthetic, wildlife and environmental benefits that citizens of the State have come to enjoy. The General Assembly further finds that the introduction and spread of nuisance plants has engendered border disputes between neighboring landowners. As a consequence, the purpose of this chapter is to give the Delaware Department of Agriculture the authority to regulate the sale, transfer and effects of nuisance plants within the State and thus to preserve the significant benefits previously described and to attempt to minimize or eliminate border disputes.

(74 Del. Laws, c. 364 § 1.)

§ 2702 Definitions.

As used in this chapter:

(1) "Complainant" means any individual, governmental entity, firm, partnership, corporation, company, society, association, or any organized group of persons, who possesses or has use of the land onto which the nuisance plant spreads or will spread unless controlled.

(2) "Control" means to maintain a nuisance plant within the property boundaries of a landowner who has planted it or allowed it to remain.

(3) "Cultivate" means to knowingly plant, propagate, transplant, or encourage to grow.

(4) "Landowner" means any individual, governmental entity, firm, partnership, corporation, company, society, association, or any organized group of persons who owns or has the right to possess and use land on which a nuisance plant is growing.

(5) "Nuisance Plant List" means the official list of nuisance plants designated as such by the Secretary of the Delaware Department of Agriculture with the advice of the Nuisance Plant Committee. The Secretary may make the alterations to the Nuisance Plant List after providing 60 days written notice of the proposed alterations to the Nuisance Plant Committee. The Secretary may make alterations to the Nuisance Plant List immediately if the Nuisance Plant Committee meets before the 60-day period elapses and approves the alterations by a majority vote.

(6) "Person" means any individual, governmental entity, firm, partnership, corporation, company, society, association, or any organized group of persons, and every officer, agent, or employee thereof.

(7) "Secretary" means the Secretary of the Delaware Department of Agriculture.

(74 Del. Laws, c. 364 § 1.)

§ 2703 Nuisance Plant Committee.

(a) The Secretary shall establish a Nuisance Plant Committee to advise the Secretary on the creation of the Nuisance Plant List.

(b) The Nuisance Plant Committee comprises 5 members to be appointed by the Secretary. The composition of the Nuisance Plant Committee shall be as follows:

(1) A representative from Delaware nursery and landscape industries;

(2) A representative from Plant Industries, Delaware Department of Agriculture;

(3) A representative from the Plant and Soil Science faculty of the University of Delaware or Delaware State University;

(4) A representative from Delaware state government outside the Department of Agriculture; and

(5) A public member.

(c) The Secretary will charge the Nuisance Plant Committee with reviewing and revising the Nuisance Plant List and with categorizing such plants as either Class A or Class B nuisance plants. A Class A nuisance plant is one for which there is no known effective and reasonable method of control. A Class B nuisance plant is one for which there is a known effective control method.

(d) Nuisance Plant Committee appointees shall serve terms for a period of 2 years, except the plant industries appointee, who will serve for a period of 3 years.

(e) The Nuisance Plant Committee shall meet a minimum of 1 time per year. The Secretary may call additional meetings as needed.

(74 Del. Laws, c. 364 § 1.)

§ 2704 Violations; penalties.

(a) No person shall sell, collect, transport, distribute, propagate, or transplant any viable portion, including seeds, of a Class A nuisance plant without the prior written consent of the Secretary.

(b)(1) No person shall sell or distribute a Class B nuisance plant without labeling the plant or the container holding it with the following warning:

This plant has the capacity to spread and become a nuisance to neighboring property owners. For this reason, its sale or transfer is

regulated by the Delaware Department of Agriculture under the Delaware Nuisance Plant Law. If it spreads from your property, you may be held financially accountable for its growth beyond boundaries of your property.

(2) No person who cultivates a Class B nuisance plant shall allow it to spread to neighboring properties.

(c) A violation of this section exposes the violator to an administrative penalty of no less than $50 and no more than $1000 per proven violation.

(74 Del. Laws, c. 364 § 1.)

§ 2705 Settlement agreement.

No administrative penalty shall be imposed for an alleged violation of this chapter until an administrative hearing is held before the Secretary or the Secretary's designee after due notice has been given to the landowner or person who possesses or has use of the land in accordance with Delaware's Administrative Procedures Act [Chapter 101 of Title 29]. However, a landowner or person who possesses or has use of the land from which a nuisance plant has spread onto a neighboring property may enter into a written agreement with the Department of Agriculture specifying terms and conditions for the control or eradication of the designated nuisance plant. So long as all the terms and conditions are being complied with, there is no violation of this chapter.

(74 Del. Laws, c. 364 § 1.)

§ 2706 Hearing procedure; appeals.

All proceedings which are held to enforce this chapter shall be conducted by the Secretary or Secretary's designee and shall be initiated by the filing of a written complaint with the Department of Agriculture by either a complainant or a Department of Agriculture official. The landowner or person who possesses or has use of the land shall have the right to appear personally, to be represented by counsel, and to submit evidence and witnesses in defense of the charges. The Secretary or the Secretary's designee shall make and preserve a full record of the proceeding. A transcript of the record may be purchased upon payment to the Department of the cost of preparing such a transcript. The Secretary or the Secretary's designee shall issue a decision in writing to the landowner or person who possesses or has use of the land within 30 days of the conclusion of the hearing. The decision by the Secretary or the Secretary's designee is appealable to the Superior Court for the county in which the nuisance plant is growing within 30 days of the mailing of a decision by the Secretary or the Secretary's designee.

(74 Del. Laws, c. 364 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2707 Regulations.

The Department of Agriculture may promulgate and adopt regulations deemed necessary to carry out the purposes of this chapter.

(74 Del. Laws, c. 364 § 1.)

Part II
Regulatory Provisions
Chapter 28
INDUSTRIAL HEMP

§ 2800 Short title.

This act shall be known and may be cited as the "Industrial Hemp Research Act."

(79 Del. Laws, c. 369 § 1.)

§ 2801 Definitions.

For purposes of this chapter:

(1) "Department" means the Department of Agriculture.

(2) "Industrial hemp" means the plant Cannabis sativa L.and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(79 Del. Laws, c. 369 § 1.)

§ 2802 Industrial hemp — Agricultural academic research.

(a) Notwithstanding any law or regulation to the contrary, the Department may grow or cultivate industrial hemp for the purpose of agricultural or academic research.

(b) The Department is authorized to certify any higher education institution in Delaware to grow or cultivate industrial hemp for the purpose of agricultural or academic research where such higher education institution submits the following to the Department:

(1) The location where the higher education institution intends to grow or cultivate industrial hemp;

(2) The higher education institution's research plan; and

(3) The name of an employee of the higher education institution that will supervise the industrial hemp growth, cultivation, and research.

(c) The Department shall maintain a list of each higher education institution certified to grow or cultivate industrial hemp under this chapter.

(79 Del. Laws, c. 369 § 1.)

Part III
Marketing of Agricultural Products
Chapter 31
MILK, CREAM AND OTHER MILK PRODUCTS; CONTAINERS
Subchapter I
General Provisions

§ 3101 Standard measure for milk or cream; sale by butterfat content.

No milk, skim milk or cream shall be sold, offered for sale, or demanded from any wholesale or retail seller thereof, at any other standard of measurement than that known as the liquid or wine measure containing 231 cubic inches to the gallon. This section shall not apply to the sale of milk, skim milk or cream by weight or percentage of butterfat.

(24 Del. Laws, c. 167; 25 Del. Laws, c. 149 § 1; Code 1915 § 2929; Code 1935 § 3433; 3 Del. C. 1953 § 3101.)

§ 3102 Unlawful sales of milk or cream; penalty.

Whoever violates § 3101 of this title shall be fined not less than $25 nor more than $100, or imprisoned not less than 10 nor more than 30 days, or both.

(24 Del. Laws, c. 167; 25 Del. Laws, c. 149 § 2; Code 1915 § 2929; Code 1935 § 3433; 3 Del. C. 1953 § 3102.)

§ 3103 Permit for receiving milk or cream; exceptions.

Every creamery, shipping station, milk factory, cheese factory, ice cream factory, milk condensary or person receiving, buying and paying for milk or cream regardless of the method of settlement, shall be required to hold a permit for each and every place where milk or cream is received by weight or measure. This chapter shall not apply to individuals buying milk or cream for private use, or to producers buying milk in emergencies to make up their regular supply, or to persons buying from dealers already holding a permit, or to hotels, restaurants, boardinghouses, railroad dining cars, retail stores or drugstores. The permit shall be issued by the Department of Agriculture to such creamery, shipping station, milk factory, cheese factory, ice cream factory, milk condensary or person upon the filing of such information as may be required by the Department of Agriculture. The permit shall be valid for a term of 1 calendar year and may be revoked by the Department of Agriculture for any violation of the provisions of this chapter. This permit issued hereunder shall be posted in plain view in the station for which it is issued.

(32 Del. Laws, c. 36 § 1; 40 Del. Laws, c. 92 § 1; Code 1935 § 634; 3 Del. C. 1953 § 3103; 57 Del. Laws, c. 764 § 12.)

§ 3104 Definition of condensed, evaporated and concentrated milk.

For the purpose of this chapter, condensed, evaporated and concentrated milk is defined as the product resulting from the evaporation of a considerable portion of the water from the fresh clean lacteal secretion, colostrum free, obtained by the complete milking of cows properly fed and kept, the product to contain, when made from whole milk or from milk with adjustment, if necessary, of the ratio of fat to nonfat solids by the addition or by the abstraction of cream without added sugars all tolerances allowed, at least 25.5% of milk solids and not less than 7.8% of milk fat. The sum of the percentage of milk fat and total milk solids shall be not less than 33.7% when made from whole milk with added sugars to contain at least 8% of milk fat all tolerances allowed and when made from skimmed milk to contain at least 20% of milk solids all tolerances allowed.

(33 Del. Laws, c. 52 § 1; Code 1935 § 647; 3 Del. C. 1953 § 3104.)

§ 3105 Sale of condensed, evaporated or concentrated milk.

No person, by himself or herself or by his or her agents, servants or employees, shall manufacture, sell or exchange or have in possession with intent to sell or exchange any condensed, evaporated or concentrated milk which does not conform at least to the minimum standards set forth in § 3104 of this title, and when contained in hermetically sealed cans does not bear stamped or labeled thereon the name and address of the manufacturer thereof.

(33 Del. Laws, c. 52 § 2; Code 1935 § 648; 3 Del. C. 1953 § 3105; 70 Del. Laws, c. 186 § 1.)

§ 3106 Sales of milk or cream under fictitious, coined, or trade names.

No person, by himself or herself or by his or her agents, servants or employees, shall manufacture, sell or exchange or have in possession with intent to sell or exchange any milk, cream or skimmed milk whether or not condensed, evaporated, concentrated, powdered, dried or desiccated to or with which has been added, blended or compounded any fats or oils other than milk fats either under the name of the products or articles or the derivatives thereof if labeled or sold under any fictitious, coined or trade names whatsoever.

(33 Del. Laws, c. 52 § 3; Code 1935 § 649; 3 Del. C. 1953 § 3106; 70 Del. Laws, c. 186 § 1.)

§ 3107 Penalty for violating § 3104, 3105 or 3106.

Whoever violates § 3104, 3105, or 3106 of this title shall be fined not less than $50 nor more than $100, or imprisoned not less than 30 nor more than 60 days, or both.

(33 Del. Laws, c. 52 § 4; Code 1935 § 650; 3 Del. C. 1953 § 3107.)

§ 3108 Enforcement of chapter.

(a) The Department of Agriculture shall enforce this chapter, and may make such proper rules and regulations as are necessary for such enforcement.

(b) Nothing in subsection (a) of this section shall prevent any individual from prosecuting any person for violating any of the provisions of this chapter.

(32 Del. Laws, c. 36 § 9; 33 Del. Laws, c. 52 § 6; 40 Del. Laws, c. 92 § 11; Code 1935 §§ 642, 652; 3 Del. C. 1953 § 3108; 57 Del. Laws, c. 764 § 12.)

§ 3109 Mastitis analysis of milk samples; appropriations; allocations.

The sum of $9,000 shall be included in the general appropriation bill which is presented to each biennial General Assembly, and appropriated therein to the Department of Agriculture to defray the expenses of a full-time field man to take and collect milk samples to be analyzed for bacteria of mastitis significance. Of each such sum so appropriated, the sum of $3,600 shall be allocated to salaries and wages, the sum of $200 shall be allocated to office and laboratory supplies, and the sum of $700 shall be allocated to travel expenses, for each fiscal year of the biennium. Such sums shall be paid by the State Treasurer upon warrants duly approved by the proper officers of the Department of Agriculture.

(3 Del. C. 1953 § 3109; 49 Del. Laws, c. 423 §§ 1, 2; 57 Del. Laws, c. 764 § 12.)

Subchapter II

Butterfat Content; Babcock Test

§ 3111 Babcock test requirement.

No person or his or her agents or servants engaged in the business of buying milk or cream on the basis of, or in any manner with reference to, the amount or percentage of butterfat contained therein, shall take, collect or use for testing purposes an unfair or an inaccurate sample, or underread, overread or erroneously manipulate the test commonly known as the "Babcock test" used for determining the percentage of such fat in said milk or cream, or falsify the record thereof, or make the "Babcock" reading except when the fat has a temperature of 135 degrees to 145 degrees Fahrenheit, or use for such test quantities other than 17.6 cubic centimeters in the case of milk and 9 grams or 18 grams in the case of cream. In all tests of cream, the cream shall be weighed and not measured into the test bottle.

(32 Del. Laws, c. 36 § 2; 40 Del. Laws, c. 92 § 2; Code 1935 § 635; 3 Del. C. 1953 § 3111; 70 Del. Laws, c. 186 § 1.)

§ 3112 Licensed tester.

Every person or agent or servant thereof engaged in the business of receiving or buying milk or cream on the basis of, or in any way with reference to, the amount of butterfat contained therein, or on the basis of tests made for official inspection or public records as determined by the "Babcock test" shall have the test or tests made only by a licensed tester who shall be responsible for the same and who shall keep a proper and permanent record of all tests made and a copy of such record shall be kept by the owner or manager of the plant.

(32 Del. Laws, c. 36 § 4; 40 Del. Laws, c. 92 § 4; Code 1935 § 637; 3 Del. C. 1953 § 3112.)

§ 3113 Qualifications and duties of licensed tester; fee; renewal of license.

For the purpose of this subchapter, a licensed tester is any person who, having furnished satisfactory evidence of good character and having passed a satisfactory examination in milk and cream testing conducted by the Department of Agriculture or its agents, has received a certificate of proficiency from the Department. Each applicant for examination for a certificate shall pay a fee of $3.45 to the Department of Agriculture or its agents. The Department shall issue a certificate of proficiency in the name of the approved applicant and under a serial number. The Department upon receipt of this certificate of proficiency, together with the payment of a fee of $3.45, shall issue a license to the applicant good for 1 calendar year. This license shall be renewed annually without further examination at the discretion of the Department upon the payment of a fee of $3.45. Each certified tester shall post the certified tester's license in plain view in the testing room in which the certified tester is employed. The Department shall revoke the license for failure to post it as above required or for any other just cause.

(32 Del. Laws, c. 36 § 4; 40 Del. Laws, c. 92 § 4; Code 1935 § 637; 3 Del. C. 1953 § 3113; 57 Del. Laws, c. 764 § 12; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3114 Licensed weigher and sampler; qualifications and duties; fee; renewal of license.

(a) Every person engaged in the business of buying milk or cream on the basis of, or in any way with reference to, the amount of butterfat contained therein or on the basis of tests made for official inspection or public record shall have the samples taken for testing purposes

either by a licensed tester or by a person licensed or certified to weigh and sample milk and cream.

(b) For the purpose of this subchapter, a person certified to weigh and sample milk or cream is any person who, having furnished satisfactory evidence of good character and having passed a satisfactory examination in weighing and sampling milk and cream conducted by the Department of Agriculture or its agents, has received a certificate of proficiency from the Department.

(c) Each applicant for an examination for such certificate shall pay a fee of $1.75 to the Department. The Department shall issue a certificate of proficiency in the name of the approved applicant and under a serial number. The Department of Agriculture upon receipt of this certificate of proficiency, together with the payment of a fee of $3.45, shall issue a license to the applicant good for 1 calendar year. This license shall be renewed annually without further examination at the discretion of the Department of Agriculture upon the payment of $3.45.

(d) Each licensed weigher and sampler shall post his or her license in plain view in the plant in which he or she is employed. The Department of Agriculture may revoke the license for failure to post it as above mentioned or for any other just cause.

(40 Del. Laws, c. 92 § 5; Code 1935 § 637; 3 Del. C. 1953 § 3114; 57 Del. Laws, c. 764 § 12; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 9 § 68; 70 Del. Laws, c. 186 § 1.)

§ 3115 Frequency of testing, holding, retesting and reporting.

(a) Any person or milk plant or agent thereof in the State or out of the State engaged in the business of buying milk on the basis of percentage of butterfat contained therein shall make a test of the milk at least once every 16 days. The milk purchased from each milk producer shall be represented by a composite sample taken from the entire delivery of each of the several lots purchased from the milk producer and shall cover a period of not more than 16 days. A composite sample shall contain a preservative and it shall contain aliquot parts from each lot of milk collected. The preservative must be capable of keeping the composite sample in suitable condition for testing for a period of at least 30 days. Each composite sample shall be held in an airtight bottle, to be labeled with the name or number of the milk producer.

(b) After the composite samples have been tested, their residues shall be held intact and in a suitable condition for retesting for a period of 15 days.

(c) All milk producers shall be notified within 5 days after the close of the period giving such producer the results of the butterfat test on the composite sample. If the producer desires a retest, such request shall be made directly to the milk plant or through the field man within 24 hours after the receipt of the butterfat test. The retest shall be made immediately and reported to the producer.

(d) The Department of Agriculture may at any time require out-of-state milk plants to deliver 1 or all composite samples to the Department of Agriculture laboratories for retesting purposes. An alternative shall be for the out-of-state milk plant to grant the Department of Agriculture or its agents permission to enter its plant for the purpose of taking samples for rechecking purposes. If the composite sample should in some manner be destroyed during the period and it becomes necessary to use fresh samples as the basis of settlement at least 3 fresh samples shall be taken from 3 separate deliveries of milk.

(e) Reports of all butterfat tests shall be made to the Department of Agriculture at the close of each testing period. If butterfat tests vary more than 0.02% from one testing period to the next testing period, a retest shall be made and reported.

(f) The Secretary of the Department of Agriculture may, by written permission, grant any person or milk plant or agent thereof engaged in the business of buying milk on the basis of percentage of butterfat contained therein the right to use a fresh sample method as approved by the Secretary.

(32 Del. Laws, c. 36 § 5; 40 Del. Laws, c. 92 § 6; Code 1935 § 638; 3 Del. C. 1953 § 3115; 57 Del. Laws, c. 503; 57 Del. Laws, c. 764 § 12; 58 Del. Laws, c. 113 § 1.)

§ 3116 Percentage of fat used as basis of payment.

No percentage of fat ascertained from a sample containing milk or cream that has been so treated as to cause it to test lower or higher than the test of the milk or cream from which it was taken shall be used as a basis of payment for milk or cream purchased or sold.

(32 Del. Laws, c. 36 § 6; 40 Del. Laws, c. 92 § 7; Code 1935 § 639; 3 Del. C. 1953 § 3116.)

§ 3117 Approved weight or measure or butterfat test as basis of payment.

(a) No person purchasing or selling milk or cream or both by weight or measure or butterfat test, and no agent or servant of any such person, shall use as a basis of payment for such purchase any weight or measure or butterfat test other than the approved weight or measure or butterfat test of the milk or cream purchased or sold.

(b) Only procedures approved by the Association of Official Analytical Chemists or the American Public Health Association and adopted or prescribed by the State Department of Agriculture may be used. The Babcock test or the automated light scattering method for determining fat content of raw unhomogenized milk are hereby adopted as procedures for the determination of the fat content of milk as a basis of payment to producers.

(32 Del. Laws, c. 36 § 7; 40 Del. Laws, c. 92 § 8; Code 1935 § 640; 3 Del. C. 1953 § 3117; 58 Del. Laws, c. 113 § 2.)

§ 3118 Butterfat statement given producers; contents.

(a) Every person or agent or servant thereof purchasing or receiving milk or cream from the producer thereof for manufacturing purposes or for reselling the same shall, at each time of payment to the producer for milk or cream, or where the producer of milk or cream is selling

the same to the purchaser or receiver by or through a cooperative association or other agency and the payment thereof is being made by the purchaser or receiver to the cooperative or other agency, at the time the purchaser or receiver makes each payment to the cooperative association or other agency, give each producer delivering milk a statement showing the amount delivered daily during the time for which payment is made and the average per centum butterfat test of same, provided payment is made on the basis of the butterfat content.

(b) The statement shall contain the name or number of the producer or seller of the milk or cream, the date of delivery thereof, and the amount delivered. The statement shall be given in the terms of the unit used as a basis for determining the value thereof. A purchaser or receiver may, in lieu of the monthly statement of weights, give daily to the producer or to his agent at the time of delivery of milk or cream to the purchaser or receiver, a written statement of the amount of milk or cream received or purchased.

(36 Del. Laws, c. 97 § 1; 40 Del. Laws, c. 92 § 9; Code 1935 §§ 641, 653; 3 Del. C. 1953 § 3118.)

§ 3119 Authority to enter premises and examine books, records and testing apparatus.

The Department of Agriculture or its agents may enter the premises and examine the books, the records and testing apparatus of any person, for the purpose of carrying out this subchapter.

(32 Del. Laws, c. 36 § 8; 40 Del. Laws, c. 92 § 10; Code 1935 § 641; 3 Del. C. 1953 § 3119; 57 Del. Laws, c. 764 § 12.)

§ 3120 Violations and penalties.

(a) Whoever violates this subchapter, except § 3111 of this title, shall be fined not less than $10 nor more than $50, or imprisoned not less than 10 nor more than 30 days, or both.

(b) Whoever violates § 3111 of this title shall be fined not less than $100 nor more than $1,000, or imprisoned not more than 9 months.

(32 Del. Laws, c. 36 § 10; 40 Del. Laws, c. 92 § 13; Code 1935 § 643; 3 Del. C. 1953 § 3120.)

§ 3121 Persons responsible for violations.

For violation of any of this subchapter proceedings may be instituted against the owner or manager who is responsible for the business transacted, together with the certified tester or the person weighing and sampling, and either or all of them shall be held equally responsible.

(40 Del. Laws, c. 92 § 12; Code 1935 § 642; 3 Del. C. 1953 § 3121.)

§ 3122 Payment of fines and other money; disposition.

All fines and penalties received for violations of this subchapter and all moneys received in compliance with this subchapter shall be paid to the Department of Agriculture or its agents and shall thereafter be paid into the State Treasury for the use of the State.

(32 Del. Laws, c. 36 § 11; 40 Del. Laws, c. 92 § 14; Code 1935 § 644; 3 Del. C. 1953 § 3122; 57 Del. Laws, c. 764 § 12.)

§ 3123 Purchase of milk or cream by state institutions.

Whenever a state institution purchases milk or cream pursuant to competitive bids based on the butterfat contents of the milk or cream supplied or to be supplied pursuant to such bid or bids, the tests to determine the butterfat contents thereof shall be made pursuant to and in compliance with the testing requirements provided under this subchapter. Whenever any bid has been accepted by any state institution to supply milk or cream or both of a required percentage of butterfat, the successful bidder shall be deemed to be in compliance with the requirements of the bid whenever any tests of the milk or cream shall be made, and such tests to determine the amount of the butterfat in such milk or cream or both shall be made pursuant to and in compliance with the provisions of this subchapter. The successful bidder shall not be required to satisfy any other tests made by any other sources than those prescribed under this subchapter.

(Code 1935 § 646A; 43 Del. Laws, c. 89 § 1; 3 Del. C. 1953 § 3123.)

Subchapter III

Standard Babcock Testing Equipment

§ 3131 Approved testing glassware and utensils.

No person purchasing milk or cream and paying for the same on the basis of the percentage of butterfat contained therein shall, if the percentage of butterfat is ascertained by the "Babcock test," use any test glassware except standard Babcock test glassware and weights which have been previously inspected and approved by the Department of Agriculture. If the proportion of butterfat is determined by any method other than the "Babcock test" no utensil or instrument shall be used in the determination until the same has been inspected and approved by the Department of Agriculture.

(32 Del. Laws, c. 36 § 3; 40 Del. Laws, c. 92 § 3; Code 1935 § 636; 3 Del. C. 1953 § 3131; 57 Del. Laws, c. 764 § 12.)

§ 3132 Specifications for standard Babcock testing glassware.

The term "standard Babcock testing glassware" applies to glassware and weights complying with the following specifications:

(1) Standard milk test bottles —

Graduation. — The total per centum graduation shall be 8. The graduated portion of the neck shall have a length of not less than 63.5 millimeters (2 1/2 inches). The graduation shall represent whole percent, .5 percent, and tenths percent. The tenths percent

graduation shall not be less than 3 millimeters in length; the .5 percent graduations shall be 1 millimeter longer than the tenths percent graduation, projecting 1 millimeter to the left. The whole percent graduations shall extend at least one-half way around the neck to the right and projecting 2 millimeters to the left of the tenths percent graduations. Each percent graduation shall be numbered, the number being placed on the left of the scale. The error at any point of the scale shall not exceed .1 percent.

Neck. — The neck shall be cylindrical, and the cylindrical shape shall extend for at least 9 millimeters below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than 10 millimeters.

Bulb. — The capacity of the bulb up to the junction of the neck shall not be less than 45 cubic centimeters. The shape of the bulb may be either cylindrical, or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between 34 and 36 millimeters; if conical, the outside diameter of the base shall be between 31 and 33 millimeters and the maximum diameter between 35 and 37 millimeters.

Charge. — The charge of the bottle shall be 18 grams.

Height. — The total height of the bottle shall be between 150 and 165 millimeters (5 7/8 and 6 1/2 inches).

(2) Standard cream test bottles —

Three types of bottles shall be accepted as standard cream test bottles; a 50 percent, 9 gram, short-neck bottle; a 50 percent, 9 gram, long-neck bottle; and a 50 percent, 18 gram, long-neck bottle.

Fifty percent, 9 gram, short-neck bottles:

Graduation. — The total percent graduation shall be 50. The graduated portion of the neck shall have a length of not less than 63.5 millimeters (2 1/2 inches). The graduation shall represent 5 percent, 1 percent, and .5 percent. The 5 percent graduation shall extend at least half way around the neck to the right. The .5 percent graduation shall be at least 3 millimeters in length, and the 1 percent graduation shall have a length intermediate between the 5 percent and the .5 percent graduations. Each 5 percent graduation shall be numbered, the number being placed on the left of the scale. The error at any point of the scale shall not exceed .5 percent.

Neck. — The neck shall be cylindrical, and the cylindrical shape shall extend at least 9 millimeters below the lowest, and 9 millimeters above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than 10 millimeters.

Bulb. — The capacity of the bulb up to the junction of the neck shall not be less than 45 cubic centimeters. The shape of the bulb may be either cylindrical, or conical, with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between 34 and 36 millimeters; if conical, the outside diameter of the base shall be between 31 and 33 millimeters, and the maximum diameter between 35 and 37 millimeters.

Charge. — The charge of the bottle shall be 9 grams. All bottles shall bear on top of the neck, above the graduations, in plainly legible characters, a mark defining the weight of the charge to be used (9 grams).

Height. — The total height of the bottle shall be between 150 and 165 millimeters (5 7/8 and 6 1/2 inches), which is the same as standard milk test bottles.

Fifty percent, 9 grams, long-neck bottles:

The same specifications in every detail as specified for the 50 percent, 9 grams, short-neck bottle, shall apply for the long-neck bottle, with the exception, however, that the total height of this bottle shall be between 210 and 235 millimeters (8 1/4 and 8 7/8 inches), and that the total length of the graduation shall not be less than 120 millimeters.

Fifty percent, 18 grams, long-neck bottles:

The same specifications in every detail as specified for the 50 percent, 9 grams, long-neck bottles, except that the charge of the bottle shall be 18 grams. All bottles shall bear, on the top of the neck, above the graduation, in plainly legible characters, a mark defining the weight of the charge to be used (18 grams).

(3) The standard Babcock pipette —

Total length of pipette, not more than 330 millimeters (13 1/4 inches). Outside diameter of suction tube, 6 to 8 millimeters.

Length of suction tube, 130 millimeters. Outside diameter of delivery tube, 4.5 to 5.5 millimeters. Length of delivery tube, 100 to 120 millimeters. Distance of graduation mark above bulb, 30 to 60 millimeters. Nozzle, straight. Delivery, 17.6 cubic centimeters of water at 20° Centigrade in 5 to 8 seconds.

(4) Standard weights —

The standard weights shall be of 9 grams and 18 grams denominations.

(32 Del. Laws, c. 37 § 2; Code 1935 § 646; 3 Del. C. 1953 § 3132.)

§ 3133 Inspection and marking of Babcock test bottles.

(a) Every person, or agent thereof, engaged in the business of buying milk or cream on the basis of, or in any manner with reference to, the amount of percentage of butterfat contained therein, as determined by the "Babcock test," shall use standard "Babcock" bottles, pipettes, and weights, as defined in § 3132 of this title. All Babcock test bottles, pipettes, and weights, so used, shall have been inspected for accuracy by the Department of Agriculture, or its proper officer or agent, and shall be legibly and indelibly marked by the Department of Agriculture, or its inspectors of weights and measures, with the letters "S. G. D." (Standard Glassware Delaware).

(b) No Babcock bottle, pipette, or weight, shall be used for a test unless examined and marked by the inspectors of weights and measures. No person or agent shall use any other than standard test bottles, pipettes and weights, which have been examined and marked as provided in this section, to determine the amount of fat in milk or cream bought on the butterfat basis as determined by the Babcock test.

(32 Del. Laws, c. 37 § 1; Code 1935 § 645; 3 Del. C. 1953 § 3133; 57 Del. Laws, c. 764 § 12.)

§ 3134 Violations and penalties.

Whoever violates this subchapter shall be fined not less than $10 nor more than $50, and shall pay the costs of prosecution.

(32 Del. Laws, c. 37 § 3; Code 1935 § 646; 3 Del. C. 1953 § 3134.)

Subchapter IV

Containers for Dairy Products

§ 3141 Registration of markings on containers.

(a) Any person engaged in manufacturing, bottling or selling milk, cream or other dairy products in bottles, boxes, tins, cans or other receptacles or containers, with such person's name or names or other mark or marks, or device or devices, branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such bottles, boxes, tins, cans or other receptacles or containers used by such person in the same or delivery of milk, cream or other dairy products, may file in the office of the Secretary of State a description of the name or names, marks or devices so used by such person, and cause such description to be printed once a week for 2 weeks successively in a newspaper published in the county in which the principal office or place of business of the owner shall be located.

(b) Upon legal proof being furnished the Secretary of State, a certificate shall be issued by the Secretary of State which certificate shall be competent evidence in any court of law of the State of the right of such person to the absolute use of such bottles, boxes, tins, cans, or other receptacles or containers, with such devices marked thereon, and of the publication and registration of the same. If such person has obtained a certificate from the Secretary of State and thereafter retires from business, such person shall have the right to legally transfer the certificate to such person's successor in the business.

(27 Del. Laws, c. 178; Code 1915 § 3594; 40 Del. Laws, c. 221 § 1; Code 1935 § 4086(a); 3 Del. C. 1953 § 3141; 70 Del. Laws, c. 186 § 1.)

§ 3142 Use of registered containers.

(a) No person shall fill with milk, cream or other dairy products, or other beverages, oils, compounds or mixtures, any bottles, boxes, tins, cans or other receptacles or containers, marked or distinguished by or with any name, mark or device, of which a description has been filed and published as provided for in this subchapter; or deface, erase, obliterate, cover up, or otherwise remove or conceal, any such name, mark or device thereon; or sell, buy, give, take, retain, or break, mutilate or destroy, or otherwise dispose of, or traffic in the same; without the written consent of the owner or owners thereof being first obtained.

(b) The fact of any person other than the rightful owner or owners thereof using any such bottles, boxes, tins, cans, or other receptacles or containers for the sale or storage therein of any milk, cream or other dairy products, or other beverages, oils, compounds or mixtures, without the written consent of such owner or owners, of which a description of the names, marks, or devices thereon has been filed and published in the manner provided for in this subchapter; or the buying, selling, using, disposing of, destroying, retaining, or trafficking in such bottles, boxes, tins, cans, or other receptacles or containers, by any person other than the owner or owners thereof, without written consent; or having in his possession, by any junk dealer or other dealer in secondhand articles, of any bottles, boxes, tins, cans, or other receptacles or containers, of which a description of the names, marks, or devices thereon has been filed and published without written consent, shall be prima facie evidence of the unlawful use, retention, possession of, or trafficking in such bottles, boxes, tins, cans, or other receptacles or containers.

(Code 1915 §§ 3594A, 3594B; 40 Del. Laws, c. 221 § 1; Code 1935 §§ 4086(b), (c); 3 Del. C. 1953 § 3142.)

§ 3143 Deposits on containers.

The requiring, taking, or accepting of any deposit upon the delivery of any bottle, box, tin, can or other receptacles or containers, the name, mark, or device upon which has been filed and published as provided for in this subchapter, shall not constitute a sale thereof, either optional or otherwise.

(Code 1915 § 3594C; 40 Del. Laws, c. 221 § 1; Code 1935 § 4086(d); 3 Del. C. 1953 § 3143.)

§ 3144 Confiscation by owner of unlawfully used containers.

The owner or proprietor, or his or her or its agent or agents, may take possession of any bottles, boxes, tins, cans, or other receptacles or containers, used in violation of this subchapter, whether the receptacles or containers be full or partly full of any liquid, beverage or other substance, or empty, and shall not be liable in damages therefor, or for any trespass arising out of taking possession. Should the party or parties having possession of the receptacles or containers refuse to empty the same of the contents contained therein immediately, upon notice and demand by the owner or proprietor, or his or her or its agent or agents, then the owner, proprietor or agent may empty the receptacles or containers and shall not be liable therefor.

(Code 1915 § 3594D; 40 Del. Laws, c. 221 § 1; Code 1935 § 4086(e); 3 Del. C. 1953 § 3144; 70 Del. Laws, c. 186 § 1.)

§ 3145 Sterilization of bottles.

Glass bottles used in the sale and delivery of milk, cream and other dairy products shall be sterilized before each and every filling, and shall not be used by the owner or owners thereof, or by any other person for any other purpose whatsoever.

(Code 1915 § 3594F; 40 Del. Laws, c. 221 § 1; Code 1935 §§ 4086(g), 3 Del C 1953, 3147; 70 Del. Laws, c. 283 § 4.)

§ 3146 Violations and penalties.

Whoever violates this subchapter shall be fined not more than $10 for each offense, unless a different penalty is prescribed by the section violated.

(Code 1915 § 3594E; 40 Del. Laws, c. 221 § 1; Code 1935 § 4086(f); 3 Del. C. 1953 § 3146; 70 Del. Laws, c. 283 § 4.)

§ 3147 Jurisdiction of offenses.

Justices of the peace shall have jurisdiction of offenses under this subchapter.

(Code 1915 §§ 3594G, H; 40 Del. Laws, c. 221 § 1; Code 1935 §§ 4086(h), (i); 3 Del. C. 1953 § 3149; 70 Del. Laws, c. 283 § 4.)

§ 3148 Appeals; bond; time for taking.

Any person convicted of violating this subchapter shall have the right of an appeal to the Court of Common Pleas upon giving bond with surety satisfactory to the justice of the peace or judge before whom such person was convicted. The appeal shall be taken and bond given within 5 days from the time of conviction.

(Code 1915 § 3594J; 40 Del. Laws, c. 221 § 1; Code 1935 § 4086(j); 3 Del. C. 1953 § 3150; 69 Del. Laws, c. 423 § 3; 70 Del. Laws, c. 283 § 4.)

§§ 3149 , 3150. Jurisdiction of offenses; appeals; bond; time for taking.

Transferred.

Subchapter V

Dealers' and Handlers' Bonds

§ 3161 Requirement of bond; amount.

(a) No milk dealer or handler shall purchase, acquire or receive on consignment or otherwise milk from producers unless the milk dealer or handler has filed with the Department of Agriculture a corporate surety, individual surety, or collateral bond, approved by such Department.

(b) Except as otherwise herein provided, the bond required by subsection (a) of this section shall be in a sum equal to the value of the highest aggregate amount of milk purchased, acquired or received by the dealer or handler from producers in any 1 month during the preceding calendar year, which value shall be computed according to such milk dealer's or handler's posted prices for such month, and shall not in any event exceed $100,000.

(c) The bond required by subsection (a) of this section shall be upon a form prescribed by the Department of Agriculture, conditioned for the payment by the milk dealer or handler of all amounts due, including amounts due under this subchapter and the orders of such Department, for milk purchased or otherwise acquired from producers by the milk dealer or handler during the license year, upon such terms and conditions as the Department may prescribe.

(d) In the case of a milk dealer or handler who pays producers in full each week for milk purchased, acquired or received by him from such producers, the bond required by subsection (a) of this section shall be in a sum equal to 50 percent of the value of the highest aggregate amount of milk purchased, acquired or received by the dealer or handler from producers in any 1 month during the preceding calendar year, which value shall be computed according to such milk dealer's or handler's posted prices for such month, and shall not in any event exceed $50,000.

(Code 1935 § 654A; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3161; 57 Del. Laws, c. 764 § 12.)

§ 3162 Computation of amount; milk from another state.

Milk purchased, acquired or received by a milk dealer or handler from producers outside the State and sold or distributed by such dealers or handlers as fluid milk within the State, shall be included in computing the amount of such dealer's or handler's bond, except where such dealer or handler has filed a bond for the protection of such producers within the state wherein the milk is purchased, acquired or received or with such producers. In such computation, the amount due for such milk shall be determined according to any applicable official prices or any lawful contract price.

(Code 1935 § 654B; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3162.)

§ 3163 Filing by dealer not engaged in business during preceding year.

A milk dealer or handler purchasing or acquiring or receiving or intending to purchase, acquire or receive milk from producers, but not so engaged during any month of the preceding calendar year, shall file a bond in a reasonable sum to be fixed by the Department of Agriculture, and within the time for filing his or her application such dealer or handler shall request the Department to fix such sum.

(Code 1935 § 654B; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3163; 57 Del. Laws, c. 764 § 12; 70 Del. Laws, c. 186 § 1.)

§ 3164 Time of filing; period effective.

(a) The bond required in this subchapter shall be filed with the dealer's or handler's application for a license, and shall be filed within the time for filing such application.

(b) The bond shall become effective upon its being filed with the Department of Agriculture for the entire license year, or for that part of the license year in which the milk dealer or handler became engaged in the milk business. Any bond filed with the Department shall become effective upon being filed, whether or not it is approved by the Department, and shall no longer be of effect during the license year only when it has been replaced by a bond approved by the Department to be substituted therefor. The bond required in this subchapter shall be an obligation independent of the granting of a license and shall remain in full force and effect for and during the license year designated, as long as the dealer or handler purchases or receives milk from producers or is indebted to pay producers for any milk delivered during said license year, whether or not a license is granted the milk dealer or handler or a license granted the milk dealer or handler remains in force.

(c) The Department of Agriculture shall determine within a reasonable time after the close of a license year which milk dealers or handlers have paid all amounts protected by their bonds filed with the Department, and if the Department finds that all amounts protected by the bond of a milk dealer or handler have been paid, it shall thereafter return the bond for said past license year to each such milk dealer or handler.

(Code 1935 § 654C; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3164; 57 Del. Laws, c. 764 § 12.)

§ 3165 Surety requirements.

(a) A corporate surety bond shall be executed to the State by the milk dealer, as principal, and by a corporate surety company. The Department of Agriculture shall have no power to reject any corporate surety bond which is so executed by a corporate surety company authorized to do business in this State as surety.

(b) An individual surety bond shall be executed to the State by the milk dealer, as principal, and by 1 or more individuals, as surety or sureties, who shall have sole title to real estate, the fair valuation of which, free and clear, or in excess of all encumbrances, shall be at least equal to the amount of the bond.

(c) A collateral bond shall be executed to the State by the milk dealer, as principal, shall set forth therein the collateral posted with such bond, and shall have attached thereto the collateral properly assigned and transferred to the State. The collateral posted with such bond shall be cash in an amount equal to the amount of the bond; or such bond shall be secured by an actual deposit with the Department of Agriculture, or with a bank, bank and trust company, or national bank within the State, of money to the full amount of the bond; or by securities to such amount, consisting of interest-bearing obligations of the United States government, of this State, or of any political subdivision of this State, or by any other security or securities approved by the Department of Agriculture. The security or securities deposited therewith shall constitute a trust fund for producers from whom the dealer purchases milk.

(Code 1935 § 654D; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3165; 57 Del. Laws, c. 763 § 12.)

§ 3166 Substitutions.

The Department of Agriculture may grant to any milk dealer or handler the authority to substitute for any bond, surety or any collateral, another bond, surety or other collateral, provided that such other bond, surety, or collateral meets all the requirements of this subchapter.

(Code 1935 § 654D; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3166; 57 Del. Laws, c. 764 § 12.)

§ 3167 Financial statement; acceptance in lieu of surety.

(a) A milk dealer or handler shall, from time to time, when required by the Department of Agriculture, make and file with such Department a verified statement of his or her disbursements, or of any other facts in connection with his or her business, during a period to be prescribed by the Department, which financial statement shall contain the names of the producers from whom milk was purchased, acquired, received or handled on consignment or otherwise, the amount due to the producers, and any other relevant facts required by the Department pertinent to the dealer or handler or the dealer's or handler's surety or sureties.

(b) In lieu of, and notwithstanding any and all provisions contained in this subchapter to the contrary, and in particular any and all provisions requiring a milk dealer or handler to file a corporate surety, or individual surety, or collateral bond, the Department of Agriculture may accept of and from any milk dealer or handler who has been continuously engaged in such business in this State for a period of 7 years prior thereto a complete current financial statement of all the assets and liabilities of such dealer or handler, verified under oath by such dealer or handler or an authorized agent thereof; which financial statement shall be in such form and in such detail as the Department prescribes from time to time.

(c) Whoever wilfully falsifies any such financial statement, in whole or in part, is guilty of making a false written statement in violation of § 1233 of Title 11 and shall be punished accordingly.

(d) If the Department of Agriculture determines from the financial statement that the fair net worth of the milk dealer or handler is at least equal to the amount of corporate surety, or individual surety, or collateral bond which such milk dealer or handler would otherwise be required to file, the Department may accept such milk dealer's or handler's bond and financial statement without requiring any corporate or individual surety thereon or collateral to be posted therewith.

(Code 1935 § 654E; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3167; 57 Del. Laws, c. 764 § 12; 70 Del. Laws, c. 186 § 1.)

§ 3168 Increase of bond.

If it appears from the dealer's or handler's financial statement, or from facts otherwise ascertained by the Department of Agriculture, that the bond afforded to producers selling, supplying or making available on consignment or otherwise milk to such milk dealer or handler does not adequately protect such producers, the Department may require such milk dealer or handler to procure an additional surety, or to give an additional bond or additional security for the collateral bond, in a sum to be determined by the Department, which (1) shall not exceed more than 50 percent of the value of the highest aggregate amount of milk purchased, acquired or received on consignment or otherwise by the dealer or handler from producers in any 1 month during the preceding or current year, which value shall be computed according to the prices applicable, or which (2) shall be a sum not exceeding by more than 50 percent the amount found to be due and owing producers by such dealer on a particular date determined by the Department, whichever sum is greater, but the total increase shall not in any event exceed $50,000. In the case of a milk dealer or handler who pays producers in full each week for milk purchased, acquired or received or handled on consignment or otherwise by him from such producers, any increase required hereunder shall not exceed more than 25 percent of such value or amount, but the total increase in any event shall not exceed $25,000.

(Code 1935 § 654F; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3168; 57 Del. Laws, c. 764 § 12.)

§ 3169 Decrease in bond.

The Department of Agriculture may grant a reduction of the bond or the collateral, or release an additional surety, if it appears that owing to a decrease in the milk purchased, received or handled by the dealer or handler, or to other causes, a bond in a lesser amount or with fewer sureties will protect producers selling, supplying or making available milk to such milk dealer or handler.

(Code 1935 § 654F; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3169; 57 Del. Laws, c. 764 § 12.)

§ 3170 Bonds, collateral, etc., deposited with State Treasurer.

All bonds, together with any moneys, or securities given as collateral therefor, received by the Department of Agriculture from milk dealers pursuant to the provisions of this subchapter, shall be transmitted by the Department to the State Treasurer for safekeeping subject to withdrawal in whole or in part at any time by the Department.

(Code 1935 § 654G; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3170; 57 Del. Laws, c. 764 § 12.)

§ 3171 Income from collateral.

The milk dealer or handler shall be entitled to all moneys received by the State Treasurer as interest or dividends upon any security or securities deposited by such milk dealer or handler with the Department of Agriculture and transmitted by the Department to the State Treasurer for safekeeping, in accordance with this subchapter. The milk dealer or handler shall not be entitled to interest or dividends if there is on file with the Department a valid unpaid claim of a producer against the milk dealer or handler, based on milk sold, supplied or made available by such producer to the milk dealer or handler.

(Code 1935 § 654H; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3171; 57 Del. Laws, c. 764 § 12.)

§ 3172 Suit upon bond.

The Department of Agriculture may sue on the bond on behalf of producers. Suit may be brought in the name of the State upon relation of the Department of Agriculture or of the Attorney General, in such manner as debts are by law recoverable.

(Code 1935 § 654I; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3172; 57 Del. Laws, c. 764 § 12.)

§ 3173 Order of Department of Agriculture.

If, by valid formal order refusing, suspending or revoking a license, after hearing with due notice to all those liable on the bond, the Department of Agriculture has found a milk dealer or handler to be indebted thereunder, such order and the findings of fact in support thereof shall be conclusive evidence of the amount due under such bond in a suit thereon by the Department, unless an appeal therefrom is pending and a supersedeas granted.

(Code 1935 § 654J; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3173; 57 Del. Laws, c. 764 § 12.)

§ 3174 Distribution of proceeds of bond or collateral.

The Department of Agriculture shall prescribe the procedure for the payment, out of the proceeds of any bond or collateral required by this subchapter, of the amounts found due to producers or handlers or dealers, based on sales or deliveries of milk by them to a milk dealer or handler who has posted a bond or collateral. If the proceeds of a bond or of collateral which has been posted by a milk dealer or handler shall be insufficient to pay in full the amounts due to producers who have sold or supplied milk to such milk dealer or handler, the moneys available shall be divided pro rata among such producers.

(Code 1935 § 654K; 48 Del. Laws, c. 376 § 1; 3 Del. C. 1953 § 3174; 57 Del. Laws, c. 764 § 12.)

Subchapter VI

Fresh Milk

§ 3175 Definitions.

(a) "Delaware fresh milk" means milk consisting entirely of fresh milk produced in Delaware.

(b) "Fresh milk" means milk offered for sale to the public which has not been dehydrated, rehydrated or reconstituted in whole or in part and shall not contain caseins, casein products, or caseinates other than those caseins, casein products, or caseinates which occur naturally.

(c) "Northeastern fresh milk" means milk consisting entirely of fresh milk produced in Delaware, Maryland, New Jersey, Pennsylvania, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire or Maine.

(76 Del. Laws, c. 333.)

§ 3176 Labeling of milk.

Milk containers may be labeled as "fresh", "Delaware fresh" or "Northeastern fresh" as long as the requirements of § 3175 of this title are met.

(76 Del. Laws, c. 333.)

§ 3177 Penalty.

Whoever violates this subchapter shall be assessed a civil penalty of $1,000 per instance.

(76 Del. Laws, c. 333.)

§ 3178 Enforcement.

The Department of Agriculture shall enforce this subchapter and may make rules and regulations as are necessary for such enforcement.

(76 Del. Laws, c. 333.)

Part III
Marketing of Agricultural Products
Chapter 32
NORTHEAST INTERSTATE DAIRY COMPACT

§§ 3201 -3204. The State of Delaware to enter into Compact; provisions thereof; the Delaware Delegation to the Northeast Interstate Dairy Compact; duties of the Secretary of Agriculture; civil penalties.

(Repealed by 77 Del. Laws, c. 357 § 1, effective July 12, 2010.)

Part III
Marketing of Agricultural Products
Chapter 35
EGGS

§ 3501 Definitions.

As used in this chapter, unless the context clearly requires a different construction:

(1) "Eggs" means eggs in the shell that are the product of domesticated chickens.

(2) "Consumer" means any person who acquires eggs for consumption in his own household and not for resale.

(3) "Institutional consumer" means a restaurant, hotel, boardinghouse or any other business, facility or place in which eggs are prepared or offered as food for use by its patrons, residents, inmates or patients.

(4) "Retailer" means any person who markets eggs to ultimate consumers.

(5) "Market" means sell, offer for sale, give in the channels of commerce, barter, exchange, or distribute in any manner.

(6) "Person" means any individual, producer, firm, partnership, exchange, association, trustee, receiver, corporation or any other entity and any member, officer, employee or agent thereof.

(7) "Grade" means specifications defining the limits of variation in quality of eggs in such a manner as to differentiate among classes of eggs, and the letter, number or other symbol by which reference thereto may be made.

(8) "Standard" means specifications of the physical characteristics of any or all of the component parts of individual eggs.

(43 Del. Laws, c. 88 § 5; 3 Del. C. 1953 § 3501; 56 Del. Laws, c. 258 § 1.)

§ 3502 Standards; grades; size-weight classes.

The Department of Agriculture shall establish, and from time to time, may amend or revise standards, grades, and size-weight classes for eggs marketed in Delaware. In administering this section, the Department of Agriculture shall have due regard for the desirability of uniformity in the standards, grades and size-weight classes for eggs moving in intrastate and interstate commerce and may employ standards, grades or size-weight classes developed by the United States Department of Agriculture.

(43 Del. Laws, c. 88 § 1; 3 Del. C. 1953 § 3502; 56 Del. Laws, c. 258 § 1; 57 Del. Laws, c. 764 § 14.)

§ 3503 Official quality grades and weight classes.

The standards, grades, weight classes and tolerance for individual shell eggs adopted by the United States Department of Agriculture, Poultry Division of the Agricultural Marketing Service are adopted as the official standards, grades, weight classes and tolerance for this State. Such adopted standards apply to consumer grades only. Supplements to, and revisions of, the United States Department of Agriculture's standards, grades, weight classes and tolerance shall serve to effect similar changes in the standards, grades, weight classes and tolerance for this State.

Official standards for quality for individual shell eggs are:

Grade AA;

Grade A;

Grade B;

Unclassified.

(43 Del. Laws, c. 88 § 2; 3 Del. C. 1953 § 3503; 56 Del. Laws, c. 258 § 1.)

§ 3504 Labeling.

(a) The container in which any eggs are marketed in this State shall bear prominently on the outside portion thereof:

(1) The grade of the eggs;

(2) The size-weight class of the eggs;

(3) The word "eggs";

(4) The numerical count of the contents;

(5) The name and address of the packer or distributor.

(b) Eggs marketed in any manner other than in containers labeled in accordance with subsection (a) of this section shall be kept in full view of the prospective purchaser and shall have adjacent thereto, and prominently displayed, a sign or similar device bearing the grade and size-weight class of the eggs. Eggs not graded for quality shall be marked "UNCLASSIFIED." Eggs not sorted into official size classes shall be marked "UNCLASSIFIED." Such sign or device shall bear letters and numbers at least 1/2 inch in height of such character as shall be clearly visible to prospective purchasers.

(c) The term "fresh eggs," or any legend, symbol, picture, representation or device declaring or tending to convey the impression that the eggs are fresh, may be applied only to eggs meeting the requirements of grade A or AA.

(d) No label, container, display, or advertisement of eggs shall contain incorrect, fraudulent, or misleading representations. No person

shall advertise eggs for sale unless the unabbreviated grade and size-weight class are conspicuously designated in block letters at least half as high as the tallest letter in the word "eggs" or the tallest figure in the price, whichever is larger.

(e) Letters and numerals used to designate the grade and size-weight class of eggs marketed in containers shall be clearly legible and at least 3/8 of an inch in height. Cartons, cases or other containers holding 2 or more containers of eggs shall also be lettered and numbered in accordance with this subsection. Any carton, case or other container which is reused shall, upon such reuse, have obliterated or removed therefrom any labels, lettering, numerals, or other symbols or representations not applicable to the contents upon such reuse.

(43 Del. Laws, c. 88 § 3; 3 Del. C. 1953 § 3504; 56 Del. Laws, c. 258 § 1.)

§ 3505 Advertising of eggs.

Advertising of eggs by the roadside, or by newspaper, magazine, handbills, radio, television, window signs, store displays or in any manner, shall include quality and size designations if the price is shown or stated. Such quality and size designations shall be prominent and conspicuous and the advertising shall be in no way deceptive or dishonest.

(43 Del. Laws, c. 88 § 4; 3 Del. C. 1953 § 3505; 56 Del. Laws, c. 258 § 1.)

§ 3506 Limitation in use of descriptive terms.

It shall be unlawful for any person to use such descriptive terms as fresh, new laid, hennery, direct from farm, farm fresh, best, number one, fancy, special, extra, select, or any other words, figures or symbols which imply or modify the quality designation in describing eggs of lesser quality than Grade A.

(43 Del. Laws, c. 88 § 6; 3 Del. C. 1953 § 3506; 56 Del. Laws, c. 258 § 1.)

§ 3507 Invoice requirements.

Every person selling eggs to retailers, restaurants, hotels, public and private eating places and institutions shall furnish a dated invoice showing the exact size and quality of such eggs, or they shall be invoiced as "UNCLASSIFIED."

(43 Del. Laws, c. 88 § 7; 3 Del. C. 1953 § 3507; 56 Del. Laws, c. 258 § 1.)

§ 3508 Sanitation and related matters.

(a) Any person assembling, transporting, marketing, or processing graded eggs for marketing shall keep the eggs at a temperature in accordance with United States Department of Agriculture temperature requirements. In addition, any container, including the packaging material therein or associated therewith, shall be clean, unbroken and free from foreign odor.

(b) The Department of Agriculture shall by rules and regulations provide for the keeping, processing, transporting and sale of eggs under sanitary conditions.

(c) Nothing in this chapter or in any rules or regulations of the Department of Agriculture shall be construed to exempt any persons or premises from the application thereto of any laws otherwise applicable and relating to the operation of establishments or facilities for the storing, transporting, sale, distribution, preparation or serving of food.

(43 Del. Laws, c. 88 § 8; 3 Del. C. 1953 § 3508; 56 Del. Laws, c. 258 § 1; 57 Del. Laws, c. 764 § 14; 69 Del. Laws, c. 98 § 1.)

§ 3509 Sale of eggs unfit for human consumption.

No person shall offer for sale, sell, trade or otherwise exchange eggs for human consumption which are classified inedible or loss eggs as defined by the United States Department of Agriculture rules and regulations on eggs.

(43 Del. Laws, c. 88 § 1; 3 Del. C. 1953 § 3509; 56 Del. Laws, c. 258 § 1.)

§ 3510 Exemptions.

(a) Producers are exempt from §§ 3503 and 3504 of this title if they sell eggs produced by their own flocks, provided such eggs are not sold at an established place of business detached from the premises of their production and provided they are not advertised or displayed to the public with price, or size, or quality designations or any descriptive terms as stated in § 3506 of this title.

(b) Newspapers or any other advertising media shall not be liable, pursuant to this chapter, for publishing advertisements furnished by a vendor or distributor of eggs or anyone acting on their behalf.

(3 Del. C. 1953 § 3510; 56 Del. Laws, c. 258 § 1.)

§ 3511 Enforcement.

This chapter, together with the rules and regulations as promulgated by the Department of Agriculture, shall be enforced by the Department or its authorized agents. Any additional rules and regulations shall be determined by a public hearing after due notice.

(43 Del. Laws, c. 88 § 6; 3 Del. C. 1953 § 3511; 56 Del. Laws, c. 258 § 1; 57 Del. Laws, c. 764 § 14.)

§ 3512 Power of enforcement officers.

In order to carry out this chapter, the Department of Agriculture, or its representatives, may enter, during the usual hours of business, any warehouse, store, building, market, carrier or vehicle at, in or from which eggs are sold, offered or exposed for sale and examine any or all such eggs for the purpose of determining whether the provisions of this chapter have been violated.

(43 Del. Laws, c. 88 § 7; 3 Del. C. 1953 § 3512; 56 Del. Laws, c. 258 § 1; 57 Del. Laws, c. 764 § 14.)

§ 3513 Violations and penalties.

Whoever violates this chapter, or wilfully interferes with the Department of Agriculture or its duly authorized agents in the performance of its or their duties, shall be fined not less than $25 nor more than $100 for every such violation. Justices of the peace shall have jurisdiction over such violation.

(43 Del. Laws, c. 88 § 8; 3 Del. C. 1953 § 3513; 56 Del. Laws, c. 258 § 1; 57 Del. Laws, c. 764 § 14.)

Part V
Poultry
Chapter 63
POWERS AND DUTIES; INSPECTION AND VACCINATION OF POULTRY FLOCKS AND HATCHERIES

§ 6301 Powers and duties of Department.

The Department may execute contracts for the preparation, publication and dissemination of information for the promotion of the poultry industry in the State. The Department may also undertake studies on disease control, regulatory activities and various types of experimental and extension activities which may in its opinion be deemed beneficial to the poultry industry. All money expended for experimental and extension activities shall be in cooperation with the Agricultural Experimental Station and Extension Service of the University of Delaware. The Department may expend any share of the funds appropriated to its use for advertising, education and other mediums for the promotion of state poultry and poultry products, with the understanding that during periods of overproduction, decreased consumer-demand and other conditions resulting in poultry markets unfavorable to the grower, the moneys at its disposal should be used largely, if not entirely, for advertising and other sales promotional activities in the interest of state poultry and state poultry products.

(47 Del. Laws, c. 356 § 1; 3 Del. C. 1953 § 6103; 57 Del. Laws, c. 764 § 20B.)

§ 6302 Inspection and certification of poultry flocks and hatcheries; rules and regulations.

For the encouragement of the breeding of better poultry in this State and for the improvement in the quality of chicks from the hatcheries of the State, the Department of Agriculture may have inspections made of poultry flocks and chick hatcheries in the State upon application of the owners thereof and may make rules for such inspections. When the state inspection shows freedom from disease and the meeting of standards for poultry flocks and chick hatcheries, which standards the Department of Agriculture may establish, the Department may issue certificates to the owners showing that the standards have been met. The Department may make rules and regulations for the management and care of flocks. When hatcheries in this State use for hatching purposes eggs from flocks of poultry which have been certified, such hatcheries, upon compliance with all rules and regulations of the Department of Agriculture, shall be issued certificates setting forth the classification of their hatcheries. The Department may make rules and regulations for the movement, sale, labeling and advertising of all chicks, eggs and poultry produced by flocks and hatcheries under state supervision as aforesaid.

(Code 1915 § 697K; 33 Del. Laws, c. 51 § 1; Code 1935 § 626; 47 Del. Laws, c. 361 § 1; 3 Del. C. 1953 § 6301; 57 Del. Laws, c. 764 § 21.)

§ 6303 Revocation of certification.

The Department of Agriculture may revoke certificates issued in accordance with § 6302 of this title when the rules, regulations and requirements made for flocks of poultry and hatcheries are not complied with by the owners of such flocks and hatcheries.

(Code 1915 § 697L; 33 Del. Laws, c. 51 § 1; Code 1935 § 627; 47 Del. Laws, c. 361 § 1; 3 Del. C. 1953 § 6302; 57 Del. Laws, c. 764 § 21.)

§ 6304 Violations of certification; penalties; jurisdiction.

(a) Whoever sells, or advertises for sale, chicks, eggs or poultry of the kind specified in § 6302 of this title, or advertises in any way that his flock or hatchery is under state supervision without the authority of the Department of Agriculture, shall be fined not less than $25 nor more than $500, together with costs of suit.

(b) Justices of the peace shall have jurisdiction of offenses under this section.

(Code 1915 § 697L; 33 Del. Laws, c. 51 § 1; Code 1935 § 627; 47 Del. Laws, c. 361 § 1; 3 Del. C. 1953 § 6303; 57 Del. Laws, c. 764 § 21.)

§ 6305 Cooperation with United States Department of Agriculture.

The Department of Agriculture may cooperate with the United States Department of Agriculture in the administration of the National Poultry Improvement Plan or the National Turkey Improvement Plan.

(Code 1935 § 627A; 47 Del. Laws, c. 361 § 2; 3 Del. C. 1953 § 6304; 57 Del. Laws, c. 764 § 21.)

§ 6306 Vaccination personnel; sanitary requirements.

(a) No person engaged in performing vaccination work on poultry shall enter into or upon any poultry yard, poultry house or poultry premises to vaccinate any poultry for the diseases commonly called New Castle, chicken pox or laryngotracheitis, unless such person shall wear outer footwear and outer garments and shall use equipment which have been thoroughly cleaned and disinfected as prescribed in this section before entry is made into or upon any such premises.

(b) The outer footwear shall be overshoes or boots of rubber or other material which can be readily cleaned and disinfected, and the outer garments shall be aprons, coveralls, long coats or bibbed overalls and jackets made of rubber or rubberized material which can be readily

cleaned and disinfected, or made of a pervious fabric which can be readily laundered. All outer footwear and apparel of rubber or water repellant material must be thoroughly cleaned and disinfected with a suitable disinfectant before entry is made into or upon any such poultry premises; and if the apparel is of a pervious fabric, a freshly laundered outer garment must be worn upon entering any such poultry premises.

(c) All equipment used by any such person for catching or confining poultry or in performing any such vaccination work shall be thoroughly cleaned and disinfected with a suitable disinfectant before any such equipment is brought into or upon the poultry premises.

(d) After completing any vaccination work, all outer footwear, outer garments and equipment shall be thoroughly cleaned and disinfected before the same are removed from the premises.

(Code 1935 § 609A(1); 47 Del. Laws, c. 273 § 1; 3 Del. C. 1953 § 6305; 70 Del. Laws, c. 186 § 1.)

§ 6307 Rules and regulations pertaining to vaccination of poultry.

The Department of Agriculture shall establish rules and regulations respecting the vaccination of poultry which are necessary to carry out the purposes of this chapter.

(Code 1935 § 609A(2); 47 Del. Laws, c. 273 § 1; 3 Del. C. 1953 § 6306; 57 Del. Laws, c. 764 § 21.)

§ 6308 Violation of vaccination requirements; penalties.

Whoever violates § 6306 of this title, or any of the regulations established by the Department of Agriculture under § 6307 of this title, shall, for each offense, be fined not less than $10 nor more than $100, or imprisoned not less than 5 nor more than 30 days, or both.

(Code 1935 § 609A(3); 47 Del. Laws, c. 273 § 1; 3 Del. C. 1953 § 6307; 57 Del. Laws, c. 764 § 21.)

Part V
Poultry
Chapter 67
BIOLOGICAL PRODUCTS FOR USE IN ANIMALS AND POULTRY

§ 6701 Definitions.

(a) "Department" means Department of Agriculture.

(b) "Person" includes individual, partnership, corporation, cooperative or association.

(c) "Distribute" means offer to sale, sell, barter or otherwise supply biologicals.

(d) "Biological product" means living, attenuated or killed organisms or viruses for the treatment or prevention of diseases of animals, other than humans, or poultry.

(e) "Safety" means that the biological product is not harmful for the purposes intended.

(f) "Potency" means that the biological product possesses sufficient power to protect poultry or animals, other than humans, against the disease or diseases represented by the registrant.

(3 Del. C. 1953 § 6701; 53 Del. Laws, c. 314; 57 Del. Laws, c. 764 § 23; 63 Del. Laws, c. 277 § 1.)

§ 6702 Application of chapter.

This chapter shall apply to the use of all biological products to be used for the prevention, suppression or treatment of disease in animals, other than humans, or poultry kept or housed within the confines of this State.

(63 Del. Laws, c. 277 § 1.)

§ 6703 Requirements.

(a) Each biological product, before being shipped into this State, must comply strictly with the provisions set forth by the United States Department of Agriculture's Veterinary Biologics Division on safety, potency and efficacy. The product manufacturer must supply upon demand of the State Veterinarian's office of the Delaware Department of Agriculture a copy of the U.S.D.A. approval to market the product in question in interstate commerce.

(b) Any person manufacturing a biological product solely for use within the State must also comply with the same requirements as set down for the interstate sale of biologicals.

(63 Del. Laws, c. 277 § 1.)

§ 6704 Refusal of permission to distribute; exemptions.

(a) If in the opinion of the State Veterinarian the best interest of the animal, other than humans, or poultry population of the State would be served or for reason of proper diagnosis that a biological product duly licensed and approved by the U.S.D.A. Biologics Division should not be used within the State, then the manufacturer of such a biological product will be notified why that product should not be distributed within the State.

(b) The State Veterinarian shall have the authority to grant exemptions to the above requirements if it is positively shown that there is a case of hardship caused by the withholding of approval of the product destined for use by Delaware livestock producers.

(c) The State Veterinarian shall grant, in writing, permission for a manufacturer who has complied with U.S.D.A. requirements to conduct field trials using new products on poultry or animals in the State.

(63 Del. Laws, c. 277 § 1.)

§ 6705 Penalties; jurisdiction.

Any person who knowingly buys, receives or uses any biological product intended for use in animals, other than humans, or poultry that does not have U.S.D.A. approval or a written statement of exemption from the State Veterinarian shall be fined not less than $100 nor more than $1000. The Court of Common Pleas shall have jurisdiction over violations of this section.

(3 Del. C. 1953 § 6704; 53 Del. Laws, c. 314; 57 Del. Laws, c. 764 § 23; 63 Del. Laws, c. 277 § 1.)

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 71
ANIMAL HEALTH

§ 7101 Duties and powers of Department of Agriculture; construction with Chapter 63.

(a) The Department of Agriculture shall protect the health of the domestic animals of the State, and determine and employ the most efficient and practical means for the detection, prevention, suppression, control or eradication of dangerous, contagious or infectious diseases among the domestic animals, to include a blood test and injection test for the determination of the existence of any contagious or infectious disease. For these purposes it may establish, maintain, enforce and regulate such quarantine and other measures relating to the movement and care of animals and their products, the disinfection of suspected localities and articles and the destruction of animals, as it deems necessary, and may adopt from time to time all such regulations as are necessary and proper for carrying out the purposes of this chapter and Chapter 73 of this title. In the case of any contagious disease, the Department or its authorized agents may put under quarantine the entire herd containing the suspected or diseased animal or animals.

(b) Where this section is in conflict with Chapter 63 of this title, this section shall control.

(26 Del. Laws, c. 78 § 2; Code 1915 § 684; 32 Del. Laws, c. 33 § 4; Code 1935 § 607; 3 Del. C. 1953 § 7101; 52 Del. Laws, c. 281 § 1; 57 Del. Laws, c. 764 § 24; 66 Del. Laws, c. 157 § 1.)

§ 7102 Assistants or agents; supplies; oaths of appraisers; examinations.

(a) The Department of Agriculture may appoint and employ such assistants and agents, and may purchase such supplies and materials as are necessary in carrying out this chapter and Chapter 73 of this title. The Department and the members thereof may administer oaths or affirmations to the appraisers appointed under § 7107 of this title.

(b) The Department may order and conduct such examinations into the conditions of the livestock of the State in relation to contagious diseases, including the milk and meat supplies of cities, towns, boroughs and villages, as seem necessary, and take proper measures to protect milk and meat supplies from contamination.

(26 Del. Laws, c. 78 § 6; Code 1915 § 688; 32 Del. Laws, c. 33 § 6; Code 1935 § 611; 3 Del. C. 1953 § 7102; 57 Del. Laws, c. 764 § 24.)

§ 7103 Administration of hog-cholera vaccine.

No person shall buy, sell or administer any modified live virus hog-cholera vaccine in this State.

(3 Del. C. 1953 § 7103; 57 Del. Laws, c. 689 § 1; 57 Del. Laws, c. 764 § 24.)

§ 7104 Entry on premises for examination.

(a) The Department of Agriculture or any member thereof, or any of their duly authorized agents, may enter any premises, farms, fields or pens, where any domestic animals are at the time quartered, for the purpose of examining them in any way that is deemed necessary to determine whether they are or were the subjects of any contagious or infectious diseases.

(b) For purposes of this section, it shall be the duty of the owner or custodian of any animals proposed to be examined, to adequately restrain and confine said animals in an area accessible to the examiner and so designated by him or her on the premises.

(26 Del. Laws, c. 78 § 4; Code 1915 § 686; Code 1935 § 609; 3 Del. C. 1953 § 7104; 52 Del. Laws, c. 281 § 2; 57 Del. Laws, c. 689 § 2; 57 Del. Laws, c. 764 § 24; 70 Del. Laws, c. 186 § 1.)

§ 7105 Violations; penalties.

Whoever wilfully violates this chapter or Chapter 73 of this title, or any regulations of the Department of Agriculture, or wilfully interferes with officers appointed under said chapters, shall, if no other penalty is provided by law, be fined not more than $100 or imprisoned not more than 30 days, or both.

(26 Del. Laws, c. 78 § 5; Code 1915 § 687; 32 Del. Laws, c. 33 § 5; Code 1935 § 610; 3 Del. C. 1953 § 7105; 57 Del. Laws, c. 764 § 24.)

§ 7106 Expenses.

All necessary expenses of the Department of Agriculture under this chapter and Chapter 73 of this title shall, upon approval in writing by the Governor, be paid by the State Treasurer.

(25 Del. Laws, c. 48; 26 Del. Laws, c. 78 § 7; Code 1915 § 689; Code 1935 § 612; 3 Del. C. 1953 § 7106; 57 Del. Laws, c. 764 § 24.)

§ 7107 Compensation for animals condemned and killed.

(a) Except as otherwise provided in Chapter 73 of this title, when it is deemed necessary to condemn and kill any animal or animals to prevent the further spread of disease, and an agreement cannot be made with the owners for the value thereof, 3 appraisers shall be appointed, 1 by the owner, 1 by the Department of Agriculture or its authorized agent, and the third by the 2 so appointed. The appraisers

shall, under oath or affirmation, appraise the animal or animals, taking into consideration their actual value and condition at the time of appraisement, and the appraised price shall be paid in the same manner as other expenses of the Department. Under such appraisement not more than $50 shall be paid for any infected animal of grade or common stock, not more than $100 for any infected animal of registered stock, not more than $40 for any horse or mule of common or grade stock, and not more than 50 percent of the appraised value of any standard bred registered or imported horse.

(b) Notwithstanding the provisions of subsection (a) of this section, in no event shall the State be liable or otherwise legally obligated to pay compensation to any person(s) or other entities in any amount exceeding $5 million during any single state fiscal year as a result of the State's having ordered the destruction of any poultry to prevent the spread of disease.

(26 Del. Laws, c. 78 § 3; Code 1915 § 685; Code 1935 § 608; 3 Del. C. 1953 § 7107; 57 Del. Laws, c. 605; 57 Del. Laws, c. 764 § 24; 69 Del. Laws, c. 64 § 251.)

§ 7108 Feeding of garbage to hogs prohibited; exception; penalty.

(a) No person shall feed garbage to hogs in this State except as provided in subsection (c) of this section.

(b) For the purposes of this section "garbage" means putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of foods, swine carcasses and parts thereof, but not to include waste exclusively vegetable in nature.

(c) This section shall not apply to any individual farmer who feeds only his or her own household garbage to hogs which are raised for such individual farmer's own use.

(d) Whoever wilfully violates this section shall be fined not less than $200 and not more than $500. Each day's violation shall be considered a separate offense.

(e) Justices of the peace shall have original jurisdiction to hear, try and finally determine alleged violations of this section.

(3 Del. C. 1953 § 7108; 49 Del. Laws, c. 309; 57 Del. Laws, c. 689 § 3; 59 Del. Laws, c. 127 § 1; 70 Del. Laws, c. 186 § 1.)

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 72
POSSESSION OF MAMMALS OR REPTILES EXOTIC TO DELAWARE

§ 7201 Possession; permit required.

No person shall bring into this State, possess, sell or exhibit any live wild mammal or hybrid of a wild mammal or live reptile not native to or generally found in Delaware without first securing a permit under this chapter. The Department of Agriculture may adopt regulations to exempt such mammals and reptiles that do not represent a significant threat to community interests from the provisions of this chapter. Notwithstanding any provision of this chapter to the contrary, except for medical or psychological research or for display in any licensed zoological park or traveling circus, no person shall bring into this State, possess, sell or exhibit any poisonous snake not native to or generally found in Delaware where the venom of such snake poses a risk of serious injury or death to a human, and no permit for the same shall be issued by the Department of Agriculture.

(3 Del. C. 1953 § 7201; 57 Del. Laws, c. 553; 69 Del. Laws, c. 84 § 1; 72 Del. Laws, c. 285 § 1.)

§ 7202 Permit; rules and regulations; exemptions.

The Department of Agriculture shall enforce this chapter and may issue a permit where the possession or exhibition of a live wild mammal or hybrid of a wild mammal or live reptile will be in the public interest, and may promulgate rules and regulations for the proper enforcement of this chapter. The Department may designate agencies authorized to conduct animal cruelty enforcement and/or dog control enforcement to enforce the provisions of this chapter. The Department shall receive a fee of $25 for each and every permit issued. Nothing in this chapter shall be deemed to prevent the use of any live wild mammal or hybrid of a wild mammal or live reptile in medical or psychological research or for display in any municipal zoological park or traveling circus after issuance of a permit.

(3 Del. C. 1953 § 7202; 57 Del. Laws, c. 553; 67 Del. Laws, c. 260 § 1; 67 Del. Laws, c. 277 § 1; 69 Del. Laws, c. 84 § 1.)

§ 7203 Penalties.

Whoever violates this chapter shall for each offense be fined not more than $500, imprisoned not more than 30 days, or both. Justices of the peace shall have jurisdiction over offenses under this chapter.

(3 Del. C. 1953 § 7203; 57 Del. Laws, c. 553.)

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 73
CONTROL AND ERADICATION OF CATTLE DISEASES
Subchapter I
Bovine Tuberculosis and Other Cattle Diseases

§ 7301 Importation of cattle.

(a) The importation of dairy cows and other cattle for breeding purposes into the State is prohibited, excepting when such cattle are accompanied by a certificate from an inspector, whose competency and reliability are certified to by the authorities charged with the control of the diseases of domestic animals in the state from whence the cattle came, certifying that they have been examined and subjected to the tuberculin test, and are free from disease, and whose certificate shall be acceptable to the Department of Agriculture.

(b) In lieu of the inspection certificate required by this section, cattle as above specified from points outside the State may, under such restrictions as are provided by the Department, be shipped in quarantine to their destination in the State, there to remain in quarantine, until properly examined at the expense of the owner by a veterinarian to be designated by the Department.

(25 Del. Laws, c. 122 §§ 1, 2; Code 1915 § 691; Code 1935 § 613; 3 Del. C. 1953 § 7301; 57 Del. Laws, c. 764 § 25.)

§ 7302 Enforcement of importation requirements; rules and regulations.

The Department of Agriculture shall enforce § 7301 of this title, and may make such rules and regulations as are necessary and proper for enforcement.

(25 Del. Laws, c. 122 § 4; Code 1915 § 691; Code 1935 § 613; 3 Del. C. 1953 § 7302; 57 Del. Laws, c. 764 § 25.)

§ 7303 Violations of importation requirements; penalties; jurisdiction.

(a) Whoever violates § 7301 of this title shall, for each offense, be fined not more than $100 or imprisoned not more than 30 days, or both.

(b) Prosecutions under this section shall be brought in the proper court of the county in which such cattle are sold, offered for sale, or delivered to a purchaser.

(25 Del. Laws, c. 122 § 3; Code 1915 § 691; Code 1935 § 613; 3 Del. C. 1953 § 7303.)

§ 7304 Importation of Texas or Cherokee cattle; penalty.

No person shall bring or have brought into the State any Texas or Cherokee cattle, except for the purpose of slaughtering. All such cattle shall be taken directly from the cars on which they are transported to the abattoir, slaughterhouse or enclosure connected therewith and kept therein until slaughtered. Whoever violates this section shall be fined $20 and costs for each and every head of said cattle brought into the State.

(15 Del. Laws, c. 379; 16 Del. Laws, c. 310 § 1; 19 Del. Laws, c. 181 § 1; Code 1915 § 694; Code 1935 § 616; 3 Del. C. 1953 § 7304.)

§ 7305 Sale of animals with pleuro-pneumonia; penalties.

Whoever sells or disposes of any animal or animals, known to be infected with pleuro-pneumonia, or known to have been exposed thereto within 1 year prior to the sale or disposal, without due notice to the purchaser that the disease exists in the animals, or that they have been exposed thereto, shall be fined not more than $500 or imprisoned not more than 1 year.

(17 Del. Laws, c. 630 § 2; Code 1915 § 692; Code 1935 § 614; 3 Del. C. 1953 § 7305.)

§ 7306 Possession of cattle having pleuro-pneumonia; notice; penalties.

Whoever, knowing or having reason to suspect that pleuro-pneumonia exists among the cattle in his possession or under his care, fails to forthwith give notice thereof to the Department of Agriculture, shall be fined not more than $500 or be imprisoned not more than 1 year.

(17 Del. Laws, c. 630 § 4; Code 1915 § 693; Code 1935 § 615; 3 Del. C. 1953 § 7306; 57 Del. Laws, c. 764 § 25.)

§ 7307 Condemnation and disposal of cattle reacting to tuberculin test.

Cattle which have reacted to the tuberculin test or show marked diagnostic symptoms of tuberculosis shall be condemned and disposed of as directed by the Department of Agriculture. Owners of cattle that have reacted to the tuberculin test or that have been condemned by a representative of the Department of Agriculture or of the United States Bureau of Animal Industry may dispose of the animals in such ways as shall be approved by the Department of Agriculture and may receive for them their salvage value.

(Code 1915 § 697B; 31 Del. Laws, c. 10 § 1; 32 Del. Laws, c. 33 § 7; Code 1935 § 620; 3 Del. C. 1953 § 7307; 57 Del. Laws, c. 764 § 25.)

§ 7308 Conditions of payment for destruction of tubercular cattle.

(a) No payment shall be made for any animals destroyed on account of tuberculosis unless the owner has complied with all quarantine and other regulations that are agreed upon by the United States Bureau of Animal Industry and the Department of Agriculture, and unless the owner has executed the forms required by these regulations.

(b) Claims shall not be allowed which arise out of the condemnation of cattle for tuberculosis on a tuberculin test applied by other than a representative detailed by the Department of Agriculture or of the United States Bureau of Animal Industry.

(c) No compensation shall be paid to any owner of tubercular cattle whose entire herd is not under federal and state supervision for the eradication of tuberculosis.

(Code 1915 §§ 697F, 697G, 697H; 31 Del. Laws, c. 10 § 1; 32 Del. Laws, c. 33 § 7; Code 1935 §§ 621-623; 3 Del. C. 1953 § 7308; 57 Del. Laws, c. 764 § 25.)

§ 7309 Payment for cattle condemned for tuberculosis.

The Department of Agriculture may pay out of the funds appropriated by the General Assembly of the State one half of the difference between the appraised value and the salvage of all cattle that are condemned for tuberculosis by the Department of Agriculture or a veterinarian of the United States Bureau of Animal Industry working in cooperation with the Department of Agriculture. All cattle condemned for tuberculosis shall be appraised in a manner prescribed by the Department of Agriculture. No payment as compensation for any tubercular animal destroyed shall exceed two thirds of the difference between the appraised value of such animal and the value of the salvage thereof; and in no case shall any payment hereunder be more than $125 for any grade animal or more than $150 for any purebred animal, and no payment shall be made unless the owner has complied with all lawful quarantine regulations.

(32 Del. Laws, c. 33 § 7; Code 1935 § 619; 42 Del. Laws, c. 81 § 1; 3 Del. C. 1953 § 7309; 57 Del. Laws, c. 764 § 25.)

Subchapter II

Bang's Disease

§ 7321 Blood test upon request of owner.

The Department of Agriculture may take under supervision, whenever the Department deems it advisable, such herds of cattle as the owners request, for the conducting of the blood test for Bang's disease (brucellosis), if the owners requesting this service agree to conform to the rules and regulations promulgated by the Department of Agriculture for the control and eradication of the disease.

(38 Del. Laws, c. 45 § 1; Code 1935 § 677; 3 Del. C. 1953 § 7321; 57 Del. Laws, c. 764 § 25.)

§ 7322 Rules and regulations; quarantine orders.

For the proper enforcement of this subchapter, the Department of Agriculture may make and enforce orders, rules and regulations for the control and eradication and to prevent the spread of Bang's disease or any other contagious or infectious disease to the cattle of the State; and issue any quarantine orders that it deems necessary to prevent the entrance of cattle affected with a contagious or infectious disease.

(38 Del. Laws, c. 45 § 2; Code 1935 § 678; 41 Del. Laws, c. 82 § 13; 3 Del. C. 1953 § 7322; 57 Del. Laws, c. 764 § 25.)

§ 7323 Vaccination of calves.

Upon request of an owner, the Department of Agriculture shall cause any calves in the State to be vaccinated against brucellosis (Bang's disease) when such calves are between the ages of 4 and 8 months except calves in herds under state and federal supervision for the control and eradication of brucellosis and operating under the test and slaughter plan, which calves need not be vaccinated unless the owners so desire. Upon such request, the Department of Agriculture shall assign a federal, state or accredited veterinarian to administer the vaccine furnished by the Department. The Department shall make the necessary rules and regulations for handling and use of the vaccine.

(Code 1935 § 678A(a); 46 Del. Laws, c. 264 § 1; 3 Del. C. 1953 § 7323; 57 Del. Laws, c. 764 § 25.)

§ 7324 Moving of unvaccinated cattle; exceptions.

No person shall move cattle from any premise for other than immediate slaughter unless they have been vaccinated prior to reaching the age of 8 months or unless such animal is negative to an authorized blood agglutination test for brucellosis made within a period of 30 days prior to the date of removal. Such restriction shall not apply to animals in accredited brucellosis-free herds.

(47 Del. Laws, c. 355 § 1; 48 Del. Laws, c. 30 § 1; 3 Del. C. 1953 § 7324.)

§ 7325 Report of veterinarians; vaccination identification; noncompliance.

Each veterinarian authorized to make vaccinations shall report to the Department of Agriculture on forms furnished by it all vaccinations. Every animal vaccinated under this chapter shall have tattooed in his left ear such numerals and letters as the Department of Agriculture authorizes. Any veterinarian not complying with the rules made by the Department of Agriculture for the control and eradication of Bang's disease shall not be assigned any further state work.

(Code 1935 § 678A(b); 46 Del. Laws, c. 264 § 1; 47 Del. Laws, c. 355 § 2; 3 Del. C. 1953 § 7325; 57 Del. Laws, c. 764 § 25.)

§ 7326 Application for herd test; tagging and removal of reactors.

Any owner of a herd not under state and federal test and slaughter plan may apply to the Department of Agriculture for a herd test for brucellosis for the purpose of determining the extent of infection in such owner's herd so long as not more than 1 such test is made on any 1 herd in any 1 year. Any and all reactors found as a result of the test shall be tagged with react tags, the numbers of which shall by recorded, and shall remain on the premises unless removed for immediate slaughter at an establishment where federal meat inspection is maintained. At the time of such removal, reactors shall be branded with a "B" brand not more than 3 nor less than 2 inches high and a permit issued for removal to slaughter. Reactors found in informational tests shall not be eligible to indemnity unless the owner adopts the test and slaughter plan and fully observes the regulations governing operation under the plan.

(Code 1935 § 678A(c); 46 Del. Laws, c. 264 § 1; 3 Del. C. 1953 § 7326; 57 Del. Laws, c. 764 § 25; 70 Del. Laws, c. 186 § 1.)

§ 7327 Tests of herds under state-federal supervision; disposition of reactors.

When any owner of cattle in the State places the owner's herd of cattle under state-federal supervision for the eradication of Bang's disease, and signs the federal agreements for the testing of the owner's herd, the blood samples from the owner's cattle shall be taken by a veterinarian designated by the Department of Agriculture and tested in the laboratory of the Department or a laboratory officially designated by the Department, by the agglutination test. All animals which show a positive reaction to this test shall be identified by a "reactor" ear tag and brand, and shall be slaughtered, under federal or state supervision. Animals showing a suspicious reaction to the agglutination test shall be held for 60 days and retested.

(41 Del. Laws, c. 82 § 3; 3 Del. C. 1953 § 7327; 57 Del. Laws, c. 764 § 25; 70 Del. Laws, c. 186 § 1.)

§ 7328 Slaughter of condemned animals.

Any animal condemned for Bang's disease shall be slaughtered upon the direction of the Department of Agriculture or its duly appointed agent.

(41 Del. Laws, c. 82 § 4; 3 Del C. 1953 § 7328; 57 Del. Laws, c. 764 § 25.)

§ 7329 Payment for cattle condemned.

The Department of Agriculture may pay out of the funds appropriated by the General Assembly of the State one half of the difference between the appraised value and the salvage of all cattle that may be condemned for Bang's disease by the Department or a veterinarian of the United States Bureau of Animal Industry working in cooperation with the Department of Agriculture. All cattle which are condemned for Bang's disease shall be appraised in a manner prescribed by the Department of Agriculture. No payment as compensation for any animal with Bang's disease destroyed shall exceed two thirds of the difference between the appraised value of such animal and the value of the salvage thereof. In no case shall any payment hereunder be more than $125 for any grade animal or more than $150 for any purebred animal, and no payment shall be made unless the owner has complied with all lawful quarantine regulations.

(32 Del. Laws, c. 33 § 7; Code 1935 § 619; 42 Del. Laws, c. 81 § 1; 3 Del. C. 1953 § 7329; 57 Del. Laws, c. 764 § 25.)

§ 7330 Cleaning of premises after finding reactors.

The owner shall clean and disinfect the premises where reactors to the agglutination test for Bang's disease have been found and removed, at the owner's own expense, in accordance with instructions from the representative of the Department of Agriculture, who shall inspect the premises.

(41 Del. Laws, c. 82 § 5; 3 Del. C. 1953 § 7330; 57 Del. Laws, c. 764 § 25; 70 Del. Laws, c. 186 § 1.)

§ 7331 Quarantine for refusal to place herd under supervision.

If it is shown beyond a reasonable doubt that Bang's disease exists in a herd of cattle, and the owner refuses to sign an agreement placing the owner's herd under supervision of the Department of Agriculture for the eradication of the disease, or refuses to have any reactors to the Bang's disease test slaughtered at the direction of the Department, the Secretary of the Department or the Secretary's agent shall place such premises under quarantine by written notice and no cattle shall be allowed to be removed or any additions made to the herd while it is under such quarantine.

(41 Del. Laws, c. 82 § 6; 3 Del. C. 1953 § 7331; 57 Del. Laws, c. 764 § 25; 70 Del. Laws, c. 186 § 1.)

§ 7332 Quarantine and testing of modified accredited areas.

When 75 percent of the cattle owners in any county, hundred, district, or other designated area have tested herds of cattle or have made application to have their herds tested and are sufficiently interested in the work to cooperate with the Department of Agriculture to the extent of making such county, hundred, district, or other designated area become a "modified accredited area," and to comply with the state and federal regulations in order to keep their own herds clean and to bring into such area only cattle which have been tested in accordance with the state and federal regulations, the Department of Agriculture may, when it deems such action advisable and expedient, serve notice that such area shall be placed under quarantine and the Department shall commence Bang's disease testing under the area plan without expense to the owner, to the extent of funds available, providing the owners agree to comply with this subchapter and all orders, rules and regulations formulated thereunder.

(41 Del. Laws, c. 82 § 7; 3 Del. C. 1953 § 7332; 57 Del. Laws, c. 764 § 25.)

§ 7333 Quarantine of cattle of owners not participating in area plan.

When 75 percent of the cattle owners in any county, hundred, district or other designated area have tested herds of cattle or have filed petitions and agreements with the Department of Agriculture for the Bang's disease testing of their cattle under the area or any other plan of testing approved by the Department, the Department may quarantine all cattle on the premises of the remaining 25 percent and may quarantine all products from such cattle, so that no cattle or products may be removed from such premises. When the owner of such cattle has complied with all rules and regulations or orders of the Department of Agriculture, the Department may remove the quarantine.

(41 Del. Laws, c. 82 § 8; 3 Del. C. 1953 § 7333; 57 Del. Laws, c. 764 § 25.)

§ 7334 Movement of cattle into or within enrolled area.

Whenever a county, hundred, district, or other designated area has become enrolled in the area or any other plan of testing approved by the Department of Agriculture, no cattle shall be brought into or moved within such county, hundred, district or other designated area except as provided in the rules and regulations prescribed by the Department.

(41 Del. Laws, c. 82 § 9; 3 Del. C. 1953 § 7334; 57 Del. Laws, c. 764 § 25.)

§ 7335 Interference with conduct of test.

No person shall treat any cattle with a material or substance for the purpose of interfering with a Bang's disease test, or shall interfere in any way with a representative of the Department of Agriculture who is making or assisting with a Bang's disease test or shall alter or change an ear tag or other mark of identification for the purpose of concealing the identity of any cattle, or shall otherwise attempt to interfere with the identification of any cattle.

(41 Del. Laws, c. 82 § 10; 3 Del. C. 1953 § 7335; 57 Del. Laws, c. 764 § 25.)

§ 7336 Certification as modified accredited area.

When the percentage of Bang's disease infected cattle within a county, hundred, district or other designated area enrolled in the area or any other plan of Bang's disease testing approved by the Department of Agriculture, as shown by the last preceding Bang's disease test of all breeding and dairy cattle within the county, hundred, district or other designated area is reduced to meet the requirements of a "modified accredited area," as officially defined by the United States Department of Agriculture, the Department shall apply to the United States Department of Agriculture for the certification of such county, hundred, district or other designated area as a "modified accredited area."

(41 Del. Laws, c. 82 § 11; 3 Del. C. 1953 § 7336; 57 Del. Laws, c. 764 § 25.)

§ 7337 Refusal by owner to retest.

Any owner of cattle enrolled in the area or any other plan of testing approved by the Department of Agriculture who fails or refuses to have the owner's animals retested when notified by the Department shall be considered as violating the owner's agreement and shall become subject to the penalty provided in § 7338 of this title.

(41 Del. Laws, c. 82 § 12; 3 Del. C. 1953 § 7337; 57 Del. Laws, c. 764 § 25; 70 Del. Laws, c. 186 § 1.)

§ 7338 Violations; penalties; jurisdiction; disposition of fines.

(a) Whoever violates this subchapter, or any rule or regulation promulgated hereunder, shall, unless otherwise provided in this subchapter, be fined not less than $50 nor more than $100 for the first offense, and not less than $100 nor more than $200 for any subsequent offense, or, in default of fine, shall be imprisoned not less than 10 nor more than 30 days, besides the costs of prosecution.

(b) Justices of the peace shall have jurisdiction of offenses under this section.

(c) There shall be a right of appeal to the Court of Common Pleas from convictions under this section as in like cases before a justice of the peace.

(d) The fines collected under this section shall be paid forthwith to the State Treasurer and deposited in the General Fund.

(41 Del. Laws, c. 82 § 14; 3 Del. C. 1953 § 7338; 69 Del. Laws, c. 423 § 4.)

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 74
EQUINE INFECTIOUS ANEMIA

§ 7401 Definitions.

For the purpose of this chapter, unless the context otherwise requires:

(1) "Department" means the Department of Agriculture.

(2) "Person" includes veterinary practitioner, racetrack official, racing commission official, private horse owner, trainer, jockey or private person.

(3) "Equine" includes all horses of every type and description.

(3 Del. C. 1953 § 7401; 57 Del. Laws, c. 725 § 1.)

§ 7402 Equine Infectious Anemia suspected; notification.

Any person who knows or suspects that a case of Equine Infectious Anemia may exist in an equine shall immediately notify the Department and shall supply the Department with:

(1) The name of the equine, if known;

(2) Its present location; and

(3) The name of the owner, if known.

(3 Del. C. 1953 § 7402; 57 Del. Laws, c. 725 § 1.)

§ 7403 Rules and regulations; quarantine orders.

(a) For the proper enforcement of this chapter, the Department may make and enforce orders, rules and regulations for the control and eradication of Equine Infectious Anemia.

(b) Any equine suspected of having Equine Infectious Anemia shall be, by order of the Department, removed from the barns or other facilities used by healthy equines and quarantined in such place on the premises on which it is being kept so as to insure its isolation, and it shall remain under quarantine in isolation for such period as the Department deems appropriate to insure that it is free of Equine Infectious Anemia.

(3 Del. C. 1953 § 7403; 57 Del. Laws, c. 725 § 1.)

§ 7404 Diagnosis and testing; expense.

The testing and diagnosis of any equine suspected of having Equine Infectious Anemia shall be by the standard "agar gel immunodiffusion test" or by such other procedures as prescribed by the Department, and the cost thereof borne by the owner.

(3 Del. C. 1953 § 7404; 57 Del. Laws, c. 725 § 1; 61 Del. Laws, c. 34 § 1.)

§ 7405 Destruction of condemned equines.

Any equine determined incurable and condemned for Equine Infectious Anemia shall be destroyed upon the direction of the Department or its duly appointed agent.

(3 Del. C. 1953 § 7405; 57 Del. Laws, c. 725 § 1.)

§ 7406 Payment for equines condemned.

The Department may pay out of the funds appropriated by the General Assembly of this State a sum up to $1,000 for any equine, whose owner is a resident of this State, ordered destroyed, provided that the owner has submitted a claim for indemnity on forms prescribed by the Department and has complied with all quarantine regulations. The Department shall make the final determination as to the amount to be paid under this section.

(3 Del. C. 1953 § 7406; 57 Del. Laws, c. 725 § 1.)

§ 7407 Violations and penalties.

Whoever fails to report an equine, knowing or suspecting the same to be infected with Equine Infectious Anemia, or who knowingly moves a suspected or positively diagnosed equine from one premise to another, or who fails to keep such equine under quarantine in accordance with § 7403 of this title, shall be penalized as the Delaware Harness Racing Commission or Delaware Racing Commission sees fit.

(3 Del. C. 1953 § 7407; 57 Del. Laws, c. 725 § 1.)

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 75
BEE KEEPING

§ 7501 Definitions.

As used in this chapter:

(1) "Apiary" means any place where one or more colonies of honeybees are kept.

(2) "Appliances" means any apparatus, tools, machine, or other device used in the handling of bees, honey, wax and hives, and includes smokers, veils, gloves, hive tools, extractors, as well as any container of bees, honey or wax which may be used in an apiary or in transporting bees and their products.

(3) "Bees" means any stage of development of the common honeybee, Apis Mellifera, or of any other bee species being transported into Delaware for any purpose.

(4) "Bee diseases" means American or European foul brood or any other infectious or contagious disease pronounced detrimental to beekeeping by the Department of Agriculture or the State Apiarist.

(5) "Bee equipment" means hives, supers, frames, sections, wax foundation, wax, comb and honey.

(6) "Colony" means the hive and its bees, comb and equipment.

(7) "Hive" means frame hive, box hive, barrel, log gum, skep or any other container, or any part thereof, which may be used as a domicile for bees.

(8) "Queen apiary" means any apiary in which queen bees are reared or kept for gift or sale.

(9) "Africanized bee" means Apis mellifera Scutellata or Apis mellifera Adansoni or other exotic species.

(10) "Mite" means Acarapis woodi, Varroa jacobsoni.

(11) "Inspector" means any qualified person who is appointed by the Department for the purpose of inspecting honeybee colonies.

(46 Del. Laws, c. 111 § 1; 3 Del. C. 1953 § 7501; 57 Del. Laws, c. 764 § 26; 65 Del. Laws, c. 366 § 1; 77 Del. Laws, c. 360 § 1.)

§ 7502 State Apiarist and inspectors; appointment, duties and powers.

(a) The Department of Agriculture shall appoint a competent State Apiarist, who shall have adequate experience in practical beekeeping, and who shall work under the supervision of the Department.

(b) The State Apiarist shall promote the science of beekeeping by educational and other means, and shall inspect or cause to be inspected apiaries, bees and beekeeping equipment and appliances within the State.

(c) [Repealed.]

(d) Upon the written request of 1 or more beekeepers in any county of the State, the State Apiarist or the inspector shall within a reasonable time examine the bees in that locality suspected of being infested or infected with any bee disease, mite or Africanized honeybee, and if the bees are found to be infested or infected, the State Apiarist or inspector shall cause suitable approved measures to be taken for the eradication and control of the disease.

(e) The State Apiarist or the inspectors shall, at least once each year, examine all bees and all known apiaries in the State, and if any are found to be infested or infected by a disease, mite or Africanized honeybee, the State Apiarist shall cause suitable approved steps to be taken for eradication and control of the disease, mite or Africanized honeybee.

(46 Del. Laws, c. 111 § 2; 3 Del. C. 1953 § 7502; 57 Del. Laws, c. 764 § 26; 65 Del. Laws, c. 366 § 2; 70 Del. Laws, c. 186 § 1.)

§ 7503 Inspection; quarantine; destruction of bees; appeal.

For the enforcement of this chapter, the Department of Agriculture, the State Apiarist and the state bee inspectors may enter upon any public or private premises, and shall have access, ingress and egress to and from all apiaries or places where bees, bee equipment and appliances are kept, for the purpose of ascertaining whether any disease, mite or Africanized honeybee exists therein. If any disease, mite or Africanized honeybee exists in such apiaries, the State Apiarist or the bee inspector, subject to the approval of the Department of Agriculture, shall declare such apiaries to be each the center of a quarantine zone in the form of a circle 3 miles in radius, and shall prescribe suitable measures to be carried out for the eradication and control of the disease, mite or Africanized honeybee. Whenever the owners of such apiaries fail or refuse to take such steps as may be prescribed by the State Apiarist or the bee inspector to eradicate any disease, mite or Africanized honeybee from such apiaries, the State Apiarist may cause the diseased bees, together with any infested or infected bee equipment or appliances, to be destroyed in such manner as may be deemed best, after first giving to the owner 5 days' notice thereof in writing and an opportunity to be heard, and shall take such further steps as he may deem necessary to prevent the spread of the disease, mite or Africanized honeybee. Any owner may, within 5 days of receipt of such notice, appeal from the decision of the State Apiarist to the Superior Court for the county in which such apiary, bee equipment or appliances are located, by filing therein a petition setting forth the facts and making the State Apiarist a party defendant. Appeals shall be heard and determined by the court as expeditiously as possible.

(46 Del. Laws, c. 111 § 3; 3 Del. C. 1953 § 7503; 57 Del. Laws, c. 764 § 26; 65 Del. Laws, c. 366 § 3.)

§ 7504 Registration of bees with State Apiarist.

All persons keeping bees in this State shall notify the State Apiarist in writing within 10 days of the time the bees are acquired, of the number and location of colonies they own, or rent, or which they keep for anyone else, whether the bees are located on their own or someone else's property. All persons keeping bees in the State shall annually register any and all of their colonies and apiary locations with the Department on forms supplied by the Department on or before January 30th of each year.

(46 Del. Laws, c. 111 § 4; 3 Del. C. 1953 § 7504; 65 Del. Laws, c. 366 § 4.)

§ 7505 Structure of hives.

All persons keeping bees in this State shall provide movable frames in all hives used by them, and cause the bees in such hives to construct all combs in such frames so that such frames may be removed from the hive without injuring other combs in the hive, and so that all the surface of the combs may be examined visually.

(46 Del. Laws, c. 111 § 5; 3 Del. C. 1953 § 7505.)

§ 7506 Exposure of diseased, infested or infected bees or equipment; notice.

(a) No person in this State shall expose any diseased, mite infested or Africanized honeybee, or any infected or infested hives, equipment or appliances so that flying bees may have access to them.

(b) Any person keeping bees in the State shall notify the State Apiarist immediately of the existence or the suspected existence of any bee disease, mite or Africanized honeybee in such person's own or any other apiary in the State.

(46 Del. Laws, c. 111 § 5; 3 Del. C. 1953 § 7506; 65 Del. Laws, c. 366 § 5; 70 Del. Laws, c. 186 § 1.)

§ 7507 False information; interference with Apiarist or inspectors.

No person shall give false information in any matter pertaining to this chapter, or hinder or resist the State Apiarist or the inspector in the discharge of his or her duties.

(46 Del. Laws, c. 111 § 6; 3 Del. C. 1953 § 7507; 70 Del. Laws, c. 186 § 1.)

§ 7508 Precautions against spread of disease.

After inspection of infected bees, equipment or appliances, the State Apiarist or inspector shall, before leaving the premises, take such measures as shall prevent the spread of the disease by infected material adhering to his or her person or clothing or to any equipment or appliances used by him or her which may have come in contact with infected material.

(46 Del. Laws, c. 111 § 7; 3 Del. C. 1953 § 7508; 70 Del. Laws, c. 186 § 1.)

§ 7509 Movement of bees, equipment or appliances from infected apiary.

No person shall sell, barter or give away, accept, receive or transport any bees, equipment or appliances from an apiary known to be affected with a bee disease, mite infested or Africanized honeybee, without the consent in writing of the State Apiarist, until all colonies in the apiary have been inspected by the State Apiarist or the bee inspector and the disease, mite or Africanized honeybee found, in his or her judgment, to be eradicated.

(46 Del. Laws, c. 111 § 8; 3 Del. C. 1953 § 7509; 65 Del. Laws, c. 366 § 6; 70 Del. Laws, c. 186 § 1.)

§ 7510 Importation of bees or used bee equipment or appliances.

(a) No person shall ship or transport any colony of bees, or used beekeeping equipment into the State that is not accompanied by an entry permit issued by the Department.

(b) Before a person may ship or transport into the State any colony of bees, or used beekeeping equipment, the person shall request an entry permit by submitting to the Department an inspection certificate from an authorized inspector of the state of origin that includes the following information:

(1) A statement that the colonies or used beekeeping equipment is free of all diseases, mites and Africanized honeybees, based on an inspection within the preceding 60 days.

(2) Name, address and state of residence of owner and shipper.

(3) Number of hives that contain bees.

(4) Location of apiary sites where the bees will be kept.

(c) Any uncertified bees must be removed from the State within 24 hours.

(46 Del. Laws, c. 111 § 9; 3 Del. C. 1953 § 7510; 65 Del. Laws, c. 366 § 7.)

§ 7511 Inspection of queen-rearing apiaries.

Every person rearing queen bees in the State for gift or sale shall have his or her queen-rearing apiaries inspected at least once each year by the State Apiarist or inspector and on the discovery of any bee disease, mite or Africanized honeybee such person shall immediately cease to ship bees from such apiaries, until the State Apiarist declares the apiaries free of diseases, mites or Africanized honeybees and issues a certificate to that effect.

(46 Del. Laws, c. 111 § 10; 3 Del. C. 1953 § 7511; 65 Del. Laws, c. 366 § 8.)

§ 7512 Violations and penalties.

Whoever violates this chapter or any order or quarantine regulation issued hereunder, or interferes in any way with the duly-appointed representatives of the Department of Agriculture in the discharge of the duties specified in this chapter shall be subject to the assessment of a civil penalty of no less than $100 and no more than $1,000 on each count. For purposes of §§ 7509, 7510 and 7513 of this title, each colony shall constitute a single offense or count. No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture or the Secretary's designee. No civil penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing on such a charge in accordance with Chapter 101 of Title 29.

(46 Del. Laws, c. 111 § 12; 3 Del. C. 1953 § 7512; 57 Del. Laws, c. 764 § 26; 65 Del. Laws, c. 366 § 9; 66 Del. Laws, c. 126 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 360 § 2.)

§ 7513 Importation of queens, combless packages or nucleus colonies.

(a) A person may not ship or transport into this State any queen bee, combless package of bees or nucleus colony of bees unless it is accompanied by a valid inspection certificate issued by an authorized inspector of the state of origin, stating that the queen bee, combless package bees or nucleus colony is from an apiary free of diseases, mites and Africanized bees.

(b) A person may not ship or transport into the State any queen bee, combless packages or nucleus colony from any state or country that does not have an apiary inspection service.

(65 Del. Laws, c. 366 § 10.)

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 76
REGISTRATION OF LIVESTOCK DEALERS

§ 7601 Declaration of purpose.

The purpose of this chapter is to provide for the registration of livestock dealers to enable the Department to trace the movement of livestock for the purpose of controlling or eradicating serious livestock diseases. This chapter establishes the Department's jurisdiction and authority over the animal transportation recordkeeping practices of persons transporting livestock or operating a livestock auction or sales facility.

(63 Del. Laws, c. 392 § 1.)

§ 7602 Definitions.

For the purpose of this chapter, unless the context otherwise requires:

(1) "Department" means the State Department of Agriculture.

(2) "Secretary" means the Secretary of the State Department of Agriculture or his designee.

(3) "Person" means any individual, partnership, association, corporation or organized group of persons whether incorporated or not.

(4) "Livestock" means any cattle, sheep, swine, goats, horses, mules, other equines, poultry or cultured aquatic stock.

(5) "Livestock dealer" means every recognized dealer engaged in the business of buying, selling or transporting livestock or operating a livestock auction or a livestock sales facility.

(63 Del. Laws, c. 392 § 1; 67 Del. Laws, c. 50 § 1; 69 Del. Laws, c. 103 § 7.)

§ 7603 License required; fee.

Any person desiring to engage in the business of a livestock dealer, subject to this chapter, shall obtain a license from the Department. Every application for a license shall be submitted to the Department on forms obtained from the Department with a $25 fee. All fees shall be forwarded to the State Treasurer. The license shall be for the first fiscal year ending June 30, and shall be renewed annually thereafter. A license may be denied at the time of application or revoked if the livestock dealer is found violating any section of this chapter or rules and regulations of the Department.

(63 Del. Laws, c. 392 § 1; 67 Del. Laws, c. 276 § 1.)

§ 7604 Exemption from license.

Those livestock markets and their owners and officers which are approved and are classified as state-federal approved livestock markets are exempt from this chapter. Exempt companies are expected to abide by the codes of federal regulations applying to livestock markets and duties of the livestock markets concerning the identification of livestock.

(63 Del. Laws, c. 392 § 1.)

§ 7605 Revocation of license; right of appeal.

(a) The Department of Agriculture may revoke the license of any person for the violation of any of the provisions of this chapter or of any rule or regulation which may be prescribed by the Department. Notice of revocation shall be sent to the licensee by registered mail setting forth the reason for the revocation and fixing the time for a hearing, should one be desired by the licensee. At the hearing, should the reason set out in the notice be sustained, the Department may continue the revocation indefinitely or for such other period of time as the Department deems advisable or may make such other order as it deems equitable.

(b) Any person affected by the ruling of the Department of Agriculture, under this chapter, may take an appeal within 10 days from notification of the Department's decision to the Superior Court.

(c) The Superior Court for the 3 counties is vested with jurisdiction to hear and determine all such appeals and may by proper rules prescribe the procedure to be followed in such appeals. Every such appeal shall be determined by the Court. Costs may be awarded by the Court and when so awarded the same shall be collected as other costs are collected.

(63 Del. Laws, c. 392 § 1.)

§ 7606 Rules and regulations.

The Department of Agriculture, after conducting public hearings on any proposed rules or regulations, may make such rules and regulations as it deems advisable to aid in carrying out the purposes of this chapter and relative to the enforcement thereof. These rules may include requirements for recordkeeping by livestock dealers to identify animals and sales for the purpose of tracing animals found to be diseased at a later date.

(63 Del. Laws, c. 392 § 1.)

§ 7607 Violations.

Whoever violates any provisions of the chapter or any rules or regulations promulgated hereunder shall be guilty of a class C misdemeanor. The Superior Court shall have jurisdiction over all offenses under this chapter.

(63 Del. Laws, c. 392 § 1.)

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 77
STRAY LIVESTOCK

§ 7701 Permitting livestock to run at large; penalty.

Any person permitting livestock to run at large on the public highways or unenclosed lands within this State shall be tried before a justice of the peace or the Court of Common Pleas for the county in which the offense occurred and, if found guilty, shall receive a fine, which may not be suspended, of not less than $25 nor more than $200 for each offense.

(19 Del. Laws, c. 657 § 1; Code 1915 § 3632; Code 1935 § 4182; 3 Del. C. 1953 § 7701; 64 Del. Laws, c. 292 § 1; 67 Del. Laws, c. 195 § 1.)

§ 7702 Taking up and impounding stray livestock.

(a) Any person or resident owning land in this State may take up any livestock found running at large upon the public highways or on lands owned by that person and impound the same. Such person may demand and receive a reasonable sum for the care and feeding of the animal or animals while in such person's care. The care and shelter provided shall be humane and shall be adequate for the size and class of livestock impounded. The State Veterinarian, a county extension agent of the county in which the livestock is impounded and a livestock owner of the same county will be responsible for determining if the animal or animals are being housed and fed properly as well as determining a fair and reasonable cost per day.

(b) The person taking up and impounding the livestock shall forthwith give written notice of the taking up and impounding to the owner thereof, if known, or by leaving the notice with an adult person at the owner's or their usual place of abode; or, if unknown, shall place a notice of 3 days duration in 2 local newspapers adequately describing the livestock and giving an accurate name, address and telephone number of the person holding the animal or animals.

(c) Any person taking up and impounding stock under this chapter who refuses or neglects to give notice as provided in this section, shall be liable to the owner of such stock in civil damages, to be recovered in a civil action before a justice of the peace or the Court of Common Pleas of the county in which the stock was taken up.

(19 Del. Laws, c. 657 § 2; Code 1915 § 3633; Code 1935 § 4183; 3 Del. C. 1953 § 7702; 64 Del. Laws, c. 292 § 2; 67 Del. Laws, c. 195 § 1; 70 Del. Laws, c. 186 § 1.)

§ 7703 Damage by stray livestock.

Upon the application of any person, or the person's agent, sustaining any damage by reason of the livestock running at large contrary to this chapter, any justice of the peace or the Court of Common Pleas of the county in which damage was incurred by livestock, which may or may not have been taken up and impounded, shall designate the State Veterinarian, a county extension agent and a livestock owner of the county in which the damage was incurred, who shall estimate said damages and make a report to the justice or Court, in writing, under their hands or the hands of the majority of them, the amount of damage estimated. The justice or Court shall immediately give notice thereof to the parties interested. The damages so ascertained, together with the legal charges for impounding and keeping the livestock, shall be paid by the person claiming the stock before the same shall be delivered.

(19 Del. Laws, c. 657 § 3; Code 1915 § 3634; Code 1935 § 4184; 3 Del. C. 1953 § 7703; 67 Del. Laws, c. 195 § 1; 70 Del. Laws, c. 186 § 1.)

§ 7704 Sale of strays.

(a) In case the livestock is not claimed and all legal charges satisfied in accordance with this chapter within 10 days, the person having the livestock in charge shall advertise the livestock to be sold at public sale, by placing a notice giving the particulars of the sale in 2 local newspapers for a duration of 3 days and by giving a copy of the notice to the owner of the livestock, if known, or by leaving the same with an adult person at his usual place of abode.

(b) At the time fixed in the advertisement, the person having the livestock in charge shall proceed to sell the livestock, but may postpone the sale for good and sufficient cause. The proceeds of the sale, after deducting all legal charges, shall be deposited with the clerk of the peace of the county in which the proceedings took place. The clerk shall hold the proceeds for 6 months, unless sooner claimed by some person proving himself or herself to be the real owner of the livestock. If not so claimed, the proceeds shall be turned over to the Department of Agriculture.

(19 Del. Laws, c. 657 § 4; Code 1915 § 3635; Code 1935 § 4185; 3 Del. C. 1953 § 7704; 67 Del. Laws, c. 195 § 1; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 248 § 1.)

§ 7705 Exceptions.

This chapter shall not apply to cattle or other stock in charge of a drover using due diligence in the control thereof, or to cattle or their stock which accidentally escapes from the enclosures. Proof of these circumstances shall always be admitted so that no injustice to the

owners be inflicted in consequence thereof.

(19 Del. Laws, c. 657 § 5; Code 1915 § 3636; Code 1935 § 4186; 3 Del. C. 1953 § 7705; 67 Del. Laws, c. 195 § 1.)

§ 7706 Accidental escape of livestock; liability of owners.

No owner, or other person in charge of cattle or other livestock, shall be responsible in any action by reason of cattle or other livestock accidentally escaping from their enclosure and straying on any public highway of this State unless the owner or other person in charge thereof has intentionally allowed the livestock to escape or unless he or she is guilty of negligence in the care of the cattle or other livestock.

(Code 1935 § 4186A; 43 Del. Laws, c. 218 § 1; 3 Del. C. 1953 § 7706; 67 Del. Laws, c. 195 § 1; 70 Del. Laws, c. 186 § 1.)

§ 7707 Enforcement; disposition of fines.

The Delaware State Police, local police officers of the community in which the offense took place, and agents of the Department of Agriculture shall enforce this chapter prohibiting livestock running at large. All fines imposed for violations of the stray livestock laws shall be paid to the Department of Agriculture. The Department of Health and Social Services' animal welfare officers shall assist the Department of Agriculture, at the request of the Department of Agriculture.

(15 Del. Laws, c. 23; Code 1915 §§ 1415, 3638; Code 1935 §§ 1582, 4188; 3 Del. C. 1953 § 7708; 67 Del. Laws, c. 195 § 1; 80 Del. Laws, c. 248 § 1.)

§ 7708 .

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 79
MISCELLANEOUS PROVISIONS CONCERNING ANIMALS

§ 7901 Delaware Society for the Prevention of Cruelty to Animals.

(Code 1935 § 2556; 49 Del. Laws, c. 256 § 1; 77 Del. Laws, c. 118 §§ 1, 2; 78 Del. Laws, c. 282 § 1; Del. Laws, c. 200 § 1, eff Feb 3, 2016.)

§ 7902 Enforcement of laws for protection of animals.

(14 Del. Laws, c. 477 § 6; Code 1915 § 2237; Code 1935 § 2561; 3 Del. C. 1953 § 7904; 60 Del. Laws, c. 209 § 2; 70 Del. Laws, c. 283 § 11; 78 Del. Laws, c. 266 § 9; Del. Laws, c. 200 § 1, eff Feb 3, 2016.)

§ 7903 Fines and penalties in certain cases; disposition.

(16 Del. Laws, c. 382 § 3; Code 1915 § 2239; Code 1935 § 2563; 3 Del. C. 1953 § 7905; 60 Del. Laws, c. 209 §§ 3, 4; 70 Del. Laws, c. 283 § 11; Del. Laws, c. 200 § 1, eff Feb 3, 2016.)

§ 7904 Service of process.

(18 Del. Laws, c. 246; Code 1915 § 2249; Code 1935 § 2573; 3 Del. C. 1953 § 7906; 60 Del. Laws, c. 209 §§ 5, 6; 70 Del. Laws, c. 283 § 11; 77 Del. Laws, c. 393 § 1; Del. Laws, c. 200 § 1, eff Feb 3, 2016.)

§ 7905 Impoundment.

(63 Del. Laws, c. 104 § 1; 70 Del. Laws, c. 283 § 11; 73 Del. Laws, c. 238 §§ 6-8; 79 Del. Laws, c. 374 § 1; Del. Laws, c. 200 § 1, eff Feb 3, 2016.)

§§ 7906 , 7907. [Reserved.]

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 80
ANIMALS HELD IN SHELTER

§ 8001 Definitions.

Transferred to § 3001F of Title 16 by 79 Del. Laws, c. 377, § 1, effective July 31, 2014.

§ 8002 Shelter care and treatment.

Transferred to § 3002F of Title 16 by 79 Del. Laws, c. 377, § 1, effective July 31, 2014.

§ 8003 Animal adoption, recovery, and rehabilitation.

Transferred to § 3003F of Title 16 by 79 Del. Laws, c. 377, § 1, effective July 31, 2014.

§ 8004 Euthanasia in animal shelters.

Transferred to § 3004F of Title 16 by 79 Del. Laws, c. 377, § 1, effective July 31, 2014.

§ 8005 Proper facilities required.

Transferred to § 3005F of Title 16 by 79 Del. Laws, c. 377, § 1, effective July 31, 2014.

§ 8006 Violation constitutes class A misdemeanor; civil remedy; jurisdiction of Superior Court.

Transferred to § 3006F of Title 16 by 79 Del. Laws, c. 377, § 1, effective July 31, 2014.

§ 8007 Record keeping and reporting.

Transferred to § 3007F of Title 16 by 79 Del. Laws, c. 377, § 1, effective July 31, 2014.

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 81
EXOTIC AVIAN SPECIES

§ 8101 Inspection of exotic avian species; name of seller; bills of sale.

The Department of Agriculture or its duly authorized agent may enter and inspect any premises where exotic avian species are kept or harbored, for the purpose of examining such birds in any way that is deemed necessary to determine if any of them are infected with or have been exposed to a contagious or infectious disease capable of affecting poultry. The owner or custodian shall make available to the inspector the name of the person from whom such birds were acquired or purchased and a copy of the bill of sale for each shipment. All bills of sale for such shipments shall be kept on file by such owner or custodian for a period of 1 year from the date of acquisition or purchase.

(60 Del. Laws, c. 244 § 2.)

§ 8102 Death losses exceeding 10 percent.

Any person who is the owner or custodian of exotic avian species shall notify the Department of Agriculture of any death losses which exceed 10 percent of the total number of such birds on the premises or of a single shipment of such birds and shall freeze the dead specimens until collected by the Department.

(60 Del. Laws, c. 244 § 2.)

§ 8103 Quarantine orders.

If any exotic avian species or group thereof after being examined by the Department of Agriculture is found to be infected with or to have been exposed to a contagious or infectious disease capable of affecting poultry, the Department may place the premises where such birds are kept under quarantine by giving written notice of such quarantine order to the owner or custodian of such birds and no exotic avian species shall be removed from the premises while such quarantine is in effect.

(60 Del. Laws, c. 244 § 2.)

§ 8104 Destruction of exotic avian species.

The Department of Agriculture is empowered to condemn and destroy any exotic avian species which is infected with a contagious or infectious disease capable of affecting poultry or has been exposed to such disease, whenever such destruction is deemed necessary to prevent the further spread of such disease.

(60 Del. Laws, c. 244 § 2.)

§ 8105 Rules and regulations.

The Department of Agriculture may establish such rules and regulations as it deems necessary to carry out the purposes of this chapter.

(60 Del. Laws, c. 244 § 2.)

§ 8106 Penalties.

Any person who violates this chapter or any regulation established by the Department of Agriculture under this chapter shall be fined not less than $100 nor more than $1,000.

(60 Del. Laws, c. 244 § 2.)

Part VI
Domestic and Foreign Animals, Birds, Reptiles and Insects
Chapter 82
RABIES CONTROL IN ANIMAL AND HUMAN POPULATIONS
Subchapter I
Rabies Control in Animal and Human Populations

§ 8201 Purpose of chapter.

The purpose of this chapter is to control and suppress the spread of rabies among the domestic and wild animal populations of the State, to provide safeguards against exposure of this disease to citizens of the State and to prevent the introduction of this virus into this State by the importation of animals or species of animals known to be vectors or carriers.

(66 Del. Laws, c. 247 § 1; 75 Del. Laws, c. 326 § 1.)

§ 8202 Definitions.

(a) The term "animal" shall mean any species of mammal, not including humans.

(b) The term "animal welfare officer" shall mean a person employed by the Department of Health and Social Services or Department of Agriculture or a municipality as an enforcement officer.

(c) The term "bite" shall mean any penetration of the skin by the teeth.

(d) The term "cat" shall mean Felis catus.

(e) The term "Compendium" shall mean The Compendium of Animal Rabies Vaccines prepared by the National State Public Health Veterinarian, Inc., as amended from time to time.

(f) The term "Department of Agriculture" shall mean the Department, or officially designated agent thereof.

(g) The term "Department of Natural Resources and Environmental Control" shall mean the Department, or officially designated agent thereof.

(h) The term "Division of Public Health" shall mean the Division, or officially designated agent thereof.

(i) The term "dog" shall mean Canis familiaris.

(j) The term "exposure to rabies" shall mean a bite or contamination with the saliva of an animal known or suspected to have rabies of a mucosal membrane or fresh wound.

(k) The term "isolated quarantine" shall mean confinement of an animal in such a manner whereby there exists no opportunity for contact with other animals or humans, excepting 1 person 18 years old or older who cares for that animal.

(l) The term "kennel" shall mean any place wherein dogs are kept for the purposes of breeding, training, sale or show.

(m) The term "owner" shall mean any person owning, keeping or harboring 1 or more animals.

(n) The term "person" shall mean any individual, business, partnership, firm, joint stock company, corporation, association, trust, estate or other legal entity.

(o) The term "quarantine" shall mean strict confinement, under restraint by leash, closed cage or paddock, on the private premises of the owner or at another specified location.

(p) The term "rabies" shall mean, in man and animal, an acute viral disease of the central nervous system, caused by a rhabdovirus, also known as hydrophobia or Lyssa, usually transmitted to man through the injection of saliva by an animal bite.

(66 Del. Laws, c. 247 § 1; 68 Del. Laws, c. 285 § 1; 75 Del. Laws, c. 326 § 1; 80 Del. Laws, c. 248 § 2.)

§ 8203 Reporting of rabies.

Any medical practitioner, hospital, veterinarian or other person having knowledge of the following situations shall report the facts to the Division of Public Health:

(1) Any suspected or confirmed case of human rabies.

(2) Any animal known to have or suspected of having been exposed to rabies.

(66 Del. Laws, c. 247 § 1; 75 Del. Laws, c. 326 § 1.)

§ 8204 Rabies vaccination required for dogs and cats; antirabies clinics.

(a) Vaccination of dogs. —

(1) Any person owning a dog 6 months of age or older in this State shall have that dog vaccinated against rabies by a veterinarian. The owner of the dog will receive a copy of the rabies vaccination certificate legibly signed by the veterinarian. The owner of the dog will be responsible for keeping a valid rabies vaccination certificate in his possession for inspection by an animal control officer, the Department of Agriculture or the Division of Public Health, if deemed necessary.

(2) Upon request by an animal welfare officer, the Department of Agriculture, or the Division of Public Health, all owners of kennels, excluding licensed boarding kennels, shall present immediately a valid rabies vaccination certificate, signed by a veterinarian, for each dog 6 months of age or older owned by the kennel. Kennel owners will be specifically responsible for keeping all vaccination certificates for all dogs owned or kept at their premise until at least 12 months after the effective expiration date of the vaccination. If a dog is sold or traded, then the valid vaccination certificate shall be given to the new owner of the dog. If no valid certificate is given to the new owner, the new owner shall have the dog vaccinated and be issued a valid vaccination certificate.

(b) Vaccination of cats. — Any person owning a cat 6 months of age or older in this State shall have the cat vaccinated against rabies by a veterinarian. The owner of the cat will be responsible for keeping a valid rabies vaccination certificate in his or her possession for inspection by an animal welfare officer, the Department of Natural Resources and Environmental Control, the Department of Agriculture, or the Division of Public Health.

(c) Vaccination of ferrets. — Any person owning a ferret 6 months of age or older in this State shall have the ferret vaccinated against rabies by a veterinarian. The owner of the ferret is responsible for keeping a valid rabies vaccination certificate in that owner's possession for inspection by an animal welfare officer, the Department of Natural Resources and Environmental Control, the Department of Agriculture, or the Division of Public Health.

(d) Duties of veterinarian. —

(1) Each licensed veterinarian may select a rabies vaccine of his choice and use procedures for administering it consistent with the recommendations of the Veterinary Biologics Division of the U.S. Department of Agriculture which licenses that vaccine.

(2) A rabies vaccination certificate will be promptly issued to the owner of each dog or cat vaccinated against rabies. The veterinarian administering the vaccine shall complete the certificate specifying accurately the manufacturer's specifications of the duration of immunity of the rabies vaccination used and the date the animal shall be revaccinated in accordance with the specific criteria of the Compendium or as mandated by Delaware state law. The veterinarian shall sign the certificate in a legible manner. The certificate shall also include the veterinarian's address, telephone number and state license number. Veterinarians shall maintain copies of these certificates for a minimum of 12 months after the effective expiration date of the vaccination.

(e) Public antirabies clinics. — The Compendium will serve as a basis for the procedures and practices used in public antirabies clinics. The Department of Agriculture or the veterinarian selected to administer the vaccine at the public antirabies clinic will be consulted on the specific rabies vaccine or vaccines that shall be used at those clinics. All administrative procedures and personnel, excluding veterinary staffing, will be approved by the State Veterinarian. The responsible organization conducting the public antirabies clinic will be responsible for maintaining copies of these certificates for a minimum of 12 months after the effective expiration date of the vaccination.

(f) Penalty. — Any person who violates any provision of this section shall be fined $25. No penalty imposed by this section shall be suspended.

(66 Del. Laws, c. 247 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 309 § 1; 75 Del. Laws, c. 326 § 1; 78 Del. Laws, c. 323 § 1; 80 Del. Laws, c. 248 § 3.)

§ 8205 Prohibition of vaccination of certain animals for rabies.

(a) No licensed veterinarian or other person may vaccinate a wild animal, wild animal hybrid or other animal with a rabies vaccine not intended for use in that animal, except when specifically approved by the Department of Agriculture.

(b) Anyone violating this section shall be fined not less than $50 nor more than $250.

(66 Del. Laws, c. 247 § 1; 68 Del. Laws, c. 285 § 2; 75 Del. Laws, c. 326 § 1.)

§ 8206 Prohibition on the importation of certain animals.

(a) The Department of Agriculture may also ban importation of certain species of animals into the State, or require special permits for importation of certain species, if it is felt that these species of animals represent an unacceptable risk of rabies infection to humans and animals.

(b) Anyone violating this section shall be fined not less than $100 nor more than $500.

(66 Del. Laws, c. 247 § 1; 75 Del. Laws, c. 326 § 1.)

§ 8207 Disposition of animals exposed to rabies.

(a) If the owner of a dog, cat or ferret which is exposed to an animal suspected or known to be rabid can provide proof of a currently valid rabies vaccination, that dog, cat or ferret shall be revaccinated immediately and quarantined for 45 days. The Department of Agriculture may make inspections as is deemed necessary to assure that the animal is properly restrained, issue appropriate quarantine orders and release the quarantine after the 90-day period.

(b) In the event that a rabies vaccine is approved for use in animals other than dogs, cats or ferrets, and should such a vaccinated animal be exposed to rabies, the animal shall be placed in quarantine or destroyed for rabies testing, as may be required by the Department of Agriculture.

(c) If the owner of a dog, cat or other animal which is exposed to an animal suspected or known to be rabid cannot provide proof of a currently valid rabies vaccination, the animal shall, at the option of the owner, be either killed, under supervision of the Department of Agriculture, or held in isolated quarantine for a minimum of 6 months in a facility and manner approved by the Department of Agriculture, pursuant to § 8208 or § 8209 of this title. All costs relating to such isolated quarantine shall be borne by the owner of the animal. If isolated

quarantine is chosen, the Department of Agriculture may make inspections as is deemed necessary to assure that the animal is in isolated quarantine, issue appropriate quarantine orders and release the isolated quarantine after the 6-month period. In instances where isolated quarantine orders are violated the animal should be killed and tested for rabies unless an exception is made, based upon the circumstances, by the Department of Agriculture. Dogs, cats or ferrets shall be vaccinated against rabies 1 month prior to the scheduled termination of the isolated quarantine. Other animals shall not be vaccinated unless approved by the Department of Agriculture.

(d) Any person who violates any provision of this section shall be fined not less than $100 nor more than $200.

(66 Del. Laws, c. 247 § 1; 75 Del. Laws, c. 309 §§ 2, 3; 75 Del. Laws, c. 326 § 1.)

§ 8208 Responsibility and liability of owner of dog, cat or ferret for quarantine when dog, cat or ferret exposes a human being to rabies.

(a) Quarantine at time of exposure. — The owner of any dog, cat or ferret that exposes a human being to rabies shall quarantine said dog, cat or ferret for a period of at least 10 days commencing at the time of the exposure. Any person who fails to comply with this subsection shall be fined not less than $25 nor more than $100.

(1) If the owner of the dog, cat or ferret can provide proof of a currently valid rabies vaccination, that dog, cat or ferret may be quarantined on the premises of the owner or custodian.

(2) If the owner of the dog, cat or ferret cannot provide proof of a currently valid rabies vaccination, that dog, cat or ferret must be quarantined by a veterinarian, kennel or other facility approved by the Department of Agriculture. The cost of quarantine in this instance is to be borne by the owner of the dog, cat or ferret.

(3) If the owner of that dog, cat or ferret cannot show proof of a valid rabies vaccination, the quarantine period shall be extended beyond the 10 days until such time that rabies vaccine is administered to that dog, cat or ferret by a licensed veterinarian. The dog, cat or ferret shall not be vaccinated during the initial 10-day quarantine period.

(b) Quarantine after notice of exposure. — An owner who fails to quarantine any dog, cat or ferret that exposes a human being to rabies after being notified must quarantine said dog, cat or ferret in an approved place and manner. An owner failing to quarantine said dog, cat or ferret shall be fined not less than $100 nor more than $200.

(c) Reporting of conditions of quarantine. —

(1) The owner of a dog, cat or ferret quarantined pursuant to these regulations is responsible for reporting the facts to the Division of Public Health or a veterinarian, if that dog, cat or ferret shows marked behavior changes, escapes, sickens or dies during the quarantine period. If the quarantined animal dies, escapes or for any other reason is not available to complete the quarantine period, the owner shall immediately notify the Division of Public Health by telephone, to be followed by a signed, notarized affidavit stating the reason for the animal's unavailability to complete the quarantine period. This affidavit must be submitted within 7 days of the animal's disappearance or death to the Division of Public Health.

(2) Any veterinarian, approved kennel or other person having knowledge of a quarantined dog, cat or ferret which shows marked behavior changes, escapes, sickens or dies shall report the facts to the Division of Public Health.

(3) Any person failing to comply with the provisions of this subsection shall be fined not less than $50 nor more than $200.

(d) Disposition during quarantine. — A dog, cat or ferret under quarantine may not be moved from the place of quarantine, killed, given away or otherwise disposed of without the written permission of the Division of Public Health or Department of Agriculture.

(e) Surrender of dogs, cats or ferrets for quarantine. — A person may not fail or refuse to surrender any dog, cat or ferret for quarantine or destruction as required in this section when demand is made by written order of the Department of Agriculture or Division of Public Health.

(66 Del. Laws, c. 247 § 1; 68 Del. Laws, c. 285 § 3; 75 Del. Laws, c. 309 §§ 4-6; 75 Del. Laws, c. 326 § 1.)

§ 8209 Disposition and quarantine of animal other than dog, cat or ferret which exposes a human being to rabies.

(a) Destruction or quarantine. — When an animal, other than a dog, cat or ferret, exposes a human being to rabies, the Division of Public Health or the Department of Agriculture may require the destruction of the animal for rabies testing, or the quarantine of the animal in an approved place and manner.

(b) Surrender of animal. — A person may not fail or refuse to surrender said animal for quarantine or destruction as required in this section when demand is made by written order of the Department of Agriculture or the Division of Public Health.

(c) Report of behavior changes, escapes, etc. — Any person having knowledge of an animal, quarantined under the provisions of this section, which shows marked behavior changes, escapes, sickens or dies, shall report the facts to the Department of Agriculture.

(d) Penalty. — Any person interfering with the provisions of this section shall be fined not less than $100 nor more than $200.

(66 Del. Laws, c. 247 § 1; 75 Del. Laws, c. 309 § 7; 75 Del. Laws, c. 326 § 1.)

§ 8210 Submission of animal for rabies testing and examination during quarantine.

(a) When an animal is destroyed for the purposes of rabies testing, every effort shall be made to keep the head and brain intact and unfrozen. Precautions shall be taken to avoid exposure to humans during destruction and until transported to the Division of Public Health Laboratory. The Division of Public Health shall be responsible for ensuring that the destroyed animal is transported safely, and for notifying the submitting party of the rabies testing results.

(b) The Division of Public Health or the Department of Agriculture may order the owner of an animal which is suspected of having exposed a human being to rabies to have the animal examined by a licensed veterinarian at any time during the quarantine period. The cost of the examination and any other associated cost shall be borne by the owner of the biting animal which is suspected of having exposed the human being to rabies. Any animal determined by a licensed veterinarian, the Department of Agriculture or the Department of Natural Resources and Environmental Control, to be inhumanely suffering may be killed in a humane manner and the head promptly submitted to the Division of Public Health Laboratory for rabies testing.

(c) Notwithstanding any other provision of this chapter, the Department of Natural Resources and Environmental Control, the Department of Agriculture or the Division of Public Health may issue a written order that an animal suspected of exposing a human being to rabies or having bitten a person and that animal having not been immunized with a vaccine specifically approved for use in that species and administered by a veterinarian, shall be killed in a humane manner for laboratory examination for rabies, if it is determined that the animal is not being quarantined adequately or that there are other reasons which make it necessary for the preservation of human health.

(66 Del. Laws, c. 247 § 1; 68 Del. Laws, c. 285 § 4; 75 Del. Laws, c. 326 § 1.)

§ 8211 Joint regulatory powers of Department of Natural Resources and Environmental Control, Department of Agriculture, Division of Public Health; quarantine and areawide emergencies.

(a) Regulations. — The Department of Natural Resources and Environmental Control, Department of Agriculture and Division of Public Health are hereby delegated the power to adopt joint regulations signed by all 3 Department Secretaries setting forth procedures regulating the conduct of practitioners of human health, human health services, animal health services and animal control agencies for the purpose of fulfilling or carrying out the purpose and intent of this chapter.

(b) Areawide quarantine. — If rabies is known to exist within an area, the Division of Public Health, in conjunction with the Department of Natural Resources and Environmental Control and the Department of Agriculture may establish a rabies quarantine and shall define the boundaries or the quarantine area and specify the animal or animals subject to quarantine. All these animals within the quarantine area and subject to the quarantine restrictions shall be kept in strict confinement upon the premises of the owner at all times until the quarantine is terminated. An animal, subject to the quarantine, may not be brought into the quarantine area or taken out of the quarantine area without written permission.

(c) Areawide rabies emergency. — The Director of the Division of Public Health may declare an areawide rabies emergency and shall define the boundaries of the area and place specified animals under quarantine. By doing so, the Director of the Division of Public Health authorizes the Department of Natural Resources and Environmental Control, its agents and state and local police officers to destroy on sight any animals not in compliance with quarantine orders.

(d) Human animal bite. — The Director of Division of Public Health may require the reporting of all cases where humans were bitten by an animal known to transmit rabies.

(66 Del. Laws, c. 247 § 1; 75 Del. Laws, c. 326 § 1.)

§ 8212 Enforcement.

The provisions of this chapter may be enforced by any authorized employee or agent of the Departments of Agriculture, Natural Resources and Environmental Control or Health and Social Service.

(66 Del. Laws, c. 247 § 1; 75 Del. Laws, c. 326 § 1.)

§ 8213 Court jurisdiction.

Justices of the peace shall have jurisdiction of all offenses under this chapter.

(67 Del. Laws, c. 338 § 1; 75 Del. Laws, c. 326 § 1.)

Subchapter II

Animal Population Control Program and Spay/Neuter Fund

§ 8214 Short title.

Transferred to § 3010F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8215 Findings.

Transferred to § 3011F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8216 Purpose.

Transferred to § 3012F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8217 Definitions.

Transferred to § 3013F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8218 Funding.

Transferred to § 3014F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8219 Eligibility; division of Spay/Neuter Fund proceeds.

Transferred to § 3015F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8220 Preadoption spay/neuter mandate.

Transferred to § 3016F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8221 Enforcement, violations and penalties.

Transferred to § 3017F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8222 Program administration.

Transferred to § 3018F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8223 Veterinarian participation.

Transferred to § 3019F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

§ 8224 Veterinarian services tax credit.

(Repealed by 76 Del. Laws, c. 284 § 10, effective Dec 31, 2008.)

§ 8225 Performance measurement.

Transferred to § 3021F of Title 16 by 79 Del. Laws, c. 377, § 2, effective July 31, 2014.

Part VII
Cooperative Agricultural Associations or Corporations
Chapter 85
CORPORATION LAW FOR COOPERATIVE AGRICULTURAL ASSOCIATIONS
Subchapter I
Formation, Powers, Bylaws and Dissolution

§ 8501 Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Agricultural products" includes all agricultural, horticultural, vegetable, fruit and floricultural products of the soil, livestock and meats, wool, hides, poultry, eggs, dairy products, nuts, mushrooms and honey, but does not include timber products.

(2) "Association" means a corporation formed under this chapter.

(3) "Patron" means a person engaged in agriculture whose products are sold by or supplies purchased through the association, or who has executed a contract with the association to sell all or a part of the patron's agricultural products to or through the association.

(4) "Person engaged in agriculture" means a person engaged in agriculture, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture and other allied occupations.

(41 Del. Laws, c. 132 §§ 1, 2; 3 Del. C. 1953 § 8501; 70 Del. Laws, c. 186 § 1.)

§ 8502 Formation of associations; advertisement of intention to apply for charter.

(a) Cooperative agricultural associations, instituted for the purposes of mutual help, having capital stock, may be formed under the provisions of this chapter by any number of persons, not less than 5, engaged in agriculture.

(b) Notice of an intention to apply for a charter or articles of association shall be inserted in 1 newspaper of general circulation, printed in the county where the principal place of business is situated, for 1 insertion, setting forth briefly the character and purpose of the corporation and the kind of service to be performed by it. The advertisement shall be published at least 3 days before the application is laid before the Secretary of State.

(41 Del. Laws, c. 132 §§ 2, 4; 3 Del. C. 1953 § 8502.)

§ 8503 Articles of association; contents; acknowledgment.

(a) The articles of association of an intended association shall be subscribed by 5 or more persons, 3 of whom shall be citizens of this State, and shall set forth:

(1) The name of the association, which shall include the word "cooperative";

(2) The class of services to be performed by the association, which services shall be 1 or more of those enumerated in § 8507 of this title;

(3) The location of the registered office of the association, which shall be within this State;

(4) The term for which it is to exist;

(5) The amount of its capital stock, and the number and par value of shares into which it is divided, the names and post-office addresses of the subscribers, the number of shares subscribed by each, and the amount of capital actually paid into the treasury;

(6) The number of its directors for the first year, not less than 5, the names and residences of those who are chosen for directors for the first year, and the name and residence of the treasurer;

(7) Any other provisions, not inconsistent with law, which the association sees fit to adopt, governing the regulation and conduct of its affairs.

(b) The articles of association shall be acknowledged by not less than 5 of the subscribers thereto, before any officer authorized to take acknowledgments and administer oaths and affirmations in this State. The subscribers making the acknowledgment shall also make and subscribe an oath or affirmation before the authorized officer that the statements contained therein are true.

(41 Del. Laws, c. 132 § 4; 3 Del. C. 1953 § 8503; 60 Del. Laws, c. 174 § 1.)

§ 8504 Certificate of incorporation; issuance and recording.

(a) The articles of association, accompanied with proof of publication of the notice provided for in § 8502 of this title, shall be presented to the Secretary of State, who shall examine the same, and if the Secretary of State finds the articles in proper form and within the purpose mentioned in this chapter, the Secretary of State shall endorse his or her approval thereon, and direct a certificate of incorporation to issue in form similar to those issued to corporations organized under the general corporation law of this State. The certificate of incorporation shall incorporate the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen. The articles of association shall be filed in the office of the Secretary of State.

(b) A certified copy of the articles of association, together with all endorsements, shall be recorded in the office of the recorder of deeds in and for the county where the principal place of business is situated. From thenceforth the subscribers thereto, their associates and successors shall be a body politic and corporate for the purposes and upon the terms named in the articles of association.

(c) Certified copies of the records of articles of association shall be competent evidence for all purposes in the courts of this State.

(41 Del. Laws, c. 132 § 4; 3 Del. C. 1953 § 8504; 70 Del. Laws, c. 186 § 1.)

§ 8505 Existing domestic corporations.

Corporations which exist under the laws of this State, and the purposes of which coincide with the purposes of associations incorporated under this chapter, shall, upon accepting this chapter, by a writing under the seal of the corporation, duly filed in the office of the Secretary of State, be entitled to all of the privileges, immunities, franchises and powers conferred by this chapter upon associations to be created under the chapter and, upon acceptance and approval thereof by the Secretary of State, he or she shall issue a certificate to the corporation reciting the same.

(41 Del. Laws, c. 132 § 21; 3 Del. C. 1953 § 8505; 70 Del. Laws, c. 186 § 1.)

§ 8506 Reincorporation of foreign associations; procedure; effect.

(a) Cooperative agricultural associations or corporations created by or under the laws of any other state, doing business in this State, and in which 3 or more of the stockholders are citizens of this State, and which are organized and operating under laws similar to this chapter, may become corporations of this State under this chapter by preparing, having approved and recorded a certificate which shall state:

(1) The name of the corporation, which shall include or be changed to include the word "cooperative";

(2) Its purpose, which shall include 1 or more of the class of services enumerated in § 8507 of this title;

(3) The principal place where its business is to be transacted, which shall be within this State, and at which it keeps a record of the names and residences of the stockholders and the number of shares held by each;

(4) The term for which it is to exist;

(5) The number of stockholders and the total number of shares of stock outstanding;

(6) The number of its directors, and the names and residences of those elected for the current year, and the name and residence of the treasurer;

(7) The amount of its capital stock, and the number and par value of the shares into which it is divided;

(8) The name of the state and the name and citation of the statute or legislation under which it was originally created;

(9) Its financial condition at the date of the certificate, showing capital stock paid in, funded debt, floating debt, estimated value of property and cash assets, if any.

(b) The certificate shall be accompanied by another certificate, under the seal of the corporation, showing the consent of a majority in interest of the corporation to the application for a charter and to a renunciation of its original charter and of all privileges not enjoyed by corporations under this chapter under the laws of this State.

(c) Both certificates shall be acknowledged by at least 3 of the directors of the corporation before the recorder of deeds of the county in which the chief operations are to be carried on or in which the principal office is situated. The directors shall also make and subscribe an oath or affirmation before the recorder of deeds to be endorsed on the certificates that the statements contained therein are true. The certificates shall then be produced to the Secretary of State, who shall examine the same, and, if he or she finds the certificates to be in proper form and within the purposes named for associations under this chapter, he or she shall approve them, and endorse his or her approval thereon, and direct a certificate of incorporation to issue in the usual form incorporating the stockholders and their successors into a body politic and corporate, in deed and in law, by the name chosen. The certificate of incorporation shall be filed in the office of the Secretary of State, and a certified copy thereof, with all its endorsements, shall then be recorded in the office for the recording of deeds in and for the county where the chief operations are to be carried on.

(d) From the date of the certificate of incorporation, the foreign association or corporation shall be, and exist as, a corporation of this State under the provisions of this chapter and of its charter. All rights, privileges, powers, immunities, lands, property and assets of whatever kind or character possessed and owned by the original corporation, shall vest in and be owned and enjoyed by the corporation so created as fully and with like effect as if its original charter had remained in force, save as by general law and by its certificate of incorporation is expressly stated otherwise. All suits, claims and demands by the corporation, in existence at the date of the new charter, shall and may be sued, prosecuted, and collected under the laws governing the corporation prior to its new charter. Claims and demands of every nature and character in existence at the date of the new charter may be collected from and of the newly chartered corporation as fully and with like effect as if no change had taken place.

(41 Del. Laws, c. 132 §§ 22-24; 3 Del. C. 1953 § 8506; 70 Del. Laws, c. 186 § 1.)

§ 8507 General powers of associations.

An association incorporated under this chapter may engage in the buying and selling of agricultural products, taking title to such products or acting as agent for its stockholders, patrons, or any of them; may engage in or perform for its stockholders or patrons services connected with the production, harvesting, preservation, drying, grading, canning, storing, handling, utilization, marketing or sale of agricultural products produced by them; and may engage in or perform for its stockholders or patrons services connected with purchasing or leasing for use by them of supplies, including livestock, machinery, equipment, feed, fertilizer, electricity and seeds, and the hiring of labor, or any 1 or

more of the kinds of service specified in this section, for the agricultural or other purposes of the stockholders.

(41 Del. Laws, c. 132 § 3; 3 Del. C. 1953 § 8507.)

§ 8508 Specific powers of associations.

Each association formed under this chapter, by virtue of its existence as such, may:

(1) Have succession for the period limited in its articles of association, and, when no period is limited thereby, exist perpetually, subject to the power of the General Assembly under the Constitution of the State, and unless sooner dissolved by operation of law or under the provisions of this chapter;

(2) Maintain and defend judicial proceedings by the name specified in the articles of association;

(3) Adopt and use a common seal and alter the same at pleasure;

(4) Hold, purchase, and transfer such real and personal property as the purposes of the corporation require;

(5) Elect a board of directors, which may appoint a president, vice-president, secretary, treasurer and other officers, agents and employees as are deemed necessary; prescribe their duties; require bonds of them, and dismiss them and any of them in accordance with this chapter and with the bylaws of the association;

(6) Make bylaws, not inconsistent with the law, for the management of its property, the regulation of its affairs and the conduct and management of the association;

(7) Perform for stockholders and other patrons the services described in the articles of association and authorized by this chapter;

(8) Make contracts necessary in the conduct of its operation and the transaction of its affairs;

(9) Borrow money necessary to the conduct of its operations, and issue notes, bonds and other evidences of indebtedness therefor, and give security in the form of mortgage or otherwise for the payment thereof;

(10) Cooperate with any other association or corporation, whether formed under this chapter or otherwise, for the purpose of promoting the objects for which it was incorporated, or the objects for which any other similar association was formed. Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper stipulations, agreements, contracts, and arrangements with any other cooperative corporation, association or associations, formed under this chapter or otherwise, for the cooperative and more economical carrying on of its business, or any part or parts thereof; or any 2 or more cooperative associations, formed under this chapter or otherwise, may, upon resolutions adopted by their respective boards of directors, for the purpose of more economically carrying on their respective businesses, by agreement between them, unite in employing and using, or several such associations may separately employ and use, the same methods, means and agencies, which agencies may be another such association or associations for carrying on and conducting their respective businesses;

(11) Foster membership in the association and solicit patrons by advertising or by educational or other lawful means;

(12) Exercise such incidental powers as are necessary in the conduct of its operations;

(13) Issue and sell its preferred and common stock, but no person shall become the owner of more than 5 percent of the outstanding common stock of the association;

(14) Purchase and hold stock of corporations engaged in the buying or selling of agricultural products as defined in this chapter, when such purchase and holding is in keeping with the purposes for which the association was formed.

(41 Del. Laws, c. 132 § 5; 3 Del. C. 1953 § 8508.)

§ 8509 Adoption of bylaws.

Within 30 days after the recording of the articles of association in the office of the recorder of deeds, as prescribed in § 8504 of this chapter, a call, signed by not less than a majority of the directors, shall be issued for a meeting of the common stockholders. At such meeting, or any adjourned session or sessions thereof, bylaws regulating the conduct and management of the association shall be adopted.

(41 Del. Laws, c. 132 § 11; 3 Del. C. 1953 § 8509.)

§ 8510 Provisions of bylaws.

Bylaws shall, within the limits of this chapter, prescribe:

(1) The time, place and manner of calling and holding meetings. Meetings of stockholders may be held (a) by a meeting at large at such place as may be designated by the bylaws or action of the board of directors, or (b) by a meeting of delegates elected to represent the stockholders by the respective local or district organizations in such manner as may be provided by the bylaws, or (c) by district or local meetings held in the several districts or locals into which the association has divided itself. Meetings in districts or locals shall be of stockholder members of such districts or locals and need not necessarily be held at the same time in each district or local. The bylaws may provide that the board of directors may take a vote of the stockholders on a specific case or resolution by mail signed or unsigned ballot;

(2) The number of directors; the time and manner of their nomination, election and removal, their powers and duties; the number, not less than a majority, necessary to the exercise of their powers; and the method of fixing their compensation, if any. The board of directors may, by resolution adopted by a majority of the whole board, delegate 2 or more of its number to constitute an executive committee, which, to the extent provided in such resolution, shall have and exercise the authority of the board of directors in the management of the corporation. The bylaws may provide a system for the nomination of directors by a representative body or council, or otherwise, and for their election, either at large or by districts, by votes cast by stockholders in district or local organizations with the return of the votes to

the central office for tabulation;

(3) The officers, their terms of office, the time and manner of their appointment, their powers and duties, and the method of fixing their compensation, if any;

(4) Regulations governing the sale, transfer and redemption of common stock;

(5) Any other provisions deemed proper and necessary to carry out the purposes for which the association was formed, including provisions, if deemed advisable, for the creation of a representative body or council, which, among other powers, may be granted power to hear and determine charges against any member of the board of directors, and power to remove any director where such charges are sustained. The vacancy which may thus be created shall be filled as in other cases. A representative body or council, if created, shall have, in addition to the powers provided by this chapter, such other powers as are provided by the bylaws, which by the bylaws may be made advisory only;

(6) The method or methods by which the bylaws may, from time to time, be adopted, altered, amended or repealed. The authority to make, alter, amend or repeal bylaws may be expressly vested by the bylaws in the board of directors or in a representative body or council, subject to the power of the representative body or council to change or repeal bylaws made by the board of directors, and subject to the power of the stockholders to change or repeal bylaws made by either the directors or the representative body or council. Notice of all amendments proposed by the stockholders, the representative body or council, or the directors shall be given either to the stockholders individually or by publication in such regularly published paper or periodical, if any, as shall be established by the association and distributed to stockholders.

(41 Del. Laws, c. 132 § 11; 3 Del. C. 1953 § 8510.)

§ 8511 Exclusive buy and sell requirements of bylaws; liquidated damages; enforcement.

The bylaws may require common stockholders to sell all or any part of their specifically enumerated agricultural or other similar products, and to buy all or any part of their specifically enumerated supplies, exclusively through the association, but, in such case, shall specify a reasonable period in each year during which such stockholders, by giving notice prescribed in the bylaws, may withdraw and be released from their obligation to employ the services of the association in respect to such products and supplies. The bylaws or contracts, or both, may fix, as liquidated damages, specific sums to be paid to the association to reimburse it for any damages which it, or the stockholders, sustain by the failure of any common stockholder or other patron to perform any obligation to the association under the articles of association, the bylaws, or any contract with the association, and such provision shall be valid and enforceable in the courts of this State. A court of equity may grant an injunction to prevent breach of the contract and may decree specific performance thereof.

(41 Del. Laws, c. 132 § 12; 3 Del. C. 1953 § 8511.)

§ 8512 Amendment of articles of association.

The articles of association may be amended pursuant to an affirmative vote of two-thirds of all the common stockholders or the members of a representative body or council in attendance at any regular meeting, or at a special meeting called for the purpose, due notice of the time, place and object of which regular or special meeting has been given as prescribed in the bylaws. A copy of such amendment, signed and acknowledged by not less than 3 of the directors, shall be presented to the Secretary of State, who shall examine the same, and, if he or she finds it in proper form, shall endorse approval thereon. The amendment shall then be filed in the office of the Secretary of State. A certified copy of the amendment, together with the endorsements thereon, shall then be recorded in the office of the recorder of deeds in the county where the principal place of business is situated.

(41 Del. Laws, c. 132 § 18; 3 Del. C. 1953 § 8512; 70 Del. Laws, c. 186 § 1.)

§ 8513 Dissolution of associations.

Any association may cease to do business and be dissolved in the same manner as corporations are dissolved under the general corporation laws of the State.

(41 Del. Laws, c. 132 § 19; 3 Del. C. 1953 § 8513.)

§ 8514 Sale of assets.

Any association organized, existing or registered as a cooperative agricultural association under this chapter may sell, lease or exchange all its property and assets, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration as its board of directors deems expedient and for the best interests of the corporation, when authorized by written consent of the holders of a majority of the stock issued and outstanding having voting power or by vote of said stockholders at a meeting duly called for that purpose. No such authorization by vote or written consent is required where its board of directors determines that the fair value of its property and assets is less than the par value of its outstanding stock and its property and assets are sold to another association organized, existing or doing business as a cooperative agricultural association in this State and registered as provided under this chapter, in exchange for the obligation to purchase or redeem, at the par value, any of its stock offered for sale or redemption by its stockholders and the obligation to assume and pay all its debts.

(41 Del. Laws, c. 132 § 19; 48 Del. Laws, c. 98 § 1; 3 Del. C. 1953 § 8514.)

§ 8515 Registered office in State; principal office or place of business in State.

(a) Every association created under this chapter shall have and maintain in this State a registered office which may, but need not be, the same as its place of business.

(b) Whenever the term "principal place, where its business is to be transacted," "principal place of business" or "principal office" is or has been used in the articles of association of a cooperative agricultural association, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the association's registered office required under § 8503(a)(3) of this title; and it shall not be necessary for any association to amend its articles of association or any other documents to comply with this section.

(60 Del. Laws, c. 174 § 3.)

Subchapter II

Directors and Officers

§ 8521 Directors; duties; election; term; vacancies.

(a) The board of directors of each association shall consist of not less than 5 members. The board shall manage the affairs of the association and shall perform such other duties as are specifically imposed upon the board by this chapter.

(b) The bylaws of the association shall provide a method by which directors shall be nominated and elected, and may provide that the territory in which the association has stockholders shall be divided into districts, and may apportion the directors to be elected to the respective districts on the basis either of the number of stockholders or the quantity of the commodities produced for sale through the association in the respective districts. Meetings for the nomination and election of directors may be held by the stockholders either at the principal office of the corporation, or at district or local meetings of the stockholders held at the usual meeting places of local groups of stockholders that are organized for administrative purposes in the several communities, or by delegates or representatives chosen for that purpose by the stockholders in meetings assembled in the several local communities, as the bylaws may direct. Directors shall hold office until their successors enter upon the discharge of their duties. Vacancies shall be filled for the unexpired terms by the board of directors at any regular meeting, or at any special meeting called for that purpose.

(c) The board of directors shall be a continuing body, the term of one-third, or as near as may be, of whom shall expire each year, and the bylaws of the association shall so regulate the terms of directors, including the terms of additional directors that may be authorized from time to time, in order to make this principle effective.

(41 Del. Laws, c. 132 § 13; 3 Del. C. 1953 § 8521.)

§ 8522 Officers; appointment; terms; vacancies; bonds.

The officers of every association shall include a president, vice-president, secretary and treasurer, who shall be appointed annually by the board of directors. The president and vice-president shall be appointed from among the directors. The secretary and treasurer may be nonstockholders. The office of secretary and treasurer may be combined and one individual appointed thereto. Vacancies in offices shall be filled for the unexpired term by the board of directors in the manner provided for the original appointment of officers. Officers shall hold their offices until their successors are appointed and qualified and have entered upon the discharge of their duties. The board of directors shall require the treasurer, and may require such other officers, agents and employees charged by the association with responsibility for the custody of funds or property, to give bond, with sufficient surety, for the faithful performance of their duties as such. The premium on such bond shall be paid by the association.

(41 Del. Laws, c. 132 § 15; 3 Del. C. 1953 § 8522.)

§ 8523 Removal of directors and officers.

Any director of the association may, for cause, at any regular meeting, or any special meeting called for that purpose, be removed from office by the vote of not less than two-thirds of the stockholders present, or by the two-third vote of a representative body created and authorized by the bylaws to cause such removal. Any officer of the association may, for cause, at any regular meeting of the board of directors, or any special meeting of the board called for the purpose, be removed from office by the vote of not less than two-thirds of the directors present. Ten days written notice of the time and place and object of the meeting shall be given, in the manner prescribed in the bylaws, to the members of the body authorized to cause the removal, and to the directors or officers against whom charges are to be presented. Such directors or officers shall, at the same time, be informed of the nature of the charges to be preferred against them, and at such meeting shall have the opportunity to be heard in person or by counsel and by witnesses.

(41 Del. Laws, c. 132 § 14; 3 Del. C. 1953 § 8523.)

Subchapter III

Stock and Stockholders; Financial Operations

§ 8531 Issue, redemption and transfer of stock.

An association may transact or do business with or for patron stockholders or patrons not stockholders, and may issue and sell its preferred stock to patrons or nonpatrons of the associations, but common stock of the association shall be sold to patrons only. The certificate of common stock shall contain a provision that the association shall have an option to redeem the stock at par value plus declared and unpaid dividends when the owner thereof has for a period of 12 months done no business with the association, and shall contain a further provision that no sale or transfer of stock shall be valid without the written consent of the association, and, if the association withholds its consent to such sale or transfer, then the association shall redeem such stock at par value plus declared and unpaid dividends.

(41 Del. Laws, c. 132 § 6; 3 Del. C. 1953 § 8531.)

§ 8532 Dividends on stock.

Dividends on the common stock shall be paid only after dividends are paid on the preferred stock, and the required surplus fund set aside, and shall be not greater than 6 percent per annum, except as provided in this chapter. Dividends on preferred stock shall be not greater than 12 percent per annum and shall be cumulative.

(41 Del. Laws, c. 132 § 6; 3 Del. C. 1953 § 8532; 60 Del. Laws, c. 174 § 2.)

§ 8533 Liability of stockholders and officers for debts of association.

The officers and stockholders of an association, organized under and accepting this chapter, shall not be individually liable for the debts of the association otherwise than as provided in this chapter. Each common stockholder of an association shall be liable in his individual capacity to the amount of stock held by him for all work and labor done to carry on the operations of the association. The terms "work" and "labor" as used in this section mean only such obligations incurred by the association for salary and wages for actual labor and services performed by individuals.

(41 Del. Laws, c. 132 §§ 8, 9; 3 Del. C. 1953 § 8533.)

§ 8534 Voting rights of stockholders.

Every common stockholder shall be entitled to 1 vote only, and no vote by proxy shall be permitted. This restriction shall not affect any powers granted to the representative body or council, or the delegates thereto.

(41 Del. Laws, c. 132 § 7; 3 Del. C. 1953 § 8534.)

§ 8535 Patronage refunds.

After payment of the dividend on the preferred stock, and after making provision from its net earnings for the reserve fund, as provided in this chapter, the remainder of the net earnings of the association, not required for dividends on the common stock, may, in the discretion of the directors, be distributed as a patronage refund. Patron stockholders may be entitled to patronage refunds at double the rate of patronage refunds to which nonstockholder patrons shall be entitled. Patronage refunds may be credited to the accounts of nonstockholders in the purchase of capital stock of the association.

(41 Del. Laws, c. 132 § 6; 3 Del. C. 1953 § 8535.)

§ 8536 Reserve fund.

An association, after making provision for the payment of dividends on the preferred stock, and before payment of dividends on the common stock, or the distribution of any patronage refund or dividend shall set aside 10 percent of the total net earnings, annually, for a reserve fund, until the reserve fund equals at least 30 percent of the paid up capital stock. The reserve fund shall be available for such purposes as are designated and authorized by the vote of two-thirds of the members of the board of directors at a duly assembled meeting of the board, subject to the limitations and conditions provided for in the bylaws of the association.

(41 Del. Laws, c. 132 § 16; 3 Del. C. 1953 § 8536.)

§ 8537 Revolving reserve fund.

After payment of the dividend on preferred stock, and after making provision from its net earnings for the reserve fund, as provided in § 8536 of this title, the remainder of the net earnings of the association not required for dividends on the common stock and not distributable as a patronage refund may, at the discretion of the directors, be set up in a revolving reserve fund to be kept on the books of the association in the names of the patrons, according to the volume or value of their patronage. No stockholder or patron shall be entitled to payments from the revolving fund, except as provided by the board of directors, which shall have full and complete control of the expenditure and use of the funds therein, the provisions herein contained being merely authoritative and not mandatory.

(41 Del. Laws, c. 132 § 6; 3 Del. C. 1953 § 8537.)

§ 8538 Annual audit and report.

At the close of each fiscal year, a complete audit of the operations of the association shall be made by a qualified accountant employed by the board of directors. The written report of the accountant shall include statements of services rendered by the association, the balance sheet, the receipts and disbursements, and the assets and liabilities, the total number of stockholders, and other proper information, and shall be submitted to the members at the next regular meeting. Within 3 months after the expiration of the fiscal year for which made, the secretary of the association shall file one copy of the report of the audit with the Secretary of the Department of Agriculture of this State

and one copy with the Dean of the School of Agriculture of the University of Delaware. No person shall, without consent of the association, except in obedience to judicial process, make or permit any disclosure whereby any information contained in the report may be identified as having been furnished by the association.

(41 Del. Laws, c. 132 § 17; 3 Del. C. 1953 § 8538; 57 Del. Laws, c. 764 § 27.)

Subchapter IV

Marketing Contracts; Actions; Restraint of Trade and Monopoly

§ 8541 Purchases; sales; contracts with stockholders and patrons.

An association may engage in buying and selling agricultural products and supplies and take title thereto. An association may make and execute contracts with its stockholders and other patrons requiring them to sell all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. An association shall be granted by any such contract the rights which its members individually have, arising out of the production, sale, handling or delivery of products or commodities covered by the contract. The contract shall specify a reasonable period in each year during which the association or any stockholder or patron so contracting with the association may terminate the contract. The association, as agent for a stockholder or other patron, may buy agricultural supplies for him or her and sell his or her agricultural or other kindred products.

(41 Del. Laws, c. 132 § 10; 3 Del. C. 1953 § 8541; 70 Del. Laws, c. 186 § 1.)

§ 8542 Permissive provisions of marketing contracts.

Contracts with stockholders or other patrons may provide that the association may:

(1) Blend proceeds of sales in one or more or all markets, and equalize returns among all stockholders and other patrons in such markets;

(2) Establish pools and, in the case of milk, a base rating plan or any plan for production control;

(3) Collect the proceeds of the sales of such products or commodities direct from the buyer thereof, and this authority shall be coupled with an interest in favor of the association and the other patrons which is irrevocable by the stockholder or patron as long as the contract is in effect;

(4) Make, or permit the buyer to make, such deductions from the proceeds of the sales or products or commodities and the payment therefor to the association as are provided in the contract, and such authority shall be coupled with an interest in favor of the association and the other patrons which is irrevocable by the stockholder or patron as long as the contract is in effect.

(41 Del. Laws, c. 132 § 10; 3 Del. C. 1953 § 8542.)

§ 8543 Title to products sold by stockholders and patrons to association.

If stockholders and patrons contract a sale to an association, it shall be conclusively held that title to the products passes absolutely and unreservedly to the association at the time of delivery out of the possession of the stockholder or patron, or at any other time, expressly and definitely agreed in the contract. The contract may provide that the association may sell or resell the products delivered by its stockholders and other patrons, with or without taking title thereto, and pay over to its stockholders and patrons the resale price, after deducting all necessary overhead and other costs and expenses, interest, dividends on the preferred and common stock, and other proper reserves.

(41 Del. Laws, c. 132 § 10; 3 Del. C. 1953 § 8543.)

§ 8544 Suits by association against buyers; joinder of stockholder or patron.

(a) Where a contract provides that an association may collect the price of products or commodities sold through the association or facilities created by it, the association may maintain an action against any buyer of such products or commodities for the price, in its own name, without joining such stockholder or patron, with the same force and effect as if the association held title to the products or commodities and to the claim for the price thereof, and it shall not be a defense to any buyer to plead payment of the price to the stockholder or patron where the buyer has notice of the contract between the association and its stockholder or patron prior to the alleged payment.

(b) Where a contract provides that an association may make, or have the buyer make, a deduction from the proceeds of the sale of products or commodities sold through the association or facilities created by it, to be paid to the association, the association may maintain an action for the deduction, in its own name, without joining its stockholder or patron, with the same force and effect as if the association held title to the products or commodities and to the claim for the full price thereof, and it shall not be a defense to any buyer to plead payment of the price to the stockholder or patron where the buyer has notice of the contract between the association and its stockholder or patron prior to the alleged payment.

(c) Where a contract provides that an association may make, or have the buyer make, a deduction from the proceeds of the sale of products or commodities sold through the association or facilities created by it, to be paid to the association, the association shall have the right to maintain an action for the deduction in its own name without joining its stockholder or patron, with the same force and effect as if the association held title to the products or commodities or to the claim for the full price of the products or commodities, or to a claim in the

amount of such deduction, and it shall not be a defense to a buyer to plead payment of all of the price of the products or commodities, including the deduction authorized to be made, to the stockholder or patron where such buyer has notice of the contract between the association and its stockholder or patron prior to the payment, or to plead that the effect of the provisions of this chapter constitute a partial assignment of the claim of the stockholder or patron.

(41 Del. Laws, c. 132 § 10; 3 Del. C. 1953 § 8544.)

§ 8545 Joinder of claims in suits by associations.

An association may join in a single suit any number of claims for the proceeds of products or commodities, or deductions therefrom, or any other claims arising from the sale, handling or delivery of such products or commodities, which its stockholders or patrons may have against any buyer, regardless of the fact that these claims may arise from the sale of products or commodities of different stockholders or patrons.

(41 Del. Laws, c. 132 § 10; 3 Del. C. 1953 § 8545.)

§ 8546 Monopoly and restraint of trade.

An association organized under this chapter shall not be deemed to be a combination in restraint of trade, nor an illegal monopoly, nor an attempt to lessen competition or fix prices arbitrarily, or to create a combination or pool in violation of any law of this State, nor shall the marketing contracts between the association and its members, or any agreement authorized by this chapter, be so considered, nor shall the association be deemed to be a party to a combination in restraint of trade, or illegal monopoly, by reason of any agreement made with buyers of products or commodities sold to or through the association or facilities created by it, in accordance with this chapter.

(41 Del. Laws, c. 132 § 10; 3 Del. C. 1953 § 8546.)

Subchapter V

Violations and Penalties

§ 8551 Prohibited acts.

(a) No person shall knowingly induce or attempt to induce any stockholder of an association organized under this chapter to breach his marketing contract with the association, or maliciously and knowingly spread false reports about the finances or management thereof.

(b) Producers of agricultural products or commodities shall have the right to form or become stockholders or patrons in cooperative agricultural associations organized or registered under this chapter, and no person shall directly or indirectly interfere with, restrain or coerce such producers in the exercise of this right.

(c) Buyers of agricultural products or commodities from producers or from such cooperative agricultural association, whose stockholders or patrons sell all or any part of their agricultural products or commodities to or through the association or facilities created by it shall not:

(1) Distribute or circulate any blacklist of stockholders or patrons of the cooperative agricultural association, or advise any person of the membership of any producer in such cooperative agricultural association, for the purpose of preventing the purchase or sale of or payment for agricultural products or commodities produced, sold or offered for sale by the producer so blacklisted or so named;

(2) Dominate or interfere with the formation, existence or administration of any cooperative agricultural association by any means, including but not limited to the following:

a. Participating or assisting in, supervising, controlling or dominating the initiation or creation of any cooperative agricultural association or its business (as distinguished from social or educational activities), meetings or elections, and no certificate of incorporation under this chapter shall issue to any persons or corporation so dominated, nor shall any rights under § 8562 of this title accrue to a corporation so dominated;

b. Making known to such producers the buyer's approval or disapproval of any cooperative agricultural association for the purpose of encouraging or discouraging membership or shareholding therein, becoming a patron, contracting or cooperating therewith;

(3) Encourage or discourage membership or shareholding in any cooperative agricultural association or becoming a patron, contracting or cooperating with the same.

(d) Nothing in this chapter shall preclude a buyer from making an agreement with a cooperative agricultural association (not established, administered or assisted by any action of the buyer) requiring membership or shareholding therein, becoming a patron, contracting or cooperating therewith as a condition of the purchase of a producer's agricultural products or commodities, if such cooperative agricultural association has as its stockholders or patrons a majority of the producers supplying such buyer with the agricultural commodity or products sold to such buyer.

(e) The word "buyer" as used in this section shall not include a buyer which is a cooperative agricultural association of producers.

(f) Nothing in this section shall prevent a cooperative agricultural association (not established, administered or assisted by any action of the buyer) or its officers or agents from bargaining with buyers or prospective buyers of their products with regard to prices therefor, and practices, terms, conditions, rules and regulations pertaining to the industry in which they are engaged.

(41 Del. Laws, c. 132 § 17; 3 Del. C. 1953 § 8551.)

§ 8552 Penalties; civil liabilities; injunctions.

Whoever violates this chapter shall be fined not more than $300, or imprisoned for not more than 6 months, or both, and shall be liable to the association aggrieved in a civil action in the penal sum of $100 for each such offense. The association shall be entitled to an injunction against such violator to prevent continuation of such conduct.

(41 Del. Laws, c. 132 § 17; 3 Del. C. 1953 § 8552.)

Subchapter VI

Miscellaneous Provisions

§ 8561 Exemption from state taxation.

No association organized under this chapter shall be liable for the payment of any state tax upon its right to do business in this State, upon its earnings or income, or any part thereof, upon its capital stock, or upon any scrip, bonds, certificates, or other evidences of indebtedness issued by such corporation, and all stocks, bonds, et cetera, issued by such associations shall be exempt from all state taxation. Associations organized under this chapter shall not be required to file reports relative to taxes required by law of corporations not exempt from the payment of such taxes.

(41 Del. Laws, c. 132 § 20; 3 Del. C. 1953 § 8561.)

§ 8562 Foreign associations or corporations.

Associations or corporations organized under the laws of any other state, the purposes of which coincide with the purposes of associations incorporated under this chapter, shall be allowed to carry on any proper activities, operations, and functions in this State, upon compliance with the legal requirements applicable to foreign corporations desiring to do business in this State, with power to make any and all contracts which can be made by any association incorporated under this chapter. Such contracts shall be legal and valid and enforceable in this State with the same force and effect as if the corporation were organized under this chapter. Such associations or corporations shall be entitled to all of the rights, exemptions, remedies and protection available for cooperative agricultural associations formed under the provisions set forth in this chapter, with the same force and effect as if such association or corporation were organized under this chapter. Any such association or corporation shall be treated as organized under this chapter with regard to the prohibition and penalty provisions set forth in this chapter.

(41 Del. Laws, c. 132 § 25; 3 Del. C. 1953 § 8562.)

Part VIII
Meat and Poultry Inspection
Chapter 87
MEAT AND POULTRY PRODUCTS INSPECTION

§ 8701 Short title.

This chapter may be cited as the "Meat and Poultry Products Inspection Act."
(3 Del. C. 1953 § 8701; 57 Del. Laws, c. 500 § 1.)

§ 8702 Enforcing agency.

This chapter shall be administered by the State Department of Agriculture hereafter referred to as the "Department."
(3 Del. C. 1953 § 8702; 57 Del. Laws, c. 500 § 1.)

§ 8703 Definitions.

When used in this chapter:

(1) "Secretary" means the Secretary of Agriculture or his delegate.

(2) "Person" includes any individual, partnership, corporation, association, or other business unit, and any officer, agent or employee thereof.

(3) "Broker" means any person engaged in the business of buying or selling livestock products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for such broker's own account or as an employee of another person.

(4) "Renderer" means any person engaged in the business of rendering livestock or poultry carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

(5) "Animal food manufacturer" means any person engaged in the business of preparing animal (including poultry) food derived wholly or in part from livestock or poultry carcasses or parts or products of such carcasses.

(6) "Intrastate commerce" means commerce within this State.

(7) "Livestock" means any cattle, sheep, swine, goats, horses, mules or other equines, whether live or dead.

(8) "Livestock product" means any carcass, part thereof, meat, or meat food product of any livestock.

(9) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Secretary under such conditions as the Secretary may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats.

(10) "Poultry" means any domesticated bird, whether live or dead.

(11) "Poultry product" means any poultry carcass or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the Secretary from definition as a poultry product under such conditions as he may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(12) "Capable of use as human food" shall apply to any livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the Secretary to deter its use as human food, or it is naturally inedible by humans.

(13) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(14) "Adulterated" shall have the meaning set forth in § 8704 of this title.

(15) "Misbranded" shall have the meaning set forth in § 8705 of this title.

(16) "Label" includes display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article.

(17) "Labeling" includes all labels and other written, printed, or graphic matter (a) upon any article or any of its containers or wrappers, or (b) accompanying such article.

(18) "Container" or "package" includes any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

(19) "Shipping container" includes any container used or intended for use in packaging the product packed in an immediate container.

(20) "Immediate container" includes any consumer package; or any other container, not consumer package, in which livestock products or poultry products, are packed.

(21) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome

Meat Act (81 Stat. 584) [21 U.S.C. § 601 et seq.]; the term "federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791) [21 U.S.C. § 451 et seq.]; and the term "federal acts" means these 2 federal laws.

(22) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040) [21 U.S.C. § 301 et seq.], and acts amendatory thereof or supplementary thereto.

(23) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 321].

(24) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Secretary to identify the status of any article or livestock or poultry under this chapter.

(25) "Official inspection legend" means any symbol prescribed by regulations of the Secretary showing that an article was inspected and passed in accordance with this chapter.

(26) "Official certificate" means any certificate prescribed by regulations of the Secretary for issuance by an inspector or other person performing official functions under this chapter.

(27) "Official device" means any device prescribed or authorized by the Secretary for use in applying any official mark.

(28) "Official establishment" means any establishment as determined by the Secretary at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this chapter.

(29) "Inspector" means an employee or official of the Department authorized by the Secretary or any employee or official of the government of any county or other governmental subdivision of this State, authorized by the Secretary to perform any inspection functions under this chapter under an agreement between the Secretary and such governmental subdivision.

(30) "Reinspection" includes inspection of the preparation of livestock products and poultry products, as well as reexamination of articles previously inspected.

(3 Del. C. 1953 § 8703; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28; 70 Del. Laws, c. 186 § 1.)

§ 8704 Adulterated products.

"Adulterated" shall apply to any livestock product or poultry product under 1 or more of the following circumstances:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this paragraph, if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2) If it bears or contains (by reason of administration of any substance to the livestock or poultry or otherwise) any added poisonous or added deleterious substance (other than 1 which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Secretary, make such article unfit for human food;

(3) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of § 408 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 346a];

(4) If it bears or contains any food additive which is unsafe within the meaning of § 409 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 348];

(5) If it bears or contains any color additive which is unsafe within the meaning of § 706 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 379e]; provided, that an article which is not otherwise deemed adulterated under this subdivision or subdivision (3) or (4) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Secretary in official establishments;

(6) If it consists in whole or in part of any filthy, putrid or decomposed substance or is for any other reason unsound, unhealthful, unwholesome or otherwise unfit for human food;

(7) If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(8) If it is, in whole or in part, the product of an animal (including poultry) which has died otherwise than by slaughter;

(9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(10) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to § 409 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 348];

(11) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

(12) If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

(3 Del. C. 1953 § 8703A; 57 Del. Laws, c. 500 § 1.)

§ 8705 Misbranded products.

"Misbranded" shall apply to any livestock product or poultry product under 1 or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) Unless it bears a label showing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this paragraph exemptions as to livestock products not in containers may be established by regulations prescribed by the Secretary and provided, further, that under this clause, reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the Secretary;

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity of composition has been prescribed by the regulations of the Secretary under § 8708 of this title unless (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Secretary under § 8708 of this title and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) If it is not subject to the provisions of subdivision (7) of this section, unless its label bears (a) the common or usual name of the food, if any, and (b) in case it is fabricated from 2 or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings may, when authorized by the Secretary, be designated as spices, flavorings and colorings without naming each; provided, that, to the extent that compliance with the requirements of this clause is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Secretary;

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Secretary after consultation with the Secretary of Agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this subparagraph is impracticable, exemptions shall be established by regulations promulgated by the Secretary; or

(12) If it fails to bear, directly thereon and on its containers, as the Secretary may by regulations prescribe, the official inspection legend and established number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the Secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(3 Del. C. 1953 § 8703B; 57 Del. Laws, c. 500 § 1.)

§ 8706 Purpose.

It is the objective of this chapter to provide for meat, poultry, and egg products inspection programs and for the humane slaughter of livestock that will impose and enforce requirements with respect to intrastate operations and commerce that are least equal to those imposed and enforced under the federal Meat Inspection Act (21 U.S.C. § 601 et seq.), the federal Poultry Products Inspection Act (21 U.S.C. § 451 et seq.), the federal Egg Products Inspection Act (21 U.S.C. § 1031 et seq.), and the federal Humane Methods of Slaughter Act (7 U.S.C. § 1901 et seq.) with respect to operations in interstate commerce. The Secretary is directed to administer this chapter so as to accomplish this purpose and is authorized to promulgate and adopt regulations to accomplish the purpose of this chapter. The Department is designated as the appropriate state agency to cooperate with the Secretary of Agriculture of the United States in administration of this chapter.

(3 Del. C. 1953 § 8704; 57 Del. Laws, c. 500 § 1; 76 Del. Laws, c. 109 § 1.)

§ 8707 Powers of Secretary.

In order to accomplish the objective stated in § 8706 of this title, the Secretary shall:

(1) By regulations require antemortem and postmortem inspections, quarantine, segregation and reinspection with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments in this State, except those exempted by him under § 8708(13) of this title, at which livestock or poultry are slaughtered or livestock products or poultry products are prepared for human food solely for distribution in intrastate commerce;

(2) By regulations require the identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, as "Delaware Inspected and Passed" if the products are found upon inspection to

be not adulterated and as "Delaware Inspected and Condemned" if they are found upon inspection to be adulterated, and the destruction for food purposes of all such condemned products under the supervision of an inspector;

(3) Prohibit the entry into official establishments of livestock products and poultry products not prepared under federal inspection or inspection pursuant to this chapter and further limit the entry of such articles and other materials into such establishments under such conditions as he deems necessary to effectuate the purposes of this chapter;

(4) By regulations require that when livestock products and poultry products leave official establishments they shall bear directly thereon or on their containers, or both, as he may require, all information required under § 8703(16) of this title, and require approval of all labeling and containers to be used for such products when sold or transported in intrastate commerce to assure that they comply with the requirements of this chapter;

(5) Investigate the sanitary conditions of each establishment within subdivision (1) of this section and withdraw or otherwise refuse to provide inspection service at any such establishment where the sanitary conditions are such as to render adulterated any livestock products or poultry products prepared or handled thereat;

(6) Prescribe sanitation regulations relating to sanitation for all establishments required to be inspected under subdivision (1) of this section;

(7) By regulations require that the following classes of persons keep such records and for such periods as are specified in the regulations to fully and correctly disclose all transactions involved in their business, and afford to the Secretary and the Secretary's representatives (including representatives of other governmental agencies designated by the Secretary) access to such places of business, and opportunity, at all reasonable times, to examine the facilities, inventory and records thereof, to copy the records, and to take reasonable samples of the inventory upon payment of the fair market value therefor; any persons that engage in or for intrastate commerce (a) in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling (as brokers, wholesalers or otherwise), transporting, or storing any livestock products or poultry products for human or animal food; or (b) in business as renderers or in the business of buying, selling or transporting any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of any such animals (including poultry) that died otherwise than by slaughter.

(3 Del. C. 1953 § 8707; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28; 70 Del. Laws, c. 186 § 1.)

§ 8708 Additional powers of Secretary.

In order to accomplish the objective stated in § 8706 of this title the Secretary may:

(1) Remove inspectors from any establishment that fails to destroy condemned products as required under § 8707(2) of this title;

(2) Refuse to provide inspection service under this chapter with respect to any establishment for causes specified in § 401 of the Federal Meat Inspection Act [21 U.S.C. § 671] or § 18 of the federal Poultry Products Inspection Act [21 U.S.C. § 467];

(3) Order labeling and containers to be withheld from use if he determines that the labeling is false or misleading or the containers are of a misleading size or form;

(4) By regulations prescribe the sizes and style of type to be used for labeling information required under this chapter, and definitions and standards of identity or composition or standards of fill of container, consistent with federal standards, when he deems such action appropriate for the protection of the public and after consultation with the Secretary of Agriculture of the United States;

(5) By regulations prescribe conditions of storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting such articles in or for intrastate commerce to assure that such articles will not be adulterated or misbranded when delivered to the consumer;

(6) Require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared;

(7) By regulations require that every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouseman of livestock products or poultry products, or engaged in the business of buying, selling or transporting in intrastate commerce any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of any such animals (including poultry) that died otherwise than by slaughter shall register with the Secretary his name and the address of each place of business at which and all trade names under which he conducts such business;

(8) Adopt by reference or otherwise such provisions of the rules and regulations under the federal acts (with such changes therein as he deems appropriate to make them applicable to operations and transactions subject to this chapter) which shall have the same force and effect as if promulgated under this chapter, and promulgate such other rules and regulations as he deems necessary for the efficient execution of this chapter, including rules of practice providing opportunity for hearing in connection with issuance of orders under § 8707(5) of this title or subdivisions (1), (2) or (3) of this section and prescribing procedure for proceedings in such cases; provided, that this shall not preclude a requirement that a label or container be withheld from use, or a refusal of inspection, under § 8707(5) or subdivisions (1) or (3) of this section pending issuance of a final order in any such proceeding;

(9) Appoint and prescribe the duties of such inspectors and other personnel as the Secretary deems necessary for the efficient execution of the provisions of this chapter;

(10) Cooperate with the Secretary of Agriculture of the United States in administration of this chapter to effectuate the purposes stated in § 8706 of this title;

(11) Recommend to the Secretary of Agriculture of the United States for appointment to the advisory committees, provided for in the

federal acts, such officials or employees of the Department as the Secretary shall designate;

(12) Serve as the representative of the Governor for consultation with the Secretary of Agriculture of the United States under paragraph (c) of § 301 of the Federal Meat Inspection Act [21 U.S.C. § 661(c)] and paragraph (c) of § 5 of the federal Poultry Products Inspection Act [21 U.S.C. § 454(c)] unless the Governor selects another representative;

(13) Exempt the operations of any person from inspection or other requirements of this chapter if and to the extent such operations would be exempt from the corresponding requirements under the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] or the federal Poultry Products Inspection Act [21 U.S.C. § 451 et seq.] if they were conducted in or for interstate commerce or if the State were designated under the federal acts as one in which the federal requirements apply to intrastate commerce;

(14) May exempt the following types of operations from inspection: (a) slaughtering and preparation by any person of livestock and poultry of his own raising exclusively for use by him and members of his household, and his nonpaying guests and employees; and (b) any other operations which the Secretary may determine would best be exempted to further the purposes of this chapter, to the extent such exemptions conform to the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] and the federal Poultry Products Inspection Act [21 U.S.C. § 451 et seq.] and the regulations thereunder.

(3 Del. C. 1953 § 8706; 57 Del. Laws, c. 500 § 1.)

§ 8709 Licenses.

Every person who owns or operates an official establishment or other facility subject to this chapter shall obtain a license for such establishment or facility. Every application for a license shall be submitted to the department on forms obtained from the department with a $25 fee. All fees shall be forwarded to the State Treasurer. The license shall be for the fiscal year ending June 30, and shall be renewed annually thereafter. A license may be denied at the time of application or revoked if the official establishment is found violating any section of this chapter or rules and regulations of the department.

(3 Del. C. 1953 § 8706A; 58 Del. Laws, c. 176; 66 Del. Laws, c. 79 § 1.)

§ 8710 Prohibited acts.

(a) No person shall, with respect to any livestock or poultry or any livestock products or poultry products:

(1) Slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles solely for intrastate commerce, except in compliance with the requirements of this chapter;

(2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any such articles which are capable of use as human food, and are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or any articles required to be inspected under this chapter, unless they have been so inspected and passed; or

(3) Do, with respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded.

(b) No person shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the Secretary, except as may be authorized by such regulations.

(c) No person shall violate any provision of the regulations or orders of the Secretary under § 8707 or 8708 of this title.

(3 Del. C. 1953 § 8707; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28; 70 Del. Laws, c. 186 § 1.)

§ 8711 Additional prohibited acts.

(a) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary.

(b) No person shall:

(1) Forge any official device, mark, or certificate;

(2) Without authorization from the Secretary use any official device, mark or certificate, or simulation thereof, or alter, detach, deface or destroy any official device, mark or certificate;

(3) Contrary to the regulations prescribed by the Secretary, fail to use, or to detach, deface or destroy any official device, mark or certificate;

(4) Knowingly possess, without promptly notifying the Secretary or the Secretary's representative, any official device or any counterfeit, simulated, forged or improperly altered official certificate or any device or label or any carcass of any animal (including poultry), or part or product thereof, bearing any counterfeit, simulated, forged or improperly altered official mark;

(5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Secretary; or

(6) Knowingly represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has not been so inspected and passed, or exempted.

(3 Del. C. 1953 § 8708; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28; 70 Del. Laws, c. 186 § 1.)

§ 8712 Offenses.

(a) No person shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Secretary to show the kinds of animals from which they were derived.

(b) No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock products or poultry products which are not intended for use as human food, unless they are denatured or otherwise identified as required by the regulations of the Secretary or are naturally inedible by humans.

(c) No person engaged in the business of buying, selling, or transporting in intrastate commerce dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, in such commerce, any dead, dying, disabled or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the Secretary may prescribe to assure that such animals, or the unwholesome parts of products thereof, will be prevented from being used for human food purposes.

(3 Del. C. 1953 § 8709; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28.)

§ 8713 Offenses; penalties.

(a) Any person who shall give, pay, or offer, directly or indirectly, to any officer or employee of this State authorized to perform any of the duties prescribed by this chapter or by the regulations of the Secretary any money or other thing of value, with intent to influence the officer or employee in the discharge of any such duty, shall upon conviction thereof be punished by a fine not less than $5,000 nor more than $10,000 and by imprisonment not less than 1 year nor more than 3 years; and any officer or employee of this State authorized to perform any of the duties prescribed by this chapter who shall accept any money, gift, or other thing of value from any person, given with intent to influence his or her official action, or who shall receive or accept from any person engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than $1,000 nor more than $10,000 and by imprisonment not less than 1 year nor more than 3 years.

(b) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than $5,000, or imprisoned not more than 3 years, or both.

(3 Del. C. 1953 § 8710; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28; 70 Del. Laws, c. 186 § 1.)

§ 8714 Inspection; exception.

Inspection shall not be provided under this chapter at any establishment for: (1) the slaughter of livestock or poultry, or (2) the preparation of any livestock products or poultry products which are not intended for use as human food. Such products shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the Secretary to deter their use as human food.

(3 Del. C. 1953 § 8711; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28.)

§ 8715 Inspection and seal.

(a) No inspection of products placed in any container at any official establishment shall be deemed to be complete until the products are sealed or enclosed therein under the supervision of an inspector.

(b) For purposes of any inspection of products required by this chapter, inspectors authorized by the Secretary shall have access at all times, by day or night, to every part of every establishment required to have inspection under this chapter, whether the establishment is operated or not.

(3 Del. C. 1953 § 8712; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28.)

§ 8716 Detention of certain goods, products or animals.

Whenever any livestock product or poultry product or any product exempted from the definition of a livestock product and from the definition of a poultry product, or any dead, dying, disabled, or diseased livestock or poultry, is found by any authorized representative of the Secretary upon any premises where it is held for purposes of distribution, or during or after distribution, or is otherwise subject to the Interstate Commerce Act, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of this chapter or of the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] or the federal Poultry Products Inspection Act [21 U.S.C. § 451 et seq.] or the Federal Food, Drug and Cosmetic Act [21 U.S.C. § 301 et seq.], or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under § 8717 of this title or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the Secretary that the article or animal is eligible to retain such marks.

(3 Del. C. 1953 § 8713; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28.)

§ 8717 Forfeiture of certain goods, products or animals.

(a) Any livestock product or poultry product or any dead, dying, disabled, or diseased livestock or poultry that is being transported in intrastate commerce or is otherwise subject to the chapter, or is held for sale in this State after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this chapter shall be liable to be proceeded against and seized and forfeited at any time, as provided in this section.

(b) Any property subject to forfeiture under this chapter may be seized by the Department upon process issued by the Superior Court, except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the State in an injunction or forfeiture proceeding under this chapter;

(3) The Department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or,

(4) The Department has probable cause to believe that the property has been used or intended to be used in violation of this chapter.

(5) In the event of seizure pursuant to paragraph (3) and (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Department subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this chapter, the Department may:

(1) Place the property under seal;

(2) Remove the property to a place designated by it; or

(3) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Whenever property is forfeited under this chapter, the Department may:

(1) Retain the property for official use;

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs. Any remaining proceeds shall be deposited in the General Fund;

(3) Take custody of the property and remove it for disposition in accordance with law; or

(e) The article or animal shall not be sold contrary to the provisions of this chapter, or the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] or the federal Poultry Products Inspection Act [21 U.S.C. § 451 et seq.] or the Federal Food, Drug and Cosmetic Act [21 U.S.C. § 301 et seq.]; provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this chapter, or the laws of the United States, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the Secretary as is necessary to insure compliance with the applicable laws. When a decree of forfeiture is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal.

(f) This section shall in no way derogate from authority for condemnation, forfeiture, or seizure conferred by other provisions of this chapter, or other laws.

(3 Del. C. 1953 § 8714; 57 Del. Laws, c. 500 § 1.)

§ 8718 Appeal and jurisdiction.

(a) Any order issued under § 8707(5) or 8708(1), (2), or (3) of this title shall be final, unless appealed to the Superior Court within 15 days after service. Review of any such order and the determinations upon which it is based shall be upon the record in the administrative proceeding in which the order was issued.

(b) The Superior Court has jurisdiction of offenses under this chapter, except as otherwise provided in this section.

(c) The Court of Chancery shall have jurisdiction to prevent and restrain violations of this chapter.

(d) All proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of this State. Subpoenas for witnesses who are required to attend a court in any county may run into any other county in such proceeding.

(3 Del. C. 1953 § 8715; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28.)

§ 8719 Penalties generally.

(a) Any person who commits an offense in violation of this chapter for which no other criminal penalty is provided by this chapter shall, upon conviction, be subject to imprisonment for not more than 1 year, or a fine of not more than $1,000, or both; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in § 8704(11) of this title) such person shall be subject to imprisonment for not more than 3 years or a fine of not more than $10,000, or both.

(b) Nothing in this chapter shall be construed as requiring the Secretary to report for prosecution or for the institution of forfeiture or injunction proceedings, minor violations of this chapter whenever the Secretary believes that the public interest will be adequately served

by a suitable written notice or warning.

(3 Del. C. 1953 § 8716; 57 Del. Laws, c. 500 § 1; 57 Del. Laws, c. 764 § 28; 70 Del. Laws, c. 186 § 1.)

§ 8720 Powers of Secretary; investigation; record keeping.

(a) The Secretary shall also have power:

(1) To gather and compile information concerning and to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce and the relation thereof to other persons;

(2) To require, by general or special orders, persons engaged in intrastate commerce, or any class of them, or any of them, to file with the Secretary in such form as the Secretary may prescribe, annual or special, or both annual and special reports or answers in writing to specific questions, furnishing to the Secretary such information as the Secretary may require as to the organization, business, conduct, practices, management, and relation to other persons, of the person filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Secretary may prescribe, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe, unless additional time be granted in any case by the Secretary.

(b)(1) For the purpose of this chapter the Secretary shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The Secretary may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence;

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to the subpoena the Secretary may invoke the aid of any court designated in § 8718 of this title in requiring the attendance and testimony of witnesses and the production of documentary evidence;

(3) Any of the courts designated in § 8718 of this title within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Secretary or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof;

(4) Upon the application of the Attorney General of this State at the request of the Secretary, the Superior Court shall have jurisdiction to issue writs of mandamus commanding any person to comply with this chapter or any order of the Secretary made in pursuance thereof;

(5) The Secretary may order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or a person under his or her direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Secretary as provided in this section;

(6) Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts;

(7) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements or other documentary evidence before the Secretary or in obedience to the subpoena of the Secretary whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her or it may tend to incriminate him or her or it or subject him or it to a penalty or forfeiture; but no individual shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying or contempt after having received immunity from prosecution.

(c)(1) Any person who shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or her or its power to do so, in obedience to the subpoena or lawful requirement of the Secretary shall upon conviction thereof by a court of competent jurisdiction be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment;

(2) Any person who shall wilfully make or cause to be made any false entry or statement of fact in any report required to be made under this chapter, or that shall wilfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person subject to this chapter or that shall wilfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person or that shall wilfully remove out of the jurisdiction of this State, or wilfully mutilate, alter, or by any other means falsify any documentary evidence of any person subject to this chapter or that shall wilfully refuse to submit to the Secretary or to any of the Secretary's his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this chapter in his or her possession or within his or her control, shall be subject, upon conviction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than 3 years, or to both such fine and imprisonment;

(3) If any person required by this chapter to file any annual or special report shall fail so to do within the time fixed by the Secretary for filing the same, and such failure shall continue for 30 days after notice of such default, such person shall forfeit to this State the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the General Fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the county where the person has his or her or its principal office or in any county in which he or she or it shall do business. It shall be the duty of the various Deputies Attorney General, under the direction of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of this State;

(4) Any officer or employee of this State who shall make public any information obtained by the Secretary, without his authority, unless directed by a court, or use any such information to his own advantage, shall be punished by a fine not exceeding $5,000, or by imprisonment, not exceeding 1 year, or by both such fine and imprisonment, in the discretion of the court;

(5) Superior Court shall have jurisdiction over the offenses in this section.

(3 Del. C. 1953 § 8717; 57 Del. Laws, c. 500 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8721 Application of chapter.

The requirements of this chapter shall apply to persons, establishments, animals and articles regulated under the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] or the federal Poultry Products Inspection Act [21 U.S.C. § 451 et seq.] only to the extent provided for in said federal acts.

(3 Del. C. 1953 § 8718; 57 Del. Laws, c. 500 § 1.)

Part IX
Interstate Compacts
Chapter 90
PEST CONTROL COMPACT
Subchapter I
General Provisions

§ 9001 Enactment; form.

The Pest Control Compact entered into with all other jurisdictions legally joining therein shall be in the form substantially as follows:

PEST CONTROL COMPACT

Article I

Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

Article II

Definitions

As used in this compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(b) "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states;

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this article;

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value;

(e) "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this compact;

(f) "Governing Board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact;

(g) "Executive Committee" means the Committee established pursuant to Article V(e) of this compact.

Article III

The Insurance Fund

There is established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

Article IV

The Insurance Fund, Internal Operations and Management

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote each on such Board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and General Assembly of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

Article V

Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

(1) Assist in the coordination of activities pursuant to the compact in his state; and

(2) Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor with the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed 3 representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or on the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of this compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and 4 additional members of the Governing Board chosen by it so that there shall be one member representing each of 4 geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least 4 members of such Committee are present and vote in favor thereof. Necessary expenses of each of the 5 members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charged against the Insurance Fund.

Article VI

Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

(1) The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

(2) The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the

absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

(1) A detailed statement of the circumstances which occasion the request for the invoking of this compact.

(2) Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

(3) A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

(4) Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

(5) A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

(6) Such other information as the Governing Board may require consistent with the provisions of this compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or the Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall, upon notice in writing given within 20 days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states and any other entities concerned.

Article VII

Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the Governing Board or Executive Committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI(d) of this compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if

made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

Article VIII

Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI(d) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

Article IX

Finance

(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for presentation to the General Assembly thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: One-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of 3 years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(g) of this compact, provided that the Governing Board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV(g) of this compact, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Insurance Fund.

(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

Article X

Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any 5 or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 2 years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XI

Construction and Severability

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable and if any

phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, it shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

(3 Del. C. 1953 § 9001; 56 Del. Laws, c. 70; 70 Del. Laws, c. 186 § 1.)

Subchapter II

Effectuation

§ 9022 Cooperation.

Consistent with law and within available appropriations, the departments, agencies and officers of this State may cooperate with the Insurance Fund established by the Pest Control Compact.

(3 Del. C. 1953 § 9022; 56 Del. Laws, c. 70.)

§ 9023 Filing of bylaws.

Pursuant to Article IV(h) of the compact, copies of bylaws and amendments thereto shall be filed with the Secretary of State.

(3 Del. C. 1953 § 9023; 56 Del. Laws, c. 70.)

§ 9024 Compact administrator.

The compact administrator for this State shall be the Secretary of the Department of Agriculture.

(3 Del. C. 1953 § 9024; 56 Del. Laws, c. 70; 57 Del. Laws, c. 764 § 29.)

§ 9025 Request.

Within the meaning of Article VI(b) or VIII(a) of the compact, a request or application for assistance from the Insurance Fund may be made by the Governor whenever in his judgment the conditions qualifying this State for such assistance exist and it would be in the best interest of this State to make such request.

(3 Del. C. 1953 § 9025; 56 Del. Laws, c. 70; 70 Del. Laws, c. 186 § 1.)

§ 9026 Appropriations.

The department, agency or officer expending or becoming liable for an expenditure, on account of a control or eradication program undertaken or intensified pursuant to the compact, shall have credited to his account in the State Treasury the amount or amounts of any payments made to this State to defray the cost of such program, or any part thereof, or as reimbursement thereof.

(3 Del. C. 1953 § 9026; 56 Del. Laws, c. 70; 70 Del. Laws, c. 186 § 1.)

§ 9027 Definition.

As used in the compact, with reference to this State, the term "Executive Head" shall mean the Governor.

(3 Del. C. 1953 § 9027; 56 Del. Laws, c. 70.)

Part IX
Interstate Compacts
Chapter 91
MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT

§ 9101 Approval of compact; text.

The Governor of Delaware may execute a compact on behalf of the State with any 1 or more of the States of Maryland, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia, who may, by their legislative bodies, authorize a compact, in form substantially as follows:

Middle Atlantic Interstate Forest Fire Protection Compact

Article I. The purpose of this compact is to promote effective prevention and control of forest fires in the Middle Atlantic region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member States, and by providing for mutual aid in fighting forest fires among the compacting States of the region and with States which are party to other regional forest fire protection compacts or agreements.

Article II. This compact shall become operative immediately as to those States ratifying it whenever any two or more of the States of Delaware, Maryland, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia that are contiguous have ratified it and Congress has given consent thereto.

Article III. In each State the State forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that State and shall consult with like officials of the other member States and shall implement cooperation between such States in forest fire prevention and control. The compact administrators of the member States shall organize to coordinate the services of the member States and provide administrative integration in carrying out the purposes of this compact. The compact administrators shall formulate and, in accordance with need, from time to time revise a regional forest fire plan for the member States. It shall be the duty of each member State to formulate and put in effect a forest fire plan for that State and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

Article IV. Whenever the State forest fire control agency of a member State requests aid from the State forest fire control agency of any other member State in combating, controlling or preventing forest fires, it shall be the duty of the State forest fire control agency of that State to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V. Whenever the forces of any member State are rendering outside aid pursuant to the request of another member State under this compact, the employees of such State shall, under the direction of the officers of the State to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the State to which they are rendering aid. No member State or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting State or under the laws of the aiding State or under the laws of a third State on account of or in connection with a request for aid shall be assumed and borne by the requesting State. Any member State rendering outside aid pursuant to this compact shall be reimbursed by the member State receiving such aid for any loss or damage to or expense incurred in the operation of any equipment answering a request for aid and for the cost of all materials, transportation, wages, salaries and maintenance of employees and equipment incurred in connection with such request: Provided, That nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost, or from loaning such equipment, or from donating such services to the receiving member state without charge or cost. Each member State shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such State. For the purposes of this compact, the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding State under the laws thereof. The compact administrators shall formulate procedure for claims and reimbursement under the provisions of this article in accordance with the laws of the member States.

Article VI. Nothing in this compact shall be construed to authorize or permit any member State to curtail or diminish its forest fire fighting forces, equipment, services or facilities, and it shall be the duty and responsibility of each member state to maintain adequate forest fire fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative. Nothing in this compact shall be construed to limit or restrict the powers of any State ratifying the same to provide for the prevention, control and extinguishment of forest fires or to prohibit the enactment or enforcement of State laws, rules or regulations intended to aid in such prevention, control and extinguishment in such State. Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States Forest Service and a member State or States.

Article VII. The compact administrators may request the United States Forest Service to act as the primary research and coordinating

agency of the Middle Atlantic Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each State, and the United States Forest Service may accept the initial responsibility in preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of the United States Forest Service may attend meetings of the compact administrators.

Article VIII. The provisions of Articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any State party to this compact and any other State which is party to a regional forest fire protection compact in another region: Provided, That the Legislature of such other State shall have given its assent to such mutual aid provisions of this compact.

Article IX. This compact shall continue in force and remain binding on each State ratifying it until the legislature or the Governor of such State takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the State desiring to withdraw to the chief executives of all States then parties to the compact.

(72 Del. Laws, c. 235 § 4.)

§ 9102 Effective date of compact.

The above compact shall be effective immediately as between the State and such other state or states as have already approved the compact. As to other states it shall become effective when approved by them. The Governor may take such action as may be necessary to complete the exchange of official documents between this State and any other state authorizing the compact.

(72 Del. Laws, c. 235 § 4.)

§ 9103 Compact administrator.

The State Forester or someone designated by the State Forester shall act as compact administrator for this State.

(72 Del. Laws, c. 235 § 4; 70 Del. Laws, c. 186 § 1.)

Part X
Horse Racing
Chapter 100
HARNESS RACING
Subchapter I
Delaware Harness Racing Commission

§ 10001 Definitions.

As used in this chapter:

(1) "Commission" means the Delaware Harness Racing Commission.

(2) "Commissioner" means a member of the Delaware Harness Racing Commission.

(3) "Harness racing," "harness races," "harness horse racing" or "harness horse races" means and includes only any racing of horses in which the horses competing or participating are harnessed to a sulky, carriage or similar vehicle and are not mounted by a jockey.

(45 Del. Laws, c. 303 § 10; 28 Del. C. 1953 § 501; 66 Del. Laws, c. 303 § 261(a).)

§ 10002 Secretary; powers and duties.

The Harness Racing Commission shall be a unit of the Department of Agriculture. The Secretary of Agriculture shall promulgate those rules and regulations relating to the establishment of the Harness Racing Commission as such a unit. The Harness Racing Commission and all employees in positions authorized in the Annual Appropriations Act assigned to the Harness Racing Commission shall report directly to the Secretary.

(66 Del. Laws, c. 303 § 261(a); 75 Del. Laws, c. 89 § 305.)

§ 10003 Composition; appointment; qualifications and term; compensation; vacancies.

(a) The Delaware Harness Racing Commission is continued. The Commission shall consist of 5 members.

(b) Not more than 3 Commissioners shall be of the same political party. One Commissioner shall be appointed from each county of the State and shall be a bona fide resident of the county for which appointed. No person shall be appointed to the Commission nor be an employee thereof nor officiate at pari-mutuel meetings conducted in this State who is licensed or regulated, directly or indirectly, by the Commission other than for the position to which he is appointed nor shall he have any legal or beneficial interest, direct or indirect, pecuniary or otherwise, in any firm, association or corporation so licensed or regulated or which participates in pari-mutuel meetings in any manner. No person shall be a member of the Commission who is not of good moral character or who has been convicted of, or is under indictment for, a felony under the laws of Delaware or any other state, or the United States.

(c) The term of office of each Commissioner shall be 6 years from the 22nd day of April in the year of his appointment and until his successor shall qualify.

(d) Members of the Harness Racing Commission shall receive a $150 stipend for each meeting. The Chairperson of the Commission shall receive $250 per meeting. The Commission shall meet no more than 16 times per year. Each Commissioner shall be entitled to be paid his reasonable expenses for traveling to and from any office of the Commission on official business.

(e) Vacancies in the Commission for any reason other than expiration of term of office shall be filled by the Governor for the unexpired term of any Commissioner. The Governor shall appoint a bona fide resident of the proper county for a full term of 6 years when there is a vacancy by reason of expiration of term.

(45 Del. Laws, c. 303 §§ 1, 2, 4, 5; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 502; 58 Del. Laws, c. 511 § 62; 63 Del. Laws, c. 143 §§ 9, 10; 63 Del. Laws, c. 390 § 7; 66 Del. Laws, c. 171 §§ 2-4; 66 Del. Laws, c. 303 § 261(a); 72 Del. Laws, c. 94 § 281.)

§ 10004 Removal of Commissioner from office.

The Governor shall remove any or all of the Commissioners for inefficiency, neglect of duty or misconduct in office, first giving to him or her or them, a copy of the charges filed against him or her or them and an opportunity of being publicly heard in person or by counsel in his or her or their defense upon not less than 10 days written notice. If any of the Commissioners is removed from office, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the Commissioner and the Governor's findings thereof, together with a complete record of the proceedings.

(45 Del. Laws, c. 303 § 2; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 503; 66 Del. Laws, c. 303 § 261(a); 70 Del. Laws, c. 186 § 1.)

§ 10005 Purpose; powers and duties.

The primary purpose of the Commission is to regulate and oversee the sport of harness racing, within this State in the public interest. The Commission shall possess the powers and duties specified in this chapter and also the powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter. The jurisdiction, supervision, powers and duties of the Commission shall extend under

this chapter to any person who holds or conducts any meeting within this State at which harness horse racing is permitted for any stake, purse or reward and upon which wagering or betting is conducted as provided in this chapter. The Commission shall possess all necessary powers and duties to regulate the conduct of all grooms, drivers and owners and their employees, of all harness racing horses entered or to be entered in any harness racing meet authorized by the Commission under this chapter. For this purpose, the said Commission may promulgate and prescribe such rules and regulations as it may deem proper and necessary.

(45 Del. Laws, c. 303 § 1; 28 Del. C. 1953 § 504; 52 Del. Laws, c. 233 § 1; 63 Del. Laws, c. 143 § 11; 66 Del. Laws, c. 303 § 261(a).)

§ 10006 Office, meetings and quorum.

The Commission shall establish and maintain offices at such places within this State and shall meet at least monthly during the period when any association is conducting a harness horse racing meet and at such other times as it deems necessary. A majority of the Commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty and for the exercise of any power of the Commission.

(45 Del. Laws, c. 303 § 4; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 506; 63 Del. Laws, c. 143 § 12; 66 Del. Laws, c. 303 § 261(a); 68 Del. Laws, c. 214 § 1.)

§ 10007 Employees.

(a) The Commission may appoint such officers, clerks, stenographers, inspectors, racing officials, veterinarians and such other employees as it deems necessary, consistent with the purposes of this chapter. The Commission for the purpose of maintaining integrity and honesty in racing shall prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to competently perform these duties.

(b) In addition to any minimum qualifications promulgated by the Commission, all applicants for the position of steward or race judge must be certified by a national organization approved by the Commission. An applicant for the position of steward or race judge must also have been previously employed as a steward, patrol judge or other racing official at a harness racing meeting for a period of not less than 45 days during 3 of the past 5 years, or have at least 5 years of experience as a licensed driver who has also served not less than 1 year as a licensed racing official at a harness racing meeting or have 10 years of experience as a licensed harness racing trainer who has also served not less than 1 year as a licensed racing official at a harness racing meeting.

(c) The Commission may appoint a racing inspector or investigator for each harness racing meet. Such racing inspector shall perform all duties prescribed by the Commission consistent with the purposes of this chapter. Such racing inspector shall have full and free access to the books, records and papers pertaining to the pari-mutuel system of wagering and to the enclosure or space where the pari-mutuel system is conducted at any harness racing meeting to which the racing inspector shall be assigned to the purpose of ascertaining whether the holder of such permit is operating in compliance with the Commission's rules and regulations. The racing inspector shall investigate whether such rules and regulations promulgated by the Commission are being violated at such harness racetrack or enclosure by any licensee, patron or other person. Upon discovering any such violation, the racing inspector shall immediately report his or her findings in writing and under oath to the Commission or its designee as it may deem fitting and proper. The racing inspector or investigator shall be devoted full time to the duties of the office and shall not hold any other position or employment, except for performance of similar duties for the Thoroughbred Racing Commission.

(d) All employees appointed under subsections (a) through (c) of this section shall serve at the pleasure of the Commission and are to be paid a reasonable compensation. No person shall be appointed to hold any such office or position who holds any official relation to any person, association or corporation engaged in or conducting harness horse racing within the State. The full compensation of the presiding judge, associate judges and track veterinarian and no more than that portion of the compensation of the state steward paid by the licensed persons or association as of June 30, 1998, shall be paid by the Commission subject to pro rata reimbursement by the licensed persons or associations conducting harness racing meets under this chapter. Increases in costs of the aforementioned officials shall be reasonable and related to expansion in the number of days of racing and the number of races held, the need to maintain competitive salaries, and inflation. The Commission shall determine and insure that such employees perform their duties in the public interest. No Commissioner, racing official, steward or judge whose duty is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race regulated by the Commission or have any financial or pecuniary interest in the outcome of any race regulated by the Commission.

(e) The Commission may employ an Administrator of Racing who shall perform all duties prescribed by the Commission consistent with the purposes of this chapter. The Administrator of Racing shall be appointed by the Governor after consideration of candidates jointly submitted by the Harness Racing Commission and the Thoroughbred Racing Commission. The Administrator of Racing shall be devoted full time to the duties of the office and shall not hold any other office or employment, except that the Administrator of Racing can perform the same duties as Administrator of Racing for the Thoroughbred Racing Commission. The Administrator of Racing shall be the representative for the Commission at all race meetings. The Administrator of Racing shall attend all meetings of the Commission and shall keep a complete record of its proceedings and preserve, at its general office, all books, maps, documents and papers entrusted to its care. The Administrator of Racing shall be the executive officer of the Commission and shall be responsible for keeping all Commission records and carrying out the rules and orders of the Commission. The Commission may appoint the Administrator of Racing to act as a hearing officer to hear appeals from administrative decisions of the steward or racing judges.

(45 Del. Laws, c. 303 §§ 2, 4; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 507; 57 Del. Laws, c. 740 § 10; 61 Del. Laws, c. 2 § 1; 63 Del. Laws, c. 143 § 13; 66 Del. Laws, c. 303 § 261(a); 68 Del. Laws, c. 214 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 414 § 1.)

§ 10008 Secretary's duties.

The Secretary of the Commission shall keep a record of all proceedings of the Commission and shall preserve all books, maps, documents and papers belonging to the Commission or entrusted to its care and perform such other duties as the Commission prescribes.

(45 Del. Laws, c. 303 § 4; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 508; 66 Del. Laws, c. 303 § 261(a); 68 Del. Laws, c. 214 § 1.)

§ 10009 Operational expenses; use of revenues; commission positions; use of lottery revenues.

The annual operating budget act shall appropriate ASF revenue to the Harness Racing Commission for operational expenses. The Commission's revenues, derived from fees, fines and licenses, shall be used to cover its respective operational expenditures. The Harness Racing Commission shall maintain three positions used for the State Steward, the Presiding Judge and one Associate Judge. These positions shall be exempt from the classified service as provided in Chapter 59 of Title 29. The compensation for these positions shall be determined by the Harness Racing Commission. Persons appointed by the Commission to fill these positions shall be eligible for membership in the State Pension Plan, for coverage under the life and health insurance programs for State employees, and for worker's compensation benefits as State employees, but, because of the nature of these positions, they shall not be eligible for annual leave, sick leave or compensatory time. Should revenues be insufficient to cover the operational costs of the Commission, funds may be transferred from state lottery revenues collected under the authority of § 4815 of Title 29 to cover such shortfalls with the concurrence of the Director of the Office of Management and Budget and the Controller General.

(73 Del. Laws, c. 322 § 2; 75 Del. Laws, c. 88 § 21(2).)

§ 10010 Annual report.

The Commission shall make an annual report to the Governor on or before the 1st day of January in each year. The report shall include a statement of receipts and disbursements by the Commission and any additional information and recommendations which the Commission deems of value.

(45 Del. Laws, c. 303 § 4; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 511; 66 Del. Laws, c. 303 § 261(a); 68 Del. Laws, c. 214 § 1.)

§ 10011 [Reserved.]

§ 10012 License to participate in racing.

(a) The Commission may establish categories of licenses and impose license fees as specified in subsection (b) of this section for persons participating in pari-mutuel harness racing meets under the jurisdiction of the Commission.

(b) Any person required by the Commission to be licensed to participate in pari-mutuel harness racing during any calendar year shall, at the time of making application for such license, pay the Commission a fee as follows: for each owner, trainer, driver or groom, or a combination thereof, $50; provided, however, that the fee for applying for only a groom's license shall be $20.

(70 Del. Laws, c. 589 § 1; 72 Del. Laws, c. 227 § 1.)

§ 10013 License to officiate at race meets.

(a) The Commission may establish categories of licenses and impose license fees as specified in subsection (b) of this section for persons serving as racing officials at pari-mutuel harness race meets under jurisdiction of the Commission.

(b) Any person required by the Commission to be licensed to serve as a racing official during any calendar year shall at the time of making application for such license pay to the Commission a fee, as follows:

(1) State steward, $125.
(2) Presiding judge, $100.
(3) Associate judge, $75.
(4) Paddock judge, horse identifier and equipment checker or patrol judge, $50.
(5) State veterinarian or lasix veterinarian, $50.
(6) Breath analyzer, veterinary assistant, paddock inspector, laboratory personnel and all other paddock personnel, $50.
(7) Racing secretary, $100.
(8) Assistant racing secretary, $50.
(9) Official starter, clerk of the course, official charter or official timer, $50.
(10) For any other person designated by the Commission to be licensed as a pari-mutuel racing official, $50.

(70 Del. Laws, c. 589 § 1; 72 Del. Laws, c. 227 §§ 2-5.)

§ 10014 License to work for a race meet licensee.

(a) The Commission may establish categories of licenses and impose license fees as specified in subsection (b) of this section for persons working for a licensee during pari-mutuel harness race meetings under the jurisdiction of the Commission.

(b) The Commission shall require persons working for a licensee during any calendar year to be licensed and at the time of making application for such license pay to the Commission a fee, as follows:

(1) Vendor, $50;

(2) Photographer, $50;

(3) For employees of a vendor, employees of a photographer, concession stand workers, maintenance personnel, parking lot attendants, admission staff, security personnel, mutual employees, timer or totalizator and film patrol workers, $20; and

(4) For any other persons designated by the Commission to be licensed to work for a race meet licensee during a pari-mutuel harness race meet, $20.

(70 Del. Laws, c. 589 § 1; 72 Del. Laws, c. 227 §§ 6, 7.)

§ 10015 Special powers of the Commission.

The Commission shall require that any person who is required to be licensed to participate in pari-mutuel harness racing, under the jurisdiction of the Commission, be fingerprinted by the Commission or its designee for purposes of a criminal history check on such applicant. Any person required by the Commission to be fingerprinted as part of the license application process shall also be responsible for payment to the State Bureau of Identification for the cost of fingerprinting and conducting state and federal criminal history checks. The State Bureau of Identification shall be the intermediary for the purpose of this section for the receipt of said federal criminal history records.

(70 Del. Laws, c. 589 § 1.)

§ 10016 Administrative inspection warrants.

Pursuant to § 101(10) of this title, the Delaware Harness Racing Commission is authorized to apply for and utilize administrative inspection warrants issued by the Secretary of Agriculture for the purpose of conducting administrative inspections and seizures of property at any location within the State where harness racing horses are stabled or otherwise located.

(79 Del. Laws, c. 135 § 2.)

Subchapter II

License to Conduct Harness Racing Meet; Taxes

§ 10022 License as required.

Any person desiring to conduct a harness horse racing meet within the State during any calendar year shall first obtain a license to do so from the Commission.

(45 Del. Laws, c. 303 § 7; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 521; 66 Del. Laws, c. 303 § 261(a).)

§ 10023 Application; rejection; award of dates and maximum racing days; qualifications for license.

(a) The application for a license to conduct a harness horse race meet shall be filed with the Commission on or before the 31st day of December of the year preceding that for which the license is requested but the Commission may, for a good cause, permit an application to be filed at a later date. The application shall specify the days on which harness horse racing is desired to be conducted and shall be in such form and supply such data and information, including a blueprint of the track and specifications of its surface and blueprints and specifications of buildings and grandstand on the land where the meet is to be conducted as the Commission prescribes, provided, however, that it shall not be necessary for the applicant to submit blueprints and specifications with the application if the race meet for which a license is requested is to be conducted at a track for which the Commission granted a license for the preceding year.

The blueprints and specifications shall be subject to the approval of the Commission, which, at the expense of the applicant, may order such engineering examination thereof as to the Commission seems necessary. The erection and construction of the track, grandstand and buildings of any applicant for a license to conduct harness horse racing under this chapter shall be subject to the inspection of the Commission, which may order such engineering examination as the Commission deems necessary at the expense of the applicant, and may employ such inspectors as the Commission considers necessary for that purpose.

In the event that an application is made for racing dates in Sussex County in compliance with subsection (c) of this section, it shall not be necessary for the applicant to submit blueprints and specifications with the application if the applicant plans to assign those dates applied for to another county.

(b) The Commission may reject any application for a license for any cause which it deems sufficient, and the action of the Commission shall be final.

(c) The Commission shall, on or before the 15th of September of the year preceding that for which a license is desired, award all dates for harness horse racing in this State for the succeeding year; but the dates so awarded shall not exceed 340 days for any 1 licensee, but may exceed more than 340 days in the aggregate for all licensees. To the extent a licensee under this chapter conducts harness horse races during a given year, it shall, at a minimum, subject to the availability of racing stock, conduct live harness horse races on the same number of days as the licensee conducted live harness horse races between September 1, 1991, and April 1, 1992. The Commission may authorize any person, corporation or association licensed under this chapter to transfer all or a portion of the racing dates awarded to such licensee under this section to the track of any other person, corporation or association licensed under this chapter to conduct racing in this State; provided, that each licensee in Kent County which has requested and been awarded racing dates in any calendar year shall conduct a minimum of 8

weeks of racing at the track of such licensee during such year. Each licensee upon request shall be guaranteed a minimum of 8 weeks of racing. In awarding such racing dates, the Commission shall observe previous traditional seasons. There shall be no racing between the Saturday before and the Saturday after Christmas, unless Christmas falls on a Saturday or Sunday, in which case there shall be no racing between the Monday before Christmas, and the Monday after Christmas. The decision of the Commission regarding racing dates, including concurrent racing dates, shall be final. In addition, the Commission may award additional dates, beyond any limits prescribed elsewhere, for racing days limited exclusively to the receiving and accepting of wagers or bets on electronically televised simulcasts of harness horse races.

(d) The Commission may meet subsequently to the 15th day of January of each year and award dates for harness horse racing within the limits provided in this section on application submitted to it, provided that the days so awarded in no way conflict with this chapter.

(e) No license to conduct harness racing under this section shall be granted except to a private stock corporation formed and existing under the laws of the State for the purpose of conducting harness racing and businesses incident thereto, in compliance with the following conditions and requirements:

(1) Before a license shall be issued under the provisions of this chapter, the applicant shall file with the Commission, in addition to other requirements of this chapter, the names, addresses and terms of office of its directors and officers and at such other time or times thereafter as they may be changed, the names and addresses of such directors and officers, a copy of the certificate of incorporation duly certified by the Secretary of State and a copy of its bylaws. Such applicant shall file with the Commission a copy of any amendment to its certificate of incorporation, duly certified as aforesaid, within 10 days after the effective date of any such amendment;

(2) The board of directors of the applicant shall not be less than 5 in number;

(3) The applicant shall have no other office except in the State;

(4) Every applicant for a license shall file with the Commission at the time of application for a license a statement of its resources and liabilities. The Commission shall have access at all times to the books, records and accounts of the licensee;

(5) No license shall be issued unless a majority of the board of directors and officers shall be bona fide residents of the State.

(45 Del. Laws, c. 303 §§ 7, 8; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 522; 49 Del. Laws, c. 192 §§ 1-4; 51 Del. Laws, c. 5; 51 Del. Laws, c. 337; 52 Del. Laws, c. 183; 52 Del. Laws, c. 276 § 1; 54 Del. Laws, c. 297; 55 Del. Laws, c. 223 §§ 1-5; 57 Del. Laws, c. 230; 57 Del. Laws, c. 455; 58 Del. Laws, c. 72; 60 Del. Laws, c. 4 § 1; 66 Del. Laws, c. 303 § 261(a); 68 Del. Laws, c. 214 § 2; 68 Del. Laws, c. 254 § 1; 69 Del. Laws, c. 446 § 23.)

§ 10024 Application fee and license fee.

(a) Any person upon applying to the Commission for a license to conduct a harness horse racing meet during any calendar year shall at the time of making the application pay to the Secretary of Finance a fee of $2,000.

(b) Any person who is granted a license by the Commission to conduct a harness horse racing meet during any calendar year shall at the time the license is granted pay to the Secretary of Finance an additional fee of $1,000.

(45 Del. Laws, c. 303 § 5; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 523; 57 Del. Laws, c. 741 § 30A; 66 Del. Laws, c. 303 § 261(a); 72 Del. Laws, c. 227 §§ 8, 9.)

§ 10025 Issuance.

Upon the award of days to any applicant, the Commission shall issue a license for the holding of the meet or meets during the days awarded to the applicant. The license shall be subject to all rights, regulations and conditions from time to time prescribed by the Commission.

(45 Del. Laws, c. 303 § 9; 28 Del. C. 1953 § 524; 66 Del. Laws, c. 303 § 261(a).)

§ 10026 Suspension or revocation; appeal.

Any license issued by the Commission shall be subject to suspension or revocation by the Commission for any cause whatsoever which the Commission deems sufficient. If any license is suspended or revoked, the Commission shall state publicly its reasons for so doing and cause an entry of the reasons to be made on the minute book of the Commission and its action shall be final. The propriety of such action shall be subject to review, upon questions of law only, by the Superior Court of the county within which the license was granted. The action of the Commission shall stand unless and until reversed by the Court.

(45 Del. Laws, c. 303 § 9; 28 Del. C. 1953 § 525; 66 Del. Laws, c. 303 § 261(a).)

§ 10027 Rules of United States Trotting Association.

Every license issued under this chapter shall contain a condition that all harness races or racing meets conducted thereunder shall be subject to the reasonable rules and regulations from time to time prescribed by the United States Trotting Association. Any rule or regulation of the United States Trotting Association may be modified or abrogated by the Commission upon giving the United States Trotting Association an opportunity to be heard. All grooms, drivers and owners and their employees of any horses entered, or to be entered, in any harness racing meet licensed under this chapter shall be subject to said rules and regulations prescribed as aforesaid by the said United States Trotting Association. Said rules of the United States Trotting Association may be modified or abrogated by the Commission upon giving the United States Trotting Association an opportunity to be heard.

(45 Del. Laws, c. 303 § 10; 28 Del. C. 1953 § 526; 52 Del. Laws, c. 233 § 2; 66 Del. Laws, c. 303 § 261(a).)

§ 10028 Inspection of racing premises prior to meet.

Not less than 5 days prior to the opening of any meet authorized by the Commission, the Commission, at the expense of the licensee for the meet, shall cause to be made an inspection of the track, grandstand and buildings where the meet is to be held and unless the track, grandstand and buildings where the meet is to be held are found to be safe for animals and persons, or are rendered safe prior to the opening of the meet, the license for the meet shall be withdrawn.

(45 Del. Laws, c. 303 § 7; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 527; 66 Del. Laws, c. 303 § 261(a).)

§ 10029 Rules, regulations and special powers of Commission.

(a) The Commission may make rules governing, restricting or regulating the rate or charge by a licensee for admission, or for the performance of any service, or the sale of any article on the premises of a licensee; provided, however, that where the Commission imposes a penalty on any person, such penalty shall not apply to that person's spouse unless such spouse has committed the same offense.

(b) All proposed extensions, additions or improvements to the buildings, stables or improvements on tracks or property owned or leased by a licensee under this chapter shall be subject to the approval of the Commission.

(c) The Commission may compel the production of any and all books, memoranda or documents showing the receipts and disbursements of any person licensed under the provisions of this chapter to conduct racing meets.

(d) The Commission may at any time require the removal of any employee or official employed by any licensee hereunder.

(e) The Commission may require that the books, records and financial or other statements of any person licensed under the provisions of this chapter shall be kept in such form or in such manner as the Commission prescribes. The Commission may visit, investigate and place expert accountants and such other persons as it deems necessary, in the offices, tracks or places of business of any such person for the purpose of satisfying itself that the Commission's rules and regulations are strictly complied with. The salaries and expenses of such expert accountants or other persons shall be paid by the person to whom they are assigned.

(f) The Commission may issue, under the hand of any Commissioner and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents before the Commission and may administer oaths or affirmations to the witnesses whenever in the judgment of the Commission it is necessary for the effectual discharge of its duties. If any person refuses to obey any subpoena, or to testify, or to produce any books, papers or documents, then the Commission may apply to the Superior Court of the county in which the Commission is sitting, and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify, or to produce the books, papers and documents. Whoever fails to obey or refuses to obey a subpoena of the Court shall be guilty of contempt of court and shall be punished accordingly. False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

(g) The Commission shall promulgate administrative regulations for effectively preventing the use of improper devices, the administration of drugs or stimulants or other improper acts for the purpose of affecting the speed or health of horses in races in which they are to participate. The Commission is also authorized to promulgate administrative regulations for the legal drug testing of licensees. The Commission is authorized to contract for the maintenance and operation of a testing laboratory and related facilities, for the purpose of saliva, urine or other tests for enforcement of the Commission's drug testing rules and regulations. The licensed persons or associations conducting harness racing shall reimburse the Commission for all costs of the drug testing program established pursuant to this section. Increases in costs of the aforementioned testing program shall be reasonable and related to expansion in the number of days of racing and the number of races held, the need to maintain competitive salaries, and inflation. The Commission may not unreasonably expand the drug testing program beyond the scope of the program in effect as of June 30, 1998. Any decision by the Commission to expand the scope of the drug testing program that occurs after an administrative hearing, at which the persons or associations licensed under § 10022 of this title consent to such expansion, shall not be deemed an unreasonable expansion for purposes of this section. The Commission, in addition to the penalties contained in § 10026 of this title, may impose penalties on licensees who violate the drug testing regulations including imposition of fines or assessments for drug testing costs. By January 1, 1999, the Commission shall present recommendations to the General Assembly regarding the implementation of additional penalties, including forfeiture of horses, which may be imposed on a licensee whose horse tests positive for illegal drugs.

(45 Del. Laws, c. 303 § 10; 47 Del. Laws, c. 23 § 2; 28 Del. C. 1953 § 528; 66 Del. Laws, c. 303 § 261(a); 68 Del. Laws, c. 214 § 3; 71 Del. Laws, c. 414 § 2.)

§ 10030 Licensee's annual financial statement.

Every licensee shall file with the Department of Finance not later than 4 months after the close of its fiscal year a statement, duly certified by an independent public accountant, of its receipts from all sources whatsoever during the fiscal year and of all expenses and disbursements, itemized in the manner and form directed by the Department of Finance, showing the net revenue from all sources derived by the licensee during the fiscal year covered by such statement.

(45 Del. Laws, c. 303 § 11; 28 Del. C. 1953 § 529; 52 Del. Laws, c. 276 § 2; 57 Del. Laws, c. 741 § 30B; 66 Del. Laws, c. 303 § 261(a).)

§ 10031 [Reserved.]

§ 10032 Delaware-owned or bred races.

(a) Persons licensed to conduct harness horse racing meets under this chapter may offer non-stakes races limited to horses wholly owned

by Delaware residents or sired by Delaware stallions.

(b) For purposes of this section, a Delaware bred horse shall be defined as one sired by a Delaware stallion who stood in Delaware during the entire breeding season in which it sired a Delaware bred horse or a horse whose dam was a wholly-owned Delaware mare at the time of breeding as shown on the horse's United States Trotting Association registration or eligibility papers. The breeding season means that period of time beginning February 1 and ending August 1 of each year.

(c) All horses to be entered in Delaware-owned or bred races must first be registered and approved by the Commission or its designee. The Commission may establish a date upon which a horse must be wholly-owned by a Delaware resident(s) to be eligible to be nominated, entered or raced as Delaware-owned. In the case of a corporation seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry, all owners, officers, shareholders and directors must meet the requirements for a Delaware resident specified below. In the case of an association or other entity seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry, all owners must meet the requirements for a Delaware resident specified below. Leased horses are ineligible as Delaware-owned entries unless both the lessor and the lessee are Delaware residents as set forth in this section.

(d) The following actions shall be prohibited for Delaware-owned races and such horses shall be deemed ineligible to be nominated, entered or raced as Delaware-owned horses.

(1) Payment of the purchase price over time beyond the date of registration;

(2) Payment of the purchase price through earnings beyond the date of registration;

(3) Payment of the purchase price with a loan, other than from a commercial lender regulated in Delaware and balance due beyond the date of registration;

(4) Any management fees, agent fees, consulting fees or any other form of compensation to nonresidents of Delaware, except industry standard training and driving fees; or

(5) Leasing a horse to a nonresident of Delaware.

(e) The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In determining whether a person is a Delaware resident, the term "resident" shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. For purposes of this section, the term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.

(f) The Commission or its designee may review and subpoena any information which is deemed relevant to determine a person's residence, including, but not limited to, the following:

(1) Where the person lives and has been living;

(2) The location of the person's source(s) of income;

(3) The address used by the person for the payment of taxes, including federal, state and property taxes;

(4) The state in which the person's personal automobiles are registered;

(5) The state issuing the person's driver's license;

(6) The state in which the person is registered to vote;

(7) Ownership of property in Delaware or outside of Delaware;

(8) The residence used for U.S.T.A. membership and U.S.T.A. registration of a horse, whichever is applicable;

(9) The residence claimed by a person on a loan application or other similar document;

(10) Membership in civic, community and other organizations in Delaware and elsewhere.

None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum of 183 days. Consideration of all of these factors together, as well as a person's expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-owned or bred races. The Commission may promulgate by regulation any other relevant requirements necessary to ensure that the licensee is a Delaware resident. In the event of disputes about a person's eligibility to enter a Delaware-owned or bred race, the Commission shall resolve all disputes and that decision shall be final.

(g) Each owner and trainer, or the authorized agent of an owner or trainer, or the nominator (collectively, the "entrant"), is required to disclose the true and entire ownership of each horse with the Commission or its designee, and to disclose any changes in the owners of the registered horse to the Commission or its designee. All licensees and racing officials shall immediately report any questions concerning the ownership status of a horse to the Commission racing officials, and the Commission racing officials may place such a horse on the steward's or judge's list. A horse placed on the steward's or judge's list shall be ineligible to start in a race until questions concerning the ownership status of the horse are answered to the satisfaction of the Commission or the Commission's designee, and the horse is removed from the steward or judge's list.

(h) If the Commission, or the Commission's designee, finds a lack of sufficient evidence of ownership status, residency or other information required for eligibility, prior to a race, the Commission or the Commission's designee may order the entrant's horse scratched from the race or ineligible to participate.

(i) After a race, the Commission or the Commission's designee may, upon reasonable suspicion, withhold purse money pending an inquiry into ownership status, residency or other information required to determine eligibility. If the purse money is ultimately forfeited

because of a ruling by the Commission or the Commission's designee, the purse money shall be redistributed per order of the Commission or the Commission's designee.

(j) If purse money has been paid prior to reasonable suspicion, the Commission or the Commission's designee may conduct an inquiry and make a determination as to eligibility. If the Commission or the Commission's designee determines there has been a violation of ownership status, residency or other information required for eligibility, it shall order the purse money returned and redistributed per order of the Commission or the Commission's designee.

(k) Anyone who willfully provides incorrect or untruthful information to the Commission or its designee pertaining to the ownership or breeding of a Delaware-owned or bred horse or pertaining to the declaration of a horse in a race restricted to Delaware-owned or bred horses or who commits any other fraudulent act in connection with the entry or registration of a Delaware-owned or bred horse, in addition to other penalties imposed by law, shall be subject to mandatory revocation of licensing privileges in the State of Delaware for a period to be determined by the Commission in its discretion except that absent extraordinary circumstances, the Commission shall impose a minimum revocation period of 2 years and a minimum fine of $5,000 from the date of the violation of these rules or the decision of the Commission, whichever occurs later.

(l) Any person whose license is suspended or revoked under subsection (k) of this section shall be required to apply for reinstatement of licensure and the burden shall be on the applicant to demonstrate that his or her licensure will not reflect adversely on the honesty and integrity of harness racing or interfere with the orderly conduct of a race meeting. Any person whose license is reinstated under this subsection shall be subject to a 2-year probationary period, and may not participate in any Delaware-owned or bred race during this probationary period. Any further violations of this section by the licensee during the period of probationary licensure shall, absent extraordinary circumstances, result in the Commission imposing revocation of all licensure privileges for a 5-year period along with any other penalty the Commission deems reasonable and just.

(m) Any suspension imposed by the Commission under this subsection shall not be subject to the stay provisions of § 10144 of Title 29.

(71 Del. Laws, c. 417 § 1.)

Subchapter III

Regulatory Provisions, Offenses and Penalties

§ 10042 Application of chapter.

This chapter shall apply to harness horse races upon which wagering or betting is conducted in accordance with subchapter IV of this chapter. Racing under this chapter shall be limited to harness horse racing or harness horse races. No part of this chapter shall be construed to apply to the racing of horses on the flat or running races; provided, however, that simulcasts of the racing of horses on the flat or running races or harness horse races which are displayed within the enclosure of any harness horse race meeting shall constitute harness horse racing within said enclosure.

(45 Del. Laws, c. 303 §§ 6, 10, 14; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 541; 64 Del. Laws, c. 21 § 4; 66 Del. Laws, c. 303 § 261(a).)

§ 10043 Liability insurance of licensee.

Ten days before any harness horse racing meet may be held under this chapter those licensed to conduct the meet shall deposit with the Commission a policy of insurance against personal injury liability which may be sustained at the meet. The insurance shall be in an amount approved by the Commission, with premium prepaid.

(45 Del. Laws, c. 303 § 7; 47 Del. Laws, c. 23 § 1; 28 Del. C. 1953 § 542; 66 Del. Laws, c. 303 § 261(a).)

§ 10044 Limitation on compensation that may be paid by licensee.

No salary, fee or compensation exceeding the sum of $2,000 shall be paid in any calendar year by any person licensed under this chapter, except to officials or employees actively engaged in the operations incident to the holding of the harness racing meet or in the maintenance of the racing plant.

(45 Del. Laws, c. 303 § 10; 28 Del. C. 1953 § 543; 66 Del. Laws, c. 303 § 261(a).)

§ 10045 Enforcement.

All officers of the law shall cooperate with the Commission for the proper enforcement of this chapter.

(45 Del. Laws, c. 303 § 13; 28 Del. C. 1953 § 544; 66 Del. Laws, c. 303 § 261(a).)

§ 10046 Aiding or abetting in unlicensed meet; penalty.

Whoever aids or abets in the conduct of any meet within this State at which harness horse racing or harness races are permitted for any stake, purse or reward and upon which wagering or betting is conducted as provided in this chapter, except in accordance with a license duly issued and unsuspended or unrevoked by the Commission, shall be fined not less than $575 and not more than $11,500 for each day of such unauthorized meeting, or imprisoned.

(45 Del. Laws, c. 303 § 13; 28 Del. C. 1953 § 545; 66 Del. Laws, c. 303 § 261(a); 68 Del. Laws, c. 9 § 69.)

§ 10047 Failure of licensee to pay tax on admissions; penalty.

(a) Whoever, being a licensee, fails or refuses to pay the amount found to be due by the Department of Finance as the tax on admissions shall be fined not more than $28,750 in addition to the amount due the Department of Finance.

(b) All fines up to the amount found to be due the Department of Finance and paid into court by a licensee found guilty of violating this section shall be transmitted and paid over by the clerk of the court to the Department of Finance.

(45 Del. Laws, c. 303 § 11; 28 Del. C. 1953 § 546; 57 Del. Laws, c. 741 § 30B; 66 Del. Laws, c. 303 § 261(a); 68 Del. Laws, c. 9 § 70.)

§ 10048 Restrictions on licensee acting as video lottery agent.

During any calendar year in which a licensee under this chapter has also been licensed by the Director of the State Lottery Office to maintain video lottery machines within the confines of a racetrack licensed under this chapter, the following rules shall apply:

(1)a. As to each racetrack so licensed by the Director of the State Lottery Office, the licensee shall, at a minimum, subject to the availability of racing stock, force majeure, casualty, and other circumstances beyond the reasonable control of the licensee, conduct live harness horse races on:

1. At least 80 days if the licensee conducted more than 40 days of live harness horse races during 1992, or
2. At least 60 days if the licensee conducted 40 or fewer days of live harness horse races during 1992.

b. The obligation set forth in paragraph a. of this subsection to increase the number of days upon which live harness horse races must be conducted shall be contingent upon:

1. The licensee receiving the necessary approvals from the Commission and any approvals required from the contracted horsemen's association to conduct year-round inbound and outbound simulcasting,
2. The licensees continuing to be licensed under Chapter 48 of Title 29 as a video lottery agent, and
3. No authorization of any increase in the number of video lottery agents.

c. Each licensee shall also employ during the live racing operations a minimum of 50 additional employees than the average daily number employed during the most recent racing meet held prior to July 16, 1994. The licensee's continued failure to substantially comply with this requirement after notice from the Director shall be grounds for revocation or suspension of the video lottery agent's license.

(2) An amount calculated pursuant to § 4815(b)(4) of Title 29 shall be added to the purses for the races to be held at the licensee's racetrack. The allocation of said sums among the races to be held at the licensee's racetrack shall be in accordance with contracts currently in force with the Horsemen's Association recognized for purposes related to the allocation of purses, if applicable; provided, that all such sums shall have been allocated no later than the end of the calendar year immediately following the calendar year of receipt of said sums by the licensee.

(69 Del. Laws, c. 446 § 22; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 253 § 12; 77 Del. Laws, c. 219 § 28; 79 Del. Laws, c. 311 § 1.)

§ 10049 Fraudulent written statements; class A misdemeanor.

Whoever makes a false written statement which he/she knows to be false or does not know to be true in a written document filed with, registered or recorded in or otherwise a part of the records of the Delaware Harness Racing Commission, the Commission's designee or a licensee conducting a harness racing meet under this chapter shall be guilty of a class A misdemeanor as defined in Title 11.

(71 Del. Laws, c. 58 § 1.)

§ 10050 Fraudulent certificate of registration or eligibility documents; class G felony.

Notwithstanding the provisions of § 10049 of this chapter, whoever makes a false written statement which he/she knows to be false or does not know to be true in a certificate of registration issued by the United States Trotting Association, in any application for such a certificate of registration or in any eligibility documents issued by the United States Trotting Association shall be guilty of a class G felony as defined in Title 11.

(71 Del. Laws, c. 58 § 2.)

Subchapter IV

Wagering or Betting by Pari-Mutuel Machines or Totalizators

§ 10052 Place for wagering.

Within the enclosure of any harness horse racing meet licensed and conducted under this chapter, but not elsewhere, the wagering and betting on harness horse racing or horse races or both by the use of pari-mutuel machines or totalizators and by manual computation without the use of pari-mutuel machines or totalizators is authorized and permitted.

(45 Del. Laws, c. 303 § 15; 48 Del. Laws, c. 50; 28 Del. C. 1953 § 551; 66 Del. Laws, c. 303 § 261(a); 80 Del. Laws, c. 307 § 1.)

§ 10053 License to conduct pools; application; qualifications.

(a) The Commission may grant a license to any person to make, conduct and sell pools by the use of pari-mutuel machines or totalizators and to make, conduct and sell pools for the "daily double" by manual computation without the use of pari-mutuel machines or totalizators for the purpose of receiving wagers or bets on harness horse races within the enclosure of any harness horse racing meet licensed and conducted under this chapter, but not otherwise, under such regulations as the Commission prescribes.

(b) The Commission may prescribe regulations governing the granting of applications for licenses, the granting of licenses and the conditions under which any licensee may conduct, sell or make any such pool.

(c) The qualifications of any licensee shall be such as to afford a reasonable belief that the licensee will be financially responsible and will conduct the business of operating the pools in a proper and orderly manner. A licensee to make, conduct and sell such pools shall be a person licensed to conduct a harness horse racing meet under this chapter.

(45 Del. Laws, c. 303 § 15; 48 Del. Laws, c. 50; 28 Del. C. 1953 § 552; 66 Del. Laws, c. 303 § 261(a).)

§ 10054 Revocation of license.

All licenses for the operation of pools as provided in this chapter shall be revocable at any time, without hearing, in the absolute discretion of the Commission.

(45 Del. Laws, c. 303 § 15; 28 Del. C. 1953 § 553; 66 Del. Laws, c. 303 § 261(a).)

§ 10055 Rules, regulations and special powers of Commission.

(a) The Commission may require the keeping of books and records by a licensee of a pool in such forms, or in such manner, as the Commission prescribes. The Commission may also regulate the duties of any employee of any such licensee and visit, investigate and place expert accountants and such other persons as it deems necessary in the office or place of business of any person licensed to operate a pool for the purpose of satisfying itself that the Commission's rules and regulations are strictly complied with.

(b) The Commission may also issue, under its hand and seal, subpoenas for the attendance of witnesses and the production of books, papers and documents of the licensee before the Commission and may administer oaths or affirmations to the witnesses whenever in the judgment of the Commission it is necessary for the effectual discharge of its duties. If any person refuses to obey any subpoena or to testify or to produce any books, papers or documents, then the Commission may apply to the Superior Court of the county in which it is sitting and thereupon the Court shall issue its subpoena requiring the person to appear and testify, or to produce the books, papers and documents before the Commission. Any person failing to obey or refusing to obey a subpoena of the Court is guilty of contempt of court and shall be punished accordingly. False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

(45 Del. Laws, c. 303 § 15; 28 Del. C. 1953 § 554; 66 Del. Laws, c. 303 § 261(a).)

§ 10056 Tax on pari-mutuel and totalizator pools; special fund.

(a) Every person engaged in the business of conducting a harness racing meet under this chapter shall pay as a tax to this State an amount equal to 3/4 of 1 percent of the total contributions to all pari-mutuel and totalizator pools conducted or made on each racing day prior to January 1, 1981, on any and every racetrack licensed under this chapter and on all races that day at such tracks during any such day when a pari-mutuel racing meet (not including daytime thoroughbred racing) is being conducted outside this State within 75 miles of such person's harness racing meet.

(b) Every person engaged in the business of conducting a harness racing meet under this chapter shall pay as a tax to this State a percentage of the total contributions to all pari-mutuel and totalizator pools conducted or made on each racing day prior to January 1, 1981, on any and every racetrack licensed under this chapter and on all races that day at such track during any such day when no pari-mutuel racing meet (not including daytime thoroughbred racing) is being conducted within 75 miles of such person's harness racing meet.

The percentage of such pari-mutuel and totalizator pools to be paid as such tax shall be as follows:

(1) Three-quarters of 1 percent of the first $400,000 of daily contributions to such pools or any portion thereof; plus

(2) Three percent of daily contributions to such pools in excess of $400,000 up to $600,000; plus

(3) Five and one-half percent of daily contributions to such pools in excess of $600,000.

(c) On each racing day to which subsection (b) of this section is applicable when the total contributions to all pari-mutuel and totalizator pools conducted or made at any racetrack licensed under this chapter exceed $400,000, every person engaged in the business of conducting a racing meet under this chapter shall pay as an additional tax to this State:

(1) Two percent of the total contributions to all pari-mutuel and totalizator pools conducted or made on each racing day on any and every racetrack licensed under this chapter where the patron is required to select 2 or more horses in a single race having a field of 8 or less horses declared "in to go" by the track judges or where the patron is required to select 2 or more horses in more than 1 race where all of such races have a field of 8 or less horses declared "in to go" by the track judges.

(2) Four percent of the total contributions to all pari-mutuel and totalizator pools conducted or made on each racing day on any and every racetrack licensed under this chapter where the patron is required to select 2 or more horses in a single race having a field of 9 or more horses declared "in to go" by the track judges or where the patron is required to select 2 or more horses in more than 1 race where either 1 or more of such races has a field of 9 or more horses declared "in to go" by the track judges.

(3) One half of the odd cents of all redistributions to be made on pari-mutuel or totalizator pool contributions exceeding the sum equal to the lowest multiple of 10, such odd cents to be calculated on the basis of each dollar wagered. If a minus pool is created, the break shall be to the lowest multiple of 5.

(d) The State Treasurer shall deposit the money received pursuant to subsections (a), (b) and (c) of this section in the General Fund of this State. In addition (except as hereinafter provided), every person engaged in the business of conducting a harness race meet under this chapter shall pay an amount equal to 1/2 of 1 percent of all contributions to all pari-mutuel and totalizator pools conducted or made on any and every racetrack licensed under this chapter and every race at such track, and the State Treasurer shall deposit such amount to a special fund called the "Delaware Standardbred Development Fund." All fees received pursuant to §§ 564(b) and 567 of Title 28 shall also be deposited to said special fund. Said special fund shall be administered pursuant to subchapter V of Chapter 5 of Title 28.

(e) Where the total contributions to pari-mutuel and totalizator pools conducted or made at a racing meet or meets during any fiscal year of any person licensed under this chapter commencing subsequent to 1978 average $300,000 or less per day during such fiscal year and the licensee conducting such meet or meets sustained a loss before taxes on income for such fiscal year, which loss shall be determined from a certificate from the licensees' independent public accountants and confirmed by the Delaware Harness Racing Commission, the licensee shall not be required to pay the additional amount set forth in subsection (d) of this section, for the meet or meets conducted in the fiscal year immediately following the fiscal year in which the loss occurred, to the extent of the loss sustained in the preceding year, nor shall the licensee be required to increase the base upon which purse money is computed to any amount greater than the base upon which the licensee would have computed the amount of purse money under the law in effect during the licensee's fiscal year ending in 1978.

(f) The tax payable under this section shall be computed daily and shall be paid by certified check on a weekly basis. Each check shall be transmitted by the licensee to the Secretary of Finance no later than Wednesday following the week for which the tax is due. Such tax is imposed upon and payable by the licensee and shall not be taken into account in determining the amount of any pari-mutuel or totalizator pool which is available for distribution among the contributors to such pool.

(45 Del. Laws, c. 303 § 15; 28 Del. C. 1953 § 555; 55 Del. Laws, c. 108 § 1; 56 Del. Laws, c. 156 § 1; 56 Del. Laws, c. 448; 57 Del. Laws, c. 136 § 28; 57 Del. Laws, c. 197; 57 Del. Laws, c. 741 §§ 30C, 30D; 58 Del. Laws, c. 299; 60 Del. Laws, c. 4 §§ 2, 3; 60 Del. Laws, c. 19 § 1; 60 Del. Laws, c. 20 § 1; 60 Del. Laws, c. 113 § 49; 60 Del. Laws, c. 289 § 14; 60 Del. Laws, c. 345 §§ 1-3; 61 Del. Laws, c. 225 § 2; 62 Del. Laws, c. 18 § 2; 66 Del. Laws, c. 303 § 261(a).)

§ 10057 Licensee's commissions on pari-mutuel and totalizator pools.

(a) The Commission shall authorize commissions pursuant to this subsection and subsection (b) of this section on pari-mutuel or totalizator pools to all licensees operating a racing meet pursuant to this chapter. The commission shall be 18% of the total daily contributions to all pari-mutuel or totalizator pools conducted or made at the racing meet and at every race at the meet, plus all of the odd cents of all redistributions to be made on all pari-mutuel or totalizator pool contributions, exceeding the sum equal to the next lowest of 10, such odd cents to be calculated upon the basis of each dollar wagered.

(b) In addition to the commissions authorized by subsection (a) of this section, the Commission shall authorize as commissions to the licensee operating a racing meet pursuant to this chapter 7% of the total contributions to all pari-mutuel and totalizator pools conducted or made on each racing day on any and every racetrack licensed under this chapter where the patron is required to select 2 or more horses in a single race or where the patron is required to select 2 or more horses in more than 1 race.

(45 Del. Laws, c. 303 § 15; 46 Del. Laws, c. 31; 47 Del. Laws, c. 12; 28 Del. C. 1953 § 556; 60 Del. Laws, c. 4 § 4; 60 Del. Laws, c. 20 § 2; 60 Del. Laws, c. 345 § 4; 62 Del. Laws, c. 18 § 3; 65 Del. Laws, c. 267 § 1; 66 Del. Laws, c. 303 § 261(a).)

§ 10058 Deduction of federal taxes from total of contributions.

For the purpose of making any of the calculations of amounts payable to the State and to the licensee under §§ 10056 and 10057 of this title, no federal taxes, if any, shall be deducted from the amount of total contributions before applying the percentages specified in those sections.

(45 Del. Laws, c. 303 § 15; 28 Del. C. 1953 § 557; 66 Del. Laws, c. 303 § 261(a).)

§ 10059 Disposition of moneys for unclaimed pari-mutuel tickets.

(Repealed by 76 Del. Laws, c. 277 § 3, effective June 30, 2008.)

§ 10060 Combined pari-mutuel pools on interstate simulcast wagering.

(a) On interstate simulcasts of races that a person licensed under this chapter transmits or receives, the licensee may combine wagers made at the licensee's track with wagers of the same type made at out-of-state facilities where wagering is lawful.

(b) The purpose of this section is to allow the creation of common pari-mutuel pools for calculating odds and determining payouts.

(c) The wagers made at out-of-state facilities may not be considered part of the licensee's pari-mutuel pools for any purpose other than the purpose specified under subsection (b) of this section.

(68 Del. Laws, c. 95 § 1.)

§ 10061 Tax enforcement.

The Director of the Division of Revenue shall enforce the administration of taxes provided for in §§ 10024 and 10056 of this title, or any other applicable section of this chapter.

(71 Del. Laws, c. 414 § 3.)

Subchapter V

Delaware Standardbred Breeder's Program Fund

§ 10081 Title and established.

(a) This section shall be referred to as the Delaware Standardbred Breeder's Program Fund Act of 1999.

(b)(1) A special fund of the State is hereby established in the Department of Agriculture to be known as the "The Delaware Standardbred Breeder's Fund." Funds reserved for the Delaware Standardbred Breeder's Program pursuant to § 4815(b)(4)a. and b.2. of Title 29 shall be transferred to the Delaware Standardbred Breeder's Program Fund. The Secretary of Finance and the Secretary of Agriculture shall deposit or transfer all other moneys, including gifts, bequests, grants or other funds, from private and public sources specifically designated for the Delaware Standardbred Breeder's Program Fund. The General Assembly at any time may appropriate additional moneys to the Delaware Standardbred Breeder's Program Fund.

(2) Moneys from the Delaware Standardbred Breeder's Program Fund shall be expended in accordance with the Delaware Standardbred Breeder's Program Plan approved pursuant to § 4815(b)(4)b.2. of Title 29.

(3) The Delaware Standardbred Breeder's Program Fund shall be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. All income earned shall be reinvested in the Delaware Standardbred Breeder's Program Fund.

(4) No moneys shall be expended from the Delaware Standardbred Breeder's Program Fund except pursuant to an appropriation incorporated in the State's Bond and Capital Improvements Act or annual appropriations act.

(5) The transfer of funds from the Delaware Standardbred Breeder's Program Fund shall be approved by the Secretary of Finance, the Secretary of Agriculture, and the Chair of the Delaware Harness Racing Commission. Such expenditures shall only be made upon the satisfaction of the specific requirements established by law and the plan and rules adopted by the Delaware Standardbred Breeder's Fund Board to govern expenditures for this purpose. Unexpended cash balances in the Delaware Standardbred Breeder's Program Fund shall be interest-earning and such interest shall be credited to the Delaware Standardbred Breeder's Program Fund.

(72 Del. Laws, c. 261 § 1; 79 Del. Laws, c. 311 § 1.)

Part X
Horse Racing
Chapter 101
HORSE RACING
Subchapter I
Delaware Thoroughbred Racing Commission

§ 10101 Composition, appointment, qualifications and term; Chairman and Secretary; compensation; vacancies and reappointment.

(a) The Delaware Thoroughbred Racing Commission (the Commission) shall consist of 5 members, hereafter in this chapter referred to as "Commissioners," to be appointed by the Governor. The Thoroughbred Racing Commission and all employees in positions authorized in the Annual Appropriations Act assigned to the Thoroughbred Racing Commission shall report directly to the Secretary.

(b) Not more than 3 Commissioners shall be of the same political party. One Commissioner shall be appointed from each county of the State and shall be a bona fide resident of the county for which appointed. Each Commissioner shall be a qualified voter of this State, shall be not less than 30 years of age and shall have been a resident of this State for a period of at least 2 years prior to his appointment. No person shall be appointed to the Commission nor be an employee thereof nor officiate at pari-mutuel meetings conducted in this State who is licensed or regulated, directly or indirectly, by the Commission other than for the position to which such person is appointed nor shall such person have any legal or beneficial interest, direct or indirect, pecuniary or otherwise, in any firm, association or corporation so licensed or regulated or which participates in pari-mutuel meetings in any manner nor shall such person participate in pari-mutuel meetings in any manner other than in such person's official capacity. No person shall be a member of the Commission who is not of good moral character or who has been convicted of, or is under indictment for, a felony under the laws of Delaware or any other state, or the United States.

(c) The term of office of each Commissioner shall be 6 years from July 17 in the year of the Commissioner's appointment and until the Commissioner's successor shall qualify. In case any Commissioner is allowed to hold over after the expiration of the Commissioner's term, the Commissioner's successor shall be appointed for a term to expire on the date on which it would have expired had there been no holding over.

(d) The Governor shall designate 1 Commissioner to be Chairperson of the Commission and another Commissioner to be Secretary of the Commission.

(e) Members of the Thoroughbred Racing Commission shall receive a $150 stipend for each meeting. The Chairperson of the Commission shall receive $250 per meeting. The Commission shall meet no more than 16 times per year. Each Commissioner shall be entitled to be paid his or her reasonable expenses for attending any meeting of the Commission.

(f) Vacancies in the Commission shall be filled by the Governor by appointment for the unexpired term. Each Commissioner shall be eligible for reappointment, in the discretion of the Governor.

(g) [Repealed.]

(38 Del. Laws, c. 62 §§ 1, 2, 4, 5; 40 Del. Laws, c. 112 § 1; Code 1935 §§ 5496, 5497, 5499, 5500; 41 Del. Laws, c. 219; 47 Del. Laws, c. 47; 28 Del. C. 1953 § 301; 63 Del. Laws, c. 143 §§ 2, 3; 63 Del. Laws, c. 390 § 6; 66 Del. Laws, c. 171 § 1; 68 Del. Laws, c. 84 § 173(a); 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 94 § 282; 73 Del. Laws, c. 74 § 309; 75 Del. Laws, c. 89 § 305; 79 Del. Laws, c. 70 § 1.)

§ 10102 Removal of Commissioner from office.

(a) The Governor may remove any Commissioner for inefficiency, neglect of duty or misconduct in office, giving to the Commissioner a copy of the charges against him or her and an opportunity of being publicly heard in person or by counsel in his or her own defense upon not less than 10 days' written notice.

(b) If the Commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the Commissioner and the Governor's findings thereof, together with a complete record of the proceedings.

(38 Del. Laws, c. 62 § 2; Code 1935 § 5497; 28 Del. C. 1953 § 302; 68 Del. Laws, c. 84 § 173(a); 70 Del. Laws, c. 186 § 1.)

§ 10103 Powers, duties and jurisdiction.

(a) The Commission shall have the powers and duties specified in this chapter, as well as the powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter.

(b) The jurisdiction, supervision, powers and duties of the Commission shall extend under this chapter to any and all person or persons, associations or corporations who or which shall hold or conduct any meeting within this State at which horse racing is permitted for any stake, purse or reward.

(c) The Commission shall possess all necessary powers and duties to regulate the conduct of all participants in any thoroughbred and/or

Arabian racing meet authorized by the Commission within this State including, but not limited to, owners, trainers, assistant trainers, authorized agents, jockeys, jockey's agents, stable agents, stable employees, stewards, racing officials, licensee's employees or any employee of a person or concern contracting with the licensee to provide a service or commodity and which employment requires his presence on licensee's grounds during a racing meet, or veterinarian, farrier, dental technician or supplier of food, tack, medication or horse feed. For this purpose, the Commission may promulgate and prescribe such rules and regulations as it may deem proper and necessary.

(38 Del. Laws, c. 62 § 1; Code 1935 § 5496; 28 Del. C. 1953 § 303; 63 Del. Laws, c. 143 § 4; 64 Del. Laws, c. 266 § 1; 68 Del. Laws, c. 84 § 173(a).)

§ 10104 Oath and bond; failure to furnish.

(a) Before entering upon the discharge of the duties of the Commissioner's office, each Commissioner shall take oath that he or she will well and faithfully execute all and singular the duties appertaining to his or her office according to the laws of this State and the rules and regulations adopted in accordance therewith and shall give bond to the State with personal or corporate surety or sureties approved by the Governor in the penal sum of $25,000, with the condition that he or she will well and faithfully execute and perform all and singular the duties appertaining to his or her office according to the laws of this State and the rules and regulations adopted in accordance therewith.

(b) Every bond, when duly executed and approved, shall be filed in the office of the Secretary of State, and certified copies under the seal of the Secretary of State may be used as evidence in any court of this State.

(c) The Governor shall at all times when, in his or her opinion, the surety or sureties of any Commissioner has become or is likely to become invalid or insufficient, demand and require the Commissioner forthwith to renew his or her bond to the State with surety or sureties to be approved by the Governor in the penalty and according to the form prescribed in this section.

(d) Any Commissioner who fails to take oath and give bond with surety or sureties as required by this section within 30 days of his or her appointment or who fails to renew his or her bond with surety or sureties within 30 days after the same has been demanded and required by the Governor shall be guilty of neglect of duty and shall be removable as provided in § 10102 of this title.

(38 Del. Laws, c. 62 § 3; 40 Del. Laws, c. 112 § 1; Code 1935 § 5498; 45 Del. Laws, c. 293 § 1; 28 Del. C. 1953 § 304; 68 Del. Laws, c. 84 § 173(a); 70 Del. Laws, c. 186 § 1.)

§ 10105 Meetings; office; and quorum.

(a) The Commission shall meet at least once a year to set racing dates and at least once a month during the racing meets.

(b) [Repealed.]

(c) A majority of the Commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the Commission.

(38 Del. Laws, c. 62 § 4; Code 1935 § 5499; 28 Del. C. 1953 § 305; 63 Del. Laws, c. 143 § 5; 68 Del. Laws, c. 84 § 173(a); 79 Del. Laws, c. 70 § 2.)

§ 10106 Secretary's duties.

The Secretary of the Commission shall keep a record of all proceedings of the Commission and shall preserve all books, maps, documents and papers belonging to the Commission or entrusted to its care and perform such other duties as the Commission may prescribe.

(38 Del. Laws, c. 62 § 4; Code 1935 § 5499; 28 Del. C. 1953 § 306; 68 Del. Laws, c. 84 § 173(a).)

§ 10107 Employees.

(a) The Commission may appoint such officers, clerks, stenographers, inspectors, racing officials, veterinarians and such other employees as it deems necessary, consistent with the purposes of this chapter. The Commission for the purpose of maintaining integrity and honesty in racing shall prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to competently perform those duties.

(b) In addition to any minimum qualifications promulgated by the Commission, all applicants for the position of steward or race judge must be certified by a national organization approved by the Commission. An applicant for the position of steward or race judge must also have been previously employed as a steward, patrol judge, clerk of scales or other racing official at a thoroughbred racing meeting for a period of not less than 45 days during 3 of the past 5 years, or have at least 5 years of experience as a licensed jockey who has also served not less than 1 year as a licensed racing official at a thoroughbred racing meeting, or have 10 years of experience as a licensed thoroughbred racing trainer who has also served not less than 1 year as a licensed racing official at a thoroughbred racing meeting.

(c) The Commission may appoint a racing inspector or investigator for each thoroughbred racing meet. Such racing inspector shall perform all duties prescribed by the Commission consistent with the purposes of this chapter. Such racing inspector shall have full and free access to the books, records and papers pertaining to the pari-mutuel system of wagering and to the enclosure or space where the pari-mutuel system is conducted at any thoroughbred racing meeting to which he shall be assigned for the purpose of ascertaining whether the holder of such permit is operating in compliance with the Commission's rules and regulations. The racing inspector shall investigate whether such rules and regulations promulgated by the Commission are being violated at such thoroughbred race track or enclosure by any licensee, patron or other person. Upon discovering any such violation, the racing inspector shall immediately report his or her findings in writing and under oath to the Commission or its designee as it may deem fitting and proper. The racing inspector or investigator shall be

devoted full time to the duties of the office and shall not hold any other position or employment, except for performance of similar duties for the Harness Racing Commission.

(d) All employees appointed under subsections (a) through (c) of this section shall serve at the pleasure of the Commission and are to be paid a reasonable compensation. No person shall be appointed to or hold any such office or position who holds any official relation to any person, association or corporation engaged in or conducting thoroughbred racing within this State. The compensation of the stewards and track veterinarian shall be paid by the Commission subject to pro rata reimbursement by the licensed persons or associations conducting thoroughbred racing meets under this chapter. Increases in costs of the aforementioned officials shall be reasonable and related to expansion in the number of days of racing and the number of races held, the need to maintain competitive salaries, and inflation. No Commissioner, racing official, steward or judge whose duty is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race regulated by the Commission or have any financial or pecuniary interest in the outcome of any race regulated by the Commission.

(e) The Commission may employ an Administrator of Racing who shall perform all duties prescribed by the Commission consistent with the purposes of this chapter. The Administrator of Racing shall be appointed by the Governor after consideration of candidates jointly submitted by the Harness Racing Commission and the Thoroughbred Racing Commission. The Administrator of Racing shall be devoted full time to the duties of the office and shall not hold any other office or employment, except that the Administrator of Racing can perform the same duties as Administrator of Racing for the Harness Racing Commission. The Administrator of Racing shall be the representative for the Commission at all meetings of the Commission and shall keep a complete record of its proceedings and preserve, at its general office, all books, maps, documents and papers entrusted to its care. The Administrator of Racing shall be the executive officer of the Commission and shall be responsible for keeping all Commission records and carrying out the rules and orders of the Commission. The Commission may appoint the Administrator of Racing to act as a hearing officer to hear appeals from administrative decisions of the steward or racing judges.

(38 Del. Laws, c. 62 §§ 2, 4; Code 1935 §§ 5497, 5499; 28 Del. C. 1953 § 307; 57 Del. Laws, c. 740 § 13; 68 Del. Laws, c. 84 § 173(a); 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 138 § 1; 71 Del. Laws, c. 414 § 4.)

§ 10108 Operational expenses; use of revenues; stewards; use of lottery revenues.

The annual operating budget act shall appropriate ASF revenue to the Thoroughbred Racing Commission for operational expenses. The Commission's revenues, derived from fees, fines and licenses, shall be used to cover its operational expenditures. The Thoroughbred Racing Commission shall maintain three ASF positions used for stewards. These positions shall be exempt from the classified service as provided in Chapter 59 of Title 29. The compensation for these positions shall be determined by the Thoroughbred Racing Commission. Persons appointed by the Commission to fill these positions shall be eligible for membership in the State Pension Plan, for coverage under the life and health insurance programs for state employees, and for worker's compensation benefits as state employees, but because of the nature of these positions, they shall not be eligible for annual leave, sick leave or compensatory time. Should revenues be insufficient to cover the operational costs of the Commission, funds may be transferred from state lottery revenues collected under the authority of § 4815 of Title 29 to cover such shortfalls with the concurrence of the Director of the Office of Management and Budget and the Controller General.

(73 Del. Laws, c. 322 § 1; 75 Del. Laws, c. 88 § 21(2).)

§ 10109 Annual report.

The Commission shall make an annual report to the Governor on or before January 1 of each year. The report shall include a statement of receipts and disbursements by the Commission and any additional information and recommendations which the Commission deems of value.

(38 Del. Laws, c. 62 § 4; Code 1935 § 5499; 28 Del. C. 1953 § 310; 68 Del. Laws, c. 84 § 173(a).)

§ 10110 Administrative inspection warrants.

Pursuant to § 101(10) of this title, the Delaware Thoroughbred Racing Commission is authorized to apply for and utilize administrative inspection warrants issued by the Secretary of Agriculture for the purpose of conducting administrative inspections and seizures of property at any location within the State where race horses are stabled or otherwise located, except those horses stabled or otherwise located at facilities licensed pursuant to § 4805(b)(13) of Title 29.

(79 Del. Laws, c. 135 § 3.)

Subchapter II

License to Conduct Racing Meet; Taxes

§ 10121 License to conduct racing for stake, purse or reward.

No person shall hold or conduct any meeting within this State at which horse racing is permitted for any stake, purse or reward, unless such person is licensed by the Commission as provided in this subchapter.

(38 Del. Laws, c. 62 § 6; 40 Del. Laws, c. 112 § 1; Code 1935 § 5501; 28 Del. C. 1953 § 321; 49 Del. Laws, c. 220 § 28; 68 Del. Laws, c. 84 § 173(a).)

§ 10122 Application; inspections and examinations; rejection; award of dates and maximum racing days.

(a) Any person desiring to conduct a racing meet within this State during any calendar year shall apply to the Commission for a license to do so. The application shall be filed with the Secretary of the Commission on or before a day to be fixed by the Commission. The application shall specify the days on which racing is desired to be conducted or held and shall be in such form and supply such data and information, including a blueprint of the track and specifications of its surface and blueprints and specifications of buildings and the grandstand on the land of the applicant where the meeting is to be conducted as the Commission prescribes. The blueprints and specifications shall be subject to the approval of the Commission, which, at the expense of the applicant, may order such engineering examination thereof as to the Commission seems necessary. The erection and construction of the track, grandstand and buildings of any applicant for a license to conduct racing under this chapter shall be subject to the inspection of the Commission which, at the expense of the applicant, may employ such inspectors as it considers necessary for that purpose.

(b)(1) No license shall be issued by the Commission for flat racing on a track less than 1 mile in circumference or for steeplechase racing in the infield of a track less than 1 mile in circumference.

(2) The Commission may reject any application for a license for any cause which it deems sufficient, and the action of the Commission shall be final.

(c) The Commission shall, upon application to it and on or before the 1st Tuesday in February of each year, award dates for racing within the respective counties of this State for the current year. The dates so awarded for racing to be conducted in any 1 county shall not exceed 340 days in the aggregate in which racing will be conducted in any 1 county in this State, and the decision of the Commission on the award of dates shall be final. Dates awarded in any 1 county shall be used by the licensee in that county for racing in that county only. Anything in this subsection to the contrary notwithstanding, in calendar year 1992 only, the Commission may upon application submitted to it on or before September 1, 1992, meet subsequent to the 1st Tuesday in May and award additional dates for racing within the respective counties of this State for 1992; provided, however, that the Commission may award additional dates, beyond any limits prescribed elsewhere, for racing days limited exclusively to the receiving and accepting of wagers or bets on electronically televised simulcasts of horse races.

(d) No more than 2 racing meets shall be held in any 1 county in any 1 year.

(e) The Commission may meet subsequent to the 1st Tuesday in February of each year and award dates for racing within the limits provided in this section on application submitted to it, provided that the days so awarded in no way conflict with any other provision of this chapter. In calendar year 1985, the Commission may meet subsequent to July 1, 1985, and award additional dates for racing within the limits provided in this section on application submitted to it, provided that the days so awarded in no way conflict with any other provision of this chapter.

(f) No part of this chapter shall be construed to apply to harness horse racing or harness horse races.

(38 Del. Laws, c. 38 §§ 7, 8, 10; 40 Del. Laws, c. 112 § 1; Code 1935 §§ 5502, 5503, 5505; 41 Del. Laws, c. 219 § 1; 43 Del. Laws, c. 242; 47 Del. Laws, c. 24; 28 Del. C. 1953 § 322; 51 Del. Laws, c. 300 § 1; 52 Del. Laws, c. 147; 56 Del. Laws, c. 228 § 1; 58 Del. Laws, c. 2; 58 Del. Laws, c. 4; 60 Del. Laws, c. 426 § 1; 65 Del. Laws, c. 15 §§ 1-3; 67 Del. Laws, c. 18 § 1; 68 Del. Laws, c. 84 § 173(a); 68 Del. Laws, c. 253 § 1; 69 Del. Laws, c. 446 § 24.)

§ 10123 Application and license fees.

(a) Any person, upon applying to the Commission for a license to conduct a racing meet within this State during any calendar year, shall, at the time of making the application, pay to the Secretary of the Department of Finance a fee of $3,000.

(b) Any person who is granted a license by the Commission to conduct a racing meet within this State during any calendar year shall, at the time the license is granted, pay to the Secretary of the Department of Finance an additional fee of $2,000.

(38 Del. Laws, c. 62 § 5; 40 Del. Laws, c. 112 § 1; Code 1935 § 5500; 41 Del. Laws, c. 219 § 1; 28 Del. C. 1953 § 323; 57 Del. Laws, c. 741 § 31A; 68 Del. Laws, c. 84 § 173(a).)

§ 10124 Issuance; terms and conditions.

(a) Upon the award of days to any applicant, the Commission shall issue a license for the holding of the meet or meets during the days awarded to the applicant.

(b) The license shall be subject to all rights, regulations and conditions from time to time prescribed by the Commission.

(38 Del. Laws, c. 62 § 9; Code 1935 § 5504; 28 Del. C. 1953 § 324; 68 Del. Laws, c. 84 § 173(a).)

§ 10125 Suspension or revocation; appeal.

(a) Any license issued by the Commission shall be subject to suspension or revocation by the Commission for any cause whatsoever which the Commission may deem sufficient.

(b) If any license is suspended or revoked, the Commission shall state publicly its reasons for so doing and cause an entry of the reasons to be made on the minute book of the Commission, and its action shall be final.

(c) The propriety of the action taken by the Commission shall be subject to review, upon question of law only, by the Superior Court of the county within which the license was granted. The action of the Commission shall stand unless and until reversed by the Court.

(38 Del. Laws, c. 62 § 9; Code 1935 § 5504; 28 Del. C. 1953 § 325; 68 Del. Laws, c. 84 § 173(a).)

§ 10126 Required condition contained in every license.

(Repealed by 63 Del. Laws, c. 143 § 7, eff July 13, 1981.)

§ 10127 Inspection of racing premises prior to meet.

Not less than 5 days prior to the opening of any meet authorized by the Commission, the Commission, at the expense of the licensee for the meet, shall cause to be made an inspection of the track, grandstand and buildings where the meet is to be held, and, unless the track, grandstand and buildings are found to be safe for animals and persons or are rendered safe therefor prior to the opening of the meet, the license for the meet shall be withdrawn.

(38 Del. Laws, c. 62 § 7; Code 1935 § 5502; 41 Del. Laws, c. 219 § 1; 28 Del. C. 1953 § 327; 68 Del. Laws, c. 84 § 173(a).)

§ 10128 Rules, regulations and special powers of Commission.

(a) The Commission may make rules governing, restricting or regulating the rate or charge by a licensee for admission or for the performance of any service or the sale of any article on the premises of a licensee.

(b) The Commission may use the services of the Thoroughbred Racing Protection Bureau and county, state or federal law-enforcement agencies. An individual making application for a license to participate in or be employed at a meet held by a licensee shall be fingerprinted by the Commissioner or the Commissioner's designee for purposes of a criminal history record check. The individual shall be responsible for all costs related to the fingerprinting and criminal history check.

(c) The Commission may authorize a licensee to appoint, subject to the approval and control of the Commission: (1) Racing officials; (2) chemists; (3) accountants; (4) engineers; (5) stewards; and (6) veterinarians; and grant licenses to all participants in the racing meet.

(d) No Commissioner, racing official, steward or judge whose duty is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race regulated by the Commission, have any financial or primary interest in the outcome of any race regulated by the Commission, or have any financial interest in a thoroughbred and/or Arabian horse race track or in the operation of any such track within this State.

(e) All proposed extensions, additions or improvements to the buildings, stables or improvements on tracks or property owned or leased by a licensee under this chapter shall be subject to the approval of the Commission.

(f) The Commission may compel the production of any and all books, memoranda or documents showing the receipts and disbursements of any person licensed under the provisions of this chapter to conduct racing meets.

(g) The Commission may at any time require the removal of any employee or official employed by any licensee hereunder.

(h)(1) The Commission may require that the books, records and financial or other statements of any person licensed under the provisions of this chapter shall be kept in such form or in such manner as the Commission prescribes.

(2) The Commission may visit, investigate and place expert accountants and such other persons as it deems necessary in the offices, tracks or places of business of any such person for the purpose of satisfying itself that the Commission's rules and regulations are strictly complied with. The salaries and expenses of such expert accountants or other persons shall be paid by the person to whom they are assigned.

(i) The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents before the Commission and may administer oaths or affirmations to the witnesses whenever in the judgment of the Commission it may be necessary for the effectual discharge of its duties.

(j) If any person refuses to obey any subpoena or to testify or to produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which the Commissioner or the Commission may be sitting, and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or to produce the books, papers or documents.

(k) Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

(l) False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

(m)(1) The Commission shall adopt regulations governing the operation of thoroughbred and Arabian racing including the regulation of betting in connection therewith and the regulation of the conduct of all participants in any racing meet, to insure the integrity and security of the conduct of meetings held pursuant to this chapter. Such regulations shall include provisions for disciplinary measures for violations thereof including the imposition of fines, suspension or revocation of licenses or permits, and ejection or expulsion from a licensee's premises.

(2)a. The Commission shall have the authority to impose a fine of up to the greater of $10,000 or the amount of the purse money for the race to which the violation related for any violation of its regulations.

b. The stewards of a race meeting acting in accordance with such regulations if authorized by the Commission shall have the authority to impose disciplinary measures, including fines, suspension or revocation of licenses or permits, and ejection or exclusion from a licensee's premises.

c. All fines imposed pursuant to this section shall be paid over to the General Fund upon receipt by the Commission.

d. A person fined or otherwise disciplined by the stewards of a racing meeting shall have a right of appeal to the Commission and for a hearing before the Commission. Any person fined or otherwise disciplined by the Commission shall have a right of appeal to the Superior Court of the State.

e. The action of the Commission shall stand unless and until reversed by the Court.

(n) The Commission shall promulgate administrative regulations for effectively preventing the use of improper devices, the administration of drugs or stimulants or other improper acts for the purpose of affecting the speed or health of horses in races in which they are to participate. The Commission is also authorized to promulgate administrative regulations for the legal drug testing of licensees. The Commission is authorized to contract for the maintenance and operation of a testing laboratory and related facilities, for the purpose of saliva, urine or other tests for enforcement of the Commission's drug testing rules and regulations. The licensed persons or associations conducting thoroughbred racing shall reimburse the Commission for all costs of the drug testing programs established pursuant to this section. Increases in costs of the aforementioned testing program shall be reasonable and related to expansion in the number of days of racing and the number of races held, the need to maintain competitive salaries, and inflation. The Commission may not unreasonably expand the drug testing program beyond the scope of the program in effect as of June 30, 1998. Any decision by the Commission to expand the scope of the drug testing program that occurs after an administrative hearing, at which the persons or associations licensed under § 10121 of this title consent to such expansion, shall not be deemed an unreasonable expansion for purposes of this section. The Commission, in addition to the penalties contained in § 10125 of this title, may impose penalties on licensees who violate the drug testing regulations including imposition of fines or assessments for drug testing costs. By January 1, 1999, the Commission shall present recommendations to the General Assembly regarding the implementation of additional penalties, including forfeiture of horses, which may be imposed on a licensee whose horse tests positive for illegal drugs.

(38 Del. Laws, c. 62 § 10; Code 1935 § 5505; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 328; 63 Del. Laws, c. 143 §§ 6, 8; 64 Del. Laws, c. 266 §§ 2, 3; 68 Del. Laws, c. 84 § 173(a); 69 Del. Laws, c. 47 § 1; 70 Del. Laws, c. 131 § 1; 70 Del. Laws, c. 554 § 1; 71 Del. Laws, c. 414 § 5; 79 Del. Laws, c. 136 § 1.)

§ 10129 Licensee's annual financial statement.

Every licensee shall file with the Commission, not later than 4 months after the close of its fiscal year, a statement, duly certified by an independent public accountant, of its receipts from all sources whatsoever during such fiscal year and all expenses and disbursements itemized in the manner and form directed by the Commission. The statement shall also show the net revenue from all sources derived by the licensee during the fiscal year covered by such statement.

(38 Del. Laws, c. 62 § 12; Code 1935 § 5506; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 329; 56 Del. Laws, c. 42 § 1; 68 Del. Laws, c. 84 § 173(a).)

§ 10130 [Reserved.]

§ 10131 License to participate in racing.

(a) The Commission shall have the power to impose license fees for those participating in a racing meet.

(b) The license fees for participants in a racing meet, if imposed by the Commission, shall be payable to the Commission as follows:

(1) $50 for all owners and all trainers.

(2) $30 for all veterinarians, farriers, jockeys, apprentice jockeys, jockey agents and assistant trainers.

(3) $15 for all licensee vendors and vendor employees.

(4) $5 for all stable employees and association employees.

(5) $25 for each stable name.

(6) $25 for each partnership

(7) $50 for each authorized agent.

(c) This section shall be retroactive to January 1, 1996; however, paragraphs (b)(5), (b)(6), and (b)(7) of this section shall be retroactive to January 1, 2000.

(70 Del. Laws, c. 555 § 1; 72 Del. Laws, c. 291 §§ 1, 2.)

Subchapter III

Regulatory Provisions, Offenses and Penalties

§ 10141 Application of chapter.

(a) Racing under this chapter shall be limited to animals of the equine species.

(b) No part of this chapter shall be construed to apply to racing conducted by an agricultural fair association nor to harness horse races, except as provided in subsection (e) of this section, nor shall any part of this chapter apply to races at which no admission is charged or at which no form of income by gift, admission or otherwise is received and for which no purse, stake or reward in cash or the equivalent of cash is offered, nor shall any part of this chapter be construed to apply to any annual, single day steeplechase racing event conducted by a nonprofit organization which has conducted such races since 1978 and where no form of wagering, pool-making or betting is permitted or conducted thereat.

(c) A trophy, other than cash or the equivalent of cash, shall not be deemed a purse, stake or reward within the meaning of this section.

(d) The Commission shall in all cases determine whether any trophy, reward, purse or stake offered for any race is cash or the equivalent of cash.

(e) For purposes of this chapter simulcasts of horse races or harness horse races displayed within the enclosure of any horse race meeting shall constitute horse racing within said enclosure.

(38 Del. Laws, c. 62 §§ 10, 15; Code 1935 §§ 5505, 5509; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 341; 64 Del. Laws, c. 21 §§ 1, 2; 68 Del. Laws, c. 84 § 173(a); 75 Del. Laws, c. 13 § 1.)

§ 10142 [Reserved.]

§ 10143 Liability insurance of licensee.

Ten days before any racing meet may be held under this chapter, the person licensed to conduct the racing meet shall deposit with the Commission a policy of insurance against personal injury liability which may be sustained at the meet. The insurance shall be in an amount approved by the Commission with premium prepaid.

(38 Del. Laws, c. 62 § 7; Code 1935 § 5502; 41 Del. Laws, c. 219 § 1; 28 Del. C. 1953 § 343; 68 Del. Laws, c. 84 § 173(a).)

§ 10144 Limitation on payment of compensation.

No salary, fee or compensation exceeding the sum of $2,000 shall be paid in any calendar year by any person licensed under this chapter, except to officials or employees actively engaged in the operations incident to the holding of the racing meet or in the maintenance of the racing plant.

(38 Del. Laws, c. 62 § 10; Code 1935 § 5505; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 344; 68 Del. Laws, c. 84 § 173(a).)

§ 10145 Minimum purse, stake or reward.

(a) No race shall be authorized or permitted for a purse, stake or reward of less than $700 except in the event of a split race, in which case the purse, stake or reward shall be equally divided.

(b) Plate value, if any, shall be considered as a part of the purse, stake or reward.

(38 Del. Laws, c. 62 § 10; Code 1935 § 5505; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 345; 68 Del. Laws, c. 84 § 173(a).)

§ 10146 Aiding or abetting in unlicensed meet; penalty; enforcement.

(a) Whoever aids or abets in the conduct of any meet within this State at which racing of horses is permitted for any stake, purse or reward, except in accordance with a license duly issued and unsuspended or unrevoked by the Commission, shall be fined not less than $500 nor more than $10,000 for each day of such unauthorized meeting or imprisoned for such term as the court in its discretion may determine.

(b) All officers of the law shall cooperate with the Commission for the proper enforcement of this chapter.

(c) The Governor may, upon the request of the Commission, order the Superintendent of State Police to assign a sufficient number of patrolmen to prevent horse racing at any track, a license for which has been refused, suspended or revoked by the Commission.

(38 Del. Laws, c. 62 § 14; Code 1935 § 5508; 28 Del. C. 1953 § 346; 68 Del. Laws, c. 84 § 173(a).)

§ 10147 Failure of licensee to pay taxes on admissions; penalty.

(a) Whoever, being a licensee, fails or refuses to pay the amount found to be due by the Secretary of the Department of Finance as the tax on admissions shall be fined not more than $25,000, in addition to the amount due the Secretary of the Department of Finance.

(b) All fines up to the amount found to be due the Secretary of Finance and paid into court by a licensee violating this section shall be transmitted and paid over by the clerk of the court to the Secretary of Finance.

(38 Del. Laws, c. 62 § 12; Code 1935 § 5506; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 347; 57 Del. Laws, c. 741 § 31B; 68 Del. Laws, c. 84 § 173(a).)

§ 10148 Restrictions on licensee acting as video lottery agent.

During any calendar year in which a licensee under this chapter has also been licensed by the Director of the State Lottery Office to maintain video lottery machines within the confines of a racetrack licensed under this chapter, the following rules shall apply:

(1) As to each racetrack so licensed by the Director of the State Lottery Office, the licensee shall conduct live racing operations on at least 100 days, or such fewer number of days to which the licensee and the organization that represents the majority of owners and trainers racing at the licensee's racetrack agree in writing. In December of each year, the licensee will submit to the Delaware Thoroughbred Racing Commission proposed racing days for the following year. Each licensee shall also employ during the live racing operations a minimum of 100 additional employees than the average daily number employed during the most recent racing meet held prior to July 16, 1994. The licensee's continued failure to substantially comply with this requirement after notice from the Director shall constitute grounds for revocation or suspension of the video lottery agent's license.

(2) An amount determined pursuant to § 4815(b)(4) of Title 29 shall be added to the purses for the races to be held at the licensee's racetrack. The allocation of said sums among the races to be held at the licensee's racetrack shall be in accordance with contracts currently in force with the Horsemen's Association recognized for the purposes related to the allocation of purses, provided that all such sums shall have been allocated no later than the end of the calendar year immediately following the calendar year of receipt of said sums

by the licensee.

(69 Del. Laws, c. 446 § 20; 79 Del. Laws, c. 144 § 1; 79 Del. Laws, c. 158 § 1; 79 Del. Laws, c. 311 § 1.)

Subchapter IV

Wagering or Betting by Pari-Mutuel Machines or Totalizators

§ 10161 Place of conducting pari-mutuel betting.

Within the enclosure of any horse race meeting licensed and conducted under this chapter, but not elsewhere, the wagering or betting on horse races or harness horse racing or both by the use of pari-mutuel machines or totalizators and by manual computation without the use of pari-mutuel machines or totalizators is authorized and permitted.

(38 Del. Laws, c. 62 § 16; 40 Del. Laws, c. 112 § 1; Code 1935 § 5510; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 361; 68 Del. Laws, c. 84 § 173(a); 80 Del. Laws, c. 307 § 2.)

§ 10162 License to conduct pari-mutuel or totalizator pools; application for and qualifications of licensee; grant of license.

(a) The Commission may grant a license to any person to make, conduct and sell pools by the use of pari-mutuel machines or totalizators for the purpose of receiving wagers or bets on horse races within the enclosure of any racing meet licensed and conducted under this chapter, but not otherwise, under such regulations as the Commission prescribes.

(b) The Commission may prescribe regulations governing the granting of applications for licenses, the granting of licenses and the conditions under which any licensee may conduct, sell or make any such pool.

(c) The qualifications of any licensee shall be such as to afford a reasonable belief that the licensee will be financially responsible and will conduct the business of operating the pools in a proper and orderly manner.

(d) A licensee to make, conduct and sell pools by the use of pari-mutuel machines or totalizators must be a person licensed to conduct a racing meet under this chapter.

(38 Del. Laws, c. 62 § 16; 40 Del. Laws, c. 112 § 1; Code 1935 § 5510; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 362; 68 Del. Laws, c. 84 § 173(a).)

§ 10163 Revocation of license.

All licenses for the operation of pari-mutuel or totalizator pools shall be revocable at any time, without hearing, in the absolute discretion of the Commission.

(38 Del. Laws, c. 62 § 16; 40 Del. Laws, c. 112 § 1; Code 1935 § 5510; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 363; 68 Del. Laws, c. 84 § 173(a).)

§ 10164 Rules, regulations and special powers of Commission; subpoenas; contempt; perjury.

(a) The Commission may:

(1) Require the keeping of books and records by a licensee of a pari-mutuel or totalizator pool in such form or in such manner as the Commission prescribes;

(2) Regulate the duties of any employee of any such licensee; and

(3) Visit, investigate and place expert accountants and such other persons as it deems necessary in the office or place of business of any person licensed to operate a pari-mutuel or totalizator pool for the purpose of satisfying itself that the Commission's rules and regulations are strictly complied with.

(b) The Commission may issue, under the hand of its Chairperson and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents of a licensee before the Commission and may administer oaths or affirmations to the witnesses whenever in the judgment of the Commission it may be necessary for the effectual discharge of its duties.

(c) If any person refuses to obey any subpoena or to testify or to produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting, and, thereupon, the Court shall issue its subpoena requiring the person to appear and testify or to produce the books, papers and documents before the Commission.

(d) Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

(e) False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

(38 Del. Laws, c. 62 § 16; 40 Del. Laws, c. 112 § 1; Code 1935 § 5510; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 364; 68 Del. Laws, c. 84 § 173(a); 70 Del. Laws, c. 186 § 1.)

§ 10165 Tax on pari-mutuel income.

(a) Every person engaged in the business of conducting a racing meet under this chapter shall pay as a tax to this State three quarters of one percent of the licensee's commissions on pari-mutuel and totalizator pools conducted on each racing day.

(b) The tax levied in subsection (a) of this section shall be paid by certified check on a weekly basis. Each such check shall be

transmitted by the licensee to the Secretary of the Department of Finance no later than Wednesday following the week for which the taxes are due.

(38 Del. Laws, c. 62 § 16; 40 Del. Laws, c. 112 § 1; Code 1935 § 5510; 43 Del. Laws, c. 242; 45 Del. Laws, c. 293 § 2; 28 Del. C. 1953 § 365; 49 Del. Laws, c. 345 § 1; 51 Del. Laws, c. 300 § 2; 55 Del. Laws, c. 84 § 1; 56 Del. Laws, c. 42 § 2; 57 Del. Laws, c. 470 § 1; 57 Del. Laws, c. 741 § 31C; 58 Del. Laws, c. 298 § 1; 60 Del. Laws, c. 426 § 4; 60 Del. Laws, c. 512 §§ 1, 2; 61 Del. Laws, c. 163 § 2; 64 Del. Laws, c. 244 § 1; 65 Del. Laws, c. 386 § 1; 68 Del. Laws, c. 84 § 173(a).)

§ 10166 Licensee's commissions on pari-mutuel and totalizator pools.

(a) The Commission shall authorize as gross commissions on pari-mutuel and totalizator pools to the licensee operating a racing meet under this chapter 17% of the total contributions to all pari-mutuel and totalizator pools conducted or made at the racing meet and at every race or meeting, plus all of the odd cents of all redistributions to be made on all pari-mutuel and totalizator pool contributions exceeding the sum equal to the next lowest multiple of 10, such odd cents to be calculated on the basis of each dollar wagered. If a minus pool is created, the licensee may break to the lowest multiple of 5.

(b) In addition to the other commissions allowed by this section, every person engaged in the business of conducting a racing meet under this chapter shall receive as a gross commission 2% of the total contributions to all dual pari-mutuel and totalizator pools conducted on each racing day on any and every racetrack licensed under this chapter. Dual pari-mutuel and totalizator pool means a separate wagering pool in which an interest is represented by a single wager on 2 entries, and shall include, but not be limited to, daily doubles, exactas, quinellas and perfectas.

(c) In addition to the other commissions allowed by this section, every person engaged in the business of conducting a racing meet under this chapter shall receive as a gross commission 8% of the total contributions to all special pari-mutuel and totalizator pools conducted on each racing day on any and every racetrack licensed under this chapter. Special pari-mutuel and totalizator pool means a separate wagering pool in which an interest is represented by a single wager on more than 2 entries, and shall include, but not be limited to, tri-perfectas, trifectas, twin doubles and big exactas.

(d) From the gross commissions allowed by this section, the licensee may retain as its net commissions only those sums which remain after payment of the taxes imposed by § 10165 of this title.

(38 Del. Laws, c. 62 § 16; 40 Del. Laws, c. 112 § 1; Code 1935 § 5510; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 366; 49 Del. Laws, c. 345 § 2; 51 Del. Laws, c. 300 § 3; 55 Del. Laws, c. 84 §§ 2, 3; 56 Del. Laws, c. 42 § 3; 56 Del. Laws, c. 228 § 2; 57 Del. Laws, c. 111; 57 Del. Laws, c. 470 § 2; 58 Del. Laws, c. 298 § 2; 60 Del. Laws, c. 426 § 5; 60 Del. Laws, c. 512 § 3; 61 Del. Laws, c. 163 § 3; 68 Del. Laws, c. 84 § 173(a).)

§ 10167 No deduction for federal taxes for purposes of §§ 10165 and 10166.

For the purpose of making any of the calculations of amounts payable to this State and to the licensee under §§ 10165 and 10166 of this title, no federal taxes, if any, shall be deducted from the amount of total contributions before applying the percentages specified in such sections.

(38 Del. Laws, c. 62 § 16; 40 Del. Laws, c. 112 § 1; Code 1935 § 5510; 43 Del. Laws, c. 242; 28 Del. C. 1953 § 367; 68 Del. Laws, c. 84 § 173(a).)

§ 10168 Disposition of moneys for unclaimed pari-mutuel tickets.

(Repealed by 76 Del. Laws, c. 277 § 3, effective June 30, 2008.)

§ 10169 Combined pari-mutuel pools on interstate simulcast wagering.

(a) On interstate simulcasts of races that a person licensed under this chapter transmits or receives, the licensee may combine wagers made at the licensee's track with wagers of the same type made at out-of-state facilities where wagering is lawful.

(b) The purpose of this section is to allow the creation of common pari-mutuel pools for calculating odds and determining payouts.

(c) The wagers made at out-of-state facilities may not be considered part of the licensee's pari-mutuel pools for any purpose other than the purpose specified under subsection (b) of this section.

(68 Del. Laws, c. 25 § 1.)

§ 10170 Tax enforcement.

The Director of the Division of Revenue shall enforce the administration of taxes provided for in this chapter in §§ 10123, 10165 or any other applicable section of this chapter.

(71 Del. Laws, c. 414 § 6.)

§ 10171 Jockeys Health and Welfare Benefit Fund.

(a) A special fund of the State is hereby established to be known as the "Delaware Jockeys Health and Welfare Benefit Fund." Funds reserved for the Delaware Jockeys Health and Welfare Benefit Fund pursuant to § 4815(b)(4)c. of Title 29 shall be transferred to the Delaware Jockeys Health and Welfare Benefit Fund which will be maintained in an account established in the Department of Agriculture.

(b) Moneys from the Delaware Jockeys Health and Welfare Benefit Fund shall be expended in accordance with the provisions of § 4815(b)(4)c. of Title 29 and pursuant to regulations and reasonable criteria for benefit eligibility promulgated by the Jockeys Health and Welfare Benefit Fund Board.

(c) The Delaware Jockeys Health and Welfare Benefit Fund shall be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. All income earned shall be reinvested in the Delaware Jockeys Health and Welfare Benefit Fund.

(74 Del. Laws, c. 424 § 2; 79 Del. Laws, c. 311 § 1.)

Subchapter V

Interstate Licensing Compact

§§ 10180 -10193. Interstate Licensing Compact.

(Repealed by 73 Del. Laws, c. 382 § 1, effective July 1, 2002.)

Part X
Horse Racing
Chapter 102
INTERSTATE LICENSING COMPACT

§ 10200 Short title.

This Compact shall be known and may be cited as the "Interstate Compact for Uniform Licensure of Participants."

(73 Del. Laws, c. 382 § 1.)

§ 10201 Compact.

The State of Delaware is hereby authorized to enter into the following Compact subject to the terms and conditions stated in the Compact.

(73 Del. Laws, c. 382 § 1.)

§ 10202 Purposes.

The purpose of this Compact is to:

(a) Establish uniform requirements among the party states for the licensing of participants in live horse racing with pari-mutuel wagering and ensure that all such participants who are licensed pursuant to this Compact meet a uniform minimum standard of honesty and integrity.

(b) Facilitate the growth of the harness and horse racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live horse racing with pari-mutuel wagering.

(c) Authorize the Delaware Thoroughbred Racing Commission and the Delaware Harness Racing Commission to participate in this Compact.

(d) Provide for participation in this Compact by officials of the party states, and permit those officials, through the Compact Committee established by this Compact, to enter into contracts with governmental agencies and non-governmental persons to carry out the purposes of this Compact.

(e) Establish the Compact Committee created by this Compact as an interstate governmental entity duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation and other state and local law enforcement agencies.

(73 Del. Laws, c. 382 § 1.)

§ 10203 Definitions.

(a) "Compact Committee" means the organization of officials from the party states that is authorized and empowered by this Compact to carry out the purposes of this Compact.

(b) "Official" means the appointed, elected, designated or otherwise duly selected representative of a racing commission or equivalent thereof in a party state who represents that party state as a member of the Compact Committee.

(c) "Participants in live racing" means participants in live horse racing with pari-mutuel wagering in party states.

(d) "Party state" means each state that has enacted this Compact.

(e) "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and each territory or possession of the United States.

(73 Del. Laws, c. 382 § 1.)

§ 10204 Entry into force, eligible parties, and withdrawal.

This Compact shall come into force when enacted by any 4 states. Thereafter, this Compact shall become effective as to any other state upon both (i) that state's enactment of this Compact and (ii) the affirmative vote of a majority of the officials on the Compact Committee as provided in § 10209 of this title.

(73 Del. Laws, c. 382 § 1.)

§ 10205 States eligible to join Compact.

Any state that has adopted or authorized horse or harness racing with pari-mutuel wagering shall be eligible to become party to this Compact.

(73 Del. Laws, c. 382 § 1.)

§ 10206 Withdrawal from Compact and impact thereof on force and effect of Compact.

Any party state may withdraw from this Compact by enacting a statute repealing this Compact, but no such withdrawal shall become effective until the head of the executive branch of the withdrawing state has given notice in writing to the head of the executive branch of

all other party states. If as a result of withdrawals, participation in this Compact decreases to less than 3 party states, this Compact no longer shall be in force and effect unless and until there are at least 3 or more party states again participating in this Compact.

(73 Del. Laws, c. 382 § 1.)

§ 10207 Compact Committee.

There is hereby created an interstate governmental entity to be known as the "Compact Committee," which shall be comprised of 1 official from the racing commission or its equivalent in each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the party state the official represents. Pursuant to the laws of his or her party state, each official shall have the assistance of his or her state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his or her responsibilities as the representative from his or her state to the Compact Committee. If an official is unable to perform any duty in connection with the powers and duties of the Compact Committee, the racing commission or equivalent thereof from his or her state shall designate another person as an alternate who shall serve in his or her place and represent the party state as its official on the Compact Committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his or her duties as that party state's representative official on the Compact Committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the Compact Committee as the committee's bylaws may provide.

Delaware's delegate shall be appointed by the Governor with the advice and consent of the Senate, and shall serve until his or her successor is confirmed.

(73 Del. Laws, c. 382 § 1; 70 Del. Laws, c. 186 § 1.)

§ 10208 Powers and duties of Compact Committee.

In order to carry out the purposes of this Compact, the Compact Committee is hereby granted the power and duty to:

(a) Determine which categories of participants in live racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, should be licensed by the committee, and establish the requirements for the initial licensure of applicants in each such category, and the requirements for renewal of licenses in each category. Provided, however, that with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance of a license to an applicant, the licensure requirements for each category of participants in live racing that the Compact Committee decides to license shall be comparable to the most restrictive licensure requirements of any party state for that category.

(b) Investigate applicants for a license from the Compact Committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the Federal Bureau of Investigation and relevant state and local law enforcement agencies, and, where appropriate, from the Royal Canadian Mounted Police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the committee as provided in subsection (a) of this section above. Only officials on, and employees of, the Compact Committee may receive and review such criminal history record information, and those officials and employees may use that information only for the purposes of this Compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official on or employee of the Compact Committee. The fingerprints of each applicant for a license from the Compact Committee shall be taken by the Compact Committee, its employees, or its designee, and pursuant to Public Law 92-544 or Public Law 100-413, shall be forwarded to a state identification bureau, or to the Association of Racing Commissioners International, an association of state officials regulating pari-mutuel wagering designated by the Attorney General of the United States, for submission to the Federal Bureau of Investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the Federal Bureau of Investigation or other receiving law enforcement agency.

(c) Issue licenses to, and renew the licenses of, participants in live racing listed in subsection (a) of this section who are found by the committee to have met the licensure and renewal requirements established by the committee. The Compact Committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the Compact Committee shall notify the applicant that it will not be able to process his application further. Any such applicant shall have the right to present additional evidence to, and to be heard by, the Compact Committee, but the final decision on issuance or renewal of the license shall be made by the Compact Committee using the requirements established pursuant to subsection (a) of this section.

(d) Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to effectuate the purposes of this Compact.

(e) Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of this Compact, prescribe their powers, duties and qualifications, hire persons to fill those offices, employments and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits and other conditions of employment of its officers, employees and other positions.

(f) Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation or other entity.

(g) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the purposes of this Compact.

(h) Charge a fee to each applicant for an initial license or renewal of a license.

(i) Receive other funds through gifts, grants, and appropriations.

(73 Del. Laws, c. 382 § 1; 70 Del. Laws, c. 186 § 1.)

§ 10209 Voting requirements.

(a) Each official shall be entitled to 1 vote on the Compact Committee.

(b) All action taken by the Compact Committee with regard to the addition of party states as provided in § 10204 of this title, the licensure participants in live racing, and the receipt and disbursement of funds shall require a majority vote of the total number of officials (or their alternates) on the committee. All other action by the Compact Committee shall require a majority vote of those officials (or their alternates) present and voting.

(c) No action of the Compact Committee may be taken unless a quorum is present. A majority of the officials (or their alternates) on the Compact Committee shall constitute a quorum.

(73 Del. Laws, c. 382 § 1.)

§ 10210 Administration and management.

(a) The Compact Committee shall elect annually from among its members a chairperson, a vice-chairperson, and a secretary/treasurer.

(b) The Compact Committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials (or their alternates) on the committee at that time and shall have the power by the same vote to amend and rescind these bylaws. The committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the Secretary of State or equivalent agency of each of the party states.

(c) The Compact Committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and his or her other support staff.

(d) Employees of the Compact Committee shall be considered governmental employees.

(73 Del. Laws, c. 382 § 1; 70 Del. Laws, c. 186 § 1.)

§ 10211 Immunity from liability for performance of official acts and duties.

Officials of party states shall not be held personally liable for any non-intentional act or omission that occurs during the performance of their official responsibilities and duties under this Compact.

(73 Del. Laws, c. 382 § 1.)

§ 10212 Rights and responsibilities of each party state.

(a) By enacting this Compact, each party state:

(1) Agrees to accept the decisions of the Compact Committee regarding the issuance of Compact Committee licenses to participants in live racing pursuant to the committee's licensure requirements.

(2) Reserves the right:

(i) To charge a fee for the use of a Compact Committee license in that state;

(ii) To apply its own standards in determining whether, on the facts of a particular case, a Compact Committee license should be suspended or revoked;

(iii) To apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the Compact Committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the Compact Committee; and

(iv) To establish its own licensure standards for the licensure of non-racing employees at harness and horse racetracks and employees at separate satellite wagering facilities. Any party state that suspends or revokes a Compact Committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the Compact Committee of that suspension or revocation.

(3) Agrees to reimburse or otherwise pay the expenses of its official representative on the Compact Committee or its alternate.

(b) No party state shall be held liable for the debts or other financial obligations incurred by the Compact Committee.

(73 Del. Laws, c. 382 § 1.)

§ 10213 Construction and severability.

This Compact shall be liberally construed so as to effectuate its purposes. The provisions of this Compact shall be severable, and, if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of the United States or of any party state, or the applicability of this Compact to any government, agency, person or circumstances is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If all or some portion of this Compact is held to be contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

(73 Del. Laws, c. 382 § 1.)