



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

Secretary's Order No.: 2016-F-0026

**RE: Approving Final Regulations to Amend 7 DE Admin. Code §3774:
*Oyster Minimum Size Limit***

Date of Issuance: June 10, 2016

Effective Date of the Amendment: July 11, 2016

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006, 6010, and other relevant authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 DE Admin. Code §3774: *Oyster Minimum Size Limit*, promulgated pursuant to authority granted in 7 *Del.C.* §§1902(a) and 2106(d). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2016-01 dated March 8, 2016. The Department published its initial proposed regulation Amendments in the April 1, 2016 *Delaware Register of Regulations*. The Department then held a public hearing on April 21, 2016. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment through May 6, 2016.

Delaware's Good Nature depends on you!

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to 7 DE Admin. Code §3774: *Oyster Minimum Size Limit* (“Amendments”). Delaware’s Advisory Council on Shellfisheries requested the Department’s Division of Fish and Wildlife (“Division”) to consider this proposed regulatory action to allow Delaware’s oyster harvesters to possess *de minimis* quantities of undersized oysters (less than 2.75 inches between the two most distant points on the edges of said oyster’s shell, “undersized”) that are inherent to the harvesting process.

Oysters typically grow in complex and densely packed reefs on Delaware’s natural oyster grounds. When harvested, the oysters are brought aboard dredge vessels in asymmetrical clumps comprised of shell, varying sized oysters, and other organisms that are not easily separable. Market oysters (greater than 2.75 inches minimum size limit, “market”) are singled and culled from the dredged material prior to landing, but some undersized oysters can inadvertently remain attached to the market oysters. Some shell breakage can also occur during the bagging and handling process, rendering a market oyster illegal. Furthermore, the incidental retention of spat, or small oysters (less than one inch in size, “spat”, “small”) attached to market oysters is practically unavoidable, particularly in years of high juvenile recruitment.

The Department’s proposed regulatory action at this time would allow up to five percent (by number) undersized oysters per landed bushel. Attached spat or attached small oysters that cannot be removed from a market oyster without destroying either oyster could be retained, and would not count toward the five percent allowance. It should be noted that the proposed regulatory amendment is unlikely to increase costs or place additional burdens on the affected public. The proposed amendment provides a

reasonable accommodation to harvesters, and establishes objective and enforceable criteria. Similar allowances are in place for conch (whelk), blue crab, and hard clam. It should also be noted that the proposed amendment is not expected to have detectable impacts to Delaware's oyster resource.

The above-referenced proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on April 21, 2016. Members of the public attended the aforementioned public hearing, and comment was received by the Department regarding these proposed Amendments. Of note is the fact that all comment received by the Department regarding this matter was positive, and voiced strong support of these proposed Amendments while thanking the Department for undertaking this regulatory action at this time. All proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated June 2, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code §3774: *Oyster Minimum Size Limit*, are well-supported. Therefore, the

recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will enable the Department to allow Delaware oyster harvesters to possess up to five percent (by number) undersized oysters (i.e., less than 2.75 inches between the two most distant points on the edges of said oyster's shell) per landed bushel. Additionally, attached spat or attached small oysters (i.e., less than one inch) that cannot be removed from a market oyster (i.e., greater than 2.75 inches) without destroying either oyster may be retained, without counting the same toward the five percent allowance. As noted previously, this proposed promulgation provides a reasonable accommodation to harvesters, and establishes objective and enforceable criteria. Additionally, the proposed regulatory amendments are unlikely to increase costs or place additional burdens on the affected public, and are not expected to have detectable impacts to Delaware's oyster resource.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limits*, pursuant to 7 *Del.C.* §§1902(a) and 2106(d);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on April 21, 2016, and held the record open through close of business on May 6, 2016, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record, and the recommended proposed regulatory Amendments, as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

5. The adoption of these proposed regulatory Amendments will enable the Department to (1) allow Delaware oyster harvesters to possess up to five percent (by number) undersized oysters (i.e., less than 2.75 inches between the two most distant points on the edges of said oyster's shell) per landed bushel; (2) allow attached spat or attached small oysters (i.e., less than one inch) that cannot be removed from a market oyster (i.e., greater than 2.75 inches) without destroying either oyster to be retained, without counting the same toward the five percent allowance; and (3) provide a reasonable accommodation to oyster harvesters, and establish objective and enforceable criteria, with no expectation of detectable impacts to Delaware's oyster resource;

6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B1" regarding same, as this proposed regulation is not substantially

likely to impose additional costs or burdens upon individuals and/or small businesses. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory Amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limits*, as published in the April 1, 2016 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limits*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



David S. Small
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable David S. Small
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest 
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Proposed Regulation Amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limit***

DATE: June 2, 2016

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Thursday, April 21, 2016, at 6:00 p.m. at the Department of Natural Resources and Environmental Control (“DNREC”, “Department”), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments (“Amendments”) to 7 DE Admin. Code §3774, *Oyster Minimum Size Limit*. Delaware’s Advisory Council on Shellfisheries requested the Department’s Division of Fish and Wildlife (“Division”) to consider this proposed regulatory action to allow Delaware’s oyster harvesters to possess *de minimis* quantities of undersized oysters (less than 2.75 inches between the two most distant points on the edges of said oyster’s shell, “undersized”) that are inherent to the harvesting process.

Oysters typically grow in complex and densely packed reefs on Delaware’s natural oyster grounds. When harvested, the oysters are brought aboard dredge vessels in asymmetrical clumps comprised of shell, varying sized oysters, and other organisms that are not easily separable. Market oysters (greater than 2.75 inches minimum size limit, “market”) are singled and culled from the dredged material prior to landing, but some undersized oysters can inadvertently remain attached to the market oysters. Some shell breakage can also occur during the bagging and

handling process, thus rendering a market oyster illegal under the current regulations. Furthermore, the incidental retention of spat, or small oysters (less than one inch in size, “spat”, “small”) attached to market oysters is practically unavoidable, particularly in years of high juvenile recruitment.

The Department’s proposed regulatory action at this time would allow up to five percent (by number) undersized oysters per landed bushel. Attached spat or attached small oysters that cannot be removed from a market oyster without destroying either oyster could be retained, and would not count toward the five percent allowance. It should be noted that the proposed regulatory amendment is unlikely to increase costs or place additional burdens on the affected public. The proposed amendment provides a reasonable accommodation to harvesters, and establishes objective and enforceable criteria. Similar allowances are in place for conch (whelk), blue crab, and hard clam. The proposed amendment is not expected to have detectable impacts to Delaware’s oyster resource.

The Department has the statutory basis and legal authority to act with regard to the aforementioned proposed amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limits*, pursuant to 7 *Del.C.* §§1902(a) and 2106(d). Members of the public attended the April 21, 2016 hearing. Comment was received by the Department concerning these proposed Amendments, both verbally at the time of the hearing and via email thereafter, and the same will be discussed in greater detail below. It should be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; (2) fourteen documents introduced by responsible Department staff at the public hearing held on April 21, 2016, and marked by this Hearing Officer accordingly as Department Exhibits 1-14; and (3) comment received via email on May 6, 2016 from Timothy Sage, a local oyster harvester, who voiced strong support of this proposed promulgation. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Stewart Michels, developed the record with the relevant documents in the Department's files.

As noted above, the purpose of this proposed regulatory promulgation is to allow up to five percent (by number) undersized oysters per landed bushel. Attached spat or attached oysters measuring less than one inch that cannot be removed from a market oyster without destroying either oyster could be retained, and would not count toward the five percent allowance. As part of its regulatory development process, the Department's Division of Fish and Wildlife provided numerous notices of this proposed regulatory action to both the regulated community and the public at large, as follows, to wit: (1) March 9, 2016 memorandum to the Interested Persons list (as maintained by the Division); (2) legal notice of the public hearing of April 21, 2016 published in both the Delaware State News and the News Journal on March 23, 2016; (3) notice of the aforementioned public hearing posted to the State Meeting Calendar on March 24, 2016; (4) a Blackboard connect email and text message sent to registered users on March 24, 2016 and again on April 20, 2016, advising of the aforementioned public hearing; (5) emails sent to the Division's Fisheries List Serve subscribers on March 24, 2016 and again on April 20, 2016, containing information from the legal notice regarding these proposed regulatory amendments;

and (6) posts to the Department's Division of Fish and Wildlife Facebook page made on March 24, 2016 and again on April 20, 2016, advising of this proposed regulatory action.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on April 21, 2016. As noted previously, comment was received by the Department in this matter, at both the time of the aforementioned hearing and during the post-hearing phase of this proposed promulgation. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. It should be noted that all comment received by the Department regarding this matter was positive, and the same voiced strong support of these proposed Amendments while thanking the Department for undertaking this regulatory action at this time. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed Amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limits*, as noted above. Accordingly, I recommend promulgation of these proposed regulatory Amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limits*, pursuant to 7 *Del.C.* §§1902(a) and 2106(d);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on April 21, 2016, and held the record open through close of business on May 6, 2016, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

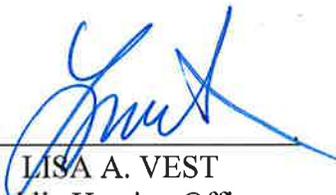
4. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limits*, will enable Delaware to (1) allow oyster harvesters to possess up to five percent (by number) undersized oysters (i.e., less than 2.75 inches between the two most distant points on the edges of said oyster's shell) per landed bushel; (2) allow attached spat or attached small oysters (i.e., less than one inch) that cannot be removed from a market oyster (i.e., greater than 2.75 inches) without destroying either oyster to be retained, without counting the same toward the five percent allowance; and (3) provide a reasonable accommodation to oyster harvesters, and establish objective and enforceable criteria, with no expectation of detectable impacts to Delaware's oyster resource;

5. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all proposed regulations initially submitted to the *Delaware Register of Regulations* on or after January 1, 2016), and has selected Exemption "B1" regarding same, as this proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Moreover, the Department believes these proposed regulatory Amendments to be

lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's proposed regulatory amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limits*, as published in the April 1, 2016 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed regulatory amendments as final regulatory amendments to 7 DE Admin. Code §3774, *Oyster Minimum Size Limits*, for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:
Appendix A: Proposed Reg. Amendments/Reg. Flex. Analysis and Impact Stmt. Form

APPENDIX "A"

PROPOSED REGULATIONS

6.9.5 If a patient has an attending physician involved in his or her care, this physician should be consulted before discharge and his/her review and decision included in the discharge.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

4468 Delivery of Hospice Services

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a) and 2106(d)

(7 Del.C. §§1902(a) and 2106(d))

7 DE Admin. Code 3774

REGISTER NOTICE: SAN #2016-1

3774 Oyster Minimum Size Limits

1. TITLE OF THE REGULATION:

7 DE Admin. Code 3774 Oyster Minimum Size Limit

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

Delaware's Advisory Council on Shellfisheries requested the Department consider action to allow Delaware's oyster harvesters to possess *de minimis* quantities of undersized (<2.75") oysters that are inherent to the harvesting process.

Oysters typically grow in complex and densely packed reefs on Delaware's natural oyster grounds. When harvested, the oysters are brought aboard dredge vessels in asymmetrical clumps comprised of shell, varying sized oysters and other organisms that are not easily separable. Market oysters (>2.75" minimum size limit) are singled and culled from the dredged material prior to landing, but some undersized (<2.75") oysters can inadvertently remain attached to the market oysters. Some shell breakage can also occur during the bagging and handling process, rendering a market oyster illegal. Furthermore, the incidental retention of spat or small oysters (<1") attached to market oysters is practically unavoidable, particularly in years of high juvenile recruitment.

The proposed action would allow up to five percent (by number) undersized oysters per landed bushel. Attached spat or attached oysters measuring less than one inch that cannot be removed from a market oyster without destroying either oyster could be retained and would not count toward the five percent allowance.

The proposed amendment is unlikely to increase costs or place additional burdens on the affected public. The proposed amendment provides a reasonable accommodation to harvesters and establishes objective and enforceable criteria. Similar allowances are in place for conch (whelk), blue crab, and hard clam. The proposed amendment is not expected to have detectable impacts to Delaware's oyster resource.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §§1902(a) and 2106(d)

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

None.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3774 Oyster Minimum Size Limit will be open

April 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on April 21, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 904RFA 04-01-16.pdf>

3765 Oysters
(Break in Continuity of Sections)

3774 Oyster Minimum Size Limit

(Penalty Section 7 Del.C. §1912)

- 1.0 ~~It shall be~~ Except as provided in 1.1 and 1.2, it is unlawful for any person to possess any oyster harvested for direct sale from the State's natural oyster beds that measures less than 2.75 (2¾) inches between the two most distant points on the edges of said oyster's shell.
- 1.1 Oysters measuring less than 2.75 (2¾) inches shall not comprise, by number, more than 5.0% of any landed bushel bag or bushel sample(s) obtained from any landed multi-bushel cage.
- 1.2 Notwithstanding 1.1, a person may possess oysters harvested for direct sale from the State's natural oyster beds that measure at least 2.75 (2¾) inches and have attached oysters or attached spat that measure less than one (1) inch between the two most distant points on the edges of said oyster's shell and that cannot be separated without destroying either oyster.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1301

REGISTER NOTICE
SAN # 2016-02

1301 Regulations Governing Solid Waste

1. TITLE OF THE REGULATIONS:

Delaware's *Regulations Governing Solid Waste* (DRGSW)

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

Delaware's Department of Natural Resources and Environmental Control (DNREC), Solid and Hazardous Waste Management Section (SHWMS) is proposing amendments to current scrap tire facility regulations to address missing operational requirements and to reduce compliance and financial burdens posed by current regulations. The proposed amendments will reduce compliance requirements and financial burdens for scrap tire facilities storing scrap tires in fully enclosed trailers.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGSW are proposed and amended in accordance with the provisions found at 7 Del.C.

Title 7 Natural Resources and Environmental Control
3700 Shellfish

3000 Division of Fish and Wildlife

3700 Shellfish

3765 Oysters

3774 Oyster Minimum Size Limit

(Penalty Section 7 Del.C. §1912)

1.0 Except as provided in 1.1 and 1.2, it shall be unlawful for any person to possess any oyster harvested for direct sale from the State's natural oyster beds that measures less than 2.75 (2¾) inches between the two most distant points on the edges of said oyster's shell.

1.1 Oysters measuring less than 2.75 (2¾) inches shall not comprise, by number, more than 5.0% of any landed bushel bag or bushel sample(s) obtained from any landed multi-bushel cage.

1.2 Notwithstanding 1.1, a person may possess oysters harvested for direct sale from the State's natural oyster beds that measure at least 2.75 (2¾) inches and have attached oysters or attached spat that measure less than one (1) inch between the two most distant points on the edges of said oyster's shell and that cannot be separated without destroying either oyster.

5 DE Reg. 2140 (5/1/02)



Regulatory Flexibility Analysis and Impact Statement Form

For Proposed New and Amended Regulations Affecting Small Businesses or Individuals

Introduction

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 Del.C. Ch. 104).

This RFA and RIS form is intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations.

State agencies proposing new or amended regulations that are substantially likely to impose additional costs or burdens on small businesses¹ or individuals² must submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) to the Registrar of Regulations, with the proposed regulation. For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.

What is a Regulatory Flexibility Analysis (RFA)?

In each RFA, an agency must consider, where applicable, lawful, feasible and desirable, specific methods of reducing the burdens of the regulation on individuals and/or small businesses, including: (1) establishing less stringent requirements and deadlines; (2) establishing performance standards to replace design standards; (3) exempting individuals and small businesses from all or part of the regulation; and (4) examining other ways to accomplish the regulation's purpose, while minimizing the impact upon individuals and/or small businesses.

What is a Regulatory Impact Statement (RIS)?

Among other things, each RIS must (1) describe the purpose of the regulation; (2) identify the individuals and/or small businesses subject to it; (3) provide an estimate of the potential costs of compliance; and (4) describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation. In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly.

¹"Small business" means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.

²"Individual" means any natural person, including any sole proprietorship. The term "individual" does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a "small business"; e.g. the CEO of a large business.

Agencies, Boards, and Commissions: please fill out this form when proposing new or amended regulations for the purpose of informing the public and business community. All proposed regulations, even if an exemption applies, must have this form attached when submitting to the Registrar of Regulations.

Date 02/22/2016 Agency DNREC Division/Office DFW

Contact Name Stewart Michels

Contact Email (or mailing address for comments) stewart.michels@state.de.us

Regulation # 3774 Title Oyster Minimum Size Limit

Exemptions

- Exemption A:* This proposed regulation is **not subject to Chapter 104, Title 29 of the Delaware Code**, because it will not apply to small businesses or individuals at all.
- Exemption B:* The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

- B1.* This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:
The proposed amendment sets a less stringent compliance requirement that will replace an operational standard with a performance standard. It's inherently consistent with RFA goals.
- B2.* This is an emergency regulation pursuant to **29 Del.C. §10119**.
- B3.* This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, **29 Del.C. §10113(b)**. Choose which reason:
- B3a.* Descriptions of agency organization, operations and procedures for obtaining information
- B3b.* Rules of practice and procedure used by the agency
- B3c.* Delegations of authority to subordinates
- B3d.* Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
- B3e.* Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations
- B3f.* Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings

- B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to:

- B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. *(If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL):*

The proposed amendment sets a less stringent compliance requirement that will replace an operational standard with a performance standard. It's inherently consistent with RFA goals.

End of Exemption Section

Regulatory Flexibility Analysis

State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where **applicable, lawful, feasible and desirable**, the following methods of reducing the additional costs and burdens of proposed regulations on **individuals and small businesses**:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1.	
2.	
3.	
4.	
5.	
6.	

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above:

A large, empty rectangular box with a thin black border, occupying the central portion of the page. It is intended for the user to provide an explanation if the RFA section above does not address the six methods and there is no applicable exemption.

End of Regulatory Flexibility Analysis Section

Regulatory Impact Statement

Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below Regulatory Impact Statement (RIS).

- Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.

- Statutory Citation: _____
- URL: _____
- Subject Matter Statutory Citation: _____
- URL: _____

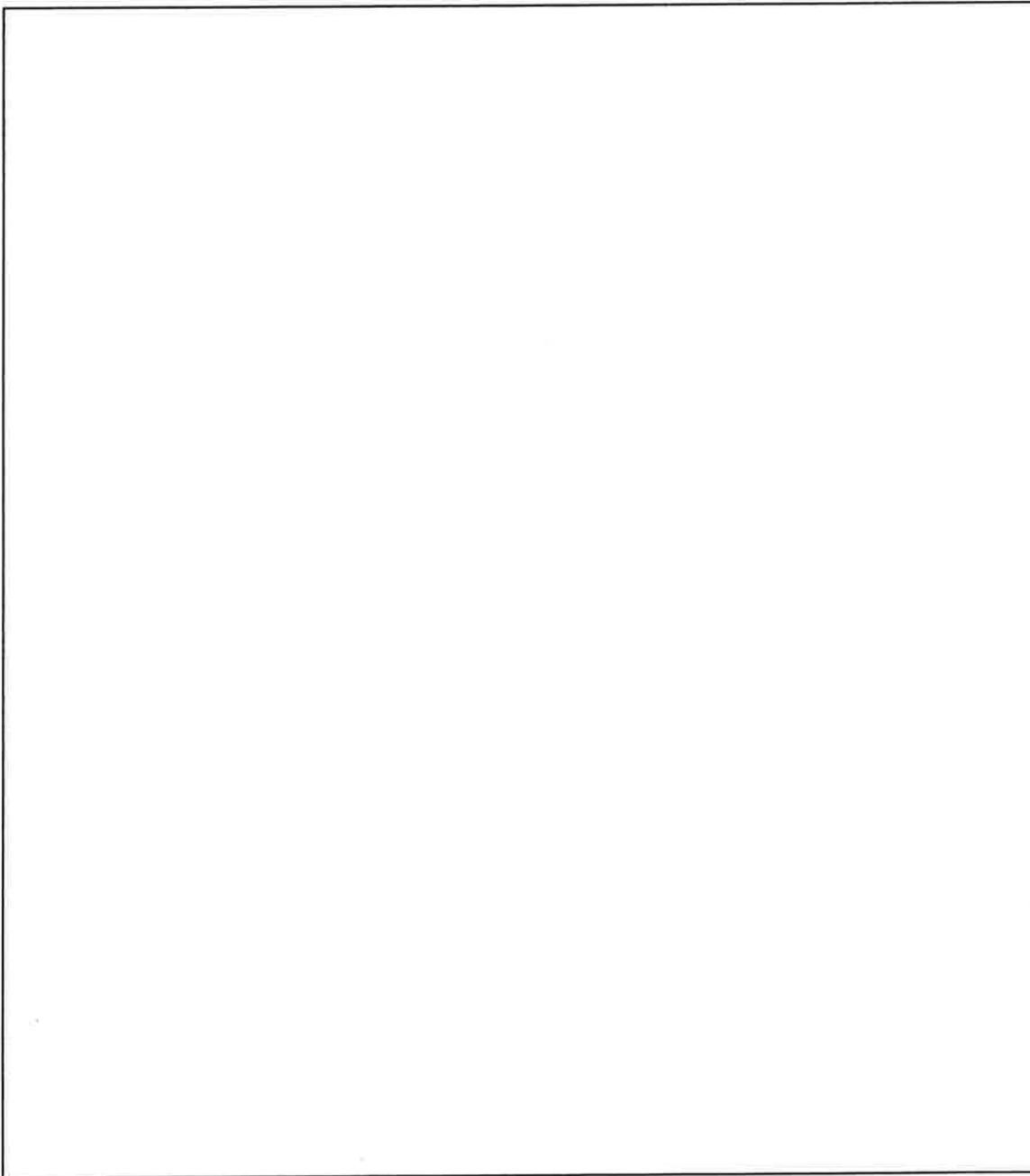
- Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):

- What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:

- Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

- Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. Use the below space for a free-text response (*Cost Estimate Option 1*) or, use the questionnaire below to guide the response (*Cost Estimate Option 2*):

Cost Estimate Option 1:

A large, empty rectangular box with a thin black border, intended for a free-text response to the cost estimate question.

	Cost Estimate Option 2	Yes	No	Unknown
1	Is this regulation being proposed to implement a state or federal program that provides funds to Delaware?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2	If this regulation is not implemented, will individuals, businesses, or programs lose federal funding?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3	Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4	Does this regulation follow industry standards and best practices?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5	Are there potential costs in not establishing these standards?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6	Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7	Does the regulation require additional recurring costs on small businesses or individuals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8	Does the regulation impose additional administrative burden for a small business or individual?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8a	If answering yes to #8, is it ongoing reporting or one time? (Choose answer) <input type="radio"/> Ongoing <input type="radio"/> One Time <input type="radio"/> Unknown			
8b	If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation? <input type="radio"/> Large Amount <input type="radio"/> Small Amount <input type="radio"/> Unknown			
9	Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<i>Cost Estimate Option 2 (continued)</i>		Yes	No	Unknown
10	Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10a	If answering yes to #10, estimate how many hours an outside professional may be needed to assist			
10b	If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11	Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12	Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13	Will small businesses have to hire additional employees in order to comply with the proposed regulation?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15	Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16	Does the regulation require small businesses to obtain additional education to keep up to date with regulatory requirements?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
17	Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation.			

- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation:

- *(Optional)* Estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:

- *(Optional)* Agencies are encouraged to list trade or industry groups, small businesses, or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS upon completion:

End of Regulatory Impact Statement Section