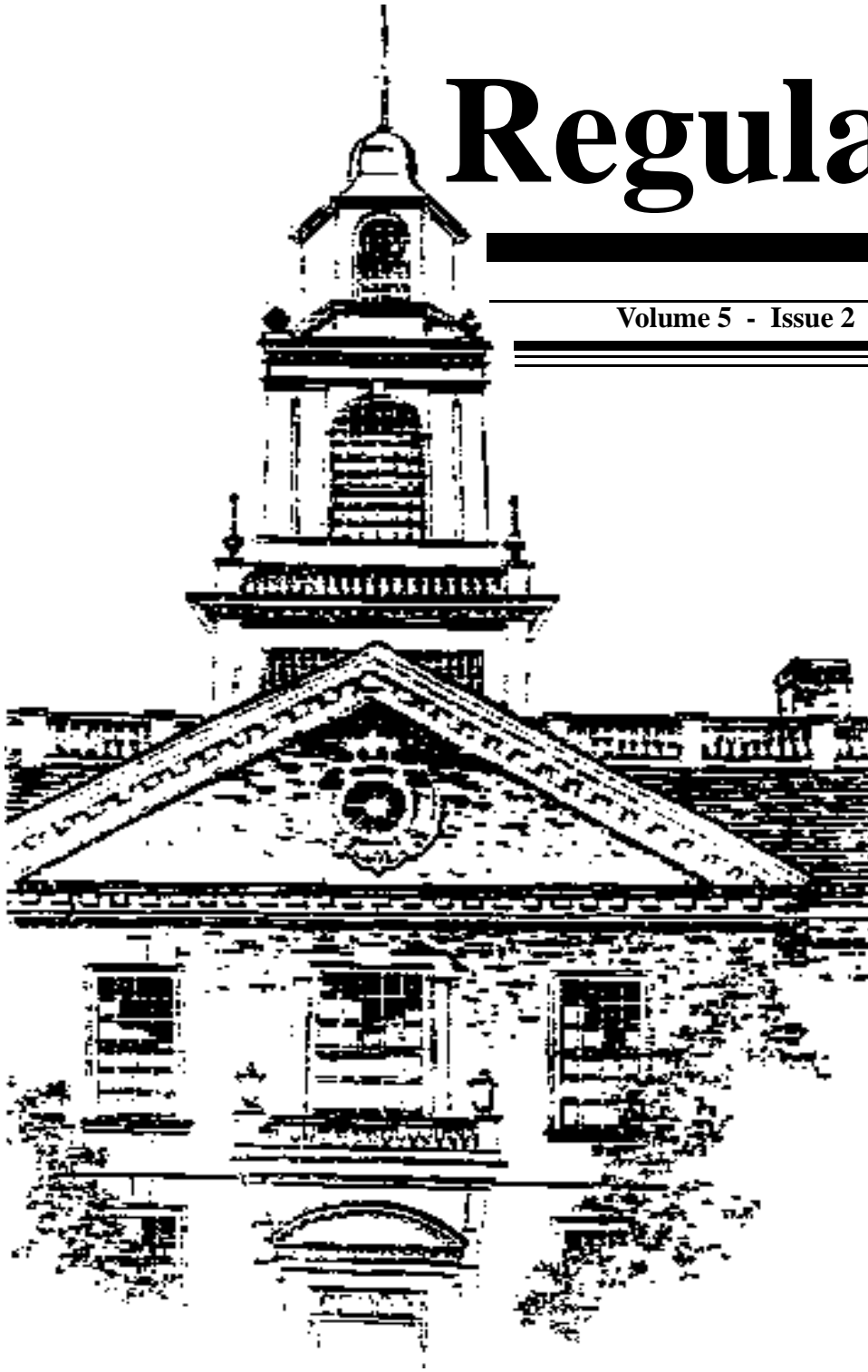


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# Delaware Register of Regulations



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Issue Date: August 1, 2001

Volume 5 - Issue 2

Pages 223 - 487

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before July 15, 2001.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

**4 DE Reg. 769 - 775 (11/1/00)**

Refers to Volume 4, pages 769 - 775 of the Delaware Register issued on November 1, 2000.

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### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section,

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

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

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

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

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

**Delaware's A Better Chance and General Assistance  
Program**

**REVISION OF THE REGULATIONS OF  
DELAWARE'S DIVISION OF SOCIAL SERVICES  
MANUAL SECTIONS 3023.9, 3023.9.1**

**NATURE OF THE PROCEEDINGS**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Delaware's A Better Chance and General Assistance Programs initiated proceedings to propose new policies related to the Division of Social Services Manual Sections 3023.9 and 3023.9.1. These changes relate to Delaware's A Better Chance (DABC) and General Assistance (GA) rules for overlapping eligibility and the overlapping eligibility exception. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the May, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

**FINDINGS OF FACT**

The Department finds that the proposed changes as set forth in the May, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations related to Delaware's A Better Chance (DABC) and General Assistance (GA) rules for overlapping eligibility and the overlapping eligibility exception are adopted and shall be final effective July 10, 2001.

6/15/01

Vincent P. Meconi, Secretary, DHSS

**DSSM 3023.9 DABC and GA Overlapping Eligibility**

People can only receive one cash assistance payment for themselves at a time. This means that a person cannot be open in more than one DCIS case nor can they be open in more than one assistance group at the same time.

This does not preclude a person moving in the same month from a GA assistance group to a DABC assistance group in the same month. Please see DSSM 3023.9.1 ABC and GA Overlapping Eligibility Exception.

**DSSM 3023.9.1 ABC and GA Overlapping Eligibility Exception**

An individual can receive a GA benefit and become eligible for DABC in the same month. The individual is entitled to the difference between the GA benefit received and the DABC benefit.

An example of this is when a pregnant woman receiving GA has her baby and is opened in DABC. In this situation the GA assistance group is closed for the mother after the baby is born.

**\* PLEASE NOTE: THIS FINAL REGULATION WAS INADVERTENTLY OMITTED FROM THE VOL. 5, ISSUE 1, JULY 1, 2001 REGISTER OF REGULATIONS.**



**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION**

**REAL ESTATE COMMISSION**

24 DE Admin. Code 2900

Statutory Authority: 24 Delaware Code,  
Section 2905(a)(1), (24 **Del.C.** §2905(a)(1))

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Section 2905(a)(1), the Delaware Real Estate Commission proposes to revise its Rules and Regulations. The proposed amendments revise and clarify the rules and regulations regarding escrow accounts. Substantive changes include the addition of a new rule addressing the requirements for transfer of fees or specified amounts when the real estate transaction is a non-recurring residential rental agreement of less than one hundred twenty (120) days.

A public hearing will be held on the proposed Rules and Regulations on Thursday, September 13, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**Real Estate Commission**Statutory Authority: 24 **Del.C.** 2905

- 1.0 Introduction
- 2.0 Requirements for Obtaining a Salesperson's License
- 3.0 Requirements for Obtaining a Real Estate Broker's License
- 4.0 Reciprocal Licenses
- 5.0 Escrow Accounts
- 6.0 Transfer of Broker or Salesperson
- 7.0 Business Transactions and Practices
- 8.0 Renewal of Licenses
- 9.0 Availability of Rules and Regulations
- 10.0 Disclosure
- 11.0 Hearings
- 12.0 Inducements
- 13.0 Necessity of License
- 14.0 Out of State Land Sales Applications
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Introduction**

## 1.1 Authority

1.1.1 Pursuant to 24 **Del.C.** §2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

1.1.2 The Commission reserves the right to make any amendments, modifications or additions hereto, that, in

its discretion are necessary or desirable.

1.1.3 The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 29.

## 1.2 Applicability

1.2.1 The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

## 1.3 Responsibility

1.3.1 It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to meet that responsibility may result in a civil fine against the broker of up to \$ 1,000.00 per agent.

1.3.2 Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

1.1.3 The failure of any licensee to comply with the Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's and/or salesperson's license.

## 2.0 Requirements for Obtaining a Salesperson's License

The Commission shall consider any applicant who has

successfully completed the following:

### 2.1 Course

2.1.1 The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2.1.2 Effective May 1, 1978, all real estate courses shall be limited to thirty-five (35) students in each class. This applies to both day and night courses. All other regulations regarding real estate courses are issued under the "Guidelines for Fulfilling the Delaware Real Estate Education Requirements". The Commission reserves the right to grant exception to this limitation.

### 2.2 Examination

2.2.1 Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must forward all necessary documentation to the Commission to be considered for licensure.

2.2.2 An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

### 2.3 Ability to conduct business

2.3.1 The Commission reserves the right to reject an applicant based on his or her inability to transact real estate business in a competent manner or if it determines that the applicant lacks a reputation for honesty, truthfulness and fair dealings.

2.3.2 The minimum age at which a salesperson's license can be issued is eighteen (18).

### 2.4 Fees

The Commission shall not consider an application for a salesperson's license unless such application is submitted with evidence of payment of the following fees:

2.4.1 Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 **Del.C.** §8807(d).

## 3.0 Requirements for Obtaining a Real Estate Broker's License

The Commission shall consider the application of any person for a broker's license upon completion of the following:

### 3.1 Course

3.1.1 The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

3.1.2 Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

### 3.2 Experience

3.2.1 A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license. If the licensee fails to renew his or her license by the expiration date but then makes an application for reinstatement within sixty (60) days of the expiration of the license and the Commission otherwise approves the application for reinstatement, the five-years' continuity will not be broken.

**See 4 DE Reg. 846 (11/01/00)**

3.2.2 The applicant shall submit to the Commission a list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3.2.3 The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

### 3.3 Examination

3.3.1 Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by Paragraph E of this rule to the Commission to be considered for licensure.

### 3.4 Ability to conduct business

3.4.1 The Commission reserves the right to reject an applicant based on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience, a reputation for honesty, truthfulness and fair dealings.

3.4.2 The minimum age at which a person can be issued a broker's license is twenty-three (23).

### 3.5 Credit Report

3.5.1 Each applicant shall submit a credit report from an approved credit reporting agency, which report shall be made directly to the Commission.

### 3.6 Fees

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

3.6.1 Broker's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

## 4.0 Reciprocal Licenses

### 4.1 Requirements

4.1.1 A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a nonresident broker's license under 24 Del.C. §2909(a).

4.1.2 A non-resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a broker's license issued by the Commission.

4.1.3 The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules 2.2 or 3.3 provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.

## 5.0 Escrow Accounts

5.1 All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

5.1.1 When the real estate transaction is a non-recurring residential rental agreement of less than one hundred twenty (120) days, the broker may, in accordance with written authorization from his or her principal, transfer from the escrow account a management fee and an amount specified up to a stated dollar amount for authorized repairs or cleaning expenses. Any amounts transferred in accordance with this Rule 5.1.1 must be reconciled and reflected in the written full accounting required by Rule 5.1.

5.2 All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker. A licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

**See 4 DE Reg. 457 (9/1/00)**

5.3 A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

5.4 A broker shall maintain in his office a complete

record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

5.5 An escrow account must be opened by the broker in a bank with an office located in Delaware in order to receive, maintain or renew a valid license.

5.6 The Commission may summarily suspend the license of any broker who fails to comply with 5.4, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

5.7 Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

## **6.0 Transfer of Broker or Salesperson**

6.1 All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

6.2 The Commission reserves the right to waive this requirement upon a determination of good cause.

6.3 All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

## **7.0 Business Transactions and Practices**

### **7.1 Written Listing Agreements**

7.1.1 Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

### **7.2 Copy of agreements**

7.2.1 Every party to a listing agreement, agreement of purchase and sale, or lease shall be furnished with an executed copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

### **7.3 Advertising**

7.3.1 Any licensee who advertises, on signs, newspapers or any other media, property personally owned

and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee.

7.3.2 Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the -broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs.

7.3.3 Any licensee who advertises, by signs, newspaper, or any other media, any property for sale, lease, exchange, or transfer that is listed with a broker must include in the advertisement the name of the broker under whom the licensee is licensed.

7.3.4 All advertisements for personal promotion of licensees must include the name of the company under whom the licensee is licensed.

### **7.4 Separate Office**

7.4.1 Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. Nothing contained herein, however, shall preclude said persons from sharing facilities with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

7.4.2 Where the office is located in a private home, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed, in a conspicuous location.

### **7.5 Compensation**

7.5.1 Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

7.5.2 When acting as agent, a licensee shall not accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

### **7.6 Duty to Cooperate**

7.6.1 Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions or to otherwise compensate another broker or salesperson.

## **8.0 Renewal of Licenses**

### **8.1 Renewal Required by Expiration Date on License**

8.1.1 In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the

two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

#### 8.2 Delinquency Fee

8.2.1 If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.

8.2.2 Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.

#### 8.3 Reinstatement of License

8.3.1 A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date, the licensee shall be required to take the state portion of the examination. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

8.3.2 No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

### 9.0 Availability of Rules and Regulations

#### 9.1 Fee Charge for Primers

9.1.1 Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the

State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

### 10.0 Disclosure

10.1 A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to all persons with whom he or she is transacting such business, prior to the execution of any agreements and shall include on the agreement such status.

10.2 Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will buy your home", or words to that effect, shall disclose in the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

10.3 A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

10.3.1 The written confirmation of disclosure in the contract shall be worded as follows:

10.3.1.1 With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

10.3.1.2 With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all

parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

10.3.1.3 In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

10.4 If a property is the subject of an agreement of sale but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

### **11.0 Hearings**

11.1 When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

11.2 There shall be a maximum of one (1) postponement for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission reserves the right to act based upon the evidence presented.

### **12.0 Inducements**

12.1 Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to Non-licensed Persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

12.2 This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

12.3 A real estate broker or salesperson has an affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the buyer.

### **13.0 Necessity of License**

13.1 For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a

licensee is on site. This subsection shall not prohibit a seller from showing their own house.

13.2 For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

### **14.0 Out of State Land Sales Applications**

14.1 All applications for registration of an out of state land sale must include the following:

14.1.1 A completed license application on the form provided by the Commission.

14.1.2 A \$100 filing fee made payable to the State of Delaware.

14.1.3 A valid Business License issued by the State of Delaware, Division of Revenue.

14.1.4 A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of State and a letter identifying the applicant's registered agent in the State of Delaware.

14.1.5 The name and address of the applicant's resident broker in Delaware and a completed Consent of Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.

14.1.6 A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.

14.1.7 Copies of any agreements or contracts to be utilized in transactions completed pursuant to the registration.

14.2 Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 14.1.2 through 14.1.4 of Rule 14.0 above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

14.3 If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must,

within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

### **15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that

chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

15.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

15.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment

Option.

15.6.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

15.6.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

15.6.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

15.6.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

15.6.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

15.6.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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## DIVISION OF PROFESSIONAL REGULATION

### REAL ESTATE COMMISSION

24 DE Admin. Code 2925

Statutory Authority: 24 Delaware Code,

Section 2905(a)(1), 2911(b)

(24 Del.C. §2905(a)(1), §2911(b))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Education Guidelines. The proposed amendments revise

and clarify the education guidelines regarding program criteria to reflect the approval of courses that have been certified through the Association of Real Estate License Law Officials Distance Education Certification Program.

A public hearing will be held on the proposed Education Guidelines on Thursday, September 13, 2001 at 9:30 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Education Guidelines. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

### Real Estate Commission Education Committee

Statutory Authority: 24 Del.C. 2911(b)

- 1.0 Introduction
- 2.0 Objective
- 3.0 Administration
- 4.0 Education Committee
- 5.0 Course Approval
- 6.0 Program Criteria
- 7.0 Course Approval Process
- 8.0 Provider Responsibilities
- 9.0 Instructor Qualifications
- 10.0 Instructor Approval Process

### Guidelines for Fulfilling the Delaware Real Estate Education Requirements

#### 1.0 Introduction -- Mandate for Continuing Education

1.1 24 Del.C. §2911(b) sets forth a requirement that "...each Delaware Real Estate Certificate holder applying for renewal shall be required to successfully complete in the two year period prior to renewal, continuing education hours in an amount to be prescribed by the Rules and Regulations of the Commission. Each Delaware Real Estate Certificate holder at the time of certificate renewal shall be required to furnish to the Commission satisfactory evidence that they have successfully completed the required number of hours in approved courses...."

1.2 The continuing education requirements apply to all licensees whether or not the certificate holder has been officially active or inactive during the two year period prior to expiration. The Delaware Real Estate Commission shall be informed of the completion of the continuing education



requirement at the time of submission of the Real Estate Certificate Renewal Application. In the case of an inactive licensee proof of completion of the continuing education requirement will be due upon reactivation of the license. The number of continuing education credit hours required is established within the Rules and Regulations of the Commission. The number and content of mandated courses may vary at the discretion of the Commission. The current requirement for continuing education is included within these guidelines. Updates may be obtained from the offices of the Real Estate Commission or the Real Estate Education Committee.

## **2.0 Objective**

Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Delaware Real Estate Commission's primary objective of protection of the public.

## **3.0 Administration**

The Delaware Real Estate Commission has the governing powers to approve or disapprove educational course offerings and instructor certification and reserves the right to suspend or revoke the privilege of conducting any educational course to any course provider(s) or instructor(s) who fail to adhere to the educational guidelines as established by the Commission.

## **4.0 Education Committee**

4.1 The Commission may utilize the services of a committee, appointed by the Commission, to assist in the educational objectives of the Commission.

4.2 Committee Structure - The Committee shall be comprised of twelve (12) members, four (4) from each county. Three (3) members shall be public members and the remaining members shall hold a valid Delaware real estate license.

4.3 Committee Officers - (Chairperson and Vice-Chairperson) shall be elected from the Committee and shall serve one year terms. Election of said officers will be held in January.

### **4.4 Term of Office**

4.4.1 Each appointment shall be for four (4) full years. No person who has been appointed to the Committee shall again be appointed to the Committee until an interim period of at least one (1) year has passed since such person last served.

4.4.2 A majority of members (7) shall constitute a quorum; and no recommendation shall be effective without the affirmative vote of a majority of the quorum. Any member who fails to attend three (3) consecutive regular business meetings without a valid excuse, or who fails to attend at least half of all regular business meetings during

any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Commission.

4.4.3 Committee members shall be appointed by the Commission. Applications for committee membership will be received by the Commission, via a letter of intent and a current resume 60 days prior to an anticipated vacancy. Committee members may be removed by the Commission for good cause. If an interim vacancy should occur, the Commission shall appoint a person to fill the position for a full four (4) year term commencing with the date of appointment.

### **4.5 Committee Responsibilities**

4.5.1 It shall be the duty of the Education Committee to monitor the content and conduct of all pre-licensing courses for salesperson and broker as well as continuing education programs offered to fulfill the educational requirements for obtaining and maintaining licensure in the State of Delaware.

4.5.2 The Education Committee shall have the responsibility for reviewing all applications for pre-licensing and continuing education credit as well as certification of instructor applicants, to insure that all applications satisfy the requirements.

4.5.3 After this review, the Education Committee shall recommend that an application be approved or disapproved by the Commission. If approval is recommended with regard to continuing education, the Committee shall indicate the number of full credit hours for the course. In making its decisions, the Education Committee shall follow the provisions contained in these guidelines. Any recommendation for non-approval shall be accompanied by a specific reason. Only the Delaware Real Estate Commission shall have the power to approve or disapprove the application for a course offering or instructor certification.

4.5.4 The Education Committee shall undertake such other duties and responsibilities as the Commission shall direct from time to time.

4.5.5 Committee meeting times and places shall be as necessary, but in all cases within two weeks prior to the next regularly scheduled meeting of the Commission. Committee meetings shall be conducted in accordance with the Administrative Procedures Act.

## **5.0 Course Approval**

5.1 General Requirements - An educational activity to be approved as satisfying Delaware's real estate continuing education requirements must be an organized real estate related activity, offered under responsible sponsorship, facilitated by an instructor certified by the Commission.

5.2 Organization - The sponsoring organization must have a designated individual responsible for the administration and coordination of the education program.

That designee shall be responsible to report to the Commission and/or the Committee for the proper conduct of each such program.

5.3 Facilities - The sponsoring organization must provide or arrange for appropriate educational facilities, and when necessary, library and reference materials and all instructional aids and equipment consistent with the content, format, and objective of each learning experience.

5.4 Performance - Attendance shall be used as the minimum requirement for satisfactory completion, in addition, alternative criteria for evaluating student performance may be established by the sponsoring organization or class instructor.

5.5 Maintenance and Availability of Records - An individual record of participation must be maintained by the sponsoring organization for a period of not less than three (3) years from the date of the activity and upon request made readily available as an official statement to each student of his or her participation. Information which must be included as part of this record is:

5.5.1 Name and address of the organization offering the course.

5.5.2 Name of course topic.

5.5.3 Title of the course

5.5.4 Name, resume and certificate number of the individual instructors.

5.5.5 Completion date of the course offering.

5.5.6 Number of hours of approved credit.

5.5.7 A detailed outline of the course.

5.5.8 A copy of the approval letter received from the Commission

5.5.9 A copy of the individual instructor(s) certification(s) letter(s) issued by the Commission.

5.5.10 A copy of the individual student evaluations on forms provided by the Commission.

5.5.11 A list of the individual students attending the course offering and their completion status, e.g., satisfactory or unsatisfactory.

5.6 Program Evaluation - Evaluation forms, approved by the Real Estate Commission shall be used to measure the effectiveness of the program design, operation and effectiveness of the instructor(s). These forms must be returned to the Education Committee for review within fifteen (15) calendar days of completion of the program.

## 6.0 Program Criteria

### 6.1 Areas of Concentration for Acceptable Courses

6.1.1 Courses of instruction and seminars, to be considered eligible for continuing education credit approval must be in a definable real estate topic area. Courses that may be considered eligible must be in the following topic areas:

6.1.1.1 Federal, State or Local Legislative Issues (Legislative Update).

6.1.1.2 Fair Housing Law

6.1.1.3 Anti-Trust Law

6.1.1.4 Real Estate Ethics or Professional

Standards

6.1.1.5 Agency Relationships and Responsibilities

6.1.1.6 Professional Enhancement for Practicing Licensees

6.1.2 Courses of instruction which Are Not acceptable for credit include, but are not limited to:

~~Any course given as part of a preparation for examination.~~

6.1.2.1 Offerings in mechanical office and business skills such as typing, business machines and computer operations.

6.1.2.2 Personal development and/or enrichment and motivational courses, speed reading memory improvement, and language report writing.

6.1.2.3 Correspondence courses and program learning courses not under the direct supervision of a certified instructor, except those courses that have been certified through The Association of Real Estate License law Officials (ARELLO) Distance Education Certification Program.

6.1.2.4 General training or education required of licensees to function in a representative capacity for an employing broker except if said training or education complies with the above stated topic areas, has been approved by the Commission and is taught by a certified instructor.

6.1.2.5 Meetings which are a normal part of in-house staff or licensee training, sales promotions or other meetings held in connection with the general business of the licensee and/or broker; any meetings that a licensee is required to attend as a condition of continued employment, whether imposed by rules of the employing broker or by a contractual agreement between broker and franchiser, does not qualify for continuing education credit. Work experience does not qualify for continuing education credit.

6.1.2.6 Non-educational activities of associations, trade organizations, and professional and occupational group membership or certification are not considered creditable continuing education activities. Examples of such activities are, but not limited to:

6.1.2.6.1 membership or service in a professional, occupational or other society or organization;

6.1.2.6.2 attendance at annual, periodic or special meetings, conventions, conferences, rallies and retreats;

6.1.2.6.3 writing or presentation of articles or research papers;

6.1.2.6.4 a program or other type of organizational assignment;

6.1.2.6.5 self-directed reading or study.

As a guiding principle "self-directed studies" and "individual scholarship" are not considered creditable educational activities.

### **7.0 Course Approval Process**

7.1 An application for course approval (on forms approved by the Commission), course outline, all applicable fees and any other documentation that may be required, must be filed by the course sponsor or provider, with the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467, **at least sixty (60) days prior to the date that the course is to be held.** Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed.

7.2 A course may be certified for a period of two (2) calendar years, provided the course is conducted by the sponsor or provider making application, the curriculum and course length remains exactly as approved, and certified instructors are utilized. The Education Committee may recommend a shorter or probationary approval where good cause for limited approval can be demonstrated. A sponsor who receives approval to conduct a certified course or activity, must notify the Commission in writing, of the intent to hold such activity, at least seven (7) days in advance of the start of the activity. Included in the letter of intent shall be the course approval number, date(s) and time(s) and location of the course, topic area, course name, instructor name(s) and instructor certification number(s). Courses can not be automatically renewed. Sponsors providers will need to reapply by the course expiration date and before conducting further courses. The Education Committee shall have the right to recommend to the Commission that a provider's privilege of conducting a certified course be revoked for the remainder of the approval period, if the Education Committee determines that the provider is not maintaining the standards required in these guidelines

### **8.0 Provider Responsibilities**

8.1 The organization receiving approval of a course or program accepts the responsibility to maintain a permanent record of the course activity for not less than three years from the date of the course offering. The permanent record shall include the documents as listed in "Maintenance and Availability of Records".

8.2 The sponsor or provider of all continuing education courses shall arrange for an on-site monitor in addition to the certified instructor for each activity. The monitor shall be responsible, at a minimum, for ensuring faithful and

complete attendance by students, as well as facilities management. The monitor may be a student for educational credit for that course or activity. This guideline shall not apply to courses that have been certified through ARELLO's Distance Education Certification Program.

8.3 The course sponsor or provider, will supply to the student at the completion of the course or program, a certificate of completion. This certificate must contain, but is not limited to, the following information:

- \_ Student Name
- \_ Sponsors Name
- \_ Topic Area Name
- \_ Course Title
- \_ Date course was completed
- \_ Number of Credit Hours
- \_ Course Approval Number
- \_ Instructor Name(s)
- \_ Instructor Certificate Number(s)

8.4 The organization offering the course, shall, within fifteen (15) days after the completion of the activity, provide a list of participants, their real estate license numbers (if applicable) and a copy of each student's course and instructor evaluation form and an evaluation summary report form to the Commission's Office. The evaluation summary report form shall be signed by any instructors who participated in the delivery of the course thus indicating each has had the opportunity to review the evaluation result. Failure of the organization to provide this information may be grounds to suspend the approval of that course or educational activity, in the absence of a showing of good cause for that failure.

8.5 Where the provider is a prelicensing school, the administrator thereof is responsible to apply to the Delaware Department of Public Instruction for certification and to maintain such certification. Proof of current certification must be attached to the application for course approval submitted to the Education Committee.

8.6 Prelicensing schools are to solicit the names of students interested in being contacted by recruiters by the second class meeting. Any students joining after the first class must be informed of the opportunity to be a part of the recruiting roster at the first class attended. Schools must supply the recruiting roster within seven (7) days of receiving a request from a broker.

8.7 Prelicensing schools will also furnish each student with current information regarding the prelicensing examination to include the "Real Estate Candidate Handbook" which is available to prelicensing schools through the testing service for this purpose.

8.8 Members of the Real Estate Commission or Education Committee And/or Their Official Representatives Shall Have the Right to Monitor Any Approved Course Without Notice.

**9.0 Instructor Qualifications**

9.1 It is the stated policy of the Delaware Real Estate Commission that qualified instructors must be directly involved in presenting any professional educational activity. Qualifications are determined by all or a combination of:

9.1.1 competence in the subject matter (may be evidenced by experience in which command of subject matter is recognized by the individual's peers, and/or by a formal education or training, and/or by demonstrated knowledge through publication in professional journals or appropriate media);

9.1.2 ability to transmit the educational content to the participants as determined by student evaluations and/or test results from previous instructional assignments;

9.1.3 understanding of the program objectives; and

9.1.4 knowledge and skill in the instructional methodology and learning processes to be employed.

9.2 The persons applying for instructor certification in teaching a real estate related topic must have five (5) years of full time experience in the trade, business, or profession that relates to the topic of instruction to be taught, and meet at least one (1) of the following sets of qualifications:

9.2.1 An approved instructor must meet two of the following criteria:

9.2.1.1 a Bachelor's degree

9.2.1.2 a Broker's Certificate

9.2.1.3 a professional designation such as, but not limited to; ALC (Accredited Land Consultant), CRS (Certified Residential Specialist), CCIM (Certified Commercial Investment Member) CPM (Certified Property Manager), CRB (Certified Residential Broker), CRE (Counselor Real Estate), MAI (Member Appraisal Institute), SIOR (Society Industrial Office Realtors) SRA (Senior Residential Appraiser), SRPA (Senior Real Property Appraiser), but not including GRI (Graduate Realtor Institute);

9.2.2 Possession of a valid teaching credential or certificate issued in the State of Delaware (or any State with qualifications that are equal to, or that exceed the qualification standards of the State of Delaware), and/or five (5) years of teaching experience in an accredited public, private, or parochial school; and/or five (5) years teaching experience in an accredited junior college, college or university.

9.2.3 A fully designated senior member of the Real Estate Educators Association who has been issued the DREI (Designated Real Estate Instructor) designation.

9.3 The Commission may waive the above requirements contingent upon review of proof of collateral experience in related fields of real estate. The Commission reserves the right to exercise its discretion in denying an applicant who has had a disciplinary action taken against him/her.

9.4 In addition to the qualifications listed above, the

Commission shall take into consideration evaluations from previous programs that the applicant has instructed. The Commission will also take into consideration recommendations or absence thereof of course providers, course coordinators, administrators and institutions that have employed the applicant.

9.5 The Education Committee may, at its discretion, subject to Commission approval, require a potential instructor to take a teaching methodology course (such as those given by colleges and universities) and/or a teaching methods seminar (such as currently given by the National Association of Realtors or Real Estate Educator's Association).

**10.0 Instructor Approval Process**

10.1 Applicants for instructor shall submit an application (on forms approved by the Commission), resume and any applicable fees to the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467, **at least sixty (60) days prior to the employment starting date.** Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the application. An application that is incomplete when filed shall not be considered to have been filed.

10.2 Upon approval, an instructor may be certified for a period of two (2) calendar years. An instructor may be certified in more than one subject or topic area, (e.g. pre-licensing math, pre-licensing law, fair housing, ethics, etc.). An instructor may only teach courses as preapproved by the Commission. Instructor certification can not be automatically renewed. Instructors will need to reapply by the certification expiration date and before teaching any further courses or programs. Applications are available from the Commission office.

10.4 An Instructor may receive credit for continuing education hours towards the real estate license renewal requirement in the same amount of hours as approved for credit for the course/topic being taught. This is a one time credit per licensure period, regardless of the number of times that said course/topic is taught during said course or instructor certification period.

10.5 The Education Committee shall have the right to recommend to the Commission that a certified instructor lose the privilege of certification for the remainder of the certification period if the Education Committee determines that the instructor is not maintaining the standards and/or policies required in these guidelines.

10.6 It is the Stated Policy of the Delaware Real Estate Commission That at No Time During Periods of Instruction Shall Any Person Involved in Any Approved Real Estate

Educational Activity, Use, or Attempt to Use, the Position of Instructor, Sponsor or Provider Etc., to Solicit Employees or Sales Representatives.

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**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF COSMETOLOGY AND BARBERING**

24 DE Admin. Code 5100

Statutory Authority: 24 Delaware Code,  
Section 5106(1), (24 Del.C. §5106(1))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 5106(1), the Delaware Board of Cosmetology and Barbering proposes to revise its Rules and Regulations. The proposed revisions insert a new rule regarding health and sanitation. The proposed revisions clarify that the United States Food and Drug Administration (“the FDA”) has not approved the use of any color additive for use in dyeing or tinting of the eyelash or eyebrow. In addition, the proposed revisions make clear that no product is to be used in a manner that is disapproved of by the Board of Cosmetology and Barbering, the Division of Health and Social Services, the FDA, or that violates any applicable federal or State statute.

A public hearing will be held on the proposed Rules and Regulations on Monday, September 24, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Melvin at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Melvin at the above address by calling (302) 744-4518.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**Board of Cosmetology and Barbering**

Statutory Authority: 24 Del.C. 5106

- 1.0 Demonstrations
- 2.0 Temporary Work Permits
- 3.0 Instructor Curriculum for Barbering and Cosmetology
- 4.0 Instructor Requirements
- 5.0 Reciprocity Requirements
- 6.0 Equipment for Cosmetology and Barbering Schools
- 7.0 Equipment for Nail Technology Schools
- 8.0 Equipment for Electrology Schools

- 9.0 Course outline for Aesthetician
- 10.0 Equipment for Aesthetics Schools
- 11.0 Registration of Salons and Schools
- 12.0 Apprenticeship and Supervision
- 13.0 Transfer of Nail Technician Hours to Cosmetology Programs
- 14.0 Licensure Requirements
- 15.0 Foreign Diplomas
- 16.0 Health and Sanitation: Electric Nail Files and Laser Technology
- 17.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Demonstrations**

Licensed professionals from other states may consult with an individual from this state on new techniques, new trends, new products and equipment knowledge provided they contact the Board of Cosmetology and Barbering and apply for a work permit. This would also apply to consulting in a trade show. The work permit will be good only for thirty (30) days within a calendar year. (24 Del.C. §5103 (1))

**2.0 Temporary Work Permits**

2.1 Temporary work permits will be issued to an applicant who is eligible for admission to the cosmetology, nail technician, barbering or electrology examination with the appropriate fees paid. The purpose of a temporary work permit is to allow an otherwise qualified applicant to practice pending the applicant’s scoring of a passing grade on the examination.

2.2 A temporary work permit is valid for thirty (30) days past the next available examination date.

2.3 The holder of a temporary work permit for cosmetology shall practice under the supervision of a licensed cosmetologist, barber, cosmetology or barber instructor.

2.4 The holder of a temporary work permit for nail technology shall practice under the supervision of a licensed nail technical, cosmetologist, or cosmetology instructor.

2.5 The holder of a temporary work permit for barbering shall practice under the supervision of a licensed barber, cosmetologist, cosmetology or barber instructor.

2.6 The holder of a temporary work permit for electrology shall practice under the supervision of a licensed electrologist or electrology instructor.

2.7 A temporary work permit for reciprocity will be issued to an applicant who meets or exceeds all the requirements for the State of Delaware. 24 Del.C. §5106(7)

**3.0 Instructor Curriculum for Barbering and Cosmetology**

- 3.1 Course Outline - Instructor 500 Hours
  - Subject Matter Minimum Clock Hours
  - Orientation 50

Practical Laboratory Management 200  
 Classroom Teaching and Management 200  
 Theory and Testing 50

- 3.2 Course Outline - Instructor 250 Hours  
 Subject Matter Minimum Clock Hours  
 Orientation 25  
 Practical Laboratory Management 100  
 Classroom Teaching and Management 100  
 Theory and Testing 25  
 (24 Del.C. §5106(13))

#### 4.0 Instructor Requirements

4.1 Any licensed cosmetologist or barber who has successfully completed a course of 500 hours in teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III); or has at least two (2) years experience as an active licensed, practicing cosmetologist or barber, supplemented by at least 250 hours of teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III).

4.2 Proof of educational documentation from registered school of cosmetology or barbering for specified hours of teacher training.

4.3 Experience shall be documented by a notarized statement from the current or previous employers for at least two (2) years experience as an active licensed practicing cosmetologist or barber. (24 Del.C. §5106 (13)).

#### 5.0 Reciprocity Requirements

5.1 Any applicant from a state with less stringent requirements than Delaware, is required to provide a notarized statement from a present or prior employer(s) testifying to work experience in the field for which the applicant is seeking a license in Delaware for a period of one year before making application. The work experience must have been obtained in a state or jurisdiction outside of Delaware. Unlicensed practice within the State of Delaware shall not qualify as valid work experience.

**See 4 DE Reg. 329 (8/1/00)**

Reference 2.0 for temporary work permit. (24 Del.C. §5109(a))

#### 6.0 Equipment for Cosmetology and Barbering Schools

6.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 6.1.1 (4) Shampoo basins.
- 6.1.2 (8) Hair dryers.
- 6.1.3 (4) Manicure tables and chairs.
- 6.1.4 (4) Dry sterilizers (sanitizers).
- 6.1.5 (4) Wet sterilizers (sanitizers).
- 6.1.6 (6) Dozen permanent wave rods.
- 6.1.7 (2) Reclining chair with headrest.
- 6.1.8 (1) Mannequin per student.
- 6.1.9 (12) Work Stations.

- 6.1.10 Mirrors and chairs.
- 6.1.11 (1) Locker for each student.
- 6.1.12 (4) Closed containers for soiled linen.
- 6.1.13 (3) Closed waste containers.
- 6.1.14 (1) Container for sterile solution for each manicure table.
- 6.1.15 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
- 6.1.16 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
- 6.1.17 (1) Cabinet for towels.
- 6.1.18 An arm chair or usable table and chair for each student in the theory room.
- 6.1.19 (3) Timer clocks.
- 6.1.20 Attendance records.
- 6.1.21 (1) Soap machine.
- 6.1.22 (1) Textbook for each student.  
 (24 Del.C. §5117 (a))

#### 7.0 Equipment for Nail Technology Schools

7.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 7.1.1 (4) Manicure tables and chairs.
- 7.1.2 (4) Manicure lights.
- 7.1.3 (1) First Aid Kit.
- 7.1.4 (1) Pedicure basin and stand.
- 7.1.5 (1) Covered Waste Container.
- 7.1.6 (1) Closed storage cabinet for soiled linen.
- 7.1.7 (1) Closed towel cabinet for clean linen.
- 7.1.8 Clean linen.
- 7.1.9 (1) Container for sterile solution for each manicure table.
- 7.1.10 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
- 7.1.11 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
- 7.1.12 Attendance Records.
- 7.1.13 Reception Desk.
- 7.1.14 Proper Ventilation.
- 7.1.15 (4) Dry Sterilizers.
- 7.1.16 (4) Wet Sterilizers.
- 7.1.17 Dispensary.

7.2 For each additional nail technician, equipment and supplies shall be increased so that each nail technician can render services safely and efficiently. (24 Del C. §5117 (a))

#### 8.0 Equipment for Electrology Schools

8.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

- 8.1.1 (1) Epilator (Short Wave or Blend) Needle type only.
- 8.1.2 (1) All purpose chair or lounge.
- 8.1.3 (1) Magnifying lamp (wall mounted or on a stand).

- 8.1.4 (1) Tweezers for each student.
- 8.1.5 (1) Movable table for the epilator.
- 8.1.6 (1) Adjustable stool on wheels.
- 8.1.7 All needles used for treatment must be disposable type only.
- 8.1.8 Sterilizing materials and rubber gloves.
- 8.1.9 (1) Textbook for each student.

## 9.0 Course Outline for Aesthetician

9.1 Subject Matter	Clock Hours
Personal Development	10
Health and Science	65
Hygienic Provisions	15
Consultation and Record Keeping	30
Machines, Apparatus, Including Procedures	25
Related Skin Care Procedures	15
Makeup and Color	30
Business Management and Sales Practice	10
Clinic and Practice	100
Total Minimum Hours	300

(24 Del.C. §5132(a))

## 10.0 Equipment for Aesthetics Schools

10.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

- 10.1.1 (1) Complete set of skin care equipment as follows: Steamer - Brush Unit - Vacuum Spray - Galvanic - High Frequency Unit.
  - 10.1.2 (1) All purpose chair or lounge.
  - 10.1.3 (1) Magnifying lamp (wall mounted or on a stand).
  - 10.1.4 (1) Adjustable stool on wheels.
  - 10.1.5 Sterilizing materials and rubber gloves.
  - 10.1.6 (1) Textbook for each student.
- (24 Del.C. §5130(a))

## 11.0 Registration of Salons and Schools

A person licensed by the Board as a cosmetologist, barber, electrologist, nail technician or instructor shall not work in a beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, barbering, nail technology, or electrology unless this establishment has the certificate of registration. (24 Del.C. §5117)

## 12.0 Apprenticeship and Supervision

12.1 Any person applying for licensure as a cosmetologist or barber through apprenticeship must complete the necessary apprentice hours in not less than eighteen (18) months and not more than 48 months.

12.2 Any person applying for licensure as a nail technician through apprenticeship must complete the necessary apprentice hours in not less than six (6) weeks and not more than 24 months.

12.3 Any person applying for licensure as an

electrologist through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.4 Any person applying for certification as an aesthetician through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.5 On written application to the Board prior to completion of the apprenticeship, the Board may grant extensions to these time frames for good cause shown.

12.6 Applicants for licensure as nail technician may apprentice under the supervision of either licensed nail technician or a licensed cosmetologist.

(24 Del.C. §5107)

**2 DE Reg. 1378 (2/1/99)**

## 13.0 Transfer of Nail Technician Hours to Cosmetology Programs

Apprentice nail technician hours earned totaling 250 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student nail technician hours earned totaling 125 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours. (24 Del.C. §5107)

## 14.0 Licensure Requirements

14.1 Each licensee licensed by the Board and each registered person, firm, corporation or association operating a beauty salon, barbershop, nail salon, or electrology establishment shall be responsible for ensuring that all of its employee requiring a license are licensed in Delaware prior to the commencement of employment. The licensee and/or registrant shall have available for inspection on premises at all time a copy of the Delaware license of its employees.

14.2 A Licensee and /or registrant who employs unlicensed individuals may be subject to discipline pursuant to 24 Del.C. § 5113(a)(b).

(24 Del.C. §5103)

**2 DE Reg. 1378 (2/1/99)**

## 15.0 Application for Licensure

15.1 All applications for licensure or certification must be submitted on forms approved by the Board and the Division of Professional Regulation and be accompanied by the appropriate fee.

15.2 Each applicant must provide proof of any required general or professional education in the form of : (1) a certified transcript or diploma; or (2) affidavits of the registrar or other appropriate official; or (3) any other document evidencing completion of the necessary education to the Board's satisfaction.

15.3 Any applicant submitting credentials, transcripts or other documents from a program or educational facility outside the United States or its territories must provide the

Board with a certificate of translation from a person or agency acceptable to the Board, if appropriate, and an educational credential evaluation from an agency approved by the Board demonstrating that his or her training and education are equivalent to domestic training and education.

**2 DE Reg. 1378 (2/1/99)**

### **16.0 Health and Sanitation; Electric Nail Files and Laser Technology**

16.1 Each licensee, instructor, certified aesthetician, and registered salon or school shall follow all regulations or standards issued by the Division of Public Health or its successor agency relating to health, safety or sanitation in the practice of cosmetology, barbering, electrology or nail technology.

16.2 In addition to any regulation or standard adopted by the Division of Public Health, each licensee, instructor, certified aesthetician, and registered salon school shall follow the standards for infection control and blood spill procedures promulgated by the National Interstate Council or its successor organization.

16.3 Electric nail files and electric drills shall not be used on natural nails. The use of methyl methacrylate (MMA) is prohibited. No licensee, instructor, certified aesthetician, school, beauty salon or shop shall use or permit the use of MMA.

**See 3 DE Reg. 1197 (3/1/00)**

16.4 The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.

16.5 Violation of any of the regulations, standards or prohibitions established under this Rule shall constitute a grounds for discipline under 24 Del.C. §5113 (24 Del.C. §§5100, 5101(4), 5112 and 5113)

**2 DE Reg. 1378 (2/1/99)**

16.6 The United States Food and Drug Administration ("the FDA") has not approved the use of any color additive for use in dyeing or tinting of the eyelash or eyebrow. No product shall be used in a manner that is disapproved by the Board, the Division of Health and Social Services, the FDA, or is in violation of any applicable federal or State statute or regulation.

### **17.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

17.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

17.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of

receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

17.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

17.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

17.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

17.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

17.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

17.6.2 Consent to the treating professional of the



approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

17.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program. 17.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

17.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

17.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

17.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

17.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or

safety.

17.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

17.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

17.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

17.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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## **DEPARTMENT OF AGRICULTURE**

### **HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10027 (3 **Del.C.** 10027)

The Delaware Harness Racing Commission proposes to amend several rules. The Commission proposes these amendments pursuant to 3 **Del.C.** §10029 and 29 **Del.C.** §10115.

The proposed amendment to Rule 1.0 would add a definition for the phrase "Required Days Off." The proposed amendment to Rule 3.2.4 would delete the requirement that the State Steward/judges investigate and keep a record of every objection and complaint, and would add a time limit for the filing of a protest. The proposed deletion of Rule 5.3.3 would delete the requirement that a trainer is responsible for all horses owned wholly or in part that are participating in a race meet. The proposed amendment to Rule 7.1.6.1.3 would clarify the procedure for determination of preference dates. The proposed amendment to Rule 8.3.3 would clarify the definition of a foreign substance that interferes with testing procedures. The proposed amendment to Rule 4.1.1 would provide that associations comply, with rather than enforce, Commission rules. The proposed amendment to Rule 4.4.5 would delete the requirement that an association notify the Commission of any exclusion. The proposed amendment to Rule 5.2.1.3 would permit the licensing of an owner younger than

fourteen years old provided that such an owner may not access to the paddock.

The Commission will accept written comments on the proposed rule amendment from August 1, 2001 until September 5, 2001. Written comments should be sent to the Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rule can be obtained by contacting the Commission office at 302-698-4600. The Commission will conduct a public hearing on these proposed rules on September 6, 2001 at Harrington Raceway at 1:30 p.m.

### **Proposed Changes:**

#### **1.0 Definitions**

"Act" is Chapter 100 of Title 3 of the Delaware Code.

"Added Money" is the amount exclusive of trophy added into a stakes by the association, or by sponsors, state-bred programs or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from the horsemen.

"Age" of a horse foaled in North America shall be reckoned from the first day of January of the year of foaling.

"Also Eligible" pertains to a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline.

"Appeal" is a request for the Commission or its designee to investigate, consider and review any decisions or rulings of steward/judges of a meeting.

"Association" is a person or business entity holding a license from the commission to conduct racing and/or pari-mutuel wagering.

"Association Grounds" is all real property utilized by the association in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities and parking lots and any other areas under the jurisdiction of the Commission.

"Authorized Agent" is a person licensed by the Commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

"Betting Interest" is one or more horses in a pari-mutuel contest which are identified by a single program number for wagering purposes.

"Bleeder" is a horse which has demonstrated external evidence of exercise induced pulmonary hemorrhage (epistaxis, or bleeding from one or both nostrils) and/or the existence of hemorrhage into the trachea post exercise as observed upon endoscopic examination.

"Bleeder List" is a tabulation of all bleeders to be maintained by the Commission.

"Claiming Race" is a race in which any horse starting

may be claimed (purchased for a designated amount) in conformance with the rules.

"Commission" is the Delaware Harness Racing Commission.

"Conditioned Race" is an overnight race to which eligibility is determined according to specified conditions which include age, sex, earnings, number of starts and position of finishes.

"Controlled Substance" is any substance included in the five classification schedules of the (U.S.) Controlled Substance Act of 1970.

"Coupled Entry" is two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes (also see "Entry").

"Course" is the track over which horses race.

"Dead Heat" is the finish of a race in which the noses of two or more horses reach the finish line at the same time.

"Declaration" is the naming of a particular horse as a starter in a particular race.

"Draw" is the process of assigning post positions and the process of selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

"Driver" is a person who is licensed to drive in races.

"Early Closing Race" is a race for a definite amount of money to which entries close at least six weeks prior to the race.

"Entry" (see "Coupled Entry").

"Exhibition Race" is a race on which no wagering is permitted.

"Financial Interest" is an interest that could result directly or indirectly in receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity; or as a result of salary, gratuity or other compensation or remuneration from any person. The lessee and lessor of a horse have a financial interest.

"Guest Association" is an association which offers licensed pari-mutuel wagering on contests conducted by another association (the host) in either the same jurisdiction or another jurisdiction.

"Handicap" is a race in which allowances are made according to a horse's age, sex, claiming price and performance.

"Handle" is the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Host Association" is the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

"In Harness" is when the horses are attached to a dual shaft sulky. All sulkies used in a race must be equipped with unicolored or colorless wheel discs of a type approved by the Commission and placed on the inside and outside of the wheel. Any change in the basic design of a sulky and/or major equipment shall require Commission approval. Rules,

regulations, standards and/or guidelines affecting the use of any new sulky and/or equipment must be approved by the Commission before their adoption.

"Inquiry" is when the judges suspect that a foul or any other misconduct occurred during a heat or dash.

"Late Closing Race" is a race for a fixed amount of money to which entries close less than six weeks but not more than three days before the race is to be contested.

"Licensee" is any person or entity holding a license from the Commission to engage in racing or a regulated activity.

"Maiden" is a stallion, mare or gelding that has never won a heat or race at the gait at which it is entered to start and for which a purse is offered; provided, however, that other provisions of these Rules notwithstanding, races and/or purse money awarded to a horse after the 'Official Sign' has been posted shall be considered winning performance and effect status as a maiden, and in such cases a horse placed first by virtue of disqualification shall acquire a win race record only if such horse's actual time can be determined by photo finish or electronic timing in accordance with the provisions of Rule 7.2.1.

**1 DE Reg. 501 (11/01/97)**

"Match Race" is a race between two or more horses under conditions agreed to by their owners.

"Matinee Race" is a race in which no entrance fee is charged and where the premiums, if any, are other than money.

"Meeting" is the specified period and dates each year during which an association is authorized to conduct racing and/or pari-mutuel wagering by approval of the Commission.

"Minus Pool" occurs when the amount of money to be distributed on winning wagers is in excess of the amount of money comprising the net pool.

"Mutuel Field" is two or more contestants treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

"Net Pool" is the amount of gross ticket sales less refundable wagers and statutory commissions.

"No Contest" is a race canceled for any reason by the stewards/judges.

"Nomination" is the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

"Objection" is a verbal claim of foul in a race lodged by the horse's driver.

"Off Time" is the moment at which, on the signal of the official starter, the starting gate is opened, officially dispatching the horses in each contest.

"Official Order of Finish" is the order of finish of the horses in a contest as declared official by the judges.

"Official Starter" is the official responsible for dispatching the horses for a race.

"Official Time" is the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

"Optional Claiming Race" is a conditioned race in which a horse may be entered for a stated claiming price. In the case of horses entered to be claimed in such a race, the race shall be considered, for the purpose of these rules, a claiming race. In the case of horses not entered to be claimed in such a race, the race shall be considered a conditioned race.

"Overnight Race" is a contest for which declarations close not more than seven days, omitting Sunday, before the date on which it will be contested. In the absence of conditions or notice to the contrary, declarations must close not later than 6:00 p.m. of the day preceding the race.

"Owner" is a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse.

"Paddock" is an enclosure in which horses scheduled to compete in a contest are confined prior to racing.

"Pari-Mutuel System" is the manual, electro-mechanical or computerized system and all software (including the totalisator, account betting system and off-site betting equipment) that is used to record bets and transmit wagering data.

"Pari-Mutuel Wagering" is a form of wagering on the outcome of an event in which all wagers are pooled and held by an association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning horses.

"Patron" is a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.

"Person" is any individual, partnership, corporation or other association or entity.

"Post Position" is the pre-assigned position from which a horse will leave the starting gate.

"Post Time" is the scheduled starting time for a contest.

"Primary Laboratory" is a facility designated by the Commission for the testing of samples.

"Programmed" means listed in the official program made available for sale or distribution to the public.

"Protest" is a written complaint alleging that a horse is ineligible to race.

"Purse" is the total cash amount for which a race is contested.

"Race" is a contest between horses at a licensed meeting.

"Required Days Off" horses restricted from racing for a specified number of days will start their days the day of the scheduled race.

"Restricted Area" is an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access.

"Result" is that part of the official order of finish used to determine the pari-mutuel payout of pools for each individual contest.

"Rules" are the Rules of the Delaware Harness Racing Commission.

"Satisfactory Charted Line" is one that meets the standards at the track at which a horse participates.

"Scoring" is the preliminary practice given to horses after the post parade and prior to being called to line up for the start of a race by the official starter.

"Scratch" is the act of withdrawing an entered horse from a contest after the closing of entries.

"Simulcast" is the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.

"Split Sample Laboratory" is a facility approved by the Commission to test split samples.

"Stakes Race" is a race which will be contested in a calendar year subsequent to the closing of nominations.

"Sulky" is a dual wheel racing vehicle with dual shafts not exceeding the height of the horse's withers. Shafts must be hooked separately on each side.

"Totalisator" is the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds and payoff prices to patrons at a pari-mutuel wagering facility.

"Tubing" is the administration of any substance via a naso-gastric tube.

## Rule 3.0

### 3.2 State Steward/Judges

#### 3.2.1. General Authority

3.2.2.1 The State Steward and judges for each meeting shall be responsible to the Commission for the conduct of the race meeting in accordance with the laws of this jurisdiction and these rules.

3.2.2.2 The State Steward and judges shall enforce these rules and the racing laws of the State of Delaware.

3.2.2.3 The State Steward's authority includes supervision of all racing officials, licensed personnel, other persons responsible for the conduct of racing and patrons, as necessary to ensure compliance with these rules.

3.2.2.4 The State Steward and Presiding Judge shall have authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of these rules.

3.2.2.5 The State Steward and judges have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules.

3.2.2.6 The State Steward shall be a representative of the Commission at all race meetings which the Commission may direct such State Steward to attend. The State Steward shall be the senior officer at such

meetings and, subject to the control and direction of the Commission, shall have general supervision over the racing officials, medication program and drug-testing officials, and all other employees and appointees of the Commission employed at such race meet or meetings. The State Steward shall, subject to the general control of the Commission, monitor the conduct of the racing and the pari-mutuel department, and supervise the testing of horses and drivers. The State Steward at all times shall have access to all parts of the association grounds, including the racecourse, physical plant and grounds. Upon instruction from the Commission, the State Steward shall conduct hearings and investigations, and report his findings to the Commission. The State Steward shall act for the Commission in all matters requiring its attention, to receive from all persons having knowledge thereof information required by the Commission and to perform all other duties for the compliance of the rules and regulations of the Commission and the laws of the State of Delaware.

#### 3.2.2 Period of Authority

The State Steward's and judges' period of authority shall commence five (5) business days prior to the beginning of each race meeting and shall terminate with completion of their official business pertaining to the meeting.

#### 3.2.3 Disciplinary Action

3.2.3.1 The State Steward and judges shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.

3.2.3.2 The State Steward and judges shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

3.2.3.3 The State Steward and judges may compel the attendance of witnesses and the submission of documents or potential evidence related to any investigation or hearing.

3.2.3.4 The State Steward and judges may at any time inspect license documents, registration papers and other documents related to racing.

3.2.3.5 The State Steward and judges have the power to administer oaths and examine witnesses.

3.2.3.6 The State Steward and judges may consult with the State Veterinarian to determine the nature and seriousness of a laboratory finding or an alleged medication violation.

3.2.3.7 The State Steward and judges may impose, but are not limited to, any of the following penalties on a licensee for a violation of these rules:

3.2.3.7.1 issue a reprimand;

3.2.3.7.2 assess a fine;

3.2.3.7.3 require forfeiture or redistribution of purse or award, when specified by applicable rules;

3.2.3.7.4 place a licensee on probation;  
3.2.3.7.5 suspend a license or racing privileges;

3.2.3.7.6 revoke a license;  
3.2.3.7.7 exclude from grounds under the jurisdiction of the Commission; or

3.2.3.7.8 any relief deemed appropriate.  
3.2.3.8 The State Steward and judges may take any appropriate actions against any horse for a violation or attempted violation of these rules.

3.2.3.9 The State Steward and judges may suspend a license; or they may impose a fine in accordance with these Rules for each violation; or they may suspend and fine; or they may order that a person be ineligible for licensing.

3.2.3.10 A State Steward's or judges' ruling shall not prevent the Commission from imposing a more or less severe penalty.

3.2.3.11 The State Steward or judges may refer any matter to the Commission and may include recommendations for disposition. The absence of a State Steward's or judges' referral shall not preclude Commission action in any matter.

3.2.3.12 Purses, prizes, awards, and trophies shall be redistributed if the State Steward or judges or Commission order a change in the official order of finish.

3.2.3.13 All fines imposed by the State Steward or judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.

#### 3.2.4 Protests, Objections and Complaints

The State Steward or judges shall investigate promptly and render a decision in every protest, ~~objection and complaint~~ made to them. They shall maintain a record of all protests, ~~objections and complaints~~. The State Steward or judges shall file daily with the Commission a copy of each protest, objection or complaint and any related ruling. All protests must be in writing and lodged with the State Steward or judges not later than forty-eight (48) hours after the race in question.

#### 3.2.5 Judges' Presence

A board of judges shall be present in the judges' stand during the contesting of each race.

#### 3.2.6 Order of Finish for Pari-Mutuel Wagering

3.2.6.1 The judges shall determine the official order of finish for each race in accordance with the rules of the race (see Rule 7.0).

3.2.6.2 The decision of the judges as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the contesting of the race, shall be final for purposes of distribution of the pari-mutuel wagering pool.

#### 3.2.7 Cancel Wagering

The State Steward or judges have the authority

to cancel wagering and order refunds where applicable on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.

#### 3.2.8 Steward's List

3.2.8.1 The judges shall maintain a Steward's List of the horses which are ineligible to be entered in a race.

3.2.8.2 A horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the meeting, scratched as a result of a high blood gas test, or otherwise unfit to race at the meeting may be placed on the Steward's List by the Presiding Judge and declarations and/or entries on the horse shall be refused. The owner or trainer shall be notified of such action and the reason shall be clearly stated. When any horse is placed on the Steward's List, the clerk of the course shall make a note on the eligibility certificate of such horse, showing the date the horse was put on the Steward's List the reason and the date of removal if the horse has been removed.

**1 DE Reg. 501 (11/01/97)**

**2 DE Reg. 1243 (01/01/99)**

3.2.8.3 All horses scratched by a veterinarian for either lameness or sickness will be put on the Steward's List and can not race for seven (7) days from the date of the scratched race. Entries will be accepted during this seven (7) day period for a race to be contested after the seventh day.

**4 DE Reg 336 (8/1/00)**

Veterinarians may put a horse on the Steward's List for sickness or lameness for more than seven (7) if necessary. In that instance, the horse may not race until proscribed number of days has expired. Entries will be accepted during this period for a race to be contested after the proscribed number of days has expired.

**2 DE Reg. 1244 (01/01/99)**

**4 DE Reg 336 (8/1/00)**

3.2.8.4 No Presiding Judge or other official at a fair meeting shall have the power to remove from the Steward's List and accept as an entry any horse which has been placed on a Steward's List and not subsequently removed therefrom for the reason that he/she is dangerous or an unmanageable horse. Such meetings may refuse declarations and/or entries on any horse that has been placed on the Steward's List and has not been removed therefrom.

3.2.8.5 No horse shall be admitted to any racetrack facilities in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months.

3.2.8.6 The judges may put any horse on the Steward's List for performance when such horse shows a reversal of form or does not race near its own capabilities. Such horse shall qualify in a time comparable to its known capabilities from one to three times, at the discretion of the

judges, before being allowed to start.

3.2.8.7 Any horse put on the Steward's List as unmanageable or dangerous must qualify in a satisfactory manner for the judges at least two times.

3.2.8.8 The judges may put any horse on the Steward's List for being noncompetitive or unfit to race at the meeting.

3.2.8.9 The judges may place a horse on the Steward's List when there exists a question as to the exact identification, ownership or management of said horse.

3.2.8.10 A horse which has been placed on the Steward's List because of questions as to the exact identification or ownership of said horse, may be removed from the Steward's List when, in the opinion of the judges, proof of exact identification and/or ownership has been established.

3.2.8.11 A horse may not be released from the Steward's List without the permission of the judges.

#### 3.2.9 List of Nerved Horses

The judges shall maintain a list of nerved horses which are on association grounds and shall make the list available for inspection by other licensees participating in the race meeting.

## Rule 4.0

### 4.0 Associations

#### 4.1 General Duty

4.1.1 An association, its officers, directors, officials and employees shall ~~abide by and enforce~~ comply with the Act and the rules and orders of the Commission, the State Steward and judges.

4.1.2 An association may request an exemption from a requirement in this chapter to utilize new technology or innovative construction or design of the racetrack facilities. The Commission may grant an exemption if the Commission determines that:

4.1.2.1 the association's proposal substantially satisfies the purpose of the requirement; and

4.1.2.2 the exemption is in the best interests of the race horses, the racing industry and the citizens of Delaware.

#### 4.4 Operations

##### 4.4.1 Security

4.4.1.1 An association conducting a race meeting shall maintain security controls over its premises. Security controls are subject to the approval of the Commission.

4.4.1.2 An association may establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its race meeting are licensed as required by these rules.

4.4.1.3 An association shall prevent access to and shall remove or cause to be removed from its restricted

areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

4.4.1.4 Unless otherwise authorized by the Commission, an association shall provide continuous security in the stable area during all times that horses are stabled on the grounds. An association shall require any person entering the stable area to display valid credentials issued by the Commission or a visitor's pass issued by the association. An association shall provide security fencing around the stable area in a manner that is approved by the Commission.

4.4.1.5 On request by the Commission, an association shall provide a list of the security personnel, including the name, qualifications, training, duties duty station and area supervised by each employee.

4.4.1.6 Each day, the chief of security for an association shall deliver a written report to the State Steward regarding occurrences on association grounds relating to harness horse racing on the previous day. Not later than 24 hours after an incident occurs requiring the attention of security personnel, the chief of security shall deliver to the State Steward a written report describing the incident. The report must include the name of each individual involved in the incident, the circumstances of the incident and any recommended charges against each individual involved.

#### 4.4.2 Fire Prevention

4.4.2.1 An association shall develop and implement a program for fire prevention on association grounds. An association shall instruct employees working on association grounds of the procedures for fire prevention.

##### 4.4.2.2 No person shall:

4.4.2.2.1 smoke in stalls, feed rooms or under shed rows;

4.4.2.2.2 burn open fires or oil and gas lamps in the stable area;

4.4.2.2.3 leave unattended any electrical appliance that is plugged-in to an electrical outlet.

4.4.2.2.4 permit horses to come within reach of electrical outlets or cords;

4.4.2.2.5 store flammable materials such as cleaning fluids or solvents in the stable area; or

4.4.2.2.6 lock a stall which is occupied by a horse.

4.4.2.3 An association shall post a notice in the stable area which lists the prohibitions outlined in 4.4.2.2.1 - 4.4.2.2.6 above.

#### 4.4.3 Insect and Rodent Control

An association and the licensees occupying the association's barn area shall cooperate in procedures to control insects, rodents or other hazards to horses or licensees.

#### 4.4.4 Complaints

4.4.4.1 An association shall designate a

location and provide personnel who shall be readily available to the public to provide or receive information.

4.4.4.2 An association shall promptly notify the Commission of a complaint regarding:

4.4.4.2.1 an alleged violation of the Act or a rule of the Commission;

4.4.4.2.2 an alleged violation of ordinances or statutes;

4.4.4.2.3 accidents or injuries; or

4.4.4.2.4 unsafe or unsanitary conditions for patrons, licensees or horses.

#### 4.4.5 Ejection and Exclusion

An association may eject or exclude a person for any lawful reason. ~~An association shall immediately notify the State Steward and the Commission in writing of any person ejected or excluded by the association.~~

### **Rule 5.0**

#### 5.2 Owners

##### 5.2.1 Licensing Requirements for Owners

5.2.1.1 Each person who has an ownership or beneficial interest in a horse is required to be licensed.

5.2.1.2 An applicant for an owner's license shall own or lease a horse which is eligible to race, registered with the racing secretary and under the care of a trainer licensed by the Commission. An owner shall notify the stewards/judges of a change in trainer of his/her horse. A horse shall not be transferred to a new trainer after entry.

5.2.1.3 ~~The provisions of 5.1.3~~ 5.1.4, notwithstanding, a horse owner of at least 14 years of age may apply for an owner's license a person younger than 14 years of age may apply for an owner's license, provided that no licensed owner younger than 14 years of age will be permitted paddock access at any licensed association. If younger than 18 years of age, an applicant for an owner's license shall submit a notarized affidavit from his/her parent or legal guardian stating that the parent or legal guardian expressly assumes responsibility for the applicant's financial, contractual and other obligations relating to the applicant's participation in racing.

5.2.1.4 If the Commission or its designee has reason to doubt the financial responsibility of an applicant for an owner's license, the applicant may be required to complete a verified financial statement.

5.2.1.5 Horses not under lease must race in the name of the bona fide owner. Each owner shall comply with all licensing requirements.

5.2.1.6 The Commission or its designee may refuse, deny, suspend or revoke an owner's license for the spouse or member of the immediate family or household of a person ineligible to be licensed as an owner, unless there is a showing on the part of the applicant or licensed owner, and the Commission determines that participation in racing will not permit a person to serve as a substitute for an ineligible

person. The transfer of a horse to circumvent the intent of a Commission rule or ruling is prohibited.

##### 5.2.2 Licensing Requirements for Multiple Owners

5.2.2.1 If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate or other association or entity, each shareholder, member or partner shall be licensed as required in 5.1.1 of this section.

5.2.2.2 Each partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the Commission all owners holding a five percent or greater beneficial interest, unless otherwise required by the Commission.

5.2.2.3 Each partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a five percent ownership or beneficial interest shall file with the Commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership or beneficial interest, is not presently ineligible for licensing or suspended in any racing jurisdiction.

5.2.2.4 To obtain an owner's license, an owner with less than a five percent ownership or beneficial interest in a horse shall establish a bona fide need for the license and the issuance of such license shall be approved by the Commission.

5.2.2.5 Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notice or order at such address shall constitute official notice to all persons involved in the ownership of such horse.

5.2.2.6 The written appointment of a managing owner or authorized agent shall be filed with the United State Trotting Association or Canadian Trotting Association and with the Commission.

##### 5.2.3 Lease Agreements

A horse may be raced under lease provided a completed breed registry or other lease form acceptable to the Commission is attached to the certificate of registration and on file with the Commission. The lessor and lessee shall be licensed as horse owners. For purposes of issuance of eligibility certificates and/or transfers of ownership, a lease for an indefinite term shall be considered terminable at the will of either party unless extended or reduced to a term certain by written documentation executed by both lessor and lessee.

#### **1 DE Reg. 502 (11/01/97)**

##### 5.2.4 Racing Colors

Drivers must wear distinguishing colors, and shall not be permitted to drive in a race or other public performance unless, in the opinion of the judges/stewards, they are properly dressed, their driving outfits are clean and they are well groomed. During inclement weather conditions, drivers must wear rain suits in either of their

colors or made of a transparent material through which their colors can be distinguished.

### 5.3 Trainers

#### 5.3.1 Eligibility

5.3.1.1 A person shall not train horses, or be programmed as trainer of record at extended meetings, without first having obtained a trainer license valid for the current year by meeting the standards for trainers, as laid down by the United State Trotting Association, and being licensed by the Commission. The "trainer of record" shall be any individual who receives compensation for training the horse. The holder of a driver's license issued by the United States Trotting Association is entitled to all privileges of a trainer and is subject to all rules respecting trainers.

5.3.1.2 Valid categories of licenses are:

5.3.1.2.1 "A," a full license valid for all meetings and permitting operation of a public stable.; and

5.3.1.2.2 "L," a license restricted to the training of horses while owned by the holder and/or his or her immediate family at all race meetings.

5.3.1.3 If more than one person receives any form of compensation, directly or indirectly, for training the horse, then the principal trainer or trainers must be listed as "trainer of record". It shall be a violation for the principal trainer or trainers of a horse not to be listed as "trainer of record", and, if such unlisted principal trainer or trainers are licensees of the Commission, then he, she or they shall be subject to a fine and/or suspension for such violation. In addition, it shall be a violation for a person who is not the principal trainer of the horse to be listed as "trainer of record", and such person shall be subject to a fine and/or suspension for such violation. Principal trainers and programmed trainers shall be equally liable for all rule violations. For purposes of this rule, the Steward and judges shall use the following criteria in determining the identity of the principal trainer or trainers of a horse:

5.3.1.3.1 The identity of the person who is responsible for the business decisions regarding the horse, including, but not limited to, business arrangements with and any payments to or from owners or other trainers, licensed or otherwise, veterinarians, feed companies, hiring and firing of employees, obtaining workers' compensation or proof of adequate insurance coverage, payroll, horsemen's bookkeeper, etc.;

5.3.1.3.2 The identity of the person responsible for communicating, or who in fact does communicate, with the racing secretary's office, stall manager, association and track management, owners, etc. regarding racing schedules and other matters pertaining to the entry, shipping and racing of the horse;

5.3.1.3.3 The identity of the person responsible for the principal conditioning of the horse;

5.3.1.3.4 The identity of the person responsible for race day preparation including, but not

limited to, accompanying the horse to the paddock or ship-in barn, selection of equipment, authority to warm up the horse before the public, discussion with the driver of race strategy, etc.; and

5.3.1.3.5 The identity of the person who communicates on behalf of the owner with the Steward, judges and other Commission personnel regarding the horse, including regarding any questions concerning the location or condition of the horse, racing or medication violations, etc.

### 1 DE Reg. 505 (11/01/97)

#### 5.3.2 Trainer Responsibility

5.3.2.1 A trainer is responsible for the condition of horses entered in an official race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive.

5.3.2.2 A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

5.3.2.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

#### 5.3.3 Other Responsibilities

A trainer is responsible for:

5.3.3.1 the condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;

5.3.3.2 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

5.3.3.3 ensuring that fire prevention rules are strictly observed in the assigned stable area;

5.3.3.4 providing a list to the Commission of the trainer's employees on association grounds and any other area under the jurisdiction of the Commission. The list shall include each employee's name, occupation, social security number and occupational license number. The Commission shall be notified by the trainer, in writing, within 24 hours of any change;

5.3.3.5 the proper identity, custody, care, health, condition and safety of horses in his/her charge;

5.3.3.6 disclosure of the true and entire ownership of each horse in his/her care, custody or control;



~~5.3.3.7 training all horses owned wholly or in part by him/her which are participating at the race meeting;~~

5.3.3.8 registering with the racing secretary each horse in his/her charge within 24 hours of the horse's arrival on association grounds;

5.3.3.9 ensuring that, at the time of arrival at a licensed racetrack, each horse in his/her care is accompanied by a valid health certificate which shall be filed with the racing secretary;

5.3.3.10 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state/provincial law and for filing evidence of such negative test results with the racing secretary;

5.3.3.11 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

5.3.3.12 immediately reporting the alteration of the sex of a horse in his/her care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;

5.3.3.13 promptly reporting to the Presiding Judge, racing secretary and the State veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

5.3.3.14 promptly notifying the State veterinarian of any reportable disease and any unusual incidence of a communicable illness of any horse in his/her charge;

5.3.3.15 promptly reporting the death of any horse in his/her care on association grounds to the State Steward or judges and the State veterinarian and compliance with the rules in Chapter 8 governing post-mortem examinations;

5.3.3.16 maintaining a knowledge of the medication record and status of all horses in his/her care;

5.3.3.17 immediately reporting to the State Steward and the State veterinarian if he/she knows, or has cause to believe, that a horse in his/her custody, care or control has received any prohibited drugs or medication;

5.3.3.18 representing an owner in making entries and scratches and in all other matters pertaining to racing;

5.3.3.19 horses entered as to eligibility and allowances claimed;

5.3.3.20 ensuring the fitness of a horse to perform creditably at the distance entered;

5.3.3.21 ensuring that his/her horses are properly prepared and equipped;

5.3.3.22 presenting his/her horse in the paddock at a time prescribed by the Presiding Judge before the race in which the horse is entered;

5.3.3.23 personally attending to his/her horses

in the paddock and supervising the preparation thereof, unless excused by the Paddock Judge;

5.3.3.24 attending the collection of a urine or blood sample from the horse in his/her charge or delegating a licensed employee or the owner of the horse to do so; and

5.3.3.25 notifying horse owners upon the revocation or suspension of his/her trainer's license. Upon application by the owner, the State Steward may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

#### 5.3.4 Restrictions on Wagering

A trainer shall only be allowed to wager on his/her horse or entries to win or finish first in combination with other horses.

#### 5.3.5 Substitute Trainers

If any licensed trainer is to be absent from the association grounds where his/her horse is programmed to race the Presiding Judge shall be immediately notified and at that time a licensed substitute trainer, acceptable to the Presiding Judge, shall be appointed to assume responsibility for the horse(s) racing during the absence of the regular trainer. The name of the substitute trainer shall appear on the program if possible.

## 7.0 Rules of the Race

### 7.1 Declarations and Drawing

#### 7.1.1 Declarations

7.1.1.1 Unless otherwise specified in the conditions, the declaration time shall be as follows:

7.1.1.1.1 Extended pari-mutuel meetings, 9:00 a.m.

7.1.1.1.2 All other meetings, 10:00 a.m.

7.1.1.2 The time when declarations close will be considered to be local time at the track where the race is being contested.

7.1.1.3 No horse shall be permitted to start in more than one race on any one racing day. Races decided by more than one heat are considered a single race.

7.1.1.4 The association shall provide a locked box with an aperture through which declarations shall be deposited.

7.1.1.5 The Presiding Judge shall be in charge of the declaration box.

7.1.1.6 Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the Presiding Judge shall check with the racing secretary to ascertain if any declarations by mail, telegraph, facsimile machine or otherwise, are in the office and not deposited in the entry box, and shall see that they are declared and drawn in the proper event. At other meetings, the Presiding Judge shall ascertain if any such declarations have been received by the speed superintendent or racing secretary of the fair,

and shall see that they are properly declared and drawn.

#### 7.1.2 Drawing

7.1.2.1 The entry box shall be opened at the advertised time by the Presiding Judge, who shall ensure that at least one horseman or an official representative of the horsemen is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the Presiding Judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

7.1.2.2 Subject to Commission approval, at non-extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges, or by a person designated by the Presiding Judge, for whose acts and conduct Presiding Judge shall be wholly responsible. If a substitution is made as herein provided, the name and address of the associate judge(s) or person so substituting shall be entered in the Judges' Book.

At extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges who shall have been designated by the Presiding Judge, prior to the start of the meeting, in the form of a written notice to the Commission and to the association conducting the meeting. A record shall be kept in the Judges' Book showing the name of the individual who performed such functions on each day of the meeting.

7.1.2.3 In races of a duration of more than one dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

7.1.2.4 Declarations by mail, telegraph, facsimile machine or telephone actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Such drawings shall be final. Mail, telegraph, facsimile machine and telephone declarations must state the name and address of the owner or lessee; the name, color, sex, sire and dam of the horse; the driver's name and racing colors; the date and place of last start; a current summary, including the number of starts, firsts, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.

7.1.2.5 Failure to declare as required shall be considered a withdrawal from the event.

7.1.2.6 After declaration to start has been made no horse shall be withdrawn except by permission of the judges. A fine, not to exceed \$500, or suspension may be imposed for withdrawing a horse without permission, the penalty to apply to both the horse and the party who violates

the regulation.

7.1.2.7 Where the person making the declaration fails to honor it and there is no opportunity for a hearing by the judges, this penalty may be imposed by the commission representative.

7.1.2.8 Where a horse properly declared is omitted from the race by error of the association, the race shall be redrawn; provided, however, that the error is discovered prior to the publication of the official program.

7.1.2.9 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier, except as provided for in handicap claiming races. Whenever a horse is drawn from any tier, horses on the outside move in to fill up the vacancy. When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

#### 7.1.3 Qualifying Races

7.1.3.1 Qualifying races and starting gate schooling shall be held according to the demand as determined by the Presiding Judge or State Steward.

7.1.3.2 Qualifying standards shall be set at each track by the racing secretary and the judges. These may vary at different times of the year to accommodate weather and the class of horse available. Standards for trotters will be two seconds slower than pacers.

7.1.3.3 At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

7.1.3.3.1 Before racing at a chosen gait, a horse must go a qualifying race at that gait under the supervision of a licensed judge and acquire at least one charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths, a standard photo finish shall be in use.

7.1.3.3.2 Any horse that fails to race within thirty (30) days of its last start must go a qualifying race as set forth in a) above. However, at any race meeting this period can be extended up to sixty (60) days upon receiving approval of the Commission. The time period allowed shall be calculated from the date of the last race to and including the date of declaration. Horses entered and in to go in a race or races which are canceled due to no fault of their own, shall be considered to have raced in that race, and no start shall be counted for date preference purposes.

7.1.3.3.3 When a horse has raced at a charted meeting and then gone to meetings where the races are not charted the information from the uncharted lines may be summarized including each start and consolidated in favor of charted lines to include a charted line within the last thirty (30) days before the horse is permitted to race. The consolidated line shall carry date, place, time, driver, finish,

track condition and distance.

7.1.3.3.4 The judges may permit a horse to qualify by means of a timed workout consistent with the time of the races in which he will compete in the event adequate competition is not available for a qualifying race.

7.1.3.3.5 When, for the purpose of qualifying the driver, a horse is declared in to race in a qualifying race, its performance shall be applicable to the horse's eligibility to race and the chart line shall be notated to indicate driver qualifying.

7.1.3.3.6 If a horse takes a win race record in either a qualifying race or a matinee race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been submitted to an approved urine, saliva or blood test. It will be the responsibility of the Presiding Judge to report the test on the Judges' Sheet.

7.1.3.4 Any horse regularly wearing hobbles shall not be permitted to be declared to race without them and any horse regularly racing without hobbles shall not be permitted to wear hobbles in a race without first having qualified with this equipment change. In addition to the foregoing, any horse regularly wearing hobbles and which is not on a qualifying list or Stewards' List, is allowed one start without hobbles in a qualifying race; and this single performance shall not affect its eligibility to race with hobbles in a subsequent event to which it is declared.

7.1.3.5 In their discretion the judges may require a horse to qualify for any reason; provided, however, that a horse making a break in each of two consecutive races may not be required to qualify if the breaks were solely equipment breaks and/or were caused solely by interference and/or track conditions.

7.1.3.6 A horse must qualify if:

7.1.3.6.1 it does not finish for reasons other than interference or broken equipment.

**3 DE Reg 1520 (5/1/00)**

7.1.3.7 A charted line containing only a break or breaks caused by interference or an equipment break shall be considered a satisfactory charted line.

7.1.3.8 The judges shall use the interference break mark only when they have reason to believe that the horse was interfered with by another horse or the equipment of another horse.

7.1.3.9 If qualifying races are postponed or canceled, an announcement shall be made to the participants as soon as the decision is made.

**7.1.4 Coupled Entries**

When the starters in a race include two or more horses owned by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry", and a wager on one horse in the entry shall be a wager on all horses in the "entry"; provided, however, that

when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownership, such horses may, at the request of the association, made through the State Steward, and with the approval of the Commission, be permitted to race as separate entries. If the race is split in two or more divisions, horses in an "entry" shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and their post positions shall be drawn by lots. The above provisions shall also apply to elimination heats. The person making the declaration of a horse that qualifies as a coupled entry with another horse entered in the same event shall be responsible to designate the word "entry" on the declaration blank. The Presiding Judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only; provided, however, that where this is done entries may not be rejected.

**7.1.5 Also Eligibles**

Not more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horses shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved in to race by Scratch Time on the day of the race shall be released.

**7.1.6 Preference Dates**

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

7.1.6.1 The date of the horse's last previous start in a purse race is its preference date with the following exceptions:

7.1.6.1.1 The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

7.1.6.1.2 When a horse is racing for the first time after February 1 in the current year, the date of the first declaration into a purse race shall be considered its

preference date.

7.1.6.1.3 Wherever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined by ~~lot~~ backdating, up to two starts, the horse having raced closest to the draw having the least preference. If no preference is determined, preference will be determined by lot.

7.1.6.1.4 When an overnight race has been re-opened because it did not fill, all eligible horses declared into the race prior to the re-opening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates, excluding horses already in to go.

7.1.6.2 This rule relative to preference is not applicable at any meeting at which an agricultural fair is in progress. All horses granted stalls and eligible must be given an opportunity to compete at these meetings.

### 3 DE Reg 433 (9/1/99)

## Rule 8.0

### 8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

### 3 DE Reg 1520 (5/1/00)

#### 8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the Commission Veterinarian and the racing secretary.

### 3 DE Reg 1520 (5/1/00)

#### 8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

#### 8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

#### 8.3.1.3 Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

#### 8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a

more limited ability to do so. Groups of drugs assigned to this category include the following:

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:

8.3.1.4.9.1 Cardiac glycosides;

8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and

8.3.1.4.9.3 Miscellaneous

cardiotonic drugs.

8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;

8.3.1.4.11 Antidiarrheal agents; and

8.3.1.4.12 Miscellaneous drugs including:

8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;

8.3.1.4.12.2 Stomachics; and

8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs.

The anticoagulant drugs are also included.

### 8.3.2 Penalty Recommendations

In the absence of aggravating or mitigating circumstances, the following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1--One to five years suspension and at least \$5,000 fine and loss of purse.

8.3.2.2 Class 2-- Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse.

8.3.2.3 Class 3--Sixty days to six months suspension and up to \$1,500 fine and loss of purse.

8.3.2.4 Class 4

8.3.2.4.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected, or if the substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with testing procedures: Fifteen to 50 days suspension and up to \$1,000 fine and loss of purse.

8.3.2.4.2 If the substance is detected in a urine sample but not in a blood sample:

8.3.2.4.2.1 And if such detection is the first violation of this chapter within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.2.4.2.2 And if such detection is the second violation of this chapter within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.2.4.2.3 And if such detection is the third violation of this chapter within a 12-month period: Up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

### 3 DE Reg. 1520 (5/1/00)

8.3.2.5 Class 5

8.3.2.5.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected, or if the substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with testing procedures: Zero to 15 days suspension and up to a \$150 fine and loss of purse.

8.3.2.5.2 If the substance is detected in a urine sample but not in a blood sample:

8.3.2.5.2.1 And if such detection is the first violation of this Chapter within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.2.5.2.2 And if such detection is the second violation of this chapter within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.2.5.2.3 And if such detection is the third violation of this chapter within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

### 3 DE Reg. 1520 (5/1/00)

8.3.2.6 In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the State Veterinarian, the Commission veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. Where aggravating or mitigating circumstances exist, greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the State Steward or other designee of the Commission determine that mitigating circumstances warrant imposition of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the State Steward or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only impose up to the maximum recommended penalty, and must refer the case to the Commission for its review, with a recommendation for specific action. Without limitation, the presence of the following aggravating circumstances may warrant imposition of greater penalties than those recommended, up to and including a lifetime suspension:

8.3.2.6.1 Repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse;

8.3.2.6.2 Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse; or

8.3.2.6.3 Violations which endanger the life or health of the horse.

8.3.2.7 With respect to Class 1, 2 and 3 drugs detect in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take in consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

8.3.2.8 Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The State Steward or judges may impose a shorter suspension on the horse than on the trainer.

8.3.2.9 At the discretion of the State Steward or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may,

with the consent of the State Steward or other designee of the Commission be released to the care of another trainer, and may race.

**3 DE Reg. 1520 (5/1/00)**

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in these Rules or otherwise approved and published by the Commission.

**3 DE Reg 1520 (5/1/00)**

8.3.3.2 Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

**3 DE Reg 1520 (5/1/00)**

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission.

**3 DE Reg 1520 (5/1/00)**

8.3.3.3.2 therapeutic medications in excess of acceptable limits established in these rules or otherwise approved and published by the Commission.

**3 DE Reg 1520 (5/1/00)**

8.3.3.3.3 substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to a Class 2 substance.

**1 DE Reg. 923 (1/1/98)****3 DE Reg 1520 (5/1/00)**

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

**8.3.4 Medical Labeling**

8.3.4.1 No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

**8.3.5 Furosemide (Lasix)****8.3.5.1 General**

Furosemide (Lasix) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Except under the instructions of the Commission Veterinarian for the purpose of removing a horse from the

Steward's List or to facilitate the collection of a post-race urine sample, furosemide (Lasix) shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List.

**3 DE Reg 1520 (5/1/00)****8.3.5.2 Method of Administration**

Lasix shall be administered intravenously by a licensed practicing veterinarian, unless the Commission Veterinarian determines that a horse cannot receive an intravenous administration of Lasix and gives permission for an intramuscular administration; provided, however, that once Lasix is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

**3 DE Reg 1520 (5/1/00)****8.3.5.3 Dosage**

Lasix shall be administered to horses on the Bleeder List only by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 If less than 500 milligrams is administered, and subsequent laboratory findings are inconsistent with such dosage or with the time of administration, then the trainer shall be subject to a fine or other disciplinary action;

8.3.5.3.2 Not more than 750 milligrams may be administered if (1) the State veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.3 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

**3 DE Reg 1520 (5/1/00)****8.3.5.4 Timing of Administration**

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

**4 DE Reg 336 (8/1/00)****8.3.5.5 Veterinary Charges**

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed practicing veterinarian at the rate approved by the Commission. No credit shall be given.

**8.3.5.6 Restrictions**

No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (Lasix) in oral form.

## 8.3.5.7 Post-Race Quantification

8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of Lasix per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Lasix:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or  
8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.3.2 or exceeded 500 milligrams as provided in 8.3.5.3.2, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

### 3 DE Reg 1520 (5/1/00)

## 8.3.5.8 Reports

8.3.5.8.1 The licensed practicing veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the State Steward at least one (1) hour before the horse is scheduled to race.

8.3.5.8.3 The State Steward or judges shall order a horse scratched if the written certification is not received in a timely manner.

## 8.3.5.9 Bleeder List

8.3.5.9.1 The Commission Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

### 3 DE Reg 1520 (5/1/00)

8.3.5.9.1.1 visual examination

wherein blood is noted in one or both nostrils either:

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately post-race or post-exercise on track; or

8.3.5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian or Lasix veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

### 3 DE Reg 1520 (5/1/00)

8.3.5.9.1.3 presentation to the Commission Veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the Commission Veterinarian.

### 3 DE Reg 1520 (5/1/00)

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by the Commission Veterinarian or the Lasix veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

### 3 DE Reg 1520 (5/1/00)

8.3.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and Lasix must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.5.9.4 A horse which bleeds based on the criteria set forth in 8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - 10 days;

8.3.5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the Commission Veterinarian following a satisfactory qualifying race after the mandatory 30-day rest



period; and

**3 DE Reg 1520 (5/1/00)**

8.3.5.9.4.4 4th time - barred for life.

8.3.5.9.5 An owner or trainer must notify the Commission Veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

**3 DE Reg 1520 (5/1/00)**

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Lasix symbol in the program shall appropriately reflect that the horse did not receive Lasix its last time out. Such an election by the owner or trainer shall not preclude the Commission Veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

**3 DE Reg 1520 (5/1/00)**

8.3.5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.6.4 above.

8.3.5.9.9 The State Steward or Presiding Judge, in consultation with the State veterinarian, will rule on any questions relating to the Bleeder List.

8.3.5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the Commission Veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

**3 DE Reg 1520 (5/1/00)**

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test

sample shall contain not more than 2.0 micrograms per milliliter of blood plasma.

8.3.6.1.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then warnings shall be issued to the trainer.

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

8.3.6.1.3.1 For an average between 2.6 and less than 5.0 micrograms per milliliter:

8.3.6.1.3.1.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.6.1.3.1.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.6.1.3.1.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.6.1.3.1.4 For an overage of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 5-day suspension and loss of purse.

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclufenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

**3 DE Reg 1520 (5/1/00)**

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**DEPARTMENT OF EDUCATION**

Title 14, DE Admin. Code

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

**Repeal of Certification Regulations 303, 315, 316, 317,  
318, 319, 359, 366, 367, 369**

The Professional Standards Board, with the consent of the State Board of Education acting in cooperation and

consultation with the Department of Education, seeks the repeal of those regulations from the *Regulations of the Department of Education*. All regulations listed concern the requirements for certification of educational personnel. The Professional Standards Board voted, on the recommendation of the Licensure and Certification Criteria Standing Committee, to eliminate certification requirements for non-instructional positions or for individuals who are duly certified or licensed by other Delaware agencies. Elimination of certification requirements for non-instructional positions will provide local boards of education more flexibility in hiring the individuals best suited for the positions and will alleviate the need for the Department of Education to review and process applications for certification for non-instructional positions, permitting the Department to focus its energies on the licensure and certification of instructional personnel in schools. Elimination of certification requirements for individuals who are duly certified or licensed by other Delaware agencies will eliminate redundancy and possible conflict between certification or licensure requirements among agencies.

- 303 – Certification Administrative – Assistant Superintendent for Business
- 315 – Manager of School Bus Transportation
- 316 – Certification – Supervisor of School Bus Transportation
- 317 – Certification – School Business Manager
- 318 – Certification – Manager of School Food Service Programs
- 319 – Certification – Supervisor of School Food Service Programs
- 359 – Certification – Audiology
- 366 – Certification – School Occupational Therapist
- 367 – Certification – School Physical Therapist
- 369 – Certification – (Speech) Language Pathologist

~~303 – Certification Administrative – Assistant Superintendent For Business  
Effective July 1, 1993~~

~~1.0 The following shall be required for the Standard License for a person employed to have a major responsibility in the area of finance/school business.~~

- ~~1.1 Degree required
 
  - ~~1.1.1 Master's degree from a regionally accredited college plus 30 graduate semester hours and,~~~~
- ~~1.2 Experience
 
  - ~~1.2.1 A minimum of three years successful full-time experience as a teacher or school administrator, or other full-time experience in a non-educational setting related to business/business management and,~~~~
- ~~1.3 Specialized Professional Preparation
 
  - ~~1.3.1 Master's degree in Education, Educational~~~~

~~Administration, Business, Business Administration, Accounting, Public Administration or other closely related business field and;~~

~~1.3.2 Meets the Specialized Professional Preparation for the Standard School Business Manager's License.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard certificate in 1.0.~~

~~2.1.1 Meets the requirements specified within 1.1, 1.2, 1.3.1 and;~~

~~2.1.2 Meets the requirements for a Limited Standard License as stated under the School Business Manager's License.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

### 315 Certification Manager Of School Bus Transportation Effective July 1, 1993

~~1.0 The following shall be required for the Standard License~~

~~1.1 Degree required~~

~~1.1.1 None. High School Diploma or its Equivalent and;~~

~~1.2 Experience~~

~~1.2.1 Training or experience deemed appropriate such as bus traffic management, safety management, business management and;~~

~~1.3 Specialized Professional Preparation, one course in each of the following areas:~~

~~1.3.1 State Budget Procedures/DFMS or School Business Management~~

~~1.3.2 Safety~~

~~1.3.3 Transportation~~

~~1.3.4 Supervision/Personnel Administration.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 This license may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a Manager of School Bus Transportation to allow for the completion of the requirements for the Standard License in 1.0.~~

~~2.1.1 May be issued to a public school district employee who has met the requirements of 1.1 and 1.2.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

**316 Certification Supervisor Of School Bus Transportation**  
Effective July 1, 1993

1.0 The following shall be required for the Standard License

## 1.1 Degree required

1.1.1 Bachelor's degree from a regionally accredited college and;

## 1.2 Experience

1.2.1 Three years experience as a teacher or school administrator or;

1.2.2 Five years of full time, successful experience in transportation management and;

1.3 Specialized Professional Preparation, one course in each of the following areas:

1.3.1 State Budget Procedures or School Business Management

1.3.2 Safety

1.3.3 Transportation

1.3.4 Supervision/Personnel Administration

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a Supervisor of School Bus Transportation to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 May be issued to a public school district employee who has met the requirements of 1.1 and 1.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard

**317 Certification School Business Manager**  
Effective July 1, 1993

1.0 The following shall be required for the Standard License for any individual employed as a School

Business Manager or occupying any other administrative position with major responsibility for school finance/business:

## 1.1 Degree required

1.1.1 Bachelor's degree from a regionally accredited college with a major in business administration, accounting, public administration or any other closely related curriculum such as finance or economics and;

## 1.2 Specialized Professional Preparation

1.2.1 A minimum of one course from each of the following areas:

1.2.1.1 School Business Management

1.2.1.2 School or Business Law

1.2.2 Delaware Financial Management System (DFMS) or State Accounting Procedures

1.2.3 A minimum of two courses chosen from any of the following areas:

1.2.3.1 Intermediate Accounting

1.2.3.2 Finance

1.2.3.3 Facilities Management (including the planning of construction and facilities maintenance)

1.2.3.4 Human Resource Management

1.2.4 Work experience or training outside of the field of education may be accepted in lieu of any of the courses listed in 1.2.3 if such experience is deemed equivalent. Verification of the experience shall be required and submitted to the Department of Education, Office of Certification, which shall then determine if the documented experience will serve in lieu of coursework.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a School Business Manager to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Meets the requirements specified in 1.1 and;

2.1.2 Meets the requirements in 1.1 with the exception of the DFMS State Accounting Procedure and one course from 1.2.3.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

**318 Certification Manager Of School Food Service Programs**

Effective July 1, 1993

1.0 The following shall be required for the Standard License

## 1.1 Degree required

1.1.1 None; High School Diploma or equivalent and;

## 1.2 Experience

1.2.1 A minimum of three years of successful, full-time (minimum of 15 hours per week) work experience in quantity food production and service or;

1.2.2 Experience validated by completing a Trade Competency Examination as approved by the Department of Education and;

## 1.3 Specialized Professional Preparation

1.3.1 Associate degree in Food Service Management Technology from a regionally accredited college or;

1.3.2 A high school graduate, and the completion of the six-unit Food Service Training Program under the approval of the Department of Education or;

1.3.3 A high school graduate and verification of training that is equivalent to 1.3.1 or 1.3.2 as evaluated by

the Department of Education, Education Associate of School Food Services.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a School Food Service Manager to allow for the completion of the requirements for the Standard License as listed in 1.0.

2.1.1 May be issued to a public school district employee who has met the requirements of 1.1 and 1.2. with the obligation to complete 1.3.1, 1.3.2 or 1.3.3 within the three year period of the License.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

### ~~319 Certification Supervisor Of School Food Service Programs~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for all full-time supervisors of a school food service program.

1.1 Degree required

1.1.1 Bachelor's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Two years of professional experience or teaching experience in the areas of food, nutrition, or institutional management or;

1.2.2 Successful completion of a Dietetic Internship as approved by the American Dietetic Association or;

1.2.3 Two years of experience in the supervision of quantity food production and service, or related business experience in the area of food, nutrition or institutional management or;

1.2.4 Two years of experience as a manager of a school food service unit or as the assistant manager, if the experience as the assistant occurs after the employee has been working in the school food service unit for at least two years prior to being assigned as Assistant Manager and;

1.3 Specialized Professional Preparation

1.3.1 Completion of the requirements for the Bachelor's degree as stated above to include a major that is at least 30 semester hours, and in one of the following area

1.3.1.1 Business

1.3.1.2 Nutrition

1.3.1.3 Education

1.3.1.4 Institutional Management

1.3.1.5 Child Development

1.3.1.6 Quantity Food Preparation or;

1.3.2 Completion of the requirements of any Bachelor's degree and 30 semester hours in one of the areas listed above, whether or not the coursework is part of the degree program.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a School Food Service Supervisor to allow for the completion of the requirements for the Standard License in 1.0.

2.2 May be issued to a public school district employee who has met the requirements of 1.1 and 1.2 and;

2.3 Meets the requirements for Limited Standard as stated in the General Regulations in regard to 1.3.1. or 1.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

### ~~359 Certification Audiology~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License.

1.1 Licensed Audiologist from the State of Delaware and;

1.2 Professional Education

1.2.1 Completion of a master's degree program in the area of Audiology.

2.0 Licenses that may be issued for this position include Standard and Limited Standard.

2.1 A Limited Standard License may be issued to an Audiologist holding a temporary license during completion of the Clinical Fellowship Year (CFY).

### ~~366 Certification School Occupational Therapist~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License.

1.1 Bachelor's degree from an accredited college and;

1.2 Completion of a program in occupational therapy approved by the Council of Medical Education of the American Medical Association and the American Occupational Therapy Association and;

1.3 Certification by the American Occupational Therapy Certification Board and;

1.4 A license to practice occupational therapy issued by the State of Delaware and;

1.5 One year experience in a school setting supervised by the district director/ supervisor of special education, or a Level II internship at the undergraduate/graduate level

working with children of the type to be served under this License and;

1.6 A minimum of nine semester hours covering the following areas: Introduction/Survey of Exceptional Children, Assessment/Prescription/IEP Development, Applied Behavior Analysis.

2.0 The following shall be required for the Limited Standard License:

2.1 The Limited Standard License is issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as a School Occupational Therapist to allow for the completion of the requirements for the Standard License in 1.0:

2.1.1 Requirements in 1.1, 1.2 and 1.3.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

### **367 Certification School Physical Therapist**

Effective July 1, 1993

1.0 The following shall be required for the Standard License:

1.1 Bachelor's degree from an accredited college and;

1.2 Completion of a program in physical therapy approved by the American Physical Therapy Association and;

1.3 Licensed as a Physical Therapist in the State of Delaware and;

1.4 One year experience in a school setting or a practicum at the undergraduate/graduate level working with children of the type to be served under this License and;

1.5 Minimum of nine semester hours covering the following areas: Introduction/Survey of Exceptional Children, Assessment/Prescription/IEP Development, Applied Behavior Analysis.

2.0 The following shall be the requirements for the Limited Standard License:

2.1 The limited Standard License may be issued for a period of three years at the request of a Delaware public school to a person who meets the requirements listed below and who is employed as a School Physical Therapist to allow for the completion of the requirements for the Standard License as in 1.0:

2.1.1 Requirements 1.1, 1.2, and 1.3.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

### **369 Certification Speech Language Pathologist**

Effective July 1, 2000

1.0 The following shall be required for the Standard License:

1.1 Licensed Speech/Hearing Pathologist in the State of Delaware and;

1.2 Completion of a Master's degree program in the area of speech and hearing pathology.

2.0 The License that may be issued for this position is the Standard License.

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### **Amendment To Certification Regulations 305, 306, 308, And 384**

The Professional Standards Board, with the consent of the State Board of Education acting in cooperation and consultation with the Department of Education, seeks to amend regulations 305, 306, 308, and 384 from the *Regulations of the Department of Education*. Amended regulations will be renumbered to reflect their movement to the Professional Standards Board section of the regulations. All regulations listed concern the requirements for certification of educational personnel. The elimination of certification requirements for non-instructional positions requires the amendment of the regulations to reflect those changes, as noted below:

#### **1535 ~~305~~ Certification Administrative – Administrative Assistant**

Delete from 1.2.1 ~~or three years of other related non-educational experience as appropriate to the position~~

Delete from 1.3.1 ~~If assigned to the area of business, the applicant shall meet the minimum requirements as specified for the School Business Manager License.~~

#### **1536 ~~306~~ Certification Administrative – Director**

Delete from 1.0 ~~either instructional or non-instructional. When any part of the employee's job assignment involves the supervision of instructional programs, the "Director of Instructional Areas" requirements shall be met.~~ and insert instructional in lieu thereof.

Delete 1.2.1 in its entirety

Renumber 1.2.1.1 as 1.2.1.

Renumber 1.2.1.2 as 1.2.2.

Delete 1.2.2 in its entirety, including 1.2.2.1 and 1.2.2.2  
Delete from 2.1.2 ~~1.2.1.1 and 1.2.1.2, or 1.2.2.1 or 1.2.2.2 as is appropriate to "Director of Instructional Areas" or Director of Non-Instructional Areas~~ and insert 1.2 in lieu thereof.

#### **1538 ~~308~~ Certification Administrative – Supervisor**

Delete from 1.0 ~~instructional or non-instructional.~~

~~When any part of the employee's job assignment involves the supervision of school instructional programs, the Instructional Supervisor's requirements shall be met.~~

Delete 1.2.1 in its entirety.

Renumber 1.2.1.1 as 1.2.1.

Delete 1.2.2 in its entirety, including 1.2.2.1 and 1.2.2.2.

~~Delete from 2.1.2 1.2.1 or 1.2.2 as appropriate to Supervisor of Instructional Areas or Supervisor of Non-Instructional areas and; and insert 1.2 in lieu thereof.~~

## 1584 ~~384~~ Permits – School, Classroom Aides And Autistic Residential Child Care Specialists

Delete 1.2.1 and 1.2.2

Renumber 1.2.3 as 1.2.1

Renumber 1.2.4 as 1.2.2

Persons wishing to present their views regarding this matter may do so in writing by the close of business on DATE to Patricia W. Carlson, Executive Director, Professional Standards Board, P.O. Box 1402, Dover, Delaware 19903. Copies of these regulations are available from the above address or may be viewed at the Professional Standards Board business office.

## 1535 ~~305~~ Certification Administrative - Administrative Assistant

Effective July 1, 1993

1.0 The following shall be required for the Standard License

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and,

1.2 Experience

1.2.1 A minimum of three years of successful, full-time classroom teaching experience, or three years of administrative experience, ~~or three years of other related non-educational experience as appropriate to the position~~ and,

1.3 Specialized Professional Preparation

1.3.1 Specific training or satisfactory experience including an internship and/or fieldwork in the area in which employed. ~~If assigned to the area of business, the applicant shall meet the minimum requirements as specified for the School Business Manager License.~~

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Master's degree from an accredited college and,

2.1.1.1 Meets the requirements of 1.2 and,

2.1.1.2 Within six semester hours of meeting the requirements as specified in 1.3.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

## 1536 ~~306~~ Certification Administrative - Director

Effective July 1, 1993

1.0 The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized instructional areas, ~~either instructional or non-instructional. When any part of the employee's job assignment involves the supervision of instructional programs, the "Director of Instructional Areas" requirements shall be met.~~

1.1 Degree required

1.1.1 aster's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) and,

1.2 Experience

~~1.2.1 Director of Instructional Areas (Schools, Programs, and Staff Development) such as Elementary Education, Secondary Education, Educational Leadership, Curriculum and Instruction, Human Resource Management and specific curricular areas.~~

~~1.2.1~~ ~~1.2.1.1~~ A minimum of three years of successful, full-time classroom teaching experience or,

~~1.2.2~~ ~~1.2.1.2~~ A minimum of three years of successful, full-time administrative experience in the specific area to be directed, within a school system or,

~~1.2.2 Director of Non-Instructional Areas (School Services) such as Personnel, Administrative Services, Finance and Public Relations, Pupil Services.~~

~~1.2.2.1 A minimum of three years of successful, full-time classroom teaching experience or,~~

~~1.2.2.2 A minimum of three years of successful, full-time experience in a field specifically related to the area to be directed and,~~

1.3 Specialized Professional Preparation

1.3.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) with a major in Educational Supervision and Curriculum or Educational Administration or Educational Leadership, or Human Resource Management; and Twenty-one semester hours of graduate level coursework specific to the area to be directed or,

1.3.2 Master's degree in any field plus thirty semester hours of graduate level coursework from a

regionally accredited college(s) to include the following graduate level coursework:

1.3.2.1 A minimum of twenty-one semester hours of graduate level coursework specific to the area to be directed and,

1.3.2.2 A minimum of twenty-one semester hours of graduate level coursework in the area of administration, to include at least one course in each of the following areas:

- 1.3.2.2.1 Curriculum Development and Instruction
- 1.3.2.2.2 Supervision/Evaluation of Staff
- 1.3.2.2.3 School Business Management
- 1.3.2.2.4 School Law/Legal Issues in Education
- 1.3.2.2.5 Human Resource Management
- 1.3.2.2.6 Human Development (to include child/adolescent development)
- 1.3.2.2.7 Organizational Management

(NOTE: Any of the requirements listed in 1.3.1. or 1.3.2 may be met by coursework taken either within or in addition to the Master's degree plus thirty semester hours.)

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college; and

2.1.2 Meets all experience requirements in 1.2 ~~1.2.1.1 and 1.2.1.2, or 1.2.2.1 or 1.2.2.2 as is appropriate to "Director of Instructional Areas" or "Director of Non-Instructional Areas";~~ and

2.1.3 Meets the Specialized Professional Preparation requirement in the specialized area 1.3.2.1 and is within six semester hours of meeting the administrative coursework in 1.3.2.1.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

### **1538 208 Certification Administrative - Supervisor**

Effective July 1, 1993

1.0 The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized areas, ~~instructional or non-instructional. When any part of the employee's job assignment involves the supervision of school instructional programs, the Instructional Supervisor's requirements shall~~

~~be met:~~

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and,

1.2 Experience

~~1.2.1 Supervisor of Instructional areas (Schools, Programs and Staff Development) such as Elementary Education, Secondary Education, Educational Leadership, Curriculum and Instruction, Human Resource Management, specific curricular areas.~~

1.2.1 ~~1.2.1.1~~ A minimum of three years of successful, full-time classroom teaching experience in the instructional area to be supervised ~~or~~ and,

~~1.2.2 Supervisor of Non-Instructional Areas (School Services) such as Personnel, Administrative Services, Finance, Public Relations, Pupil Services.~~

~~1.2.2.1 A minimum of three years of successful, full-time classroom teaching experience or;~~

~~1.2.2.2 A minimum of three years of successful, full-time experience in a field specifically related to the area to be supervised;~~

1.3 Specialized Professional Preparation

1.3.1 Master's degree from a regionally accredited college with a major in Educational Supervision and Curriculum and,

1.3.2 Fifteen semester hours of graduate level coursework, specific to the area to be supervised or,

1.3.3 A Master's degree in any field from a regionally accredited college with the following graduate level coursework included within, or in addition to, the degree:

1.3.3.1 A minimum of fifteen semester hours of graduate level coursework in the area to be supervised and,

1.3.3.2 A minimum of fifteen semester hours of graduate level coursework in administration to include one course in each of the following areas:

1.3.3.2.1 Curriculum Development

1.3.3.2.2 Supervision/Evaluation of Staff

1.3.3.2.3 Human Relations

1.3.3.2.4 School Law/Legal Issues

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.1.

2.1.1 Master's degree from a regionally accredited college; and

2.1.2 Meets all requirements in 1.2 ~~1.2.1 or 1.2.2 as appropriate to Supervisor of Instructional Areas or~~

Supervisor of Non-Instructional Areas and,

2.1.3 Within six semester hours of meeting the specific coursework requirements in 1.3.1 and 1.3.2, or within six semester hours of meeting the specific coursework requirements in 1.3.3.1 and 1.3.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

## 1584 384 Permits - School, Classroom Aides And Autistic Residential Child Care Specialists

Effective July 1, 1993

1.0 The following shall be required for a Permit.

1.1 A permit shall be required for all persons employed either full time or part time as a school aide, classroom aide, or autistic residential child care specialist, regardless of funding source (state, federal, local or other funding).

1.1.1 Qualifications include evaluated experience and training that shall emphasize skills relevant to the position as well as giving consideration to unique personal qualifications. Applicants shall be at least 18 years of age.

1.2 Categories of Functions shall include those persons participating in non-teaching activities such as:

~~1.2.1 School Aides assisting in supervision of playgrounds, bus loading, cafeteria, etc.~~

~~1.2.2 Clerical Aides maintaining records, materials, and equipment in school offices, instructional material centers and classrooms.~~

~~1.2.1~~ ~~1.2.3~~ Classroom Aides - assisting classroom teachers in activities that support the teaching process, but are under the supervision of the teacher (such as typing stories, putting on wraps, reading stories, locating reference materials, etc.).

~~1.2.2~~ ~~1.2.4~~ Autistic Residential Child Care Specialists - Assisting in training functions such as domestic, community, self-care, leisure and behavior management activities.

1.3 Credentials

1.3.1 All persons employed under the Permit Program shall be expected to submit to the district, the same credentials as required of other Licensed employees, including the Health License.

1.4 Job Definition

1.4.1 A school district shall be required to submit a job definition for any person employed as an aide or as an autistic residential child care specialist.

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

### 398 Degree Granting Institutions of Higher Education

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation 398 Degree Granting Institutions of Higher Education. The amendments are in response to concerns expressed by the Higher Education Commission at the time the regulations were reformatted and readopted. These amendments reflect suggestions made by the Commission. Changes for clarity and accuracy have been made in some sections. In 1.10, Library, Sections 1.10.1-1.10.5 were removed and replaced with a statement that higher education institutions must follow Middle States standards. Section 2.1.2.4 adds the requirement of an on-site visit to Delaware locations before final program approval. Section 2.2 requires that the institution seeking approval cover all expenses incurred by a visiting team. Section 4.11 increases the licensing fee to \$250 due to inflation. Sections 6.0-8.0 are new sections that further define the relationship between the Higher Education Commission and the Department of Education in the approval process.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses higher education approvals not K-12 student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses higher education approvals not equity issues.

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation addresses higher education approvals and does not have an impact on local school boards and schools.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation addresses higher education approvals and does not have an impact on local school boards and schools.

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



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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The Department of Education is required to make regulations in this area by the statute.

10. What is the cost to the state and to the local school boards of compliance with the regulation? The cost of the approval process is born by the institution seeking approval and the Department of Education provides staff services.

### **398 Degree Granting Institutions of Higher Education**

#### **1.0 Standards for Approval of Post Secondary Institutions**

##### **1.1 Purposes and Objectives**

1.1.1 An institution shall present a well-defined statement of the broad purposes or goals of the institution and the specific objectives for the students both generally and in each special program or area of study. This statement shall include the reasons for the existence of the institution in its particular community. In addition, the purposes shall be reflected in the types of students and sequence of the offerings of the college in general and in specific programs.

1.1.1.1 The specific objectives shall be presented in behavioral terms and shall be the basis for future student and program evaluation.

1.1.1.2 The Department's regulation 225 Prohibition of Discrimination that prohibits discrimination on the basis of race, color, creed, national origin, disability or gender in programs receiving approval from the Department applies to Degree Granting Institutions of Higher Education approved by the Department of Education.

##### **1.2 Administrative Organization**

1.2.1 The organizational pattern of the institution such as a two-year associate or a four-year baccalaureate or graduate or professional institution, or as a single or multi-purpose institution, shall be clearly defined and shall be related to the purposes of the institution.

1.2.2 The institution shall present a definite statement, including an organizational chart, or its administrative structure and a description of the functions and interrelationships of the governing board (board of

trustees), advisory board (if any), the president and the administrative staff, and the faculty.

1.2.3 The functions and responsibilities of the board shall be clearly defined in the Bylaws.

1.2.4 The board shall be moderate in size (between 9 and 25 members) and shall represent different points of view and interests, be selected from persons interested in the institution, willing to give the time necessary for board matters and be appointed or elected for regular or overlapping terms of office. The large majority of the members should be other than the salaried administrators of the institution.

1.2.5 There shall be evidence of established channels of communication between the governing board and the administration and faculty.

1.2.6 There shall be evidence that the administrative staff has the necessary time and assistance to enable members to discharge their duties efficiently.

1.2.7 There shall be evidence that the administrative staff is aware of its three major functions; selection, supervision and support of faculty; selection and supervision of the students and operation of the facilities for the benefit of faculty and students.

1.2.8 There shall be definite policies and procedures concerning academic freedom, tenure, retirement, pensions, leaves of absence, sick leave, the determination of rank and promotions, and the professional development of the faculty, administrative officers and professional staff.

##### **1.3 Financial Administration**

1.3.1 The institution shall demonstrate financial resources adequate for the effective accomplishment of its announced purposes. The income shall be so expended as to provide equitably for instruction, administration, maintenance, equipment and supplies, library, and student activities.

1.3.2 The business management shall be under the direction of a responsible bonded financial officer charged with the preparation and supervision of the budget in accordance with sound financial and educational practices.

1.3.3 A continuing institution shall present an operating statement and proposed balance sheet for the fiscal year and a budget summary for each present fiscal year, comparable in amount of detail to those customarily prepared for trustees.

1.3.4 Information shall be available on the annual surplus or deficit at the end of each of the past five fiscal years.

1.3.5 The general aspects of business administration and the principles of accounting and reporting shall adhere to the widely accepted standards published by the National Association of College and University Business Officers (NACUBO), ~~the American Council on Education in the current edition of *College and University Business*~~

## *Administration.*

### 1.4 Student Personnel Program

1.4.1 When appropriate, An institution shall provide evidence of an adequate student personnel program, including student activities and a counseling service and shall be directed by a professionally trained person whose responsibilities embrace the general welfare and discipline of the students.

1.4.2 Provision shall be made in the counseling service for testing of students' abilities and interests as aids to student self-understanding, educational planning and career decisions.

1.4.3 Depending on the scope of the institution and whether it is residential or nonresidential in character, the student personnel program shall be concerned with the living arrangements and health needs of students and with the development of a meaningful program of social, recreational and athletic, education and cultural out of class activities.

### 1.5 Admission Policies and Procedures

1.5.1 The instruction shall have a carefully stated selective admissions policy that is appropriate to the institution's purposes and organization. Admission criteria shall be established in consideration of the abilities needed by all students to achieve satisfactorily in the various programs of study offered. The institution shall operate in compliance with announced admission policies and procedures.

1.5.2 The admissions office shall be adequately staffed to carry out the admissions policies and procedures.

1.5.3 For admission, the institution shall require either graduation from an accredited secondary school or other recognized standards such as the General Education Development Test scores or the College Entrance Examination Board scores. The applicant's file should contain a complete transcript of the school record including courses, grades, and other appropriate information properly signed by the high school principal, guidance officer or other duly authorized school official.

1.5.4 The institution shall supply evidence such as correlation between admission credentials and freshman grades, academic attrition studies, objective test results and others, to demonstrate that it selects students qualified to pursue successfully the program of study for which admitted. The institution shall admit students in accordance with its published criteria.

1.5.4.1 The institution may, at its discretion employ more flexible and experimental admissions standards but should document with supporting information the criteria used to judge these students for admission and evaluate these criteria based on experience.

### 1.6 Faculty

1.6.1 The number of faculty shall be adequate to serve the projected number of students at an acceptable ratio. Documentation of faculty qualifications in the form of

resumes must be available upon request. The institution shall have clearly defined criteria for faculty appointments, incentives for retention, and provisions for in-service growth and development.

1.6.2 There shall be a well planned incentive program designed for retention of faculty. When applicable, ~~S~~such a program shall include policies on academic freedom, tenure, retirement, pensions, leaves of absence including sabbaticals, sick leave, insurance, and other faculty benefits. There shall be a clear statement of criteria for each rank and the requirements for promotion.

1.6.3 There shall be a thorough orientation for all new faculty, periodic evaluation and critique of instructional methods, and, where appropriate, evidence of research accomplishment.

1.6.4 If faculty members serve as advisors, they shall be fully informed about degree requirements, transfer regulations and any other specific requirements such as state teacher certification or professional licensing.

1.6.5 There shall be evidence that there is a faculty organization to carry out the respective educational responsibilities.

### 1.7 Program

1.7.1 The number and variety of curricula shall be determined by the purposes of the institution, the size of the student body, and the available personnel and resources of the institution.

1.7.2 Curricula in all fields shall evidence recognition of the relationships between broad education and the acquisition of techniques and skills. Degree requirements for each curriculum shall be clearly stated.

1.7.3 Transfer and career programs in a junior college shall include a block of courses in liberal education.

### 1.8 Graduation Requirements

1.8.1 For authorization to grant an associate degree, an institution shall require 60 semester hours of academic and pre-professional work or equivalent, give credit only for courses completed with a passing grade of the (D) or its Institutional equivalent and require an average of 2.0 or specify clearly what index is required for graduation.

1.8.2 For authorization to grant a baccalaureate degree, an institution shall require a minimum of 120 semester hours for graduation and no less than a 2.0 overall average (on a 4.0 scale).

1.8.3 All graduation requirements shall be clearly delineated for any institution.

### 1.9 Facilities

1.9.1 Administrative and faculty facilities, classrooms, library, laboratories, and student activity centers shall be suitable for their specific purposes, and convenience for advisement and scheduling, and shall promote the highest standards of learning, health and personal welfare. The institution shall comply with applicable state and federal standards, with respect to the accessibility of facilities by

persons with disabilities.

1.9.2 Beginning institutions and those planning expansion programs shall have well designed plans for appropriate building expansion.

#### 1.10 Library

~~1.10.1 The institution shall provide library facilities adequate to the effective realization of its stated educational objectives.~~

~~1.10.2 The physical facilities shall be conducive to frequent and effective use of the collections.~~

~~1.10.3 The accommodations shall allow for seating from one fourth to one third of the student body and there shall be space set aside for quiet study and leisure time reading.~~

~~1.10.4 The program shall be administered by a professionally trained library staff adequate in number for the size of the student body.~~

~~1.10.5 The collection of volumes shall meet the standards of the American Library Association.~~

1.10.1 The scope of resources shall follow the Middle States recommendation that the resources must be in reasonable proportion to the needs to be served, but numbers alone are no assurance of excellence. Most important are quality, accessibility, availability, and delivery of resources on site and elsewhere.

~~1.10.6 1.10.2~~ In the case of the non-Delaware institution offering courses, programs of courses, or degrees in Delaware, library facilities shall be imported on a temporary basis or provided through contractual arrangements ~~with other Delaware institutions~~ so that the material available will provide adequate support to the courses offered.

#### 1.11 Outcomes

1.11.1 The institution shall describe its means for assessing the extent to which it achieves its stated purposes and objectives insofar as this is measurable.

1.11.2 Plans for the measurement of outcomes shall include evaluation of undergraduate achievement based on standard tests; a study of the performance of graduates in graduate or professional schools (or of transfer students in the junior or senior years); and a long term study of the achievements based on data gathered periodically and systematically.

#### 1.12 Catalog and Announcements

1.12.1 The catalogs and all other announcements shall give an accurate description of the actual offerings of the institution and show evidence that the institution is managed by educationally competent and morally responsible persons and shall include specifically:

1.12.1.1 Identification data, such as volume number, and date of publication.

1.12.1.2 Names of the institution, the

governing board, and the administrative staff and faculty showing earned degrees and the institutions granting them.

1.12.1.3 A complete calendar for the academic year.

1.12.1.4 A statement of its accredited or approval status.

1.12.1.5 A statement of the origin and objectives of the institution.

1.12.1.6 Admission and graduation policies and requirements.

1.12.1.7 Detailed schedule of all fees and other charges as well as refund policies.

1.12.1.8 Information concerning scholarship funds.

1.12.1.9 Description of location of the institution; buildings, grounds and equipment.

1.12.1.10 List of degrees conferred and requirements for each degree.

1.12.1.11 Outline of each curriculum and a description of each course offered during period covered by the catalog and an indication of courses offered at other times. Descriptions shall indicate prerequisites, if any.

1.12.1.12 Number of weeks of instruction per semester and of class meetings per week.

#### 2.0 Procedures for Securing Approval

2.1 Institutions may be granted one of three levels of recognition: Recognized Applicant, Provisional Approval or Full Approval for five years.

2.1.1 Recognized Applicant: An institution shall complete the questionnaire, Application to Confer Academic and Honorary Degrees. This material, presented in duplicate, is reviewed by an evaluation team mutually acceptable to the institution and the Department of Education. After the review and a hearing with the Board of Trustees and the administrative staff of the institution, an on-site visitation may be required if the institution is actually in operation. If all the facts gained appear to meet, or show promise of meeting, a significant portion of the standards as stated in the Delaware Standards for Approving Institutions of Higher Education, the institution shall be notified of Recognized Applicant status valid for one or more years. Recognized Applicant status may be extended yearly or may be terminated. Recommendations shall be made for any changes in or additions to the information previously submitted which would be necessary for consideration for Provisional Approval. A two year institution shall request evaluation for Provisional Approval no later than the beginning of the 4th semester; four year institutions, no later than the 7th semester. Institutions offering programs of varying duration shall request evaluation for Provisional Approval in a timeframe appropriate to the length of the program.

2.1.2 Provisional Approval: Following the on-site

visit, required for this second level of approval, the team shall recommend to the Secretary of Education that either the institution continue to be recognized only as an Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Applicant Status will be informed of the changes and improvements necessary to be eligible for Provisional Status. There is no guarantee that a Recognized Applicant institution will be given either Provisional or Full Approval. A Recognized Applicant institution may incorporate but its charter shall not include the right to confer degrees.

2.1.2.1 An institution receiving Provisional Approval may incorporate under 8 Del. C. Section 125 with the right to confer a degree. If the institution has previously incorporated without the right to confer a degree, the charter shall be amended to include the degree-granting privilege. The institution shall retain this status until after the first class has been graduated.

2.1.2.2 An institution shall seek full approval within a minimum of two years following the first graduation but may petition for such approval within the first year. The conferring of final approval may require a second on-site visit.

2.1.2.3 If a Provisionally Approved institution does not receive full approval within four years after the first graduating class, the Department of Education may withdraw all approval and inform the Corporation Division of the State of Delaware that the section in the charter for the institution which refers to the right to confer degrees is no longer valid.

2.1.2.4 It shall be the responsibility of the Department of Education to keep Recognized Applicants and Provisionally Approved institutions apprised of the requirements they must meet in order to achieve the next level of recognition. The Department of Education shall require that an on-site visit to the Delaware location take place before moving to Final Approval.

2.1.2.5 For Final Approval an institution must meet the minimum standards ~~which that~~ are found in 1.0, the following sections of this document. However, for certain types of organizations such as a junior college of business, or a specialized area within a college such as the library, or a specialized college or school offering degrees, the Department of Education reserves the right to use as additional criteria the regulations of the appropriate accrediting or approving agency. For example, the criteria established by the Accrediting Commission for Business Schools might be used as supplementary requirements to be applied to two-year proprietary business colleges; the standards of the American Association of Collegiate Schools of Business might be applied to nonprofit two or four year institutions. The Guidelines of the American Bar Association might be the basis of approving a law school or

college. The standards established by the American Library Association will be applied to all college libraries except where more specific standards are available for professional libraries such as a law library.

2.1.3 Fully Approved institutions shall retain such status for a period of no longer than five years by which time a progress report must be filed with a follow-up visitation required if deemed desirable by the Department of Education. If such an institution is scheduled for a Regional Accreditation evaluation at the time of either the Final Approval or the five-year period review and the Department of Education has a representative on the evaluation team, the Department of Education may accept the Regional Approval in lieu of a separate evaluation.

2.1.3.1 Provisionally Approved and Fully Approved institutions shall keep the Department of Education informed of any changes in the facts as presented in their applications.

2.2 All expenses incurred by a visiting team, ~~with the exception of personnel from publicly supported educational institutions,~~ at any stage in the approval procedures shall be borne by the institution requesting approval. ~~If an institution is located outside of the State of Delaware and is incorporating in Delaware, it shall also pay the expenses of Delaware representative appointed by the State Department of Education if such a visit is deemed necessary.~~

2.3 Proposals or descriptions for graduate programs shall be very carefully detailed with emphasis on admission requirements, standards for maintaining graduate status, qualifications of staff, opportunities for research, adaptation of programs to individual needs, and any other facts pertinent to a good graduate program.

### 3.0 Institutions of Higher Education Application for Degree Granting Authority

3.1 The Applicant Institution shall complete detailed application questionnaires and submit data as requested.

3.2 The Secretary shall appoint an evaluation committee to advise the Secretary and the Applicant Institution from the time of application through the final approval.

3.2.1 The committee shall be composed of persons from the Department of Education, the University of Delaware and other persons with experience in the field of higher education and shall recommend to the Secretary of Education that the Institution receive status as a Recognized Applicant or deny recognition. The status of Recognized Applicant does not carry authorization to confer degrees.

3.3 Near the end of the first full school year of classes but prior to the close of classes, the institution shall file a progress report as described and requested by the committee. The evaluation committee will make an on-site visit to the institution in order to verify the contents of the report and evaluate progress to date.

3.3.1 A written report of the committee's action shall be sent to the Secretary of Education with a recommendation to withdraw approval, to continue the status of Recognized Applicant along with a listing of any specific recommendations to be met by the institution or to grant new status of Provisional Approval, with the right to confer a degree.

3.4 At a time one or two years following the graduation of the first class from the institution, on an occasion mutually agreed upon by the officials of the institution and the evaluation committee, the institution shall present a third progress report and the committee shall make an on-site visit. In the event that this planned visit is scheduled to occur at approximately the same time as that of a visit from the Commission on Higher Education of the Middle States Association of Colleges and Schools, or another appropriate specialized accrediting agency, it may be recommended to the Secretary of Education that a favorable report by this visiting agency be accepted in lieu of a separate report and on-site visit from the evaluating committee. The recommendation on this occasion may be for final approval of the degree-granting authority of the institution.

3.5 If approval of the institution is denied at any of the three major steps described in this procedure, the institution shall have the right of appeal to the Department of Education but in such appeal will be required to submit necessary evidence to show cause why approval should be granted or why temporary approval should be extended for a longer period of time.

3.6 Any costs incidental to the evaluation and approval of ~~a an college institution, except the salary of personnel from the publicly supported educational institutions in Delaware,~~ shall be the responsibility of the that Applicant institution.

4.0 Additional Procedures for Approval of Non-Delaware Institutions of Higher Education that Offer Courses, Programs of Courses or Degrees Within the State of Delaware

4.1 Out-of-state institutions wishing to offer credit-bearing courses, programs of courses, or degree programs in Delaware shall make application to the Secretary of Education at least one academic year before the requested date of implementation.

4.2 Final application forms with supporting documents shall be presented to the Secretary of Education at least six months prior to the requested date of implementation.

4.3 An accreditation agency designation of Recognized Applicant or any other less than full accreditation designation shall not be accepted.

4.4 Even though an institution is regionally accredited, the Department of Education may at any time require the institution to present a complete and documented application for license if complaints directed against the Delaware

operation of the institution by Delaware enrollees seem to warrant a more thorough review.

4.5 The Institution shall prove that the proposed site or facility is in compliance with applicable Federal, Delaware and local governmental laws and standards pertaining to zoning, occupancy, accessibility, fire, health and safety.

4.6 The Institution shall prove that the degree programs conform to the minimum standards established by the Department of Education for similar institutions operating within the State.

4.7 The Institution shall guarantee, by resolution of their Board of Trustees, that their operations in the state of Delaware will be financially solvent.

4.8 Programs shall be approved for periods of one to five years but initially programs shall be approved for up to three years. Credit-bearing courses, but not degree programs shall be approved for only one year.

4.9 After the initial approval, renewal approval will be contingent upon a favorable recommendation based upon periodic review by the staff of the Department of Education and usually with the assistance of a consultant(s) from an institution of higher education with expertise in the program or course offered.

4.10 The institution shall be obligated to keep the Secretary of Education informed of the names and addresses of those responsible for directing the programs from the parent campus, the names of instructors, the locations of all sites in Delaware where instruction is offered, and the names and addresses of students enrolled in the program and/or course.

4.11 A license fee of ~~\$100.00~~ \$250.00 per out-of-state institution shall be required for each school year of operation. Program duration of a shorter period, such as one semester or one quarter, shall pay a minimum fee of ~~\$50.00~~ \$150.00.

4.12 Any and all costs incidental to the evaluation and approval of a program or course, except the salary of personnel from publicly supported education institutions in Delaware, shall be the responsibility of the applicant institution.

4.13 Each year the Department of Education shall publish a list of all programs and courses approved to operate in the State.

4.14 Every agent representing an institution as herein defined, located outside the state of Delaware, shall make written application for an agent's permit to the Department on forms prepared and furnished by the Department. Each application shall state the name of the school which the applicant will represent, contain evidence of the honesty, truthfulness and integrity of the applicant, shall be verified under oath by him/her, and shall be accompanied by the recommendation of two reputable persons, certifying that the applicant is truthful, honest, and of good reputation, and recommending that a permit, as an agent, be granted to the

applicant. The fee for an original permit, as an agent, shall be determined by the Department and there shall be an annual renewal fee determined by the Department. A separate permit shall be obtained for each school represented by an agent.

4.14.1 Each applicant for a permit to serve as an agent shall submit with the application a fee in the amount of \$10.00 for the first application. This fee will be required for each institution represented by any one agent. The fee for renewal of the permit to serve as an agent shall be \$5.00 for each institution represented by the agent. The agent shall present a second application for a permit to serve as agent in conjunction with the application for certification by the second institution that he/she will represent.

4.14.2 Each agent shall apply for a permit each year at the same time that the institution he/she is to represent makes application for a Certificate of Approval. No permit shall be issued for a period of more than twelve calendar months. No agent shall perform the function of his/her assignment and solicit Delaware enrollees in the institution until he/she has been issued the appropriate identification permit.

4.14.3 The revocation of the certification of an institution for any cause shall make invalid all agent permits for that institution.

4.14.4 The discharge or resignation of any agent shall be reported immediately to the Department of Education.

4.14.5 To the extent that any situation warrants the Department of Education shall be responsible for publicizing the discontinuance of any certificate or permit.

4.14.6 In any instance where the owner of an institution indicates that he/she plans to serve as his own agent, separate fee for the agent permit will be waived, but the permit must be obtained. Any additional agents must obtain permits as otherwise described.

4.15 Violations of the law and regulations relating to Institutions of Higher Education as herein described shall be referred to the Attorney General of the State of Delaware who shall assume responsibility for enforcement of the law and the regulations.

## 5.0 Institutions of Higher Education, Located In Other States or Territories and Not Offering Programs In-State

5.1 Pursuant to 8 *Del. C.* Section 125, the Division of Corporations of the Delaware Department of State forwards requests for incorporation made by private colleges and universities, located outside of Delaware, and not offering programs in-state, to the Department of Education for approval prior to incorporation.

5.1.1 With respect to these requests for incorporation, the Department of Education recognizes the following: 1) the interest of each state and territory of the United States to grant the authority to award degrees to

institutions located within that state or territory; 2) the legitimate request of private colleges and universities located outside of Delaware to make a business decision to incorporate in the State; and 3) the Department of Education's own right, pursuant to Section 125, to set reasonable limitations to ensure the quality of education offered by such institutions of higher education incorporated in Delaware.

5.1.2 As a matter of comity, the Department of Education will not approve the incorporation of colleges, universities or other institutions offering credit-bearing courses, that have a primary site of operation in another state and do not operate in Delaware, unless the institution already is approved by the state degree granting authority of the state in which it is located, or, in states without a degree granting authority, is accredited by a nationally recognized accrediting agency or association approved by the United States Department of Education. A nationally recognized accrediting agency or association is one that appears on the list published as Nationally Recognized Accrediting Associations, by the Secretary of Education.

6.0 The Department of Education shall inform the Presidents of Delaware's public and private institutions of higher education of institutions that have applied to offer programs in the state. This notification shall take place after the applicant institution has completed the initial application and after the Department has reviewed the application, but before an on-site visit to the institution has been made.

7.0 Institutions shall request approval for programs to be added after the initial approval has been granted.

8.0 Institutions shall be required to file annual Integrated Postsecondary Education Data System (IPEDS) reports with the Higher Education Commission.

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### Educational Impact Analysis Pursuant to 14 *Del. C.* Section 122(d)

#### 501 State Content Standards

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation 501 State Content Standards from the *Regulations of the Department of Education* and the regulations on Visual and Performing Arts, Physical Education and Home Economics from the

*Handbook for K-12 Education*. (Visual and Performing Arts, II.D.2. Page B-4, III.B.2.b. Page C-3 and IV.3.b., Page D-3) (Physical Education, II.D.5., Page B-5, III.B.2.e., Page C-4, and IV.3.f., Pages D-3 – D-4) (Home Economics, III.B.2.f.).

The amendments are necessary to provide clarity on the requirements for the functional life skills curriculum, English language arts, mathematics, science, social studies, health, physical education, visual and performing arts and vocational technical education programs. The amendment creates two separate regulations, 501 State Content Standards and 503 Instructional Program Requirements.

In regulation 501 State Content Standards, all instructional programs must be in alignment with the state content standards. In addition, integration of the content standards within and across the curricula is required as well as keeping instructional materials and curricula content current and consistent with the *Guidelines for the Selection of Instructional Materials*.

In regulation 503 Instructional Program Requirements, the amendments require English language arts, mathematics, science and social studies programs for all public school students in each grade K-8, in addition to the existing high school graduation requirements. The amendments also require the functional life skills curriculum for students who need the program and for participation in other content areas as designated by the student's IEP.

The amendments require that all public school students in each grade 1-8 be enrolled in physical education programs in addition to the credit required for high school graduation.

The amendments require that all public school students in each grade 1-6 be enrolled in visual and performing arts programs and requires the presence of visual and performing arts programs in grades 7-12.

The amendments also require two or more vocational technical programs for grades 7 and 8.

These two revised regulations take the place of previously advertised amendments to the State Content Standards regulation and to previously advertised amended regulations for the visual and performing arts and physical education and a previously advertised amendment to the regulation 525 Requirements for Vocational Technical Education Programs. These regulations are also intended to include charter school students.

### **C. Impact Criteria**

1. Will the amended regulations help improve student achievement as measured against state achievement standards? The amended regulations clarify the relationship between the standards and the instructional programs and program requirements that eventually effects student achievement.

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

The amended regulations address standards and instructional programs, not equity issues.

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

The amended regulations address standards and instructional programs, not health and safety issues.

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

The amended regulations address standards and instructional programs, not students' legal rights.

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

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulations do add some additional requirements for some content areas.

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

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

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

The regulations are needed to clarify the role of the state content standards and to replace outdated regulations from the *Handbook for K-12 Education*.

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

There is no additional cost.

### **501 State Content Standards**

#### **1.0 State Content Standards**

~~1.1 Each local school district and each charter school shall provide instructional programs in mathematics, English language arts, science and social studies for all students in grades K-12, except for those students for whom a functional life skills curriculum is appropriate. The instructional programs shall be in alignment with the documents~~

*Mathematics Curriculum Framework, English Language Arts Curriculum Framework, Science Curriculum Framework and Social Studies Curriculum Framework* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

See 4 DE Reg. 853 (11/1/00)

1.2 Each local school district shall provide instructional programs in the visual and performing arts for all students in grades K-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Visual and Performing Arts Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.3 Each local school district shall provide instructional programs in technology education for all students in grades 5-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.4 Each local school district shall provide instructional programs in health and wellness education for all students in grades K-12. The instructional programs shall be in alignment with the document *Delaware Health Education Curriculum Framework and Assessment* as the same may from time to time be amended with the approval of the Secretary and the State Board of Education.

See 4 DE Reg. 850 (10/1/00)

1.5 Each local school district shall provide instructional programs for students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Standards for Functional Life Skills Curriculum* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.6 Each local school district that provides additional instructional programs for students in any area of agriscience, business finance and marketing education, foreign language, visual and performing arts and technology education shall align these areas with the applicable state content standards. These program areas shall be in alignment with the documents *Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, Foreign Language Curriculum Framework Content Standards, Visual and Performing Arts Content Standards, and the Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.7 Each local school district shall provide for the

integration of content areas within and across the curricula.

1.8 Each local school district shall keep instructional materials and curricula content current and consistent with the *Guidelines for the Selection of Instructional Materials*.

See 1 DE Reg. 153 (8/1/97)

See 1 DE Reg. 729 (12/1/97)

See 4 DE Reg. 343 (8/1/00)

As Appears in the Handbook for K-12 Education

## II. ELEMENTARY EDUCATION

### 5. PHYSICAL EDUCATION

a. The primary goal of the elementary physical education program is to have students acquire the fundamental skills necessary for their participation in team or group activities, free play, and health-related physical fitness.

b. Classes should be learning laboratories in which students are involved in the important task of learning about themselves and others through movement.

c. The program should be student centered, with a special focus on problem-solving and exploratory methods applied to a wide range of activities.

d. Students should have freedom of choice, but be guided by the teacher toward predetermined goals.

e. This suggested time allotment will serve as a basis in the formulation of the daily or weekly schedule depending on the school organization.

Vigorous Physical Activity--

1st and 2nd grade 30 minutes daily

3rd, 4th, 5th and 6th grade 30 minutes daily

f. A major part of physical education should be directed play involving team or group activities, while 30 minutes per week may be supervised free play. Directed play involves selected activities to teach desirable skills while free play is permitting the children a choice of activities under the supervision of the teacher.

## III. MIDDLE LEVEL EDUCATION

### e. Physical Education

Physical education must be offered at least two class periods per week for a year or five days a week for a semester in both grades 7 and 8. (State Board Approved February 1985)

## IV. HIGH SCHOOL

### f. Physical Education

(1) Physical education shall be a requirement for any two years during grades nine through twelve with a maximum of 1/2 unit of credit earned per year. Provision for makeup and accumulation of required credit should be provided at the ninth through twelfth grade levels.

(2) Physical education should be offered as an elective for ninth through twelfth grade students.

(3) The high schools may establish their physical



education program of instruction within these guidelines:

(a) providing instruction on a five-day week basis for a full semester;

(b) providing instruction for a minimum of three days per week for the entire school year;

(c) providing instruction on a flexible basis equivalent to three instructional periods per week or rotating two periods one semester and three the next semester; and

(d) providing instruction on a variable basis equivalent to 3 instructional classes per week during the school year.

(4) The physical education program should emphasize the concept of lifetime sports and be adapted to both individual and group physical education needs. All schools should conscientiously develop a meaningful elective program in physical education.

(5) In addition to the one unit of credit required for graduation, a student may receive only one unit of elective credit for a maximum total of two credits in physical education.

(a) Objectors must submit to the administrative head of the school an affidavit stating reasons for being excused from this activity.

(b) Pupils may be excused from physical education if they have a certified excuse from a qualified physician or they have objections based on religious beliefs to various rhythmical activity.

As Appears in the *Handbook for K-12 Education*

(From the Elementary Section II)

## ~~2. VISUAL AND PERFORMING ARTS (Music, Visual Arts, Theatre and Dance)~~

a. All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the elementary grades, kindergarten through four.

b. Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated they will be adopted in June, 1997.

(From the Middle Level Section III)

b. Visual and Performing Arts (music, visual arts, theatre, dance)

(1) All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the middle level grades, five through eight.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are approved by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

## ~~f. Home Economics~~

Program offerings in home economics and technology education must be available to all students in middle school to insure that they have the exploratory experience and elective studies to develop their special interest skills. It is essential that these programs be staffed by certified home economics and technology education teachers.

(From the Secondary Section IV)

b. Visual and Performing Arts (Music, Visual Arts, Theatre, and Dance)

(1) All high schools should provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of all students as well as those students wishing to pursue indepth study or a career in the visual and performing arts.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

## **501 State Content Standards**

### 1.0 Instructional Programs

1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: *English Language Arts Curriculum Framework, Mathematics Curriculum Framework, Science Curriculum Framework, Social Studies Curriculum Framework, Health Education Curriculum Framework and Assessment, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, Foreign Language Curriculum Framework Content Standards, Technology Education Curriculum Framework Content Standards, Family and Consumer Sciences Content Standards and the Standards for Functional Life Skills Curriculum.*

1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.1.2 Integration of the content standards shall be provided for within and across the curricula.

1.1.3 Instructional materials and curricula content shall be kept current and consistent with the *Guidelines for the Selection of Instructional Materials.*

## **503 Instructional Program Requirements**

### 1.0 English Language Arts

1.1 Local school districts and each charter school shall provide instructional programs in English Language Arts for

each grade K-12.

1.2 All public school students in each grade K-8 shall be enrolled in an English language arts program.

1.3 All public school students in grades 9-12 shall complete the credits in English language arts necessary to graduate from high school.

## 2.0 Mathematics

2.1 Local school districts and each charter school shall provide instructional programs in mathematics for each grade K-12.

2.2 All public school students in each grade K-8 shall be enrolled in a mathematics program.

2.3 All public school students in grades 9-12 shall complete the credits in mathematics necessary to graduate from high school.

## 3.0 Science

3.1 Local school districts and each charter school shall provide instructional programs in science for each grade K-12.

3.2 All public school students in each grade K-8 shall be enrolled in a science program.

3.3 All public school students in grades 9-12 shall complete the credits in science necessary to graduate from high school.

## 4.0 Social Studies

4.1 Local school districts and each charter school shall provide instructional programs in social studies for each grade K-12.

4.2 All public school students in each grade K-8 shall be enrolled in a social studies program.

4.3 All public school students in grades 9-12 shall complete the credits in social studies necessary to graduate from high school.

## 5.0 Functional Life Skills Curriculum

5.1 Local school districts and each charter school shall provide instructional programs for students for whom a functional life skills curriculum is appropriate.

5.2 Public school students in the Functional Life Skills Curriculum shall participate in health, physical education, visual and performing arts and vocational technical programs as directed by their Individual Education Program (IEP).

## 6.0 Physical Education

6.1 Local school districts and each charter school shall provide instructional programs in physical education for each grade K-12 with the exception of the James H. Groves High School program.

6.2 All public school students in each grade 1-8 shall be enrolled in a physical education program.

6.3 All public school students in grades 9-12 shall complete the credit in physical education necessary to graduate from high school.

6.4 In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.

6.5 The physical education requirements may be waived only for students who have an excuse from a qualified physician or objections based on religious beliefs. The local school district shall have the authority to grant such waivers.

## 7.0 Visual and Performing Arts

7.1 Local school districts and each charter school shall provide instructional programs in the visual and performing arts for each grade K-12 with the exception of the James H. Groves High School program.

7.2 All public school students in each grade 1-6 shall be enrolled in a visual and performing arts program.

## 8.0 Vocational Technical Education

8.1 Local school districts and charter schools, when consistent with the charter school's approved program, shall provide instructional programs in two or more vocational technical education areas in grades 7 and 8.

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

#### 745 Criminal Background Checks for Public Education Employees

##### A. Type of Regulatory Action Requested

Reauthorization of Existing Regulation

##### B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks to readopt the regulation 745 Criminal Background Checks for Public School Employees found in the appendix of the *Manual for Certification of Professional Public School Personnel*. The regulation remains the same except that it has been reformatted to fit the system used in the document, *Regulations of the Department of Education*. The regulation is required pursuant to 11 Del. C. Subchapter VI, Sections 8570 through 8572. The title of the regulation has been changed to Criminal Background Checks for Public School Related Employment in order to reflect the title in the statute.

##### C. Impact Criteria

1. Will the readopted regulation help improve student

achievement as measured against state achievement standards? The readopted regulation addresses criminal background checks not student achievement.

2. Will the readopted regulation help ensure that all students receive an equitable education? The readopted regulation addresses criminal background checks not equity issues.

3. Will the readopted regulation help to ensure that all students' health and safety are adequately protected? The readopted regulation addresses criminal background checks not health and safety issues.

4. Will the readopted regulation help to ensure that all students' legal rights are respected? The readopted regulation addresses criminal background checks not students' legal rights.

5. Will the readopted regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The readopted regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the readopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The readopted regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the readopted regulation? The statute requires the Department of Education to make regulations to implement this statute.

10. What is the cost to the state and to the local school boards of compliance with the readopted regulation? The individual applying for the position covered by the statute pays the costs.

## Regulations For School Districts For Background Checks

### 745 Criminal Background Check for Public School Related Employment

#### 1.0 Applicability of Regulations

1.1 Effective July 1, 1994, the following "covered Personnel" shall be required to initiate the criminal background check process:

1.1.1 All final candidates for public school related employment;

1.1.2 All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and

1.1.3 All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility ["EPER"] position) in public schools whether the person receives compensation or not.

1.2 Notwithstanding the definition of "covered Personnel" in 1.1, the following persons are not subject to these regulations:

1.2.1 Instructors in adult corrections institutions;

1.2.2 Instructors in adult education programs involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and/or GED programs who do not service students under age 18;

1.2.3 Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts, and/or the Delaware Institute for the Arts in Education; and

1.2.4 Substitute food service workers.

#### 2.0 Procedures for Candidates for Employment or for Persons Providing Services Under a Contract to Obtain a Criminal Background Check

2.1 A final candidate for a covered personnel position in a public school shall be subject to the following procedures:

2.1.1 After notification by a school district that he/she is a final candidate for a covered personnel position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops processing such criminal background checks or at an on-site appointment arranged by the school district. School districts at their option may require an applicant to submit a criminal background check prior to becoming a final

candidate.

2.1.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to prospective placing districts as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.

2.1.3 The candidate shall have the original of the completed criminal background check sent to one school district. A copy of all information sent to the school district shall be sent by the State Bureau of Identification to the candidate.

2.1.4 As a part of the application for public school related employment or as a part of the contract for services, the candidate shall sign a release form approved by the Department of Education. The release will allow the school district that was sent the original of the completed criminal background check to do the following:

2.1.4.1 Confirm the receipt of that original and disclose its contents to the superintendent or the chief personnel officer of other Delaware school districts considering the person as a candidate,

2.1.4.2 Send the original criminal background check to the placing school district if the candidate is hired or placed under contract in another Delaware school district,

2.1.4.3 Send any subsequent criminal history information to the person's employing or contracting school district(s).

2.1.5 Each final candidate shall have a determination of suitability made by the school district and forwarded to him/her. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal as in 5.0.

2.1.6 Final candidates for employment or entering into a contract for services may have criminal background checks from other states accepted, if all of the following conditions are met.

2.1.6.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;

2.1.6.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to a Delaware school district;

2.1.6.3 A verification from the candidate's most recent employer(s) covering the previous twelve (12) months, stating that the employer knows of no offenses committed by the candidate during that time, shall be sent

directly from the candidate's most recent employer(s) to the Delaware school district which was sent the original background check.

2.1.6.4 The out-of-state candidate shall sign a release to allow the school district receiving the out-of-state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.

2.1.7 Except as described herein, all costs associated with obtaining a criminal background check shall be paid for by the person seeking a covered personnel position. School districts may use funds other than state funds to pay for criminal background check costs and may enter into consortia to pay such costs for persons covered by the law who work in more than one school district during the course of the school year.

### 3.0 Procedures for School Districts for Criminal Background Checks on Candidates for Employment or for Persons Providing Services Under a Contract

3.1 School districts shall require all persons subject to the law and these regulations to complete a release as a part of the application or contract submissions process and, if they become a final candidate for a covered personnel position, to initiate the criminal background check process prior to entering into the covered personnel position.

3.2 The school district sent the original of a completed criminal background check shall keep the information received in a confidential manner and shall:

3.2.1 If requested by another Delaware school district's superintendent or chief personnel officer and assured that a signed release is on file in the requesting district, confirm the receipt of that original and disclose its contents to the superintendent or the chief personnel officer of the requesting Delaware school district considering the person for hire;

3.2.2 If requested by another Delaware school district's superintendent or chief personnel officer and sent a copy of the signed release on file in the requesting district, send the original criminal background check to the requesting Delaware school district if the candidate is placed in a covered personnel position; and

3.2.3 If sent any subsequent criminal history information on the person hired, placed under contract or assuming an extra duty position in another district or districts, forward such information to that/those school district(s).

3.2.4 School districts may also share and forward the above information with the Department of Education

under the same conditions applicable to school districts. The provision shall apply only when the Department of Education is acting in its capacity as an employer, a party to a contract for services or taking on a person in an extra duty position.

3.3 The school district, in accordance with 11 *Del. C.* § 8571(b), (d) and (e), shall make a determination of suitability for employment on each person it requested to initiate the criminal background check process. That determination shall be communicated to the person in writing. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal for reconsideration as in 5.0.

3.4 When a candidate is finally placed in a covered personnel position the district shall do the following: if the original of the completed criminal background check is not yet in its possession:

3.4.1 Make a written request to the school district that received the original of the completed criminal background check to forward the original copy to the placing district for placement in the employee's or contractor's file. As a part of the request, the placing district shall forward a copy of the release signed by the candidate.

3.4.2 Notify the State Bureau of Identification that the candidate has become covered personnel in the district and is no longer associated with the school district that received the original of the completed criminal background check.

3.5 A school district may place the candidate in a covered personnel position provisionally in accordance with 11 *Del. C.* § 8571(f); however, the school district shall require the candidate to comply with the provisions described in these regulations, including the requirement to initiate the criminal background check prior to being hired provisionally.

#### 4.0 Length of Validity of Criminal Background Check and Exemption for "Continuous Employment"

4.1 A criminal background check obtained under these regulations shall only be valid for twelve (12) months. If a person is not "continuously employed" by a Delaware school district within that period, the district receiving the original criminal background check need not retain it beyond that time. If the person becomes "continuously employed" by a Delaware school district, the original criminal background check shall be kept for five (5) years, or until sent to an employing school district or the Department of Education.

4.2 Each person who has been "continuously employed" in a public school district shall be exempt from the screening provisions of 11 *Del. C.* § 8571. For the

purpose of these regulations pertaining to Delaware school districts, the term "continuously employed," in 11 *Del. C.* § 8570 (3), shall apply to any person who has worked in a covered personnel position in the same public school district for at least fifteen (15) days in the prior school year. At district option, a full-time person may be exempt upon transfer between public school districts if the person has:

4.2.1 Submitted a criminal background check within the past five years,

4.2.2 No break in service since the date of the check, and

4.2.3 Requests that the records of that check are forwarded from the prior district to the new district prior to entering into a covered personnel position.

4.3 Substitute teachers may be considered to be "continuously employed" when they work fifteen (15) days in any combination of school districts, or ten (10) days in any one school district.

4.4 A person not exempted in 4.2 or 4.3 who is placed in a covered personnel position by another Delaware school district shall comply with 11 *Del. C.* § 8570, et seq., and these regulations before being hired or providing contracted services. A criminal background check performed within the previous twelve (12) months and held by another school district, and supplied under 2.0 and 3.0 of these regulations is one means of complying with 11 *Del. C.* § 8570, et seq., and these regulations.

#### 5.0 Determination of Suitability and Appeal Process

5.1 A person covered by 11 *Del. C.* § 8570, et seq., and/or these regulations, shall have the opportunity to respond to a school district regarding any criminal history information obtained prior to a determination of suitability for employment being made. See 11 *Del. C.* § 8571 (d). Such a response shall be made within ten (10) working days of the person's receipt of the criminal background check information from the State Bureau of Identification. The determination of suitability for employment shall be made by the school district pursuant to the factors listed in 11 *Del. C.* § 8571 (d).

5.2 The school district shall communicate the results of the determination of suitability to the person, in writing, within five (5) working days of the receipt of the person's response to the criminal history information. If a determination is made to deny a person placement in a covered personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as in 5.2.1 through 5.2.3.

5.2.1 Appeal shall be initiated by a person notified that he/she is being denied or being terminated from

placement in a covered personnel position, pursuant to 11 *Del. C.* § 8571, by submitting a letter of appeal to the district superintendent within ten (10) working days of the receipt of written notice.

5.2.2 The appeal shall be reviewed by the district superintendent and the person shall be given the right to be heard by the district superintendent within ten (10) working days of the receipt of the letter of appeal.

5.2.3 A written decision shall be rendered by the district superintendent within ten (10) working days of the hearing. A decision made by the district superintendent under this appeal procedure are final, unless the district has made specific provisions for appeal to another entity within the district. The decision may not be appealed to the State Board of Education or to the Department of Education.

## 6.0 Confidentiality

6.1 All records pertaining to criminal background checks, pursuant to 11 *Del. C.* § 8570, et seq., and/or these regulations, shall be maintained in a confidential manner including, but not limited to, the following:

6.1.1 Access to criminal background check records, and letter of reference accompanying out-of-state criminal background checks, and determination of suitability shall be limited to the district superintendent and the district chief personnel office and one person designated to assist in the processing of criminal background checks, who will receive training in confidentiality and be required to sign an agreement to keep such information confidential;

6.1.2 All such records shall be kept in locked, fireproof cabinets;

6.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a covered personnel position.

7.0 Penalties: The district superintendent or the district chief personnel officer shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of 11 *Del. C.* § 8571.

## 8.0 Subsequent Criminal History Information

8.1 Subsequent criminal history on a person in a covered personnel position shall be sent by the State Bureau of Identification to the district superintendent or district chief personnel office and shall be used by districts in making a determination about the person's continued suitability for placement in a public school environment.

8.2 If subsequent criminal history information is mistakenly directed to a district other than the current district of covered personnel, the information shall be forwarded immediately to the employing district by the receiving district's superintendent or chief personnel officer.

8.3 If a person is known to be in a covered personnel position in more than one district, the superintendent or chief personnel officer of the district receiving the subsequent criminal history information on that person shall share the information received immediately with the district superintendent or district chief personnel officer of the other school district.

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## Educational Impact Analysis Pursuant to 14 *Del. C.* Section 122(d)

### 828 Assistance with Medications on Field Trips

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks to amend regulation 828 Assistance With Medications on Field Trips. The amendment is necessary in order to reflect changes in 24 *Del. C.* 1921. The statute now requires "any person who assists students with medications that are self administered during school field trips have completed a Board of Nursing approved training course developed by the Department of Education". The amended regulation also requires that the parent or guardian sign a statement releasing the "assistant" from liability and eliminates the need to include the prescribing physician's telephone number when sending the medication to the school.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses medications that are self-administered on field trips. Field trips are designed to enhance classroom teaching.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses medications self-administered on field trips. This allows students with physical conditions requiring the use of certain medications to go on field trips. This is an equity issue.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation helps to protect the health and safety of

students on school sanctioned field trips.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation helps to protect the legal rights of students who need to take medications while on school sanctioned field trips.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does require that people who assist students with medications on field trips take a training course before being approved to assist with the medications.

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The amendment to the statute requires that the Department of Education amend its regulation as per the statute.

10. What is the cost to the state and to the local school boards of compliance with the regulation? The Department of Education will develop the course required by the statute and distribute it to the school district through the school nurse.

## **828 Assistance With Medications on Field Trips**

### 1.0 Definitions

“Assist a student with medication,” means assisting a student in the self-administration of a medication, provided that the medication is in a properly labeled container as hereinafter provided. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail

in lifesaving circumstances.

“Field trip” means any off-campus, school-sponsored activity.

“Medication” means a drug taken orally, by inhalation, or applied topically, and which is either prescribed for a student by a physician or is an over-the-counter drug which a parent or guardian has authorized a student to use.

“Paraprofessionals” mean teaching assistants or aides.

2.0 Teachers, administrators and paraprofessionals employed by a student's local school district are authorized to assist a student with medication on a field trip subject to the following provisions:

2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent or guardian. Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time of administration; ~~and~~ the method of administration; and a statement releasing the assistant from liability. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

2.2 The medication shall be in a container which is clearly labeled with the student's name, the name of the medication, the dose, the time of administration, and the method of administration. If the medication has been prescribed by a physician, it ~~must~~ shall be in a container which meets United States Pharmacopoeia/National Formulary standards and, in addition to the information otherwise required by this section, shall bear the name ~~and telephone number~~ of the prescribing physician, and the name and telephone number of the dispensing pharmacy.

2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraprofessionals are qualified to safely assist a student with medication. ~~and said nurse shall provide each such person with information designed to acquaint such person with safe practices and procedures in assisting with medication.~~ Each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del. C. 1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without ~~first acknowledging~~ written acknowledgement that he/she has ~~received and read the information to be provided pursuant to this section,~~ completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

2.4 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student's name, the name of the medication, the dose, the time of

administration, the method of administration, and the name of the person assisting.

2.5 Except for a school nurse, no employee of a school district shall be compelled to assist a student with medication. Nothing contained herein shall be interpreted to otherwise relieve a school district of its obligation to staff schools with certified school nurses.

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**Educational Impact Analysis Pursuant to 14 Del. C.  
Section 122(d)  
925 Children with Disabilities**

**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of Regulation**

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 925 Children With Disabilities. The amendment changes Section 23 by adding a more specific description of the appeal and hearing procedures applicable when the DOE proposes to deny all or part of an LEA's application for receipt of federal funds. The proposed change implements the comments received from the Federal Office of Special Education Programs regarding this regulation.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation clarifies the appeal process for LEAs, but does not directly help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation clarifies the appeal process for the LEAs but does not directly help ensure that all students receive an equitable education.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not directly address student's legal rights.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulation is being amended in response to federal comments and to more closely align with federal regulations.

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

**925 Children With Disabilities**

23.0 General Supervision of Education for Children with Disabilities: The Department of Education (DOE) shall ensure that each educational program for children with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and meets education standards of the State educational agency.

23.1 Documentation of DOE activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:

23.1.1 General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination; and Finance/Administration.

23.2 The DOE shall, through its Comprehensive Compliance Monitoring System, ensure that each public agency develops and implements an IEP for each of its children with disabilities.

23.3 The DOE shall distribute regulations, sample



documents and letters of notification to all agencies (public and non-public) providing services to children with disabilities.

23.4 Nothing in the Individuals with Disabilities Education Act, as amended, or in these regulations shall be construed by any party as permitting any agency of the State to reduce medical or other assistance under, or alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.

23.5 Compliance Monitoring: The DOE shall fulfill a minimum of six administrative responsibilities regarding monitoring of programs for children with disabilities. These responsibilities are:

23.5.1 Adoption and use of policies and procedures to exercise general supervision over all educational programs for children with disabilities within the State.

23.5.2 Adoption and use of a method to continuously collect and analyze information sufficient to determine compliance of sub-grantees and other agencies providing services to children with disabilities within the State, and agencies providing services to Delaware children with disabilities in other states, with applicable State and federal program operation requirements.

23.5.3 Adoption and use of a method by which the DOE formally directs that each deficiency identified in program operations be corrected by the appropriate agency.

23.5.4 Adoption and use of a method by which the DOE enforces State and federal legal obligations by requiring written assurances of compliance with such obligations as a condition of a grant or contract; and imposition of appropriate sanctions when a public agency fails or refuses to correct a deficiency. If, after giving reasonable notice and an opportunity for a hearing, the DOE determines that a local school district or other public agency has failed to comply with any requirement in the *Administrative Manual for Special Education Services*, the DOE shall:

23.5.4.1 Make no further payments to the district or agency until the DOE is satisfied that there is no longer any failure to comply with the requirement; or

23.5.4.2 Consider its decision in its review of any application made by the district or agency for IDEA-B payments;

23.5.4.3 Or both.

23.5.5 Any school district or other public agency receiving a notice from the Department of Education under 24.5.4 is subject to public notice provisions as required under 34 CFR 300.196.

23.5.6 If, through its regular monitoring procedures, complaints, hearing results or other sources of information, there is evidence that the district or agency is

making special education placements that are inconsistent with 34 CFR 300.550 (Least Restrictive Environment) or federal regulations, the Department of Education shall review the district or agency's justification for its action and shall assist the district or agency in planning and implementing any necessary corrective action.

23.6 Scope of Department of Education Compliant Monitoring Authority

23.6.1 The Department of Education, acting on behalf of the State Board of Education, shall have the authority to conduct monitoring, including collection and use of both off-site and on-site information.

23.6.2 The State Secretary of Education shall have the authority to compel the correction of deficiencies identified in program operations.

23.6.3 The State Secretary of Education shall have the authority to enforce legal obligations.

23.6.4 Department of Education standards relative to special education and related services shall be applicable to, and binding upon, all education programs for children with disabilities administered within the State.

23.7 The Department of Education Methods of Monitoring shall include:

23.7.1 Written monitoring procedures which cover all aspects of State and federal requirements and which are uniformly applied to all public agencies;

23.7.2 Identification of deficiencies in program operations by collecting, analyzing, and verifying information sufficient to make determinations of compliance/non-compliance with State and federal requirements;

23.7.3 Determination of whether or not each educational program for children with disabilities administered within the State, including private schools in which these children are placed by public agencies, meets educational standards of the Department of Education, the requirements of IDEA, Part B, and where applicable, of Educational General Administrative Requirements (EDGAR).

23.7.4 Use of other information provided to the Department of Education through complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted documents to determine if agencies and programs are in need of specific compliance interventions;

23.7.5 Monitoring the implementation of any compliance agreement and the investigation of the implementation of any orders resulting from the resolution of complaints filed with the Department of Education against the agency being monitored;

23.7.6 Use of off-site review, on-site review, letters of inquiry, and follow-up or verification of specific activities;

23.7.7 Written documentation of each monitoring

activity through correspondence and reports;

23.7.8 Specification of a reasonable period of time to complete the analysis of information collected for monitoring or evaluation purposes to identify deficiencies of a program or public agency in meeting State and federal requirements and report such deficiencies to the public agency; and, where applicable, of Educational General Administrative requirements (EDGAR);

23.7.9 Specification of a reasonable period of time for reaching a determination that a deficiency in program operations exists, and for notifying the agency in writing if required;

23.7.10 Requirement of a written notice (for example, monitoring report, letter of findings) that:

23.7.10.1 Describes each corrective action which must be taken, including a reasonable time frame for submission of a corrective action plan;

23.7.10.2 Requires that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency must take to remedy the identified areas of non-compliance.

23.7.11 Specification of a reasonable period of time after receiving a corrective action plan from an agency in which the Department of Education shall determine whether the corrective action plan meets each of the requirements or if additional information is required from the agency;

23.7.12 Specification of a reasonable period of time from the date of the original written notice, in which the Department of Education shall determine that:

23.7.12.1 The agency has submitted an acceptable corrective action plan which complies fully with all of the requirements; or

23.7.12.2 Reasonable efforts have not resulted in voluntary compliance.

23.7.13 That a school district or other public agency be given reasonable notice and an opportunity for a hearing with respect to an identified deficiency.

23.7.13.1 If the school district or other public agency declines a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within ten (10) days.

23.7.13.2 If the Department of Education conducts a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within thirty (30) days after the conclusion of the hearing; or

23.7.13.3 If the Department of Education reaches a final decision of non-compliance (i.e., the school district or other public agency has violated State or federal requirements); the Department of Education shall:

23.7.13.3.1 Make no further payments under Part B to the school district or other public agency until the school district or other public agency submits an acceptable corrective action plan;

23.7.13.3.2 Disapprove any pending school district or other public agency Part B local application, when appropriate;

23.7.13.3.3 Seek recovery of funds, and impose any other sanctions authorized by law.

23.8 Comprehensive System of Personnel Development: The Department of Education shall provide opportunities for all public and private institutions of higher education, and other agencies and organizations, including representatives of individuals with disabilities, parent, and other advocacy organizations in the State which have an interest in the education of children with disabilities, to participate fully in the development, review, and annual updating of the Comprehensive System of Personnel Development.

23.8.1 The Department of Education shall conduct an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State, and to determine the training needs of personnel relative to the implementation of federal and State requirements for programs for children with disabilities.

23.8.2 The results of the annual needs assessment shall be used in planning and providing personnel development programs.

23.8.3 The Department of Education shall implement a Comprehensive System of Personnel Development which includes:

23.8.3.1 The in-service and pre-service training of general and special education instruction, related services, and support personnel. Such training shall include training and technical assistance for ensuring that teachers and administrators in all public agencies are fully informed of their responsibilities in implementing the least restrictive environment requirements and other requirements for special education and related services;

23.8.3.2 Procedures to ensure that all personnel necessary to carry out the provision of special education and related services are qualified and that activities sufficient to carry out the personnel development plan are scheduled;

23.8.3.3 Procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials.

23.8.4 On-going in-service training programs shall be available to all personnel who are engaged in the education of children with disabilities.

23.8.4.1 These programs shall include: (1) use

of incentives which ensure participation by teachers, such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, new instructional materials, and/or updating professional skills; (2) involvement of local staff; and (3) use of innovative practices which have been found to be effective.

23.8.5 The Department of Education shall coordinate and facilitate efforts among the Department of Education, districts and agencies, including institutions of higher education and professional associations, to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

23.8.6 The Department of Education shall coordinate with each district, agency and/or institution of higher education all responsibilities relative to the gathering of data, training, recruitment and retention as delineated in 34 CFR 300.380.

23.8.7 The Department of Education shall disseminate copies of statutes, regulations, and standards applicable to programs for children with disabilities to each local education agency, institution, the GACEC and organization responsible for carrying out the programs.

23.8.7.1 Such dissemination includes each private school and facility to which a public agency has referred a child with a disability.

23.8.7.2 The Department of Education shall disseminate information on significant knowledge derived from educational research and other sources, promising practices, materials, and technology, proven effective through research and demonstration which may be of assistance to LEAs and other agencies in the improvement of education and related services for children with disabilities.

23.8.7.3 The Department of Education shall be responsible for the following dissemination activities:

23.8.7.3.1 Notice of any changes in statutes, regulations, or standards applicable to programs for children with disabilities shall be issued in writing, with copies to the head of each school district or other public agency, to each supervisor of programs for children with disabilities and to institutions of higher education;

23.8.7.3.2 Regular meetings, at least quarterly, of LEA and other agency supervisors of special education programs;

23.8.7.3.3 Learning Resource System publications relative to current issues and promising practices.

#### 23.9 Finance/Administration

23.9.1 Child Count Procedures: The Department of Education shall specify in writing the procedures and forms used to conduct the annual count of children served. Such procedures and forms shall conform to 34 CFR 300.750 through 300.755 and written instructions received from the Office of Special Education and Rehabilitative Services (OSERS).

23.9.2 Administration of Funds: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the *Delaware Code*.

23.9.3 Review of LEA Application: The Department of Education shall develop and use a review sheet to document that all required IDEA-B, EDGAR, and State statutes and regulations have been applied to the review and approval of each LEA Application.

23.9.3.1 Each LEA shall be notified in writing, using a standard format of the status of its Application, i.e., approved, not approved, and any conditions which must be met in order for the Application to be approved.

23.9.3.2 All amendments to an LEA Application shall be reviewed and approved using the same requirements and procedures used for an initial Application.

23.9.3.3 In the event that the Department of Education and the LEA cannot negotiate and effect an approved LEA Application, the Department of Education shall notify the LEA in writing ~~of its right to a hearing and the procedures for obtaining a hearing~~ of its intent to disapprove all or part of the Application. This notice shall also inform the LEA that it is entitled to a hearing before the Department's final decision to disapprove all or part of the Application, and shall advise the LEA of the procedure for requesting a hearing.

23.9.3.3.1 The LEA shall have thirty (30) days to request a hearing, beginning on the date of the Department's notice to the LEA of its right to a hearing. The request for a hearing must be filed in writing with the Delaware Secretary of Education and shall explain why the LEA believes its Application should be approved. 23.9.3.3.2 The LEA shall have access, at a reasonable time and location, to all of the Department's records pertaining to the Application and to the applications of other LEAs.

23.9.3.3.3 The Department shall schedule and conduct a hearing on the record within thirty (30) days of the Secretary's receipt of a hearing request from the LEA.

23.9.3.3.4 No later than ten (10) days after the hearing, the Department shall issue its written ruling, which shall include findings of fact and the reasons for its decision.

23.9.3.3.5 If the Department determines that its intention to disapprove all or part of the Application was contrary to applicable state or federal law, the Department shall rescind its intent to disapprove the Application and shall issue an approval consistent with the requirements of such law.

23.9.3.3.6 If the Department issues a final disapproval of all or part of the Application, the LEA may appeal that decision to the Secretary of the United States Department of Education. The LEA must file a notice of appeal with the Secretary of the United States Department of

Education within twenty (20) days of the final disapproval of the Delaware Department of Education. A copy of the LEA's federal notice of appeal must be filed with the Delaware Department of Education when it is filed with the United States Secretary of Education.

~~23.9.3.4 If, after a hearing, the district or agency application is found to be unapprovable, the district or agency may appeal this finding to the Secretary, U. S. Department of Education. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the Department of Education of the results of the hearing.~~

~~23.9.3.5 The State shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.~~

23.9.3.6 4 An applicant from a district or agency shall include the following information:

23.9.3.6 4.1 A description of how the applicant will meet the federal requirements for participation of children enrolled in private schools.

23.9.3.6 4.2 The numbers of children enrolled in private schools which have been identified as eligible for benefits under the program.

23.9.3.6 4.3 The basis the applicant used to select the children.

23.9.3.6 4.4 The manner and extent to which the applicant complied with Education Department General Administrative Regulations (EDGAR, January 1, 1996, USDE)

23.9.3.6 4.5 The places and times the children will receive benefits under the program.

23.9.3.6 4.6 The difference, if any, between the program benefits the applicant will provide to public and private school children, and the reasons for the differences.

23.9.4 Recovery of Funds for Misclassified Children: A State audit shall be conducted during the month of October to ascertain that units awarded on September 30 are in full operation on or prior to that date with evidence of services being provided. If, during the audit of State units for the education of children with disabilities, it is discovered that a child has been erroneously classified, this discrepancy will be made known to the local education agency and will also be reported to the proper persons at the Department of Education.

23.9.4.1 The specific procedures used in order to authenticate the count of children will be found in the *Monitor's Handbook for the September Audit and Site Monitoring*.

23.9.4.2 The local education agency will be notified that its Part B grant award has been reduced by an

amount equal to that fiscal year's per child allocation for each child determined to have been misclassified.

23.9.4.3 Should discovery of misclassification occur at a time other than during the audit of State units, such as in the fourth quarter of the Grant, the following year's Grant Award shall be reduced accordingly. The task of identifying children who have been misclassified shall not only during the September 30 audit of State units, but during all other IDEA monitoring and evaluation on-site visits as well.

## 23.10 Other SEA Responsibilities

23.10.1 Ensure Adequate Evaluation: As a means of ensuring adequate evaluation of the effectiveness of the policies and procedures relative to child identification shall:

23.10.1.1 Incorporate within its Comprehensive Compliance Monitoring System process a series of questions about the Childfind activities which will be asked of special and regular education teachers, administrators, related services personnel, Part H personnel and other public agencies;

23.10.1.2 Systematically review each LEA's application for federal funds to ensure that it contains a complete description of the LEA's child identification process;

23.10.1.3 Annually review the child count data to determine trends and anomalies in the types and numbers of children identified.

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

### 1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 (Terminology and School Bus Types Are Those Described in the National School Transportation Specifications and Procedures (NSTSP), May 2000)

#### A. Type of Regulatory Action Requested

New Regulation

#### B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks the approval of the State Board of Education of a new regulation on school bus standards, 1102 Standards for School Bus Chassis and Bodies Placed in Production On or After March 1, 2002 (terminology and school bus type are those described in the National School Transportation Specifications and Procedures (NSTSP), May 2000). This regulation is in addition to regulation 1101 Standards for School Buses and provides a second set of standards that apply to buses manufactured after March 2002. The existing regulation

will remain in effect until the buses that this regulation addresses are out of service.

The existing regulation will have a new name to clarify the differences between the two regulations. The name of regulation 1101 will be changed from Standards for School Buses to Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (terminology and school bus types are described in the National Standards for School Transportation 1995), but all of the content will remain the same.

It is anticipated that additional regulations will be needed at least every five years as new bus chassis and bodies are put into production and then regulations for out-of-use bus chassis and bodies will be repealed.

### **C. Impact Criteria**

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses school bus standards not student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses school bus standards not equity issues.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses school bus standards that include safety issues for school bus construction.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses school bus standards not students' legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the new regulation? The *Del. C.* requires the Department of Education to make regulations concerning standards for school buses.

10. What is the cost to the state and to the local school boards of compliance with the new regulation? The state budget provides for the cost of school buses.

**1101 Standards for School Bus Chassis and Bodies  
Placed in Production on or after March 1, 2002  
(terminology and school bus types are those described in  
the National School Transportation Specifications and  
Procedures (NSTSP), May 2000**

#### 1.0 Bus Chassis Standards

##### 1.1 Air Cleaner

1.1.1 A dry element type air cleaner shall be provided.

1.1.2 All diesel engine air filters shall include a latch-type restriction indicator that retains the maximum restriction developed during operation of the engine. The indicator should include a reset control so the indicator can be returned to zero when desired.

1.2 Axles: The front and rear axle and suspension systems shall have a Gross Axle Weight Rating (GVWR) at ground commensurate with the respective front and rear weight loads that will be imposed by the bus.

##### 1.3 Brakes, General

1.3.1 The chassis brake system shall conform to the provisions of Federal Motor Vehicle Safety Standards (FMVSS) 105, 106 and 121 as applicable.

1.3.2 The anti-lock brake system (ABS), provided in accordance with FMVSS 105 and 121, shall provide wheel speed sensors for each front wheel and for each wheel on at least one rear axle. The system shall provide anti-lock braking performance for each wheel equipped with sensors. (Four Channel System).

1.3.3 All brake systems shall be designed to permit visual inspection of brake lining wear without removal of any chassis component(s).

1.3.4 The brake lines, booster-assist lines, and control cables shall be protected from excessive heat, vibration, and corrosion and installed in a manner which prevents chafing.

1.3.5 The parking brake system for either air or hydraulic service brake systems may be of a power assisted design. The power parking brake actuator should be a push-pull device located on the instrument panel within a seated reach of a 5<sup>th</sup> percentile female driver. As an option, the parking brake may be set by placing the automatic transmission shift control mechanism in the "park" position.

1.3.6 The power operated parking brake system may be interlocked to the engine key switch. Once the parking brake has been set and the ignition switch turned to the "off" position, the parking brake cannot be released until the key switch is turned back to the "on" position.

1.4 Brakes, Hydraulic: Buses using a hydraulic-assist brake shall be equipped with audible and visible warning signals that provide a continuous warning to the driver of a loss of fluid flow from the primary source and of a failure of the back-up pump system.

#### 1.5 Brakes, Air

1.5.1 The air pressure supply system shall include a desiccant-type air dryer installed according to the manufacturers' recommendations. The air pressure storage tank system may incorporate an automatic drain valve.

1.5.2 The chassis manufacturer shall provide an accessory outlet for air operated systems installed by the body manufacturer. This outlet shall include a pressure protection valve.

1.5.3 For air brake systems, an air pressure gauge shall be provided in the instrument panel capable of complying with CDL pre-trip inspection requirements.

1.5.4 All air brake-equipped buses may be equipped with a service brake interlock. The parking brake cannot be released until the brake pedal is depressed

1.5.5 Air brake systems may include a system for anti-compounding of the service brakes and parking brakes.

1.5.6 Air brakes shall have both a visible and audible warning device whenever the air pressure falls below the level where warnings are required under FMVSS 121.

#### 1.6 Bumper Front

1.6.1 School buses shall be equipped with a heavy duty front bumper. The front bumper shall be furnished by the chassis manufacturer for all school bus types unless there is a specific agreement between the chassis manufacturer and body manufacturer.

1.6.2 The front bumper shall be of pressed steel channel or equivalent material (except Type A buses having a GVWR of 14,500 pounds or less which may be Original Equipment Manufacturer supplied) at least 3/16" thick and not less than 8" wide (high). It shall extend beyond forward-most part of the body, grille, hood, and fenders and shall extend to outer edges of the fenders at the bumper's top line.

1.6.3 The front bumper, except breakaway bumper ends, shall be of sufficient strength to permit pushing a vehicle of equal gross vehicle weight without permanent distortion to the bumper, chassis, or body.

1.6.4 The bumper shall be designed or reinforced so that it will not deform when the bus is lifted by a chain that is passed under the bumper (or through the bumper if holes are provided for this purpose) and attached to both tow eyes. For the purpose of meeting this standard, the bus shall be empty and positioned on a level, hard surface and both tow eyes shall share the load equally.

1.7 Certification: The chassis manufacturer, upon request of the Delaware Department of Education, shall certify that its product meets the state's minimum standards on items not covered by the FMVSS certification requirements of 49 CFR, Part 567.

#### 1.8 Clutch

1.8.1 Clutch torque capacity shall be equal to or greater than the engine torque output.

1.8.2 A starter interlock shall be installed to prevent actuation of the starter if the clutch pedal is not depressed.

#### 1.9 Color

1.9.1 The chassis, including wheels and front bumper, shall be black. Body cowl, hood, and fenders shall be in National School Bus Yellow (NSBY). The flat top surface of the hood may be painted with non-reflective NSBY. (See appendix B, 2000 National School Transportation Specifications and Procedures ).

1.9.2 Demountable rims, if used, may be, silver, gray or black as received from the wheel manufacturer.

1.9.3 Wheel covers shall not be permitted.

1.9.4 Mud flaps if used shall be completely black.

1.10 Daytime Running Lamps: Head lamps shall be provided with a switch to automatically operate the lamps when the vehicle is placed in gear or the parking brake is released. If this switch is designed to provide reduced illumination under normal operating conditions, a means whereby the head lamps can be engaged at full power shall be provided.

1.11 Drive Shaft: The drive shaft shall be protected by a metal guard or guards around the circumference of the drive shaft to reduce the possibility of its whipping through the floor or dropping to the ground, if broken.

#### 1.12 Electrical System

##### 1.12.1 Battery

1.12.1.1 The storage batteries shall have minimum cold cranking capacity rating (cold cranking amps) equal to the cranking current required for 30 seconds at 0 degrees Fahrenheit and a minimum reserve capacity rating of 120 minutes at 25 amps. Higher capacities may be required, depending upon optional equipment and local environmental conditions.

1.12.1.2 Since all batteries are to be secured in a sliding tray in the body, chassis manufacturers shall mount the battery temporarily on the chassis frame, except that van conversion or cutaway front-section chassis may be secured in accordance with manufacturer's standard configuration. In these cases, the final location of the battery and the appropriate cable lengths shall be agreed upon mutually by the chassis and body manufacturer. However, in all cases the battery cable provided with the chassis shall have sufficient length to allow some slack.

##### 1.12.2 Alternator

1.12.2.1 All Type A-2 buses and Type B buses

with a GVWR of 15,000 lbs. or less shall have a minimum 60 ampere alternator

1.12.2.2 Types A-2 and Type B buses over 15,000 lbs. GVWR and all Type C and Type D buses shall be equipped with a heavy-duty truck or bus-type alternator meeting SAE J 180, having a minimum output rating of 100 amperes or higher which produce a minimum current output of 50 percent of the rating at engine idle speed.

1.12.2.3 Buses equipped with an electrically powered wheelchair lift shall have a minimum 130 ampere alternator

1.12.2.4 A belt alternator drive shall be capable of handling the rated capacity of the alternator with no detrimental effect on any other driven components. (See School Bus Manufacturers Technical Council (SBMTC), "School Bus Technical Reference," for estimating required alternator capacity.)

1.12.2.5 A direct-drive alternator is permissible in lieu of a belt driven alternator.

#### 1.12.3 Wiring

1.12.3.1 All wiring shall conform to current applicable recommended practices of the Society of Automotive Engineers (SAE).

1.12.3.1.1 All wiring shall use color and at least one other method of identification. The other method shall be either a number code or name code, and each chassis shall be delivered with a wiring diagram that illustrates the wiring of the chassis.

1.12.3.1.2 Body accessories shall be wired through the ignition switch and the clearance lights through a separate switch wired through the body solenoid.

1.12.3.2 The chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or in an accessible location in the engine compartment of vehicles designed without a cowl. The strip or plug shall contain the following terminals for the body connections:

1.12.3.2.1 Main 100 amp body circuit;

1.12.3.2.2 Tail lamps;

1.12.3.2.3 Right turn signal;

1.12.3.2.4 Left turn signal;

1.12.3.2.5 Stop lamps;

1.12.3.2.6 Back-up lamps; and

1.12.3.2.7 Instrument panel lights (rheostat controlled by headlamp switch)

#### 1.12.4 Circuits

1.12.4.1 An appropriate identifying diagram (color plus a name or number code) for all chassis electrical circuits shall be provided to the body manufacturer for distribution to the end user.

1.12.4.1 The headlight system must be wired separately from the body-controlled solenoid.

1.13 Engine: All engines shall have an engine block heater.

1.14 Engine Fire Extinguisher: The chassis manufacturer may provide an automatic fire extinguisher system in the engine compartment.

#### 1.15 Exhaust System

1.15.1 The exhaust pipe, muffler and tailpipe shall be outside the bus body compartment and attached to the chassis so as not to damage any other chassis component.

1.15.2 The tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing of equal diameter.

1.15.3 Chassis manufacturers shall furnish an exhaust system with tailpipe of sufficient length to exit the rear of the bus or at the left side of the bus body no more than 18" forward of the front edge of the rear wheel house opening. If designed to exit at the rear of the bus, the tailpipe shall extend at least five inches beyond the end of the chassis frame. If designed to exit to the side of the bus, the tailpipe shall extend at least 48.5 inches (51.5 inches if the body is to be 102 inches wide) outboard from the chassis centerline.

1.15.3.1 On Types C and D vehicles, the tailpipe shall not exit beneath a fuel fill or emergency door exit.

1.15.3.2 Types A and B chassis may be furnished with the manufacturer's standard tailpipe configuration.

1.15.3.3 Chassis manufacturers may furnish a tailpipe that exits through the rear bumper.

1.15.4 The exhaust system on a chassis shall be adequately insulated from the fuel system.

1.15.5 The muffler shall be constructed of corrosion-resistant material.

1.15.6 The exhaust system on the chassis may be routed to the left of the right frame rail to allow for the installation of a power lift unit on the right side of the vehicle.

1.15.7 The tailpipe may be flush with, but shall not extend out more than two inches beyond, the perimeter of the body for side-exit pipe or the bumper for rear-exit pipe.

1.15.8 The tailpipe shall exit to the left of the emergency exit door in the rear of the vehicle or to the left side of the bus in front or behind the rear drive axle. The tailpipe exit location on all Types A-1 or B-1 buses may be according to the manufacturer's standard. The tailpipe shall not exit beneath any fuel filler location or beneath any emergency door.

#### 1.16 Fenders, Front-Type C Vehicles

1.16.1 Total spread of outer edges of front fenders, measured at fender line, shall exceed total spread of front tires when front wheels are in a straight-ahead position.

1.16.2 Front fenders shall be properly braced and shall not require attachment to any part of the body.

#### 1.17 Frame

1.17.1 The frame (or equivalent) shall be of such design and strength characteristics as to correspond at least

to standard practices for trucks of the same general load characteristics, which are used for highway service.

1.17.2 Any secondary manufacturer that modifies the original chassis frame shall guarantee the performance of workmanship and materials resulting from such modification.

1.17.3 Frames shall not be modified for the purpose of extending the wheel base.

1.17.4 Holes in top or bottom flanges or side units of the frame, and welding to the frame, shall not be permitted except as provided or accepted by chassis manufacturer.

1.17.5 Frame lengths shall be established in accordance with the design criteria for the complete vehicle.

#### 1.18 Fuel Tank

1.18.1 The fuel tank (or tanks) provided by the chassis manufacturer shall have a minimum 60-gallon capacity for school buses with a capacity of 36 passengers and above. School buses less than a capacity of 36 shall have a manufacturer's standard fuel tank. The tank shall be filled and vented to the outside of the body and the fuel filler shall be placed in a location where accidental fuel spillage will not drip or drain on any part of the exhaust system.

1.18.2 Fuel lines shall be mounted to the chassis frame in such a manner that the frame provides the maximum possible protections from damage.

1.18.3 The fuel system shall comply with FMVSS 301.

1.18.4 Fuel tank(s) may be mounted between the chassis frame rails or outboard of the frame rails on either the left or right side of the vehicle.

1.18.5 The actual draw capacity of each fuel tank shall be a minimum of 83% of the tank capacity.

1.18.6 Installation of alternative fuel systems, including fuel tanks and piping from tank to the engine, shall comply with all applicable fire codes in effect on the date of manufacture of the bus.

1.18.7 Installation of LPG tanks shall comply with National Fire Protection Association (NFPA) 58.

1.18.8 Fuel gauges must be calibrated for size of tank used. If more than one tank is used, there must be a gauge for each tank.

1.19 Governor: When the engine is remotely located from the driver, the governor shall be set to limit engine speed to maximum revolutions per minute as recommended by the engine manufacturer, and a tachometer shall be installed so the engine speed may be known to the driver while seated in a normal driving position.

1.20 Heating System, Provision For: The chassis engine shall have plugged openings for the purpose of supplying hot water for the bus heating system. The openings shall be suitable for attaching 3/4-inch pipe thread/hose connectors. The engine shall be capable of supplying coolant at a temperature of at least 170 degrees Fahrenheit at the engine cooling thermostat opening temperature. The coolant flow

rate shall be 50 pounds per minute at the return end of 30 feet of one-inch inside diameter automotive hot water heater hose. (See SBMTC-001.)

1.21 Horn: The bus shall be equipped with dual electrical horns capable of producing a complex sounds in bands of audio frequencies between 250 and 2,000 cycles per second and tested in accordance with SAE J-377.

#### 1.22 Instruments and Instrument Panel

1.22.1 The chassis shall be equipped with the instruments and gauges listed below. (Telltale warning lamps in lieu of gauges are not acceptable, except as noted):

1.22.1.1 Speedometer;

1.22.1.2 Odometer, which will give, accrued mileage (to seven digits), including tenths of miles;

1.22.1.3 Voltmeter: An ammeter with graduated charge and discharge indications is permitted in lieu of a voltmeter; however, when used, the ammeter wiring must be compatible with the current flow of the system;

1.22.1.4 Oil pressure gauge;

1.22.1.5 Water temperature gauge;

1.22.1.6 Fuel gauge;

1.22.1.7 Upper beam headlight indicator;

1.22.1.8 Brake indicator gauge (vacuum or air): A telltale warning lamp indicator in lieu of a gauge is permitted on a vehicle equipped with hydraulic-over-hydraulic brake system;

1.22.1.9 Turn signal indicator; and

1.22.1.10 Glow-plug indicator light where appropriate

1.22.2 All instruments shall be easily accessible for maintenance and repair.

1.22.3 The instruments and gauges shall be mounted on the instrument panel so that each is clearly visible to the driver while seated in a normal driving position.

1.22.4 The instrument panel shall have lamps of sufficient candlepower to illuminate all instruments, gauges and shift selector indicator for the automatic transmission.

#### 1.22.5 Multi-function gauge (MFG)

1.22.5.1 The driver must be able to manually select any displayable function of the gauge on a MFG whenever desired.

1.22.5.2 Whenever an out-of-limits condition that would be displayed on one or more functions of a MFG occurs, the MFG controller should automatically display this condition on the instrument cluster. This should be in the form of an illuminated telltale warning lamp as well as having the MFG automatically display the out-of-limits indications. Should two or more functions displayed on the MFG go out of limits simultaneously, then the MFG should sequence automatically between those functions continuously until the condition(s) are corrected.

1.22.5.3 The use of a MFG does not relieve the need for audible warning devices, where required.



1.23 Oil Filter: An oil filter with a replaceable element shall be provided and connected by flexible oil lines if it is not a built-in or an engine-mounted design. The oil filter shall have a capacity of at least one (1) quart.

1.24 Openings: All openings in the floorboard or firewall between chassis and passenger compartment (e.g. for gearshift selector and parking brake lever) shall be sealed.

#### 1.25 Passenger Load

1.25.1 The actual gross vehicle weight (GVW) is the sum of the chassis weight, plus the body weight, plus the driver's weight, plus total seated pupil weight. (For purposes of calculation, the driver's weight is 150 pounds and the pupil weight is 120 pounds per pupil.)

1.25.2 Actual GVW shall not exceed the chassis manufacturer's GVWR for the chassis, nor shall the actual weight carried on any axle exceed the chassis manufacturer's Gross Axle Weight Rating (GAWR).

1.25.3 The manufacturer's GVWR for a particular school bus shall be furnished by manufacturers in duplicate (unless more copies are requested) to the Delaware Department of Education. The Department of Education shall, in turn, transmit such ratings to the Department of Public Safety, Division of Motor Vehicles.

#### 1.26 Power and Grade Ability:

1.26.1 GVWR shall not exceed 185 pounds per published net horsepower of the engine at the manufacturer's recommended maximum number of revolutions per minute.

1.26.2 For school buses with less than 36 passenger capacity, the minimum power plant shall be 160 hp engine or equal.

1.26.3 For school buses with a capacity of 36 passengers or greater, the engine will produce at least 170 hp measured at an RPM not to exceed 2,600 and generate at least 420 foot pounds of torque.

1.27 Retarder System: A retarder system, if used, shall maintain the speed of a fully loaded school bus at 19.0 mph on a 7 % grade for 3.6 miles.

1.28 Road Speed Control: The bus shall be equipped with a vehicle speed limiter to accurately control vehicle maximum speed to 65 miles per hour.

1.29 Shock Absorbers: The bus shall be equipped with double-action shock absorbers compatible with manufacturer's rated axle capacity at each wheel location.

#### 1.30 Steering Gear

1.30.1 The steering gear shall be approved by the chassis manufacturer and designed to ensure safe and accurate performance when the vehicle is operated with maximum load and at maximum speed.

1.30.2 If external adjustments are required, steering mechanism shall be accessible to make adjustments.

1.30.3 No changes shall be made in the steering apparatus, which are not approved by the chassis manufacturer.

1.30.4 There shall be a clearance of at least 2 inches between the steering wheel and cowl, instrument panel, windshield, or any other surface.

1.30.5 Power steering is required and shall be of the integral type with integral valves.

1.30.6 The steering system shall be designed to provide a means for lubrication of all wear-points, which are not permanently lubricated.

#### 1.31 Suspension Systems

1.31.1 The capacity of springs or suspension assemblies shall be commensurate with the chassis manufacturer's GVWR.

1.31.2 Rear leaf springs shall be of a progressive rate or multi-stage design. Front leaf springs shall have a stationary eye at one end and shall be protected by a wrapped leaf, in addition to the main leaf.

1.32 Throttle: The force required to operate the throttle shall not exceed 16 pounds throughout the full range of accelerator pedal travel.

#### 1.33 Tires and Rims

1.33.1 Rims of the proper size and tires of the proper size and load rating commensurate with chassis manufacturer's gross vehicle weight rating shall be provided. All wheel rims shall be the same size to allow for interchangeability. The use of multi-piece rims and/or tube-type tires shall not be permitted.

1.33.2 Dual rear tires shall be provided on Type A-2, Type B, Type C, and Type D school buses.

1.33.3 All tires on a vehicle shall be tubeless radials and be of the same size, and the load range of the tires shall meet or exceed the GVWR, as required by FMVSS 120.

1.33.4 If the vehicle is equipped with a spare tire and rim assembly, it shall be the same size as those mounted on the vehicle.

1.33.5 If a tire carrier is required, it shall be suitably mounted in an accessible location outside the passenger compartment.

1.34 Tow Eyes or Hooks: Tow eyes or hooks shall be furnished and attached so they do not project beyond the front bumper. Tow eyes or hooks attached to the frame chassis shall be furnished by the chassis manufacturer. This installation shall be in accordance with the chassis manufacturer's specifications. (Note: Type A buses are exempt from this requirement.)

#### 1.35 Transmission

1.35.1 Automatic transmissions (AT-545 or approved equal) shall have no fewer than three forward speeds and one reverse speed. Mechanical shift selectors shall provide a detent between each gear position when the gear selector quadrant and shift selector are not steering-column mounted.

1.35.2 In manual transmissions, second gear and higher shall be synchronized, except when incompatible

with engine power. A minimum of three forward speeds and one reverse speed shall be provided.

1.35.3 An electronic control, or similar device, may be installed to ensure that automatic transmissions cannot accidentally be moved out of the "neutral" or "park" gear position while the driver is not seated in the driver's seat.

#### 1.36 Turning Radius

1.36.1 A chassis with a wheelbase of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, curb-to-curb measurement.

1.36.2 A chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44 1/2 feet, curb-to-curb measurement.

1.37 Undercoating: The chassis manufacturers, or their agents, shall coat the undersides of steel or metallic-constructed front fenders with a rust-proofing compound, for which the compound manufacturer has issued notarized certification of compliance to chassis builder that the compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B, using modified tests.

## 2.0 Bus Body Standards

### 2.1 Aisle

2.1.1 All emergency doors shall be accessible by a 12" minimum aisle. The aisle shall be unobstructed at all times by any type of barrier, seat, wheelchair or tiedown.

2.1.2 A 2" white line shall separate the driver compartment from the passenger compartment.

2.1.3 The seat backs shall be slanted sufficiently to give aisle clearance of 15" at tops of seat backs.

2.2 Back-Up Warning Alarm: An automatic audible alarm shall be installed behind the rear axle and shall comply with the published Backup Alarm Standards (SAE J994B), providing a minimum of 112 dBA.

### 2.3 Battery

2.3.1 The battery is to be furnished by the chassis manufacturer.

2.3.2 When the battery is mounted as described in the "Bus Chassis Standards", the body manufacturer shall securely attach the battery on a slide-out or swing-out tray in a closed, vented compartment in the body skirt, so that the battery is accessible for convenient servicing from the outside. The battery compartment door or cover shall be hinged at the front or top, and secured by an adequate and conveniently operated latch or other type fastener. The battery compartment is not required on Type A-1 buses.

2.3.3 Buses may be equipped with a battery shut-off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

### 2.4 Bumper (Front)

2.4.1 On a Type D school bus, if the chassis manufacturer does not provide a bumper, it shall be provided

by the body manufacturer. The bumper will conform to the standards described in the "Bus Chassis Standards".

### 2.5 Bumper (Rear)

2.5.1 The bumper shall be pressed steel channel at least 3/16" thick or equivalent strength material (except for Type A buses). Type A-1 buses bumper shall be a minimum of 8" wide (high) and Type A-2, B, C, and D buses bumper shall be a minimum of 9 1/2" wide (high). The bumper shall be of sufficient strength to permit being pushed by another vehicle without permanent distortion.

2.5.2 The bumper shall be wrapped around the back corners of the bus. It shall extend forward at least 12", measured from the rear-most point of the body at the floor line, and shall be flush-mounted to body sides or protected with an end panel.

2.5.3 The bumper shall be attached to the chassis frame in such a manner that it may be easily removed. It shall be so braced as to withstand impact from the rear or the side. It shall be so attached as to discourage hitching of rides by an individual.

2.5.4 The bumper shall extend at least 1" beyond the rear-most part of the body surface measured at the floor line.

2.6 Ceiling: See Insulation and Interior, this section.

2.7 Certification: The body manufacturer shall, upon request, certify to the Delaware Department of Education, that its product meets state standards on items not covered by FMVSS certification requirements of 49 CFR, Part 567.

2.8 Chains (Tire): See Wheelhousing, this section.

### 2.9 Color

2.9.1 The school bus body shall be painted National School Bus Yellow (NSBY).

2.9.2 The body exterior paint trim, bumper, lamp hoods, emergency door arrow, and lettering shall be black. (See illustration in NSTSP, Appendix B)

2.9.2 Optionally, the roof of the bus may be painted white down to the top window lines except that the front and rear roof caps shall remain NSBY.

2.10 Communications: Buses shall be equipped with a radio (non-CB) or telephonic communication device. It will be added by the school district, school, or contractor.

### 2.11 Construction

#### 2.11.1 Side Intrusion Test:

2.11.1.1 The bus body shall be constructed to withstand an intrusion force equal to the curb weight of the vehicle; but shall not exceed 20,000 pounds, whichever is less. Each vehicle shall be capable of meeting this requirement when tested in accordance with the procedures set forth below.

2.11.1.2 The complete body structure, or a representative seven-body section mock up with seats installed, shall be load-tested at a location 24 inches plus or minus two inches above the floor line, with a maximum 10-inch diameter cylinder, 48 inches long, mounted in a

horizontal plane.

2.11.1.3 The cylinder shall be placed as close as practical to the mid-point of the tested structure, spanning two internal vertical structural members. The cylinder shall be statically loaded to the required force of curb weight or 20,000 pounds, whichever is less, in a horizontal plane with a load applied from the exterior toward the interior of the test structure. Once the minimum load has been applied, the penetration of the loading cylinder into the passenger compartment shall not exceed a maximum of ten inches from its original point of contact. There can be no separation of lapped panels or construction joints. Punctures, tears or breaks in the external panels are acceptable but are not permitted on any adjacent interior panel.

2.11.1.4 Body companies shall certify compliance with this intrusion requirement, including test results, if requested.

2.11.2 Construction shall be reasonably dust-proof and watertight.

#### 2.12 Crossing Control Arm

2.12.1 Buses shall be equipped with a crossing control arm mounted on the right side of the front bumper. The arm when opened shall extend in a line parallel with the body side and positioned on a line with the right side wheels.

2.12.2 All components of the crossing control arm and all connections shall be weatherproofed.

2.12.3 The crossing control arm shall incorporate system connectors (electrical, vacuum, or air) at the gate and shall be easily removable to allow for towing of the bus.

2.12.4 The crossing control arm shall meet or exceed SAE Standard J1133.

2.12.5 The crossing control arm shall be constructed of noncorrosive or nonferrous material or treated in accordance with the body sheet metal standard (see "Metal Treatment").

2.12.6 There shall be no sharp edges or projections that could cause hazard or injury to students.

2.12.7 The crossing control arm shall extend minimum 70" (measured from the bumper at the arm assembly attachment point) when in the extended position.

2.12.8 The crossing control arms shall extend simultaneously with the stop arm(s) by means of the stop arm controls.

#### 2.13 Defrosters

2.13.1 Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog and snow.

2.13.2 The defrosting system shall conform to SAE J381 and J382.

2.13.3 The defroster and defogging system shall be capable of furnishing heated, outside ambient air, except that the part of the system furnishing additional air to the

windshield, entrance door and stepwell may be of the recirculating air type.

2.13.4 Auxiliary fans are not considered defrosting or defogging systems and are described under "Ventilation."

2.13.5 Portable heaters shall not be used.

#### 2.14 Doors

2.14.1 The service door shall be in the driver's control, designed to afford easy release and to provide a positive latching device on manual operating doors to prevent accidental opening. When a hand lever is used, no part shall come together that will shear or crush fingers. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation, as tested on a 10 percent grade both uphill and downhill.

2.14.2 The service door shall be located on the right side of the bus, opposite and within direct view of driver.

2.14.3 The service door shall have a minimum horizontal opening of 24" and a minimum vertical opening of 68". Type A-1 vehicles shall have a minimum opening area of 1,200 square inches.

2.14.4 Service door shall be a split-type, sedan-type, or jackknife type. (Split-type door includes any sectioned door that divides and opens inward or outward.) If one section of a split-type door opens inward and the other opens outward, the front section shall open outward. School buses with a capacity of 36 passengers or greater shall be equipped with an outward opening service door.

2.14.5 Lower, as well as upper, door panels shall be of approved safety glass. The bottom of each lower glass panel shall not be more than 10" from the top surface of bottom step. The top of each upper glass panel shall not be more than 3" from the top of the door. Type A vehicles shall have an upper panel (windows) of safety glass with an area of at least 350 square inches.

2.14.6 Vertical closing edges on split-type or folding-type entrance doors shall be equipped with flexible material to protect children's fingers. Type A-1 vehicles may be equipped with chassis manufacturer's standard entrance door.

2.14.7 There shall be no door to left of driver on Type B, C or D vehicles. All Type A vehicles may be equipped with chassis manufacturer's standard left-side door.

2.14.8 All doors shall be equipped with padding at the top edge of each door opening. Padding shall be at least 3" wide and 1" thick and extend the full width of the door opening.

2.14.9 If a power-assisted service door is used, the actuation switch shall be to the right of the steering wheel within reach of drivers in the 95<sup>th</sup> percentile of the male/female adult population).

2.14.10 On power-operated service doors, the

emergency release valve, switch or device to release the service door must be placed above or to the immediate left or right of the service door and clearly labeled.

## 2.15 Driver Compartment

2.15.1 The driver's seat supplied by the body company shall be a high back seat with a minimum seat back adjustable to 15 degrees, without requiring the use of tools, and a head restraint to accommodate a 95th percentile adult male, as defined in FMVSS 208. The driver's seat shall be secured with nuts, bolts and washers or flanged-head nuts.

2.15.2 Driver seat positioning and range of adjustments shall be designed to accommodate comfortable actuation of the foot control pedals by 95% of the male/female adult population.

2.15.3 Type A buses may utilize the standard driver's seat provided by the chassis manufacturer.

2.15.4 Driver Restraint System: A Type 2 lap/shoulder belt shall be provided for the driver. The assembly shall be equipped with an automatic locking retractor for the continuous belt system. On all buses except Type A equipped with a standard chassis manufacturer's driver seat, the lap portion of the belt system shall be guided or anchored to prevent the driver from sliding sideways under it. The lap/shoulder belt shall be designed to allow for easy adjustment in order to fit properly and to effectively protect drivers varying in size from 5<sup>th</sup> percentile adult female to 95<sup>th</sup> percentile adult male.

## 2.16 Emergency Exits

2.16.1 All installed emergency exits shall comply with the requirements of FMVSS 217.

### 2.16.2 Emergency door requirements

2.16.2.1 The upper portion of the emergency door shall be equipped with approved safety glazing, the exposed area of which shall be at least 400 square inches. The lower portion of the rear emergency doors on Types A-2, B, C, and D vehicles shall be equipped with a minimum of 350 square inches of approved safety glazing.

2.16.2.2 There shall be no steps leading to an emergency door.

2.16.2.3 The emergency door(s) shall be equipped with padding at the top edge of each door opening. Padding shall be at least 3" wide and 1" thick, and shall extend the full width of the door opening.

2.16.2.4 The side emergency door, if required, must meet the requirements as set forth in FMVSS 217, regardless of its use with any other combination of emergency exits. There shall be a clear aisle leading to it i.e., flip seats shall not be used.

2.16.2.5 There shall be no obstruction higher than 1/4 inch across the bottom of any emergency door opening.

2.16.2.6 The rear emergency window shall have an assisted lifting device that will aid in lifting and

holding the rear emergency window open.

2.16.3 Emergency exit requirements: Types A, B, C, and D vehicles shall be equipped with a total number of emergency exits as follows for the indicated capacities of vehicles. Exits required by FMVSS 217 may be included to comprise the total number of exits specified.

0 to 42 Passenger = 1 emergency exit per side and 1 roof hatch.

43 to 78 Passenger = 2 emergency exits per side and 2 roof hatches.

79 to 90 Passenger = 3 emergency exits per side and 2 roof hatches.

2.16.4 Side emergency exit windows when installed may be vertically hinged on the forward side of the window. No side emergency exit window will be located above a stop arm.

2.16.5 In addition to the audible warning required on emergency doors by FMVSS 217, additional emergency exits shall also be equipped with an audible warning device.

## 2.17 Emergency Equipment

### 2.17.1 Fire Extinguisher

2.17.1.1 The bus shall be equipped with at least one UL-approved pressurized, dry chemical fire extinguisher. The extinguisher shall be mounted (and secured) in a bracket, located in the driver's compartment and readily accessible to the driver and passengers. A pressure gauge shall be mounted on the extinguisher and shall be easily read without moving the extinguisher from its mounted position.

2.17.1.2 The fire extinguisher shall have a total rating of 2A10BC or greater. The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher.

### 2.17.2 First-aid kit

2.17.2.1 The bus shall have a removable, moisture-proof and dust-proof first aid kit in an accessible place in the driver's compartment. It shall be properly mounted (and secured) and identified as a first aid kit. The location for the first aid kit shall be marked.

#### 2.17.2.2 Minimum contents include:

<u>Units</u>	<u>Qty. per unit</u>	
<u>2</u>	<u>12</u>	<u>- 1" x 3" adhesive bandages</u>
<u>1</u>	<u>2</u>	<u>- 2" bandage compress</u>
<u>1</u>	<u>1</u>	<u>- 4" bandage compress</u>
<u>1</u>	<u>1</u>	<u>- non-sterile triangular bandages</u>
		<u>approximately 40" x 36" x 54" with 2 safety pins</u>
<u>1</u>	<u>1</u>	<u>- eye kit with 2 sterile eye pads and 1 oz. wash</u>
<u>1</u>	<u>3</u>	<u>- burn ointment, 1/8 oz.</u>
<u>1</u>	<u>5</u>	<u>- ammonia inhalants</u>
<u>1</u>	<u>5</u>	<u>- PVP antiseptic swabs</u>
<u>1</u>	<u>5</u>	<u>- insect sting swabs</u>

2.17.3 Body fluid clean-up kit: Each bus shall have a removable and moisture-proof body fluid clean-up kit

accessible to the driver. It shall be properly mounted and identified as a body fluid clean-up kit in the driver's compartment. Minimum contents of the body fluid clean-up kit shall include the following:

2.17.3.1 1- 16 oz. bottle of 70% rubbing alcohol or 10% solution of bleach

2.17.3.2 1- plastic trash bag with tie, minimum of 12" x 12"

2.17.3.3 2- pairs of medical examination gloves (non-latex)

2.17.3.4 10- paper towels, approximately 10 1/2" x 12 1/2"

2.17.4 Warning devices: Each school bus shall contain at least three (3) reflectorized triangle road warning devices mounted in an accessible place that meet requirements in FMVSS 125.

2.17.5 Any of the emergency equipment may be mounted in an enclosed compartment provided the compartment is labeled in not less than 1" letters, identifying each piece of equipment contained therein.

#### 2.18 Floor

2.18.1 The floor in the under-seat area, including tops of wheel housings, driver's compartment and toe board, shall be covered with rubber floor covering or equivalent, having a minimum overall thickness of .125". The driver's area on all Type A buses may be manufacturer's standard flooring and floor covering.

2.18.2 The floor covering in the aisles shall be of aisle-type rubber or equivalent, wear-resistant and ribbed. Minimum overall thickness shall be .187" measured from tops of ribs.

2.18.3 The floor covering must be permanently bonded to the floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be a type recommended by the manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.

2.18.4 On Types B, C and D buses, a flush-mounted, screw-down plate that is secured and sealed shall be provided to access the fuel tank sending unit.

2.19 Handrails: At least one handrail shall be installed. The handrail(s) shall assist passengers during entry or exit, and be designed to prevent entanglement, as evidenced by the passage of the National Highway Transportation Safety Administration (NHTSA) string and nut test as defined in the NSTSP.

#### 2.20 Heater and Air Conditioning Systems

##### 2.20.1 Heating System

2.20.1.1 The heater shall be a hot-water type.

2.20.1.2 Every bus with a capacity of 36 or more shall have 2 heaters at the front: 1 to the left of the driver, and 1 to the right of the driver near the entrance door, and 1 heater in the rear portion of the bus.

2.20.1.3 If only one heater is used, it shall be

fresh-air or combination fresh-air and re-circulation type.

2.20.1.4 If more than one heater is used, additional heaters may be temperatures as specified re-circulating air type.

2.20.1.5 The heating system shall be capable of maintaining bus interior in SAE test procedure J2233.

2.20.1.6 All forced air heaters installed by body manufacturers shall bear a name plate that indicates the heater rating in accordance with SBMTC-001. The plate shall be affixed by the heater manufacturer and shall constitute certification that the heater performance is as shown on the plate.

2.20.1.7 Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or any sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hoses shall conform to SAE J20c. Heater lines on the interior of bus shall be shielded to prevent scalding of the driver or passengers.

2.20.1.8 Each hot water system installed by a body manufacturer shall include one shut-off valve in the pressure line and one shut-off valve in the return line with both valves at the engine in an accessible location, except that on all Types A and B buses, the valves may be installed in another accessible location.

2.20.1.9 There shall be a water flow regulating valve installed in the pressure line for convenient operation by the driver while seated.

2.20.1.10 Accessible bleeder valves shall be installed in an appropriate place in the return lines of body company-installed heaters to remove air from the heater lines.

2.20.1.11 Access panels shall be provided to make heater motors, cores and fans readily accessible for service. An outside access panel may be provided for the driver's heater.

##### 2.20.2 Air Conditioning

###### 2.20.2.1 Performance Specifications

2.20.2.1.1 The installed air conditioning system shall cool the interior of the bus down to at least 80 degrees Fahrenheit, measured at a minimum of three points, located 4' above the floor at the longitudinal centerline of the bus. The three points shall be: (1) near the driver's location, (2) at the midpoint of the body, and (3) 2' forward of the emergency door, or, for type D rear-engine buses, 2' forward of the end of the aisle.

2.20.2.1.2 The test conditions under which the above performance must be achieved shall consist of: (1) placing the bus in a room (such as a paint booth) where ambient temperature can be maintained at 100 degrees Fahrenheit (2) heat soaking the bus at 100 degrees Fahrenheit with windows open for at least 1 hour and (3) closing windows, turning on the air conditioner with the engine running at the chassis manufacturer's recommended

low idle speed, and cooling the interior of the bus to 80 degrees Fahrenheit or lower within a maximum of 30 minutes while maintaining 100 degrees Fahrenheit outside temperature.

2.20.2.1.3 Alternately, this test may be performed under actual summer conditions, which consist of temperatures above 85 degrees Fahrenheit, humidity above 50 percent with normal sun loading of the bus and the engine running at the engine manufacturer's recommended low idle speed. After a minimum of 1 hour of heat soaking, the system shall be turned on and must provide a minimum 20 degree temperature drop in the 30-minute time limit.

#### 2.20.2.2 Other Requirements

2.20.2.2.1 Evaporator cases, lines and ducting (as equipped) shall be designed in such a manner that all condensation is effectively drained to the exterior of the bus below the floor level under all conditions of vehicle movement and without leakage on any interior portion of bus.

2.20.2.2.2 Any evaporator or ducting system shall be designed and installed so as to be free of injury-prone projections or sharp edges. Any ductwork shall be installed so that exposed edges face the front of the bus and do not present sharp edges.

2.20.2.2.3 Evaporator cases and/or ducting systems shall be equipped with diffusers that are adjustable.

2.20.2.2.4 On specially equipped school buses, the evaporator and ducting (if used) shall be placed high enough that they will not obstruct occupant securement shoulder strap upper attachment points. This clearance shall be provided along entire length of the passenger area on both sides of the bus interior to allow for potential retrofitting of new wheelchair positions and occupant securement devices throughout the bus.

2.20.2.2.5 The condensers shall be equipped with a sight glass (or at least one for each part of a split system) that is accessible and directly visible for checking the level of the refrigerant.

2.20.2.2.6 The compressor system shall be equipped with both a high pressure and a low pressure switch to prevent compressor operation when system temperatures are above or below recommended safe levels. Lubrication of moving compressor parts shall be accomplished automatically. An automatic (electric) clutch shall be provided on each compressor.

2.20.2.2.7 All system operating controls, including on-off switch (es), blower switch (es) and thermostat controls shall be accessible to the driver in a seated position.

2.20.2.2.8 Blowers shall be a minimum of two speeds.

2.20.2.2.9 Wiring shall be copper with color-coded insulation. The air conditioning system shall be

equipped with at least one manually resettable circuit breaker per side to provide overload protection for the main power circuit feeding the evaporator blowers and condenser fans. System control circuits shall also have overload protection, but may be fused.

2.20.2.2.10 Refrigerant shall be R 134A.

2.20.2.2.11 All wiring, hoses, and lines shall be grommited, routed, and supported so as to reduce wear. All flexible refrigerant hoses shall be double braided.

2.20.2.2.12 The body shall be equipped with insulation, including sidewalls, roof, firewall, rear, inside body bows and plywood (see "Insulation") or composite floor insulation to aid in heat dissipation and reflection.

2.20.2.2.13 All glass (windshield, service and emergency doors, side and rear windows) shall be equipped with maximum integral tinting allowed by federal or ANSI standards for the respective locations, except that windows rear of the driver's compartment shall have approximately 28 percent light transmission.

2.20.2.2.14 Type A buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 120 amperes. Type B, C, and D buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 160 amperes.

2.20.2.2.15 Roofs shall be painted white (see "Color").

2.21 Hinges: All exterior metal door hinges which do not have stainless steel, brass, or nonmetallic hinge pins or other designs that prevent corrosion shall be designed to allow lubrication to be channeled to the center 75 percent of each hinge loop without disassembly.

#### 2.22 Identification

2.22.1 The body shall bear words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of body or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Letters shall conform to "Series B" of Standard Alphabets for Highway Signs. "SCHOOL BUS" lettering shall have a reflective background. All lettering on NSBY surfaces shall be black, and lettering on black surfaces shall be NSBY or white.

2.22.2 Bus identification number shall be displayed on the sides, on the rear, and on the front.

2.22.3 District or company name or owner of the bus shall be displayed;

2.22.4 Other lettering, numbering, or symbols which may be displayed on the exterior of the bus, shall be limited to:

2.22.4.1 The location of the battery(s) identified by the word " Battery" or " Batteries" on the battery compartment door in 2" lettering;

2.22.4.2 Symbols or letters not to exceed 64 square inches of total display near the service door.

displaying information for identification by the students of the bus or route served;

2.22.4.3 Symbols identifying the bus as equipped for or transporting students with special needs (see Specially Equipped School Bus section);

2.22.4.4 Lettering of fuel type in 2" lettering adjacent to the fuel filler opening; and

2.22.4.5 Manufacturer, company name, dealer, or school logo may be displayed in the right side plate location on the rear of the bus.

2.23 Inside Height: Inside body height shall be 72" or more, measured metal to metal, at any point on longitudinal center line from front vertical bow to rear vertical bow. Inside body height of Type A-1 buses shall be 62" or more.

#### 2.24 Insulation

2.24.1 If thermal insulation is specified, it shall be fire-resistant, UL approved, with minimum R-value of 5.5. Insulation shall be installed so as to prevent sagging.

2.24.2 If floor insulation is required, it shall be 5 ply nominal 5/8" thick plywood, and it shall equal or exceed properties of the exterior-type softwood plywood, C-D Grade, as specified in standard issued by U.S. Department of Commerce. When plywood is used, all exposed edges shall be sealed. Type A-1 buses may be equipped with nominal 1/2" thick plywood meeting the above requirements. Equivalent material may be used to replace plywood, provided it has an equal or greater insulation R value, deterioration, sound abatement and moisture resistance properties.

#### 2.25 Interior

2.25.1 The interior of bus shall be free of all unnecessary projections, which include luggage racks and attendant hand rails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed to contain lap joints, the forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and/or tow chains. (See "Storage Compartment")

2.25.2 The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

2.25.3 Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in the NSTSP, Appendix B. School buses with a capacity of 36 passengers or greater shall be equipped with a sound-proof body package that includes firewall and engine cover. The headliner over the driver's compartment to the front barriers shall be perforated to absorb sound.

2.25.4 Interior overhead storage compartments may be provided if they meet the following criteria:

2.25.4.1 Meet head protection requirements of FMVSS 222 where applicable;

2.25.4.2 Have a minimum rated capacity displayed for each compartment;

2.25.4.3 Be completely enclosed and equipped with latching doors which must be sufficient to withstand a force five times the maximum rated capacity of the compartment;

2.25.4.4 Have all corners and edges rounded with a minimum radius of 1" or padded equivalent to door header padding;

2.25.4.5 Be attached to the bus sufficiently to withstand a force equal to 20 times the maximum rated capacity of the compartment; and

2.24.4.6 Have no protrusions greater than 1/4 inch.

#### 2.26 Lamps and Signals

2.26.1 Interior lamps shall be provided which adequately illuminate the aisle and the stepwell. The stepwell light shall be illuminated by a service door-operated switch, to illuminate only when headlights and clearance lights are on and the service door is open.

2.26.2 Body instrument panel lights shall be controlled by an independent rheostat switch.

2.26.3 School bus alternately flashing signal lamps:

2.26.3.1 The bus shall be equipped with two red lamps at the rear of vehicle and two red lamps at the front of the vehicle. Lamps may be the sealed beam or halogen type.

2.26.3.2 In addition to the four red lamps described above, four amber lamps shall be installed so that one amber lamp is located near each red signal lamp, at same level, but closer to the vertical centerline of bus. The system of red and amber signal lamps shall be wired so that amber lamps are energized manually, and red lamps are automatically energized (with amber lamps being automatically de-energized) when stop signal arm is extended or when bus service door is opened. An amber pilot light and a red pilot light shall be installed adjacent to the driver controls for the flashing signal lamp to indicate to the driver which lamp system is activated.

2.26.3.3 The area around lens of alternately flashing signal lamps extending outward from the edge of the lamps 3" (+/- 1/4") to the sides and top and minimum 1" to the bottom, shall be black in color on the body or roof area against which the signal lamp is seen (from distance of 500 feet along axis of vehicle). Visors or hoods, black in color, are required and shall have a minimum depth of 4". (See NSTSP, Appendix B)

2.26.3.4 Red lamps shall flash at any time the stop signal arm is extended.

2.26.3.5 All flashers for alternately flashing red and amber signal lamps shall be enclosed in the body in a

readily accessible location.

2.26.4 Turn signal and stop/tail lamps:

2.26.4.1 Bus body shall be equipped with amber rear turn signal lamps that are at least 7" in diameter. These signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. Turn signal lamps are to be placed as wide apart as practical and their centerline shall be a maximum of 12" below the rear window. Type A-1 conversion vehicle lamps must be at least 21 square inches in lens area and must be in the manufacturer's standard color.

2.26.4.2 Buses shall be equipped with amber side-mounted turn signal lights. The turn signal lamp on the left side shall be mounted rearward of the stop signal arm and the turn signal lamp on the right side shall be mounted rearward of the service door. An additional side turn signal lamp may be mounted over the rear wheel opening on both sides.

2.26.4.3 In addition to manufacturer's standard turn signals, Type C school buses shall also be equipped with front, Class A fender or hood-mounted turn signals.

2.26.4.4 Buses shall be equipped with four combination red stop/tail lamps:

2.26.4.4.1 Two combination lamps with a minimum diameter of 7", or if a shape other than round, a minimum 38 square inches of illuminated area shall be mounted on the rear of the bus just inside the turn signal lamps.

2.26.4.4.2 Two combination lamps with a minimum diameter of 4", or if a shape other than round, a minimum 12 square inches of illuminated area shall be placed on the rear of the body between the beltline and the floor line. The rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated. Type A-1 buses with bodies supplied by chassis manufacturer may have manufacturer's standard stop and tail lamps.

2.26.4.5 All buses shall be equipped with a transistorized 16-light monitor that monitors the front and rear warning lamps of the school bus. The monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse or circuit breaker against any short circuit or intermittent shorts.

2.26.4.6 Body markers shall be the armored type.

2.26.4.7 Backup lamps: The bus body shall be equipped with two white rear backup lamp signals that are at least 4" in diameter or, if a shape other than round, a minimum of 13 square inches of illuminated area, meeting FMVSS 108. If backup lamps are placed on the same

horizontal line as the brake lamps and turn signal lamps, they shall be to the inside.

2.26.5 School buses may be equipped with fog lamps.

2.27 Metal Treatment

2.27.1 All metal used in construction of bus body shall be zinc-coated or aluminum-coated or treated by equivalent process before the bus is constructed. Included are such items as structural members, inside and outside panels, door panels and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts.

2.27.2 All metal parts that will be painted, in addition to the above requirements, shall be chemically cleaned, etched, zinc-phosphate-coated and zinc-chromate- or epoxy primed, or the metal may be conditioned by equivalent process.

2.27.3 In providing for these requirements, particular attention shall be given to lapped surfaces, welded connections of structural members, cut edges on punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subjected to abrasion during vehicle operation.

2.27.4 As evidence that above requirements have been met, samples of materials and sections used in the construction of the bus body shall not lose more than 10 percent of material by weight when subjected to a 1,000-hour salt spray test as provided for in latest revision of ASTM Standard B-117.

2.28 Mirrors

2.28.1 The interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing which retains the glass in the event of breakage. The mirror shall have rounded corners and protected edges. All Type A buses shall have a minimum of a 6" x 16" mirror and Types B, C, and D buses shall have a minimum of a 6" x 30" mirror.

2.28.2 Each school bus shall be equipped with exterior mirrors meeting the requirements of FMVSS 111. Mirrors shall be easily adjustable, but shall be rigidly braced so as to reduce vibration.

2.28.3 Buses may be equipped with heated and/or remote control external mirrors.

2.29 Mounting

2.29.1 The chassis frame shall support rear body cross member. The bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such manner as to prevent shifting or separation of the body from the chassis under severe operating conditions.

2.29.2 Insulators shall be installed at all contact points between the body and the chassis frame on Types A-2, B, C, and D buses, and shall be secured by a positive means to the chassis frame or body to prevent shifting,



separation, or displacement of the isolators under severe operating conditions.

2.30 Overall Length: Overall length of bus shall not exceed 40 feet, excluding accessories.

2.31 Overall Width: Overall width of bus shall not exceed 96", excluding accessories. The body, excluding mirrors, shall have a minimum width of 75 inches and a minimum height of 79 inches from road surface to top of roof.

2.32 Public Address System:

2.32.1 There shall be installed a public address amplifier specifically designed for vehicular applications with a minimum power output of not less than 5 watts sine-wave power. Such system shall consist of an on-off switch, volume control, and an inside-outside speaker selector switch. Additionally, it shall have an outside speaker completely weather-proofed a minimum 7 watt power capability and two interior dynamic speakers with a minimum diameter of 4 inches. These speakers shall be located above the window line, to the rear of the driver, and shall not project more than 1/2 inch from the interlining of the bus. There shall be no sharp edges or corners that could cause injury to a passenger. The outside speaker shall be located on the front of the cowl under the hood or other suitable location under the hood.

2.32.2 Buses may be equipped with an AM/FM/ audio system.

2.32.3 No internal speakers, other than the driver's communication systems, may be installed within 4' of the driver's seat back in its rearmost upright position.

2.33 Reflective Material (see NSTSP, Appendix B)

2.33.1 The front and/or rear bumper may be marked diagonally 45 degrees down to centerline of pavement with 2" +/- 1/4" wide strips of non-contrasting reflective material.

2.33.2 The rear of bus body shall be marked with strips of reflective NSBY material to outline the perimeter of the back of the bus using material that conforms with the requirements of FMVSS 131, Table 1. The perimeter marking of rear emergency exits per FMVSS 217 and/or the use of reflective "SCHOOL BUS" signs partially accomplishes the objective of this requirement. To complete the perimeter marking of the back of the bus, strips of at least 1 3/4" reflective NSBY material shall be applied horizontally above the rear windows and above the rear bumper, extending from the rear emergency exit perimeter, marking outward to the left and right rear corners of the bus. Vertical strips shall be applied at the corners connecting these horizontal strips.

2.33.3 "School Bus" signs shall be marked with reflective NSBY material comprising background for lettering of the front and/or rear "School Bus" signs.

2.33.4 Sides of bus body shall be marked with at least 1 3/4"- reflective- NSBY material, extending the length

of the bus body and located (vertically) between the floor line and the beltline.

2.34 Rub Rails

2.34.1 There shall be one rub rail located on each side of the bus at seat cushion level which extends from the rear side of the entrance door completely around the bus body (except the emergency door or any maintenance access door) to the point of curvature near the outside cowl on the left side.

2.34.2 There shall be one additional rub rail located on each side at, or no more than 10" above, the floor line. The rub rail shall cover the same longitudinal area as the upper rub rail, except at the wheel housings, and it shall extend only to the radii of the right and left rear corners.

2.34.3 Both rub rails shall be attached at each body post and all other upright structural members.

2.34.4 Each rub rail shall be 4" or more in width in their finished form, shall be of 16-gauge steel or suitable material of equivalent strength and shall be constructed in corrugated or ribbed fashion.

2.34.5 Both rub rails shall be applied outside the body or outside the body posts. (Pressed-in or snap-on rub rails do not satisfy this requirement.) For Type A-1 vehicles using the body provided by the chassis manufacturer, or for Types A-2, B, C and D buses using the rear luggage or the rear engine compartment, rub rails need not extend around the rear corners.

2.34.6 There shall be a rub rail or equivalent bracing located horizontally at the bottom edge of the body side skirts.

2.35 Seat and Restraining Barriers

2.35.1 Passenger Seating

2.35.1.1 All seats shall have a minimum cushion depth of 15" and must comply with all requirements of FMVSS 222. School bus design capacities shall be in accordance with 49 CFR, Part 571.3 and FMVSS 222.

2.35.1.2 All restraining barriers and passenger seats shall be constructed with materials that enable them to meet the criteria contained in the School Bus Seats Upholstery Fire Block Test. (See NSTSP, Appendix B)

2.35.1.3 School buses equipped with front barriers shall have modesty panels (full width) installed under the barriers the full length to the floor.

2.35.1.4 Each seat leg shall be secured to the floor by a minimum of two (2) bolts, washers, and nuts. Flange-head nuts may be used in lieu of nuts and washers, or seats may be track-mounted in conformance with FMVSS 222. If track seating is installed, the manufacturer shall supply minimum and maximum seat spacing dimensions applicable to the bus, which comply with FMVSS 222. This information shall be on a label permanently affixed to the bus.

2.35.1.5 All seat frames attached to the seat rail shall be fastened with two (2) bolts, washers and nuts or

flange-head nuts.

2.35.1.6 All school buses (including Type A) shall be equipped with restraining barriers which conform to FMVSS 222.

2.35.1.7 There shall be a minimum of 8" clearance between the last seat and the rear interior of the bus.

2.35.2 Pre-School Age Seating: When installed, all passenger seats designed to accommodate a child or infant carrier seat shall comply with FMVSS 225. These seats shall be in compliance with NHTSA's "Guideline for Safe Transportation of Pre-school Age Children in School Buses."

#### 2.36 Steps

2.36.1 All school buses with a capacity of 36 passengers and above shall have a three-step stepwell.

2.36.2 The first step at service door shall be not less than 10" and not more than 14" from the ground when measured from the top surface of the step to the ground, based on standard chassis specifications, except that on Type D vehicles, the first step at the service door shall be 12" to 16" from the ground.

2.36.3 Step risers shall not exceed a height of 10". When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.

2.36.4 Steps shall be enclosed to prevent accumulation of ice and snow.

2.36.5 Steps shall not protrude beyond the side body line.

#### 2.37 Step Treads

2.37.1 All steps, including floor line platform area, shall be covered with 3/16" rubber floor covering or other materials equal in wear and abrasion resistance to top grade rubber.

2.37.2 The metal back of the tread shall be permanently bonded to the step tread material.

2.37.3 Steps, including the floor line platform area, shall have a 1 1/2" white nosing as an integral piece without any joint.

2.37.4 Step treads shall have the following characteristics:

2.37.4.1 Special compounding for good abrasion resistance and coefficient of friction of at least 0.6 for the step surface, and 0.8 for the step nosing;

2.37.4.2 Flexibility so that it can be bent around a 1/2" mandrel both at 130 degrees Fahrenheit and 20 degrees Fahrenheit without breaking, cracking, or crazing;

2.37.4.3 A durometer hardness 85 to 95.

2.38 Stirrup Steps: Unless the windshield and lamps are not easily accessible from the ground, there shall be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning. Steps are permitted in or on the front bumper in lieu of the stirrup steps if the windshield and

lamps are easily accessible for cleaning from that position.

2.39 Stop Signal Arm: The stop signal arm shall be reflectorized material and comply with the requirements of FMVSS 131.

2.40 Storage Compartment: A storage container for tools, tire chains, and/or tow chains may be located either inside or outside the passenger compartment. If inside, it shall have a cover capable of being securely latched and fastened to the floor, convenient to either the service or emergency door. (The seat cushion may not serve this purpose.)

#### 2.41 Strobe Light

2.41.1 A white flashing strobe light shall be installed on the roof. It shall be located from 4 to 6 feet from the rear of the roof edge (except air conditioned buses with roof-top evaporators), within 1 foot of centerline, and behind all other roof equipment. The strobe shall extend above the roof between 4 1/2 to 6 3/4 inches, and the light shall be 12 to 16 joules with a clear lens emitting light 360 degrees around its vertical axis.

2.41.2 The light shall be wired to activate when the amber alternately flashing signal lamps are activated, continuing through the full loading or unloading cycle, with an override switch to allow activation of the strobe light during inclement weather.

2.41.3 A pilot light shall be included to indicate when the light is in operation

#### 2.42 Sun Shield

2.42.1 An interior adjustable transparent sun shield with a finished edge not less than 6" X 30" for Types B, C, and D vehicles, shall be installed in a position convenient for use by driver.

2.42.2 On all Type A buses the sun shield (visor) shall be installed according to the manufacturer's standard.

#### 2.43 Traction Assisting Devices

2.43.1 Where required or used, sanders shall:

2.43.1.1 Be of hopper cartridge-valve type;

2.43.1.2 Have a metal hopper with all interior surfaces treated to prevent condensation of moisture;

2.43.1.3 Be of at least 100 pound (grit) capacity;

2.43.1.4 Have cover on the filler opening of hopper, which screws into place, thereby sealing the unit airtight;

2.43.1.5 Have discharge tubes extending to the front of each rear wheel under the fender;

2.43.1.6 Have no-clogging discharge tubes with slush-proof, non-freezing rubber nozzles;

2.43.1.7 Be operated by an electric switch with telltale pilot light mounted on the instrument panel;

2.43.1.8 Be exclusively driver controlled; and

2.43.1.9 Have a gauge to indicate that the hopper needs refilling when it reaches one-quarter full.

2.43.2 Automatic traction chains may be installed.

2.44 Undercoating

2.44.1 Entire underside of bus body, including floor sections, cross member and below-floor-line side panels, shall be coated with rust-proofing material for which the material manufacturer has issued a notarized certification of compliance to the bus body builder that materials meet or exceed all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520b using modified test procedures\* for following requirements:

2.44.1.1 Salt spray resistance, pass test modified to 5% salt and 1000 hours;

2.44.1.2 Abrasion resistance, pass; and

2.44.1.3 Fire resistance, pass.

\*Test panels to be prepared in accordance with paragraph 4.6.12 of TT-C-520b with modified procedure requiring that the test be made on a 48-hour air-cured film at a thickness recommended by the material manufacturer.

2.44.2 The undercoating material shall be applied with suitable airless or conventional spray equipment to the recommended film thickness and shall show no evidence of voids in cured film.

2.45 Ventilation

2.45.1 Auxiliary fans (2) shall meet the following requirements.

2.45.1.1 Fans for left and right sides shall be placed in a location where they can be adjusted for maximum effectiveness and where they do not obstruct vision to any mirror, the roadway, or students outside the bus. Note: Type A buses may be equipped with one fan.

2.45.1.2 fans shall be of 6" diameter

2.45.1.3 fan blades shall be covered with a protective cage. Each fan shall be controlled by a separate switch.

2.45.2 The bus body shall be equipped with a suitably controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without having to open windows except in extremely warm weather.

2.45.3 Static-type, non-closeable exhaust ventilation shall be installed in a low-pressure area of the roof.

2.45.4 Roof hatches designed to provide ventilation in all types of exterior conditions may be provided. They may be equipped with additional ventilating fans.

2.46 Wheelhousing

2.46.1 The wheelhousing opening shall allow for easy tire removal and service.

2.46.2 Wheel housings shall be attached to the floor sheets in such a manner so as to prevent any dust, water or fumes from entering the body. Wheel housings shall be constructed of at least 16-gauge steel.

2.46.3 The inside height of the wheel housings above the floor line shall not exceed 12".

2.46.4 The wheel housings shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels.

2.46.5 No part of a raised wheelhousing shall extend into the emergency door opening.

2.47 Windows

2.47.1 Each side window, other than emergency exits designated to comply with FMVSS 217, shall provide an unobstructed opening of at least 9" high but not more than 13" high and at least 22" wide, obtained by lowering the window. One side window on each side of the bus may be less than 22" wide.

2.47.2 Optional tinted and/or frost-free glazing may be installed in all doors, windows, and windshields consistent with federal, state, and local regulations. Windshields shall be tinted with maximum integral tinting allowed by federal or ANSI standards with a shaded band across the top.

2.48 Windshield Washers: A windshield washer system shall be provided.

2.49 Windshield Wipers

2.49.1 A two-speed or variable speed windshield wiping system shall be provided. An intermittent feature may be provided.

2.49.2 The wipers shall be operated by one or more air or electric motors of sufficient power to operate the wipers. If one motor is used, the wipers shall work in tandem to give full sweep of windshield.

2.50 Wiring

2.50.1 All wiring shall conform to current SAE standards.

2.50.2 Circuits:

2.50.2.1 Wiring shall be arranged in circuits, as required, with each circuit protected by a fuse or circuit breaker. A system of color and number coding shall be used and an appropriate identifying diagram shall be provided to the end user, along with the wiring diagram provided by the chassis manufacturer. The wiring diagrams shall be specific to the bus model supplied and shall include any changes to wiring made by the body manufacturer. Chassis wiring diagrams shall also be supplied to the end user. A system of color- and number-coding shall be used on buses. The following body interconnecting circuits shall be color-coded as noted:

<u>FUNCTION</u>	<u>COLOR</u>
<u>Left Rear Directional Lamp</u>	<u>Yellow</u>
<u>Right Rear Directional Lamp</u>	<u>Dark Green</u>
<u>Stop Lamps</u>	<u>Red</u>
<u>Back-up Lamps</u>	<u>Blue</u>
<u>Tail Lamps</u>	<u>Brown</u>
<u>Ground</u>	<u>White</u>
<u>Ignition Feed, Primary Feed</u>	<u>Black</u>

The color of cables shall correspond to SAE J 1128.

2.50.2.2 Wiring shall be arranged in at least

six regular circuits as follows:

2.50.2.2.1 Head, tail, stop (brake) and instrument panel lamps;

2.50.2.2.2 Clearance lamps and stepwell lamps that shall be actuated when service door is open;

2.50.2.2.3 Dome lamps;

2.50.2.2.4 Ignition and emergency door signal;

2.50.2.2.5 Turn signal lamps; and

2.50.2.2.6 Alternately flashing signal lamps.

2.50.2.3 Any of the above combination circuits may be subdivided into additional independent circuits.

2.50.2.4 Heaters and defrosters shall be wired on an independent circuit.

2.50.2.5 Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

2.50.2.6 Each body circuit shall be coded by number or letter on a diagram of circuits and shall be attached to the body in a readily accessible location.

2.50.3 The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

2.50.4 All wiring shall have an amperage capacity exceeding the design load by at least 25%. All wiring splices are to be done at an accessible location and noted as splices on the wiring diagram.

2.50.5 A body wiring diagram, of a size which can be easily read shall be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel.

2.50.6 The body power wire shall be attached to a special terminal on the chassis.

2.50.7 All wires passing through metal openings shall be protected by a grommet.

2.50.8 Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors, which shall be water-resistant and corrosion-resistant.

### 3.0 Standards for Specially Equipped School Buses

#### 3.1 General Requirements

3.1.1 School buses designed for transporting students with special transportation needs shall comply with these standards and with FMVSSs applicable to their GVWR category.

3.1.2 Any school bus to be used for the transportation of children who are confined to a wheelchair or other mobile positioning device, or who require life-support equipment that prohibits use of the regular service

entrance, shall be equipped with a power lift, unless a ramp is needed for unusual circumstances related to passenger needs.

3.1.3 All lift buses shall have flat floors.

3.1.4 Padded barriers shall be installed to protect wheelchair positions where seating does not interface as barrier.

3.1.5 Seats shall have the minimum spacing specified under FMVSS No. 222 *School Bus Passenger Seating and Crash Protection* (within 24 inches from the safety reference point) per NHTSA February 1999 *Guideline for the Safe Transportation of Pre-School Age Children in School Buses*.

3.1.6 All seats shall have seat belts installed (39" seats shall have 3 seatbelts and 30" seats shall have 2 seatbelts.

3.2 Aisles: All school buses equipped with a power lift shall provide a minimum 30" aisle leading from any wheelchair/mobility aid position to at least one emergency exit. A wheelchair securement position shall never be located directly in front of a power lift door location. It is understood that, when provided, the lift service door is considered an emergency exit.

3.3 Glazing: Tinted glazing may be installed in all doors, windows and windshields consistent with federal, state and local regulations.

3.4 Identification: Buses with power lifts used for transporting individuals with disabilities shall display the International Symbol of Accessibility below the window line. Such emblems shall be white on blue background, shall not exceed 12 square inches in size, and shall be of a high-intensity reflectorized material meeting Federal Highway Administration (FHWA) FP-85 Standards.

3.5 Passenger Capacity Rating: In determining the passenger capacity of a school bus for purposes other than actual passenger load (e.g., vehicle classification or various billing/reimbursement models), any location in a school bus intended for securement of an occupied wheelchair/mobility aid during vehicle operations are regarded as four designated seating positions. Similarly, each lift area may be regarded as four designated seating positions.

#### 3.6 Power Lifts and Ramps

3.6.1 The power lift (power up and gravity down with a manual backup system) shall be located on the right side of the bus body when not extended.

3.6.1.1 School buses with hydraulic brakes shall be equipped with a hydraulic brake interlock system meeting Americans with Disabilities Act (ADA) standards and ensure the lift can not operate unless the parking brake is set. The interlock shall be wired through the ignition switch.

3.6.1.2 A ramp device may be used in lieu of a mechanical lift if the ramp meets all the requirements of the Americans with Disabilities Act (ADA) as found in 36 CFR §1192.23 Vehicle ramp. (See NSTSP, Appendix D)

3.6.1.3 A ramp device which does not meet the specifications of ADA but does meet the specifications of paragraph 3.6.3 of this section may be installed and used, when, and only when, a power lift system is not adequate to load and unload students having special and unique needs. A readily accessible ramp may be installed for emergency exit use. If stowed in the passenger compartment, the ramp must be properly secured and placed away from general passenger contact. It must not obstruct or restrict any aisle or exit while in its stowed or deployed position.

3.6.1.4 All vehicles covered by this specification shall provide a level-change mechanism or boarding device (e.g., lift or ramp) complying with paragraphs 3.6.2 or 3.6.3 of this section with sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location.

### 3.6.2 Vehicle lift

3.6.2.1 Design loads. The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Non-working parts, such as platform, frame, and attachment hardware that would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

3.6.2.2 Lift capacity: The lifting mechanism and platform shall be capable of lifting at least 800 pounds.

3.6.2.3 Controls: Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside the bus. The controls may be interlocked with the vehicle brakes, transmission or door, or they may provide other appropriate mechanisms or systems to ensure the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. The lift shall deploy to all levels (e.g., ground, curb, and intermediate positions) normally encountered in the operating environment. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

3.6.2.3.1 Exception: Where the lift is designed to deploy with its long dimension parallel to the vehicle axis which pivots into or out of the vehicle while occupied (i.e., "rotary lift"), the requirements of this paragraph, prohibiting the lift from being stowed while occupied, shall not apply if the stowed position is within the passenger compartment and the lift is intended to be stowed

while occupied.

3.6.2.4 Emergency operation: The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary lift and is intended to be stowed while occupied. No manual emergency operation shall require more than 2 (two) minutes to lower an occupied wheelchair to ground level.

3.6.2.5 Power or equipment failure: Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12" per second or their dropping of an occupant in the event of a single failure of any load-carrying component.

3.6.2.6 Platform barriers: The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform that extends beyond the vehicle in its raised position shall have a barrier with a minimum height of 1 ½". Such barriers shall not interfere with maneuvering into or out of the aisle. The loading-edge barrier (outer barrier), which functions as a loading ramp when the lift is at ground level, shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it. The outer barrier of the lift shall automatically raise or close, or a supplementary system shall automatically engage, and remain raised, closed, or engaged at all times that the platform is more than 3" above the roadway or sidewalk and the platform is occupied. Alternatively, a barrier or system may be raised, lowered, opened, closed, engaged, or disengaged by the lift operator, provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed or the supplementary system is engaged.

3.6.2.7 Platform surface: The platform surface shall be free of any protrusions over 1/4" high and shall be slip resistant. The platform shall have a minimum clear width of 32" at the platform to 30" above it, and a minimum clear length of 48" measured from 2" above the surface of the platform to 30" above the surface of the platform.

3.6.2.8 Platform gaps: Any openings between the platform surface and the raised barriers shall not exceed 5/8" in width. When the platform is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward lift platform edge and the vehicle floor

shall not exceed 1/2 inch horizontally and 5/8 inch vertically. Platforms on semi-automatic lifts may have a hand hold not exceeding 1 1/2" by 4 1/2" located between the edge barriers.

3.6.2.9 Platform entrance ramp: The outboard entrance ramp or loading-edge barrier used as a ramp and the transition plate from the inboard edge of the platform to the vehicle floor shall not exceed a slope of 1:8, measured on level ground, for a maximum rise of 3", and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to 1/4". Thresholds between 1/4" and 1/2" high shall be beveled with a slope no greater than 1:2.

3.6.2.10 Platform deflection: The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees (exclusive of vehicle roll or pitch) in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26" by 26" test pallet at the centroid of the platform.

3.6.2.11 Platform movement: No part of the platform shall move at a rate exceeding 6" per second while lowering and lifting an occupant, and shall not exceed 12" per second during deploying or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration when occupied shall be 0.3 g.

3.6.2.12 Boarding direction: The lift shall permit both inboard and outboard facing of wheelchair and mobility aid users.

3.6.2.13 Use by standees: Lifts shall accommodate persons using walkers, crutches, canes or braces, or who otherwise have difficulty using steps. The platform may be marked to indicate a preferred standing position.

3.6.2.14 Handrails: Platforms on lifts shall be equipped with handrails on two sides, which move in tandem with the lift, and which shall be graspable and provide support to standees throughout the entire lift operation. Handrails shall have a usable component at least 8" long with the lowest portion a minimum 30" above the platform and the highest portion a maximum 38" above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1 1/4" and 1 1/2" or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than 1/8". Handrails shall be placed to provide a minimum 1 1/2" knuckle clearance from the nearest adjacent surface. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

3.6.2.15 Circuit breaker: A resettable circuit breaker shall be installed between the power source and lift motor if electrical power is used. It shall be located as close to the power source as possible, but not within the passenger/

driver compartment.

3.6.2.16 Excessive pressure: Lift design shall prevent excessive pressure that could damage the lift system when the platform is fully lowered or raised or that could jack the vehicle.

3.6.2.17 Documentation: The following information shall be provided with each vehicle equipped with a lift:

3.6.2.17.1 A phone number where information can be obtained about installation, repair, and parts. (Detailed written instructions and a parts list shall be available upon request.)

3.6.2.17.2 Detailed instructions regarding use of the lift and readily visible when the lift door is open, including a diagram showing the proper placement and positioning of wheelchair/mobility aids on lift.

3.6.2.18 Training materials: The lift manufacturer shall make available training materials to ensure the proper use and maintenance of the lift. These may include instructional videos, classroom curriculum, system test results, or other related materials.

3.6.2.19 Identification and certification: Each lift shall be permanently and legibly marked or shall incorporate a non-removable label or tag that states that it conforms to all applicable requirements of the NSTSP. In addition, the lift manufacturer or an authorized representative, upon request of the original titled purchaser, shall provide a notarized Certificate of Conformance, either original or photocopied, which states that the lift system meets all the applicable requirements of the NSTSP.

### 3.6.3 Vehicle ramp

3.6.3.1 If a ramp is used, it shall be of sufficient strength and rigidity to support the special device, occupant, and attendant(s). It shall be equipped with a protective flange on each longitudinal side to keep special device on the ramp.

3.6.3.2 Floor of ramp shall be constructed of non-skid material.

3.6.3.3 Ramp shall be equipped with handles and be of weight and design to permit one person to put ramp in place and return it to its storage place.

3.6.3.4 Ramps used for emergency evacuation purposes may be installed in raised floor buses by manufacturers. They shall not be used as a substitute for a lift when a lift is capable of servicing the need.

### 3.7 Regular Service Entrance

3.7.1 On power-lift equipped vehicles, steps shall be the full width of the step well, excluding the thickness of doors in the open position.

3.7.2 A suitable device shall be provided at the front and rear of the stepwell to assist passengers during ingress or egress. This device shall allow for easy grasping or holding and shall have no openings or pinch points that might entangle clothing, accessories or limbs.

### 3.8 Restraining Devices

3.8.1 On power lift-equipped vehicles, seat frames may be equipped with attachments or devices to which belts, restraining harnesses or other devices may be attached. Attachment framework or anchorage devices, if installed, shall conform to FMVSS 210.

3.8.2 Belt assemblies, if installed, shall conform to FMVSS 209.

3.8.3 Child restraint systems, which are used to facilitate the transportation of children who in other modes of transportation would be required to use a child, infant, or booster seat, shall conform to FMVSS 213.

3.9 Seating Arrangements: Flexibility in seat spacing to accommodate special devices shall be permitted to meet passenger requirements. All seating shall be forward-facing.

3.10 Securement and Restraint System for Wheelchair/Mobility Aid and Occupant: For purposes of better understanding the various aspects and components of this section, the term *securement* or phrase *securement system* is used exclusively in reference to the device(s) which secures the wheelchair/mobility aid. The term *restraint* or phrase *restraint system* is used exclusively in reference to the device(s) used to restrain the occupant of the wheelchair/mobility aid. The phrase *securement and restraint system* is used to refer to the total system which secures and restrains both the wheelchair/mobility aid and the occupant.

#### 3.10.1 Securement and restraint system-general

3.10.1.1 The Wheelchair/Mobility Aid Securement and Occupant Restraint System shall be designed, installed and operated to accommodate passengers in a forward-facing orientation within the bus and shall comply with all applicable requirements of FMVSS 222. Gurney-type devices shall be secured parallel to the side of each bus.

3.10.1.2 The securement and restraint system, including the system track, floor plates, pockets or other anchorages shall be provided by the same manufacturer, or shall be certified to be compatible by manufacturers of all equipment/systems used.

3.10.1.3 When a wheelchair/mobility aid securement device and an occupant restraint share a common anchorage, including occupant restraint designs that attach the occupant restraint to the securement device or the wheelchair/mobility aid, the anchorage shall be capable of withstanding the loads of both the securement device and occupant restraint applied simultaneously, in accordance with FMVSS 222. (See 3.10.2 and 3.10.3 of this section.)

3.10.1.4 When a wheelchair/mobility aid securement device (webbing or strap assembly) is shared with an occupant restraint, the wheelchair/mobility aid securement device (webbing or strap assembly) shall be capable of withstanding a force twice the amount as specified in §4.4(a) of FMVSS 209. (See 3.10.2 and 3.10.3 of this section.)

3.10.1.5 The bus body floor and sidewall structures where the securement and restraint system anchorages are attached shall have equal or greater strength than the load requirements of the system(s) being installed.

3.10.1.6 The occupant restraint system shall be designed to be attached to the bus body either directly or in combination with the wheelchair/mobility aid securement system, by a method which prohibits the transfer of weight or force from the wheelchair/mobility aid to the occupant in the event of an impact.

3.10.1.7 When an occupied wheelchair/mobility aid is secured in accordance with the manufacturer's instructions, the securement and restraint system shall limit the movement of the occupied wheelchair/mobility aid to no more than 2" in any direction under normal driving conditions.

3.10.1.8 The securement and restraint system shall incorporate an identification scheme that will allow for the easy identification of the various components and their functions. It shall consist of one of the following, or combination thereof:

3.10.1.8.1 The wheelchair/mobility aid securement (webbing or strap assemblies) and the occupant restraint belt assemblies shall be of contrasting color or color shade.

3.10.1.8.2 The wheelchair/mobility aid securement device (webbing or strap assemblies) and occupant restraint belt assemblies may be clearly marked to indicate the proper wheelchair orientation in the vehicle, and the name and location for each device or belt assembly, i.e., front, rear, lap belt, shoulder belt, etc.

3.10.1.9 All attachment or coupling devices designed to be connected or disconnected frequently shall be accessible and operable without the use of tools or other mechanical assistance.

3.10.1.10 All securement and restraint system hardware and components shall be free of sharp or jagged areas and shall be of a non-corrosive material or treated to resist corrosion in accordance with §4.3(a) of FMVSS 209.

3.10.1.11 The securement and restraint system shall be located and installed such that when an occupied wheelchair/mobility aid is secured, it does not block access to the lift door.

3.10.1.12 A device for storage of the securement and restraint system shall be provided. When the system is not in use, the storage device shall allow for clean storage of the system, shall keep the system securely contained within the passenger compartment, shall provide reasonable protection from vandalism and shall enable the system to be readily accessed for use.

3.10.1.13 The entire securement and restraint system, including the storage device, shall meet the flammability standards established in FMVSS 302.

3.10.1.14 Each securement device (webbing or

strap assembly) and restraint belt assembly shall be permanently and legibly marked or shall incorporate a non-removable label or tag that states that it conforms to all applicable FMVSS requirements, as well as, the NSTSP. In addition, the system manufacturer, or an authorized representative, upon request by the original titled purchaser, shall provide a notarized Certificate of Conformance, either original or photocopied, which states that the wheelchair/mobility aid securement and occupants' restraint system meets all of the requirements as specified in FMVSS 222 and the NSTSP.

3.10.1.15 The following information shall be provided with each vehicle equipped with a securement and restraint system:

3.10.1.15.1 A phone number where information can be obtained about installation, repair, and parts. (Detailed written instructions and a parts list shall be available upon request).

3.10.1.15.2 Detailed instructions regarding use, including a diagram showing the proper placement of the wheelchair/mobility aids and positioning of securement devices and occupant restraints, including correct belt angles.

3.10.1.16 The system manufacturer shall make available training materials to ensure the proper use and maintenance of the wheelchair/mobility aid securement and occupant restraint system. These may include instructional videos, classroom curriculum, system test results or other related materials.

### 3.10.2 Wheelchair/mobility aid securement system

3.10.2.1 Each location for the securement of a wheelchair/mobility aid shall consist of a minimum of four anchorage points. A minimum of two anchorage points shall be located in front of the wheelchair/mobility aid and a minimum of two anchorage points shall be located in the rear. The securement anchorages shall be attached to the floor of the vehicle and shall not interfere with passenger movement or present any hazardous condition.

3.10.2.2 Each securement system location shall have a minimum clear floor area of 30" by 48". Additional floor area may be required for some applications. Consultation between the user and the manufacturer is recommended to ensure adequate area is provided.

3.10.2.3 The securement system shall secure common wheelchair/mobility aids and shall be able to be attached easily by a person who has average dexterity and who is familiar with the system and wheelchair/mobility aid.

3.10.2.4 As installed, each securement anchorage shall be capable of withstanding a minimum force of 3,000 pounds when applied as specified in FMVSS 222. When more than one securement device shares a common anchorage, the anchorage shall be capable of withstanding the force indicated above, multiplied by the number of securement devices sharing that anchorage.

3.10.2.5 Each securement device, if incorporating webbing or a strap assembly, shall comply with the requirements for Type 1 lap belt systems, in accordance with §4.2, §4.3, and §4.4(a) of FMVSS 209.

3.10.2.6 The securement system shall secure the wheelchair/mobility aid in such a manner that the attachments or coupling hardware will not become detached when any wheelchair/mobility aid component deforms, when one or more tires deflate, and without intentional operation of a release mechanism (e.g., a spring clip on a securement hook).

3.10.2.7 Each securement device (webbing or strap assembly) shall be capable of withstanding a minimum force of 2,500 pounds when tested in accordance with FMVSS 209.

3.10.2.8 Each securement device (webbing or strap assembly) shall provide a means of adjustment, of manufacturer's design, to remove slack from the device or assembly.

### 3.10.3 Occupant Restraint System

3.10.3.1 A Type 2A lap/shoulder restraint system that meets all applicable requirements of FMVSS 209 and 210 shall provide for restraint of the occupant.

3.10.3.2 The occupant restraint system shall be made of materials which do not stain, soil or tear an occupant's clothing, and shall be resistant to water damage and fraying.

3.10.3.3 Each restraint system location shall have not less than one anchorage of manufacturer's design for the upper end of the upper torso restraint.

3.10.3.3.1 The anchorage for each occupant's upper torso restraint shall be capable of withstanding a minimum force of 1,500 pounds when applied as specified in FMVSS 222.

3.10.3.4 Each wheelchair/mobility aid location shall have not less than two floor anchorages for the occupant pelvic restraint and the connected upper torso restraint.

3.10.3.4.1 Each floor anchorage shall be capable of withstanding a minimum force of 3,000 pounds when applied as specified in FMVSS 222.

3.10.3.4.2 When more than one occupant restraint shares a common anchorage, the anchorage shall be capable of withstanding a minimum force of 3,000 pounds multiplied by the number of occupant restraints sharing the common anchorage in accordance with FMVSS 222.

3.10.3.5 Each floor and wall anchorage that secures the occupant restraint to the vehicle which is not permanently attached, shall be of a "positive latch" design and shall not allow for any accidental disconnection.

### 3.10.4 Dynamic Testing

3.10.4.1 The wheelchair/mobility aid securement and occupant restraint system shall be subjected to and successfully pass a dynamic sled test at a minimum



impact speed/deceleration of 30 mph/20g's.

3.10.4.2 The dynamic test shall be performed by experienced personnel using an impact simulator with proven ability to provide reliable, accurate test results that can be replicated.

3.10.4.3 The dynamic test shall be performed in accordance with the procedures set forth in Appendix A of SAE J2249 "Test for Frontal Impact Crash Worthiness."

3.10.4.4 The wheelchair/mobility aid used for testing purposes shall be a rigid, reusable surrogate wheelchair that complies with the requirements of Appendix D of SAE J2249 "Specification for Surrogate Wheelchair."

3.10.4.5 The dynamic test shall be performed using system assemblies, components and attaching hardware that are identical to the final installation in type, configuration and positioning. The body structure at the anchorage points may be simulated for the purpose of the sled test.

3.10.4.6 When tested, the wheelchair/mobility aid securement and occupant restraint system shall pass the criteria specified in Section 6.2 of SAE J2249 "Performance Requirements of Frontal Sled Impact Test." Following is an abridged summary of the criteria. (See NSTSP, Appendix D)

3.10.4.6.1 Retain the test dummy in the test wheelchair and on the test sled with the test wheelchair in an upright position.

3.10.4.6.2 Do not show any fragmentation or complete separation of any load carrying part.

3.10.4.6.3 Do not allow the horizontal excursions of the test dummy and the test wheelchair to exceed specified limits.

3.10.4.6.4 Prevent the test wheelchair from imposing forward loads on the test dummy.

3.10.4.6.5 Allow removal of the test dummy and the test wheelchair, subsequent to the test, without the use of tools.

3.11 Special Light: Doorways in which lifts are installed shall have for use during lift operation a special light providing a minimum of 2 foot-candles of illumination measured on the floor of the bus immediately adjacent to the lift and on the lift when deployed at the vehicle floor level.

### 3.12 Special Service Entrance

3.12.1 Power lift-equipped bodies shall have a special service entrance to accommodate the power lift.

Exception: If the lift is designed to operate within the regular service entrance, and is capable of stowing such that the regular service entrance is not blocked in any way, and that persons entering or exiting the bus are not impeded in any way, a special service entrance shall not be required.

3.12.2 The special service entrance and door shall be located on the right side of the bus and shall be designed so as not to obstruct the regular service entrance.

3.12.3 The opening may extend below the floor through the bottom of the body skirt. If such an opening is

used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and give the same strength as other floor openings.

3.12.4 A drip molding shall be installed above the opening to effectively divert water from the entrance.

3.12.5 Door posts and headers at the entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for special service entrance.

### 3.13 Special Service Entrance Doors

3.13.1 A single door shall be used for the special service entrance. They shall have rub rails.

3.13.2 There shall be a 57" door height opening.

3.13.3 A single door shall be hinged to the forward side of the entrance unless doing so would obstruct the regular service entrance. If the door is hinged to the rearward side of the doorway, the door shall utilize a safety mechanism which will prevent the door from swinging open should the primary door latch fail.

3.13.4 All doors shall have positive fastening devices to hold doors in the "open" position.

3.13.5 All doors shall be weather sealed.

3.13.6 Door materials, panels and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering and other exterior features shall match adjacent sections of the body.

3.13.7 Each door shall have windows set in rubber which are visually similar in size and location to adjacent non-door windows. Glazing shall be of same type and tinting (if applicable) as standard fixed glass in other body locations.

3.13.8 Door(s) shall be equipped with a device that will actuate an audible or flashing signal located in the driver's compartment when door(s) is not securely closed and ignition is in "on" position.

3.13.9 A switch shall be installed so that the lifting mechanism will not operate when the lift platform door(s) is closed.

3.13.10 Special service entrance doors shall be equipped with padding at the top edge of the door opening. Padding shall be at least 3" wide and 1" thick and extend the full width of the door opening.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3)(v) (16 Del.C. 122(3)(v))

These regulations, "The State of Delaware Regulations Governing Cosmetology and Barbering Establishments," are

new sanitation standards. They are to be adopted in accordance with Chapter 1, Section 122 (3)(v), Title 16, **Delaware Code**.

This comprehensive code establishes minimum standards for public health assurance in the practice of cosmetology and barbering and in the operation of beauty salons, schools of cosmetology, schools of electrology, schools of nail technology and schools of barbering, and for the investigation of complaints involving unsanitary or unsafe practices or conditions in such professions or facilities.

The Health Systems Protection Section, Division of Public Health, Delaware Health & Social Services, will hold a public hearing to discuss the proposed adoption of new "State of Delaware Regulations Governing Cosmetology and Barbering Establishments." The new code establishes sanitation standards for aestheticians, barbers, cosmetologists, electrologists, and nail technicians. Additionally, the regulation applies to the operation of body salons, nail salons, barber shops as well as, schools of cosmetology, electrology, nail technology and barbering.

The public hearing will be held on August 23, 2001, at 1:30 p.m., in the DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover, Delaware.

Information concerning the proposed code is available at the following locations:

Environmental Health Field Services  
Williams State Service Center, 3<sup>rd</sup> floor  
805 River Road  
Dover, Delaware 19901  
Phone: 302-739-5305

and

Environmental Health Field Services  
2055 Limestone Road, Suite 100  
Wilmington, DE 19808  
Phone: 302-995-8650

and

Environmental Health Field Services  
Georgetown State Service Center, Rm. 1000  
546 S. Bedford Street  
Georgetown, Delaware 19947  
Phone: 302-856-5496

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by August 21, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by September 4, 2001, to:

Dave Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

**STATE OF DELAWARE**  
**STANDARDS FOR PUBLIC HEALTH ASSURANCES**  
**IN THE PRACTICE OF**  
**COSMETOLOGY AND BARBERING**

**ADOPTED BY THE SECRETARY, DELAWARE**  
**HEALTH AND SOCIAL SERVICES UNDER**  
**AUTHORITY OF 16 DEL. C. CHAPTER 1, §122(3)(v)**  
**EFFECTIVE DATE: January 2, 2002**

**SECTION 81.1, GENERAL PROVISIONS**

**81.101 Preamble**

The Secretary, Delaware Health and Social Services (DHSS), adopts these standards pursuant to the authority vested by 16 Del.C. §122(3)(v). These standards establish sanitation requirements for the practice of cosmetology, barbering, aesthetics, electrology, and nail technology and in the operation of beauty salons, schools of cosmetology, schools of electrology, schools of nail technology and schools of barbering, and for the investigation of complaints involving unsanitary or unsafe practices or conditions in such professions or facilities.

**81.102 Purpose**

These standards shall be construed and applied to promote their underlying purpose of protecting the public health. They establish minimum standards for public health assurance in the practice of aesthetiology, cosmetology, barbering, electrology, and nail technology. Individuals, schools and businesses engaged in a profession licensed by the Board of Cosmetology and Barbering (Board) are encouraged to employ more stringent requirements.

**81.103 Severability**

If any provision or application of any provision of these standards is held invalid, that invalidity shall not affect other provisions or applications, which can be given effect without the invalid provision.

**81.104 Date of Effect**

These standards shall become effective January 2, 2002.

**81.105 Inspections**

The Secretary, DHSS, or authorized designee shall have right of entry, during the facility's hours of operations and other reasonable times and in a reasonable manner without fee or hindrance, for the purpose of determining if the facility is in compliance with these standards. The facility

shall allow for inspection and shall provide information and records needed to determine compliance with these standards, whether or not the evidence exists that the facility is in violation of these standards.

#### **81.106 Variance**

DHSS may grant a variance by modifying or waiving the requirements of these standards if in the opinion of DHSS a health hazard or nuisance will not result from the variance. A variance, if granted, is rendered void upon the following: when the physical facility is demolished, or when a remodeling project in the facility includes area(s) addressed in the variance, or when the license or certificate holder granted the variance ceases to operate the facility for a period exceeding thirty (30) consecutive days. A variance shall not be transferable from person to person, nor from location to location. If a variance is granted, DHSS shall retain the information specified below in its records for the facility.

A. Statement of the proposed variance of the requirements of these Standards, citing the relevant section of these Standards;

B. An analysis of the rationale for how the potential public health hazards or nuisances will be alternatively addressed by the proposal; and

C. Any other information requested by DHSS that may be deemed necessary to render judgement.

#### **81.107 Facilities – Existing and New**

Facilities that are lawfully in existence and operating at the time of adoption of these standards shall be permitted to have their use and maintenance continued if the use, maintenance or repair of the physical facility and structure is in accordance with the original design and no hazard to life or health is created by the existing facility.

New or remodeled facilities shall before commencing work, submit an application and plans, as required, by and to, the Department of Administrative Services, Division of Professional Regulation (DPR). All construction and renovation shall comply with any and all applicable local, state or federal laws and regulations.

#### **81.108 Failure to Comply**

When a facility or licensee is not in compliance with the provisions of these regulations, the Department shall refer the matter to the Board for enforcement action. However, in the event a facility or licensee poses an immediate risk to the public health, the Secretary, in accordance with 16 Del. C. §122(1), may take immediate action.

#### **81.109 Definitions**

**81.109.1 “Apprentice”** means any person who is engaged in the learning of any or all the practices of cosmetology, barbering, nail technology or electrology from

a practitioner licensed in the profession the apprentice is studying. The apprentice may perform or assist the licensed practitioner in any of the functions which the practitioner is licensed to perform.

**81.109.2 “Antiseptic”** means an agent that destroys disease-causing microorganisms on human skin or mucosa.

**81.109.3 “Aesthetician”** means a person who practices the cleansing, stimulating, manipulating and beautifying of skin, with hands or mechanical or electrical apparatus or appliances and to give treatments to keep skin healthy and attractive.

**81.109.4 “Barber”** means any person who, for a monetary consideration, shaves or trims beards, cuts or dresses hair, gives facial or scalp massaging, treats beards or scalps with preparations made for this purpose or dyes hair.

**81.109.5 “Board”** means and refers to the Delaware Board of Cosmetology and Barbering.

**81.109.6 “Beauty salon”** means any place or part thereof, wherein cosmetology, barbering, electrology or nail technology, or any of its practices, are practiced, whether such place is known or designated as a cosmetological establishment, beauty salon or barber shop, nail salon or electrology establishment, or where the person practicing cosmetology, barbering, nail technology or electrology therein holds oneself out as a cosmetician, cosmetologist, beauty culturist, barber, nail technician or electrologist, or by any other name or designation indicating that cosmetology or barbering is practiced therein.

**81.109.7 “Contaminated Waste”** means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in the latest edition of the Federal CFR known as “Occupational Exposure to Bloodborne Pathogens.”

**81.109.8 “Cosmetologist”** means any person, including students and apprentices, who engages in the practice of cosmetology.

**81.109.9 “Cosmetology”** means any one and/or combination of practices generally and usually performed by and known as the occupation of beauty culturalist, cosmeticians, cosmetologists or hairdressers or any person holding him or herself out as practicing cosmetology in or upon whatever place or premises.

Cosmetology shall include, but otherwise not be limited to, the following or any combination of the following practices: embellishing, arranging, dressing, curling, waving, cleansing, beautifying, cutting, singeing, bleaching, coloring, or similar work upon the hair of any person by any means and with hands or mechanical or electrical apparatus.

devices or appliances or by use of cosmetic preparations, antiseptics, tonics, lotions, creams or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work, the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring, pedicuring or sculpting the nails of any person.

**81.109.10 “Department”** means the Delaware Health and Social Services (DHSS) as defined in Title 29, Section 7901, of the Delaware Code.

**81.109.11 “Disinfection”** means the destruction of pathogenic microorganisms by chemical or physical means directly applied.

**81.109.12 “Equipment”** means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with the operation of an establishment.

**81.109.13 “Electrologist”** means any person who, for a monetary consideration, engages in the removal of superfluous hair by use of specially designed electric needles.

**81.109.14 “Handsink”** means a lavatory equipped with hot and cold running water, under pressure and used solely for washing hands, arms or other portions of the body.

**81.109.15 “Hot Water”** means water which attains and maintains a temperature of at least 110°F.

**81.109.16 “Instructor”** means any person who is a cosmetologist, barber, electrologist or nail technician, who teaches cosmetology, barbering, electrology or nail technology in a duly registered school of cosmetology, barbering, electrology or nail technology.

**81.109.17 “Invasive”** means entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

**81.109.18 “Licensee”** means any person, beauty salon, barbershop, nail salon, electrology establishment, school, or other facility licensed by or holding a certificate of registration with the Board.

**81.109.19 “Liquid Chemical Germicide”** means a disinfectant or sanitizer registered with the Environmental Protection Agency or an approximate 1:10 dilution of household chlorine bleach made fresh daily and dispensed from a spray bottle.

**81.109.20 “Nail technician”** means any person who engages only in the practice of manicuring, pedicuring or sculpting nails, including acrylic nails, of any person.

**81.109.21 “Person”** means an individual, any form of business or social organization or any other non-governmental legal entity including but not limited to a corporation, partnership, limited liability company, association, trust or unincorporated organization.

**81.109.22 “Person in charge”** means the individual present at the regulated facility that is responsible for the

operation at the time of the inspection. For the purposes of disciplinary action the owner or licensee shall be liable.

**81.109.23 “Sanitize/Sanitation Procedure”** means a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by public health standards and which has been approved by DHSS.

**81.109.24 “Secretary”** means the administrator of DHSS or his or her designee.

**81.109.25 “Sharps”** means any object that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, and razor blades.

**81.109.26 “Sharps Container”** means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the international “biohazard” symbol.

**81.109.27 “Single Use”** means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cups, gauze and sanitary coverings, razors, piercing needles, stencils, and cotton swabs or balls, tissues or paper products, paper or plastic protective gloves.

**81.109.28 “Sterilization”** means a powerful process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

**81.109.29 “School of cosmetology”, “school of electrology”, “school of nail technology”, “school of barbering”** shall mean any place or part thereof where cosmetology, barbering, electrology, nail technology or any of the practices are taught, whether such place or establishment is known or designated as a cosmetological establishment, barbering school, beauty culture school, school of electrology, or by any other name or designation, indicating that cosmetology, barbering, electrology or nail technology is taught therein to students.

**81.109.30 “Universal Precautions”** means a set of guidelines and controls, published by the Center for Disease Control (CDC) as “guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers” in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as “recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures,” in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.

**SECTION 81.2. REQUIREMENTS FOR PREMISES****81.201 Water Supply**

A. Water shall be obtained from an approved source that is constructed, maintained and operated according to the requirements of the Department of Natural Resources and Environmental Control (DNREC) and DHSS.

B. The water source and system shall be of sufficient capacity and pressure to meet the demands of the facility. Hot and cold water shall be provided at all sinks.

C. The water source shall conform to the State of Delaware Drinking Water Standards and shall be analyzed annually if a private supply.

**81.202 Sewage**

Sewage shall be disposed of through an approved public treatment sewage plant or private disposal system that is sized, constructed, maintained and operated according to the requirements of DNREC and DHSS.

**81.203 Plumbing**

A. Plumbing shall be sized, constructed, installed, maintained and operated according to the requirements of the applicable plumbing code.

B. One service sink shall be provided in all regulated facilities.

C. Sanitary drinking fountains or bottled water with single use disposable cups must be provided.

**81.204 Toilet Facilities**

A. Each regulated facility shall provide the number of toilets and hand washing sinks required by the applicable plumbing code. They are required to be accessible during business hours and maintained in good working order, have adequate ventilation, and may not be used for storage of linen or beauty supplies.

B. Rest rooms shall be kept in a sanitary condition, maintained in a safe and orderly manner and be equipped with a liquid soap dispenser, disposable towels, toilet paper, and a covered waste receptacle.

**81.205 Hand Washing Facilities**

A hand washing sink which is convenient and accessible to all work stations shall be provided. This sink must be supplied with liquid soap, disposable paper towels and a covered waste receptacle and shall be used for no other purpose.

**81.206 Insect and Rodent Control**

Facilities shall be designed so as to prevent the entry and occurrence of insects and rodents. Pest control measures shall be provided and if a problem occurs professional pest control services shall be provided.

**81.207 Animals**

No animals shall be allowed in any salon, establishment or school except for those that assist persons with disabilities. Fish aquariums are allowed in the waiting area.

**81.208 Garbage and Refuse**

A covered waste receptacle shall be provided at each workstation and be emptied daily. Exterior refuse containers shall be cleanable with a tight fitting lid and collected weekly, at minimum.

**81.209 Laundry**

Soiled reusable cloth items may be mechanically washed with detergent and then dried on premises provided that washers and dryers are installed per local codes and are not included in the area used by clients.

**81.210 Floors, Walls, and Ceilings**

All floors, walls, and ceilings shall be smooth, free of open holes or cracks, washable and maintained in a clean condition and in good repair.

**81.211 Equipment Construction and Design**

All interior surfaces of the facility and fixtures shall be designed so as to be easily maintained and kept clean. Procedure surfaces, including client chairs/benches shall be easy to clean and sanitize.

**81.212 Lighting**

Artificial light sources shall be provided equivalent to at least twenty (20) foot candles three (3) feet off the floor, except that 100 foot candles shall be provided at the level where cosmetology is being performed, and where equipment is assembled.

**81.213 Ventilation**

Every beauty salon, establishment and school shall have a system of adequate ventilation in accordance with the provisions of local building codes.

**81.214 General**

A. All areas shall be maintained in a safe, orderly and sanitary condition.

B. Residential beauty salons, establishments and schools shall be separate from living quarters and have their own entrance.

C. Except where allowed by State or Local law, smoking is prohibited.

**SECTION 81.3. SAFETY AND SANITATION REQUIREMENTS**

**81.301 General**

A. Instruments shall be disinfected or sterilized in accordance with Section 81.5 of these standards.

B. An instrument that caused a skin abrasion or a cut to the skin shall be cleaned and disinfected immediately. If bleeding occurs, a tissue or cotton shall be used to collect the blood. Blood contaminated materials shall be disposed of immediately in a sealed, double-plastic bag.

C. Hair, cotton, or other waste material shall be removed from the floor without delay and deposited in a lidded, closed waste container.

D. Objects dropped on the floor may not be used until they are cleansed and disinfected.

E. Soiled combs, brushes, towels, or other used material shall be removed from the tops of workstations immediately after use.

F. All supplies or instruments which come in direct contact with a patron and cannot be disinfected (for example, cotton pads, emery boards used on the natural nail, and neck strips) must be disposed of in a covered waste receptacle immediately after their use.

G. All instruments that have been used on a patron or soiled in any manner shall be placed in a properly labeled receptacle while awaiting cleaning and sanitizing.

H. Neck dusters and all other brushes used on a patron shall be maintained in a clean and sanitary condition.

I. Permanent waving retention rods shall be cleansed and sanitized after each use. End papers must be discarded immediately after use.

J. Shampoo trays and bowls must be cleansed with soap and water or other detergent after each shampoo, kept in good repair and in a sanitary condition at all times.

K. Pressing combs shall be kept clean and free of carbon, and a hot soda solution or similar cleansing agent shall be used for this purpose. Between clients, pressing combs shall be scrubbed with a stiff brush, rinsed, disinfected, and dried.

L. Curling irons and hot combs shall be wiped free of grease or hair, with a clean cloth, after use on each client. They shall be cleaned per approved procedures and maintained clean and free from rust, grease, and dirt.

**81.302 Employee**

A. Disposable medical gloves shall be worn if the employee has a cut or open wound.

B. A person whose hands come in contact with blood shall wash and disinfect them immediately.

C. Hair clips, hairpins, bobby pins, or similar implements may not be placed in the mouth.

D. Hot combs and curling irons shall be used in a well-ventilated area.

E. A person who uses a dye, tint or other chemical shall follow the directions, regulations or instructions as they appear on the container or package.

**81.303 Single Service**

A. Only clean cloth towels or disposable paper towels shall be used on clients. A cloth towel that has been used on a client shall be immediately placed in a closed container for soiled linen. A disposable paper towel that has been used on a client shall be immediately discarded in a covered waste container.

B. The headrest of a facial chair and footrest and manicure cushion shall be covered with a clean cloth towel or an unused disposable paper towel before the start of each facial, manicure or pedicure.

C. The use of neck dusters, powder puffs, sponges, styptic pencils, and lump alum or any other equipment or implement, which cannot be sanitized and disinfected, may not be used on more than one client.

D. Treatment tables must be covered with a clean sheet of examination paper for each patron.

E. A clean cloth towel, unused disposable paper towel or unused neck strip shall be placed around the neck of each client whose hair is about to be cut to prevent the hair cloth from touching the skin.

**81.304 Equipment Storage**

A. Each regulated facility shall have at least one wet sanitizer, of sufficient size to hold all equipment and instruments as required and one closed drawer or cabinet for containing an active fumigant or electrical sanitizer for each workstation.

B. Cleaned and disinfected implements and equipment shall be stored in a clean and dry cabinet or drawer.

C. Unused clean cloth towels and disposable towels shall be stored in a closed, clean cabinet or towel dispenser.

D. A closed cabinet or separate bin or hamper for the disposal of soiled towels is required as appropriate.

**81.305 Supplies**

A. A minimum of eight combs and four brushes shall be available for each cosmetologist or barber.

B. Only powdered or liquid astringents, applied with a clean cloth towel or clean piece of cotton, may be used to check bleeding. The use of powder puffs or styptic pencils is prohibited.

C. Lotions, oils, and any other type liquid shall be poured into a disinfected container or disinfected hand. Any excess remaining after application shall be discarded immediately and not returned to the original container or applied to another client.

D. Creams and other semisolid substances shall be removed from their containers with a sterile spatula or similar utensil. The spatula or similar utensil may not be permitted to come into contact with the skin of a client.

E. All liquids, creams, and other cosmetic preparations shall be kept in clean, closed and distinctly labeled containers. Poisonous substances shall be in additionally

marked containers. Powders may be kept in clean shakers.

F. When only a portion of a cosmetic preparation is to be used on a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

### **81.4 ADDITIONAL REQUIREMENTS**

#### **81.401 Cosmetologist**

In addition to the sanitation requirements in 81.3, all beauty salons, establishments or schools that offer or provide services normally performed by a cosmetologist shall also comply with the requirements of this section:

1. Creams, lotions, powders and other cosmetics shall be removed from the client by means of disposable absorbent cotton, cleansing tissue, cotton swab, pledget, or other similar material.

2. Lip color, eye color, shadows, or other cosmetics shall be applied to the client with a disposable or cleansed and sanitized applicator.

3. Disposable lip, makeup, eyelash, or other cosmetic applicator shall be discarded immediately after use.

4. Hair removal waxes may not be used for more than one client. Any excess wax left after client service shall be discarded immediately.

5. Blood lancets shall be wrapped and discarded immediately after each use.

6. Disinfected solutions or 70 percent alcohol shall be kept on the cosmetology tray for contact disinfection of implements that may come into contact with blood. The disinfectant solution shall be changed every 1 to 2 hours, or immediately upon becoming cloudy or contaminated with blood.

7. The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.

#### **81.402 Nail Technologists**

A. In addition to the sanitation requirements in 81.3, all beauty salons, establishments or schools offering services normally performed by a nail technologist shall comply with the requirements of this section:

1. The manicure tabletop shall be maintained in a sanitary condition at all times.

2. Instruments used on an individual client shall be placed in a jar sanitizer containing cotton saturated with 70 percent alcohol or bleach during the manicure process so as to keep the instruments in a sanitary condition during the entire manicure procedure.

3. The following procedures shall be followed when paraffin wax is used:

a. A paraffin wax treatment shall be provided before, and not after, a manicure or pedicure.

b. The client shall be free of broken skin or any skin disorder.

c. The hands or feet of the client shall be disinfected before being dipped into paraffin wax.

d. The paraffin wax shall be kept free of any debris and in a sanitary manner.

B. The use of methyl methacrylate (MMA) is prohibited.

C. Electric nail files and electric drills shall not be used on natural nails.

### **SECTION 81.5 DISINFECTION AND STERILIZATION OF INSTRUMENTS AND EQUIPMENT**

#### **81.501 Non-Electrical Instruments and Equipment**

A. Before use upon a client, all non-electrical instruments with or without a sharp point or edge shall be disinfected in the following manner:

1. Cleaned with soap or detergent and water.

2. Then totally immersed in:

a. Commercially marketed U.S. Environmental Protection Agency (EPA) approved and registered disinfection agents sold for the purpose of disinfecting implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed or,

b. A solution of one part household bleach to ten parts water for 10 minutes or,

c. 70 percent alcohol for 20 to 30 minutes.

B. The disinfectant solutions required in 81.501A, shall:

1. Remain covered at all times.

2. Be changed per the manufacturer instructions but at least once per week or whenever visibly cloudy or dirty.

3. Bleach based disinfectant solutions shall be changed daily.

C. If instruments and equipment specified in Section 81.4 are sterilized in accordance with the requirements outlined in 81.3, the requirements of this section will be deemed to have been met.

#### **81.502 Electrical Instruments and Equipment**

Clippers, vibrators, and other electrical instruments shall be disinfected prior to each use by:

1. First removing all foreign matter and,

2. Use of a commercially marketed EPA approved and registered disinfection agent(s) sold for the purpose of disinfecting implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed.

#### **81.503 Electrolysis Instruments and Equipment**

A. All non-single use, non-disposable instruments such as, but not limited to electrolysis needles or tweezers

shall be:

1. cleaned thoroughly by scrubbing with soap, detergent and hot water and,

2. placed in an ultrasonic unit that shall be operated in accordance with manufacturer's instructions.

B. After cleaning, all non-single use, non-disposable instruments shall be packed individually, in peel packs, and subsequently sterilized in accordance with 81.503C. Peel packs shall contain either a sterilized or internal temperature indicator. Peel packs must be dated with an expiration date not to exceed six months. Sterile equipment may not be used if the package has been breached or after the expiration date without first sterilizing and repackaging. All equipment shall remain in sterile packaging until just before use.

C. All cleaned, non-disposable instruments shall be sterilized in a U.S Food and Drug Administration (FDA) approved steam autoclave or dry heat sterilizer. The sterilizer shall be used, cleaned and maintained according to the manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of their sterilization unit must be available for inspection. Sterilizers shall be located away from workstations or areas frequented by the public. If a beauty salon, establishment or school uses all single use, disposable instrument and products, and utilizes sterile supplies, an autoclave shall not be required.

D. Each beauty salon, establishment or school shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. These test records shall be retained for a period of three years and made available upon request of the Board or DHSS.

E. When assembling instruments, the operator shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.

## **SECTION 81.6 PERSONNEL**

### **81.601 Employee Health**

No beauty salon, establishment or school shall knowingly permit a person afflicted with an infection or parasitic infestation capable of being transmitted to a client to serve clients or instruct or train in the beauty salon, establishment or school.

### **81.602 Hygienic Practices**

Every person performing services shall thoroughly wash his or her hands with soap and water or any equally effective cleansing agent immediately before serving each client.

### **81.603 Clothing**

The person and the uniform or attire shall be clean at all times.

## **SECTION 81.7 INFECTIOUS, CONTAGIOUS OR COMMUNICABLE DISEASES**

### **81.701 General**

A. No beauty salon, establishment or school shall knowingly require or permit an employee, apprentice or student to work upon a person believed to have an infection or parasitic infestation capable of being transmitted to the employee, apprentice or student unless the client can produce a physician's certification that the client does not have an infectious, contagious or communicable disease.

B. Employees, apprentices and students shall wear gloves when required to serve a person with skin that is inflamed, broken, abraded, cut or where a skin infection or eruption is present.

C. No person may perform any act, which affects the structure or function of living tissue of the face or body. Any such act shall be considered an invasive procedure. Invasive procedures include, but are not limited to, the following:

1. Application of electricity which contracts the muscle.

2. Application of topical lotions, creams, or other substances which affect living tissue.

3. Penetration of the skin by metal needles, except electrolysis needles.

4. Abrasion of the skin below the non-living, epidermal layers.

D. Only the non-living, uppermost layers of facial skin, known as the epidermis, may, by any method or means, be removed, and then only for the purpose of beautification.

E. Only commercially available products for the removal of facial skin for the purpose of beautification may be used. Mixing or combining skin removal products is prohibited except, as it is required by manufacturer instructions.

F. Universal precautions shall be used when handling human blood or body fluids.

## **SECTION 81.8 PROHIBITED HAZARDOUS SUBSTANCES/USE OF PRODUCTS**

### **81.801 General**

A. No beauty salon, establishment or school shall have on the premises cosmetic products containing hazardous substances, which have been banned by the Delaware Code, the Board, DHSS, or the FDA for use in cosmetic products.

B. No product shall be used in a manner that is disapproved by the Board, DHSS, or the FDA, or is in violation of any applicable Federal or State statute or regulation.



**SECTION 81.9. COMPLIANCE AND ENFORCEMENT****81.901 General**

A. The certificate holder of any beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, school of barbering, school of electrology or school of nail technology shall be responsible for maintaining the Standards for Public Health Assurances established by these regulations.

B. Refusal to permit, or interference with, an inspection by the DHSS or the Board, constitutes violation of these standards.

C. DHSS shall investigate all complaints for violations of these Standards as herein regulated and shall refer any failure to comply with these Standards to the Board for disciplinary sanctions as allowed by law.

**81.902 Penalty**

Any person violating any of the requirements established by these Standards is subject to be referred to the Board for disciplinary sanctions pursuant to 24 Del.C., Chapter 51.

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)(w) (16 Del.C. 122(3)(w))

These regulations, "**The State of Delaware Regulations Governing Body Art Establishments**," are new sanitation standards. They are to be adopted in accordance with Chapter 1, Section 122 (3)(w), Title 16, **Delaware Code**.

This comprehensive code establishes minimum standards for sanitary operation of tattoo parlors and body piercing establishments. Delaware Health and Social Services shall issue annual permits and assess a \$100 permit fee. The Secretary is authorized to issue restricted, provisional or other types of permits, and to suspend or revoke any permit in accordance with the regulations.

The Health Systems Protection Section, Division of Public Health, Delaware Health & Social Services, will hold a public hearing to discuss the proposed adoption of new "State of Delaware Regulations Governing Body Art Establishments." The new code establishes sanitation standards for body art establishments that engage in practices that include, but are not limited to, tattooing and body piercing.

The public hearing will be held on August 23, 2001, at 9:30 a.m., in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware.

Information concerning the proposed code is available

at the following locations:

Environmental Health Field Services  
Williams State Service Center, 3<sup>rd</sup> floor  
805 River Road  
Dover, Delaware 19901  
Phone: 302-739-5305

and

Environmental Health Field Services  
2055 Limestone Road, Suite 100  
Wilmington, DE 19808  
Phone: 302-995-8650

and

Environmental Health Field Services  
Georgetown State Service Center, Rm. 1000  
546 S. Bedford Street  
Georgetown, Delaware 19947  
Phone: 302-856-5496

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by August 21, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by September 4, 2001, to:

Dave Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

**STATE OF DELAWARE  
REGULATIONS GOVERNING  
BODY ART ESTABLISHMENTS**

**ADOPTED BY THE SECRETARY, DELAWARE  
HEALTH AND SOCIAL SERVICES UNDER  
AUTHORITY OF 16 DEL. C. CHAPTER 1, §122(3)(w)  
EFFECTIVE DATE: January 2, 2002**

**Preamble**

The Secretary of Delaware Health and Social Services adopts these Regulations pursuant to the authority vested in the Secretary by 16 Del.C. 122. These Regulations establish standards for the sanitary operation of body art establishments. For the purpose of these Regulations, the term "body art establishment" includes "tattoo parlor" and "body piercing establishment," as defined in 16 Del.C. 122(3)(w). These Regulations provide a system of permitting and inspection of body art establishments and

procedures for enforcement.

These Regulations are adopted on \_\_\_\_\_ (date) and have an effective date of \_\_\_\_\_ (date).

### **Purpose**

These Regulations shall be liberally construed and applied to promote their underlying purpose of protecting the public health. They establish minimum standards in the practice of body art and those facilities that choose to require more stringent standards are encouraged to do so.

### **Severability**

In the event any particular clause or section of these Regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

## **SECTION 82.1 GENERAL PROVISIONS**

### **82.101 Definitions**

For the purposes of these Regulations:

**82.101.1 AFTERCARE** means written instructions given to the client, specific to the body art procedure(s) rendered, on caring for the body art and surrounding area. These Instructions will include information when to seek medical treatment, if necessary.

**82.101.2 ANTISEPTIC** means an agent that destroys disease causing microorganisms on human skin or mucosa.

**82.101.3 BODY ART** includes the practice of "body piercing" as defined in 82.101.5, "branding" as defined in 82.101.6, and "tattooing" as defined in 82.101.29. This definition **does not include** practices that are considered medical procedures by a state medical board, such as implants under the skin, and shall not be performed in a body art establishment. Nor does this definition include, for the purposes of these Regulations, piercing of the outer perimeter or lobe of the ear using pre-sterilized single use stud and clasp ear piercing systems.

**82.101.4 BODY ART ESTABLISHMENT** includes "tattoo parlor" and "body piercing establishment" and means any place or premise, whether public or private, temporary or permanent in nature or location, where the practices of body art, whether or not for profit, are performed.

**82.101.5 BODY PIERCING** means the perforation of human tissue excluding the ear for a non-medical purpose.

**82.101.6 BRANDING** means a permanent mark made on human tissue by burning with a hot iron or other instrument.

**82.101.7 CONTAMINATED WASTE** means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are

capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations Part 1910.1030 (latest edition), known as "Occupational Exposure to Bloodborne Pathogens."

**82.101.8 COSMETIC TATTOOING** see **TATTOOING**.

**82.101.9 DISINFECTION** means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

**82.101.10 DIVISION** means the Delaware Division of Public Health as the agency, and its authorized representatives, having jurisdiction to promulgate, monitor, administer and enforce these Regulations.

**82.101.11 EAR PIERCING** means the puncturing of the outer perimeter or lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system following manufacturers instructions. Under no circumstances shall ear piercing studs and clasps be used anywhere on the body other than the outer perimeter and lobe of the ear.

**82.101.12 EQUIPMENT** means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with the operation of a body art establishment.

**82.101.13 HANDSINK** means a lavatory equipped with tempered hot and cold running water under pressure, used solely for washing hands, arms or other portions of the body.

**82.101.14 HOT WATER** means water at a temperature greater than or equal to 110°F (43°C).

**82.101.15 INSTRUMENTS USED FOR BODY ART** means hand pieces, needles, needle bars and other instruments that may come in contact with a client's body or possible exposure to bodily fluids during body art procedures.

**82.101.16 INVASIVE** means entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

**82.101.17 JEWELRY** means any personal ornament inserted into a newly pierced area, which must be made of surgical implant grade stainless steel, solid 14k or 18k white or yellow gold, niobium, titanium or platinum, a dense, low-porosity plastic and or which is free of nicks, scratches or irregular surfaces and which has been properly sterilized prior to use.

**82.101.18 LIQUID CHEMICAL GERMICIDE** means a disinfectant or sanitizer registered with the Environmental Protection Agency or an approximate 1:100 dilution of household chlorine bleach made fresh daily and dispensed from a spray bottle (500 ppm, ¼ cup per gal. or 2 tablespoons per qt. of tap water).

**82.101.19 OPERATOR/TECHNICIAN** means any person who controls, operates, manages, conducts or practices body art activities at a body art establishment and who is responsible for compliance with these regulations, whether actually performing body art activities or not. The term includes technicians who work under the operator and perform body art activities.

**82.101.20 PERMIT** means written approval by the Division to operate body art establishment. Approval is given in accordance with these Regulations and is separate from any other licensing requirement that may exist within communities or political subdivisions comprising the jurisdiction.

**82.101.21 PERSON** means an individual, any form of business or social organization or any other non-governmental legal entity including but not limited to a corporation, partnership, limited liability company, association, trust or unincorporated organization.

**82.101.22 PHYSICIAN** means a person licensed by the State of Delaware to practice medicine in all its branches and may include other areas such as dentistry, osteopathy or acupuncture, depending on the rules and regulations of the State of Delaware.

**82.101.23 PROCEDURE SURFACE** means any surface of an inanimate object that contacts the client's unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure or any associated work area which may require sanitizing.

**82.101.24 SANITIZE/SANITIZATION**

**PROCEDURE** means a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by public health standards and which has been approved by the Division.

**82.101.25 SHARPS** means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, scalpel blades and razor blades.

**82.101.26 SHARPS CONTAINER** means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the International Biohazard Symbol.

**82.101.27 SINGLE USE** means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves.

**82.101.28 STERILIZATION** means a very powerful process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

**82.101.29 TATTOOING** means one or more of the

following:

(a) An indelible mark made upon the body of another person by the insertion of a pigment under the skin.

(b) An indelible design made upon the body of another person by production of scars other than by branding.

This includes all forms of cosmetic tattooing.

**82.101.30 TEMPORARY BODY ART ESTABLISHMENT** means any place or premise operating at a fixed location where an operator performs body art procedures for no more than 14 days consecutively in conjunction with a single event or celebration.

**82.101.31 UNIVERSAL PRECAUTIONS** means a set of guidelines and controls, published by the Centers for Disease Control and Prevention (CDC) as 'guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers' in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as 'recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures', in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.

**82.101.32 VARIANCE** means a written document issued by the Division that authorizes a modification or waiver of one or more of the requirements of these Regulations if, in the opinion of the Division, a health hazard or nuisance will not result from the modification or waiver.

**82.102 Pre-operational Requirements**

**82.102.1 General**

(a) No person shall operate a body art establishment who does not have a valid permit issued to him by the Division of Public Health (the "Division"). Only a person who complies with the requirements of these Regulations shall be entitled to receive or retain such a permit.

(b) Permits shall not be transferable from person to person or from location to location. The valid permit shall be posted in a location easily observed by the customer.

(c) When a body art establishment changes ownership, management firm, or lessee, both the facility and its operation shall be brought into full compliance with these Regulations prior to the issuance of a permit. A variance may be issued, as provided by these Regulations.

(d) These Regulations outline requirements for body art establishments with permanent, restricted, mobile,

provisional, and temporary permits, and provides enforcement procedures applicable to such establishments.

(e) Establishments operating at the time of the enactment of these Regulations shall be given 180 calendar days to make application to the Division and comply with these Regulations. Establishments in compliance with these regulations shall be issued a permit in accordance with 82.102.2(a), (b), or (c). Establishments not in full compliance but which, in the judgment of the Division, do not pose an immediate health risk, shall be issued a provisional permit in accordance with 82.102.2(d). Establishment that continue to operate without proper permits from the Division or operate in violation of these Regulations will be subject to legal remedial actions and sanctions as provided by the law.

#### 82.102.2 Classification of Body Art Establishment Permits

(a) A **permanent permit** is valid for one year from date of issue and is intended for businesses that operate at a fixed location.

(b) A **restricted permit** shall be issued to an establishment that is not approved to provide full services because of certain limitations.

(c) A **mobile permit** may be issued to an enclosed vehicle which meets all the requirements of these Regulations and which does not operate at a fixed location.

(d) A **provisional permit** with conditions of operations may be granted for a specified period of time to an establishment at the effective date of these Regulations, when no immediate public health risk exists, to allow such establishment adequate time to come into full compliance with these Regulations.

(e) A **temporary permit** may be issued for educational, trade show or product demonstration purposes only. A temporary permit may not exceed fourteen (14) calendar days.

#### 82.102.3 Issuance of Permits

(a) Any person desiring to operate a body art establishment shall make written application for a permit. Such application shall be made on forms provided by the Division, and shall include the name and address of each applicant, the location and type of the proposed establishment and the signature of each applicant. Payment of \$100 fee shall accompany the application and be remitted with the annual renewal application.

(b) The Division shall issue a permit to the applicant if its inspection reveals that the proposed body art establishment complies with these Regulations.

(c) A permanent, restricted, or mobile permit remains valid for one (1) year from the date of issuance. Unless the facility is closed for a period of sixty (60) days or more; a new owner, firm, or lessee takes possession; or the permit is revoked by the Division for violations of these Regulations, the permit will remain valid.

#### 82.102.4 Submission of Plans

Whenever a body art establishment is constructed, undergoes physical alteration, or an existing structure is converted for this purpose, properly prepared plans and specifications shall be submitted to the Division. After review, a Certificate of Approval with conditions will be issued, and the establishment shall comply with the requirements.

#### 82.102.5 Post-Construction and Pre-operational Inspection

Prior to issuance of a permit, the Division shall inspect the proposed body art establishment to determine compliance with the requirements of these Regulations.

### **82.103 Variance**

82.103.1 The Division may grant a variance by modifying or waiving the requirements of these Regulations if in the opinion of the Division a health hazard or nuisance will not result from the variance. A variance, if granted, is rendered void upon the following: when the physical facility is demolished, or when a remodeling project in the facility includes the area(s) addressed in the variance, or when the permit holder granted the variance ceases to operate the Body Art establishment for a period exceeding thirty (30) consecutive days. A variance shall not be transferable from person to person, nor from location to location. If a variance is granted, the Division shall retain the information specified below in its records for the Body Art establishment.

(a) A statement of the proposed variance of the requirement of these Regulations, citing the relevant section of these Regulations;

(b) An analysis of the rationale for how the potential public health hazards or nuisances will be alternatively addressed by the proposal; and

(c) Any other information requested by the Division that may be deemed necessary to render judgement.

### **82.104 Division Personnel Competency Requirement**

82.104.1 Division personnel performing environmental health/sanitary evaluations or complaint investigations of body art establishments shall meet the same requirements as specified for a permit holder in 82.302 of these Regulations prior to assuming responsibilities for this program.

## **SECTION 82.2 COMPLIANCE PROCEDURES**

### **82.201 General**

82.201.1 The valid permit shall be conspicuously displayed on the premises of the establishment for public view. Failure to display a valid permit shall be considered as a violation of these Regulations.

82.201.2 When an inspection reveals that the body art establishment is not in compliance with these Regulations, the permit holder shall take corrective action within the time

specified by the Division. The permit holder may additionally be required to provide to the Division a written plan to correct violations of these Regulations, including the method of correction and the anticipated date of completion.

### **82.202 Inspections and Right of Assess**

82.202.1 After a representative of the Division presents proper identification and provides notice of the intent to conduct an inspection, the person in charge of the body art establishment shall allow the representative to determine if the establishment is in compliance with these Regulations by allowing access to the establishment, allowing inspection, and providing information and records specified in these Regulations and to which the Division is entitled.

### **82.203 Administrative Action**

#### **82.203.1 Operating without a permit**

(a) If a body art establishment is found operating without a valid permit, the Division shall order immediate closure. The closure shall be effective upon receipt of a written notice by the person in charge of the establishment. The establishment shall remain closed until proper application, submission and review of plans, or inspection reveal compliance with these Regulations and approval for permit is made.

(b) A conspicuous, colored placard shall be prominently displayed at all entrances of a body art establishment which has failed to obtain a valid permit.

#### **82.203.2 Imminent Health Hazard**

##### **(a) Suspension of Permit**

If conditions exist in a body art establishment that represent an imminent health hazard, the Division may suspend the operating permit without a hearing upon written notice for a period not to exceed ten (10) days. The suspension shall be effective upon receipt of written notice by the person in charge of the establishment. A suspension statement recorded on the inspection report constitutes a written notice. The person in charge shall yield the permit to the Division.

##### **(b) Hearing**

If the immediate health hazard is not eliminated, the Division shall schedule an administrative hearing within the ten (10) day period of suspension. The purpose of the hearing is to determine if the suspension should be extended, permit revoked or other action taken as necessary.

##### **(c) Reinstatement of Permit**

The permit holder of the body art establishment may request, in writing, to the Division at any time during the suspension, an inspection for the purpose of showing that the imminent health hazard no longer exists. When the imminent health hazard no longer exists, the suspension shall be terminated and the permit returned. If the Division determines that the imminent health hazard has not been

corrected and that the hazard still exists, the suspension remains in force pending a hearing and the Division may recommend that the permit be revoked.

(d) A conspicuous, colored placard shall be prominently displayed at all entrances of a body art establishment whose permit stands suspended or revoked.

#### **82.203.3 Serious Violations, Repeat Violations and General Unsanitary Conditions**

(a) If serious violations, repeat violations, or general unsanitary conditions exist, the Division may issue and properly serve due notice, by certified mail or by hand delivery, of the intention of the Division to suspend the permit of a body art establishment. The Division shall not suspend a permit of a body art establishment for serious or repeated violations which do not present an imminent health hazard, without having first issued and properly served such notice of intent to suspend. Within thirty (30) days of the date of such notice of intent to suspend, the permit holder may submit to the Division a written request for an administrative hearing. The suspension shall commence upon expiration of the notice of intent, unless within thirty (30) days of the date of such notice, the Division receives from the permit holder a written request for an administrative hearing. If the permit holder makes a timely request for an administrative hearing, the suspension shall be stayed pending the results of the hearing.

(b) A conspicuous, colored placard shall be prominently displayed at all entrances of a body art establishment whose permit stands suspended or revoked.

#### **82.203.4 Body Art Establishment Permit Holder Right to Administrative Hearing**

Upon due notice that the Division intends to suspend the permit of a body art establishment, as indicated in 82.203.3, or for other reasons to protect the public health, the permit holder may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing. When an administrative hearing is scheduled, the permit holder of the establishment shall be informed at least (5) days prior to the hearing of the place, time, and date of the hearing and the specific charges against the establishment. Notification of the hearing shall be by certified mail or by hand delivery. Failure of the permit holder to be present for an administrative hearing shall result in automatic suspension of permit and recommendation for revocation.

### **82.204 Records of Administrative Proceedings**

82.204.1 A written report of the hearing decision shall be furnished by the Division to the permit holder of the body art establishment.

### **82.205 Penalty**

82.205.1 Any person who neglects or fails to comply with the requirements of these Regulations shall be subject

to the provisions of 16 Del. C. § 107, and shall be fined not less than \$100 and not more than \$1000, together with costs, unless otherwise provided by law.

82.205.2 The Division may seek to enjoin violations of these Regulations.

### **SECTION 82.3 OPERATIONAL REQUIREMENTS**

#### **82.301 Requirements for the Premises**

82.301.1 Body art establishments applying after adoption of these Regulations shall submit a scale drawing and floor plan of the proposed establishment for a plan review by the Division, as part of the Permit Application process. The Division may charge a reasonable fee for this review.

82.301.2 All walls, floors, and all procedure surfaces in rooms or areas where body art procedures are performed shall be smooth, washable, and in good repair. Walls, floors and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches shall be of such construction as to be easily cleaned and sanitized after each client. All body art establishments shall be completely separated by solid partitions or by walls extending from floor to ceiling, from any room used for human habitation, a food establishment or room where food is prepared, a hair salon, or other such activity which may cause contamination of work surfaces.

82.301.3 Effective measures shall be taken by the body art operator to protect the entrance into the establishment and the breeding or presence on the premises of insects, vermin and rodents. Insects, vermin and rodents shall not be present in any part of the establishment, its appurtenances or adjoining premises.

82.301.4 There shall be a minimum of forty-five (45) square feet of procedure area floor space for each operator in the establishment. Each establishment shall have an area which may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by dividers, curtains or partitions, at a minimum.

82.301.5 The establishment shall be well-ventilated and provided with an artificial light source equivalent to at least twenty (20) foot candles three (3) feet off the floor, except that at least on hundred (100) foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

82.301.6 No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities. Fish aquariums shall be allowed in non-procedural areas.

82.301.7 A separate, readily accessible, handsink with hot and cold running water, under pressure, preferably equipped with wrist or foot operated controls and supplied with liquid soap, and disposable paper towels shall be readily accessible within the body art establishment. One

handsink shall serve no more than three operators. In addition, there shall be a minimum of one lavatory, excluding any service sinks, and one toilet in a body art establishment.

82.301.8 At least one waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily and solid waste shall be removed from the premises at least weekly. All refuse containers shall be cleanable and kept clean.

82.301.9 All instruments and supplies shall be stored in clean, dry and covered containers.

82.301.10 Reusable cloth items shall be mechanically washed with detergent and dried after each use. The cloth items shall be stored in a dry, clean environment until used.

#### **82.302 Requirements for the Permit Holder**

82.302.1 The permit holder of the body art establishment shall have the ability to demonstrate knowledge of the following subjects:

(a) Anatomy; and skin diseases, disorders, and conditions (including diabetes);

(b) Universal Precautions, as published by the Centers for Disease Control and Prevention;

(c) Infectious disease control, including waste disposal, hand washing techniques, sterilization equipment operation and methods, and sanitization, disinfection, sterilization methods and techniques; and

(d) Facility safety and sanitation.

82.302.2 The permit holder shall only hire operators who have complied with the requirements of these Regulations and who have the ability to demonstrate skills and knowledge in body art procedures.

#### **82.303 Requirements for Professional Standards**

82.303.1 The following information shall be kept on file on the premises of a body art establishment and available for inspection by the Division.

(a) Full names and exact duties;

(b) Date of birth;

(c) Gender;

(d) Home address;

(e) Home/work phone numbers;

(f) Identification photos of all body art operator/technicians.

(g) Establishment name;

(h) Hours of operation;

(i) Owner's name and address.

(j) Complete description of all body art procedures performed.

(k) Inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or orders shall satisfy

this requirement.

(l) A copy of these regulations.

82.303.2 It shall be unlawful for any person to perform body art procedures unless such procedures are performed in a body art establishment with a current permit.

82.303.3 The body art operator/technician must be a minimum of eighteen years of age.

82.303.4 Smoking, eating, or drinking should be restricted by anyone is prohibited in the area where body art is performed.

82.303.5 (a) No person shall tattoo, brand, or perform body piercing on another person if the other person is under the influence of alcoholic beverages, including beer, wine or spirits, or a controlled substance.

(b) No person shall tattoo, brand, or perform body piercing on another person if the person authorizing the body art procedure to be performed on the other person is under the influence of alcoholic beverages, including beer, wine or spirits, or a controlled substance.

82.303.6 The permit holder and all employees shall comply with Universal Precautions, as defined in these Regulations, and shall assume that all human blood and specified human body fluids are infectious for HIV, HBV, and other blood pathogens.

82.303.7 The operator/technician shall maintain a high degree of personal cleanliness, conform to hygienic practices and wear clean clothes when performing body art procedures. Before performing body art procedures, the operator/technician must thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.

82.303.8 In performing body art procedures, the operator shall wear disposable medical gloves. Gloves must be changed if they become contaminated by contact with any non-clean surfaces or objects or contact with a third person. The gloves shall be discarded at a minimum, after the completion of each procedure on an individual client and hands washed prior to donning the next set of gloves. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable medical gloves does not preclude or substitute for hand washing procedures as part of a good personnel hygiene program.

82.303.9 If, while performing a body art procedure the operator's/technician's glove is pierced, torn or otherwise contaminated, the procedure in 82.303.7 and 82.303.8 shall be repeated. The contaminated gloves shall be immediately discarded and the hands washed thoroughly, per 82.303.6, before a fresh pair of gloves are applied. Any item or instrument used for body art which is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.

82.303.10 Contaminated waste, as defined in these

Regulations, which may releases liquid blood or body fluids when compressed or may releases dried blood or body fluids when handled must be placed in an approved "red" bag which is marked with the International Biohazard Symbol. It must then be disposed of by a waste hauler approved by the Delaware Department of Natural Resources and Environmental Control. Sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste on-site shall not exceed the period specified by the Division or more than a maximum of 30 days, as specified in 29 CFR Part 1910.1030 whichever is less.

82.303.11 Any skin or mucosal surface to receive a body art procedure shall be free of rash or any visible infection.

82.303.12 The skin of the operator/technician shall be free of rash or infection. No person or operator affected with boils, infected wounds, open sores, abrasions, keloids, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that they could contaminate body art equipment, supplies or working surfaces with body substances or pathogenic organisms.

82.303.13 Proof shall be provided upon request of the Division that all operators/technicians have either completed or were offered and declined, in writing, the hepatitis B vaccination series. This offering should be included as a pre-employment requirement.

#### **82.304 Requirements for Preparation and Care of the Body Art Area**

82.304.1 Before performing a body art procedure, the immediate and surrounding area of the skin where the body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation, depending on the type of body art to be performed. If shaving is necessary, single use disposable razors or safety razors with single service blades shall be used and discarded after each use and the reusable holder shall be autoclaved after use. Following shaving, the skin and surrounding area will be washed with soap and water. The washing pad shall be discarded after a single use.

82.304.2 In the event of blood flow, all products used to check the flow of blood or to absorb blood shall be single use and disposed of immediately after use in appropriate containers, unless the disposal products meet the definition of contaminated waste (see 82.101.7).

**82.305 Requirements for Sanitation and Sterilization Procedures**

82.305.1 All non-single use, non-disposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water or follow the manufacturer's instructions to remove blood and tissue residue, and placed in an ultrasonic unit which will also be operated in accordance with manufacturer's instructions.

82.305.2 After cleaning, all non-disposable instruments used for body art shall be packed individually in peel-packs and subsequently sterilized (see 82.305.3). All peel-packs shall contain either a sterilizer indicator or internal temperature indicator. Peel-packs must be dated with an expiration date not to exceed six (6) months.

82.305.3 All cleaned, non-disposable instruments used for body art shall be sterilized in a steam autoclave. The sterilizer shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of their sterilization unit must be available for inspection by the Division. Sterile equipment may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing. Sterilizers shall be located away from work stations or areas frequented by the public. If the body art establishment uses all single use, disposable instruments and products, and utilizes sterile supplies, an autoclave shall not be required.

82.305.4 Each holder of a permit to operate a body art establishment shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory, or in-house testing equipment may be used with the appropriate documentation. The permit shall not be issued or renewed until documentation of the sterilizer's ability to destroy spores is received by the Division. These test records shall be retained by the operator for a period of three (3) years and made available to the Division upon request.

82.305.5 All reusable needles use in tattooing and body piercing shall be cleaned and sterilized prior to use and stored in peel-packs. After sterilization, the instruments used for tattooing and body piercing shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

82.305.6 All instruments used for tattooing and body piercing shall remain stored in sterile packages until just prior to performing a body art procedure. When assembling instruments used for performing body art procedures, the operator shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.

82.305.7 All inks, dyes, pigments, needles and equipment shall be specifically manufactured for performing

body art procedures and shall be used according to manufacturer's instructions. The mixing of approved inks, dyes or pigments or their dilution with potable water is acceptable. Immediately before applying a tattoo, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single use paper cups or plastic cups. Upon completion of the tattoo, these single use paper cups or plastic caps and their contents shall be discarded.

**82.306 Requirements for Single Use Items**

82.306.1 Single use items shall not be used on more than one client for any reason. After use, all single use needles, razors, razor blades, and other sharps shall be immediately disposed of in approved sharps containers.

82.306.2 All products applied to the skin, including body art stencils shall be single use and disposable. Acetate stencils shall be allowed for re-use if sanitization procedures (see 82.101.24) are performed between uses if approved by the Division. Petroleum jellies, soaps and other products used in the application of stencils shall be dispensed and applied on the area to be tattooed with sterile gauze or in a manner to prevent contamination of the original container and its contents. The gauze shall be used only once and then discarded.

**82.307 Exemptions**

82.307.1 Licensed health care practitioners allowed by law to provide medical treatment who perform, either independent of or in connection with, body art procedures as part of patient treatment are exempt from these regulations.

82.307.2 Individuals who pierce only the outer perimeter and lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system are exempt from these Regulations. Individuals who use ear piercing systems must conform to the manufacturer's directions on use and applicable U.S. Food and Drug Administration requirements. The Division retains authority to investigate consumer complaints relating to alleged misuse or improper disinfection of ear piercing systems.

**SECTION 82.4 NOTIFICATION AND RECORDS REQUIREMENTS****82.401 Public Notification Requirements**

82.401.1 Verbal and written public educational information, approved by the Division, shall be required to be given to all clients wanting to receive body art procedure(s). Verbal and written instructions, approved by the Division, for the aftercare of the body art procedure site shall be provided to each client by the operator upon completion of the procedure. The written instructions shall advise the client to consult the operator at the first sign of infection or swelling and contain: the name, address and phone number of the establishment. These documents shall



be signed and dated by the applicant and the establishment retaining the original with all other required records. In addition, all establishments shall prominently display a Disclosure Statement, provided by the Division, which advises the public of the risks and possible consequences of body art services. The facility permit holder shall also post in public view the name, address and phone number of the Division, and the procedure for filing a complaint.

**82.402 Client Records**

82.402.1 In order for the operator/technician establishment/owner to properly evaluate the client's medical condition for receiving a body art procedure and not violate the client's rights or confidential medical information, the operator/technician shall obtain the following information from the client: "In order for proper healing of your body art procedure, we ask that you disclose if you have or have had any of the following conditions:

- (a) Diabetes;
- (b) History of hemophilia (bleeding);
- (c) History of skin diseases, skin lesions or skin sensitivities to soaps, disinfectants;
- (d) History of allergies or adverse reactions to pigments, dyes or other skin sensitivities;
- (e) History of epilepsy, seizures, fainting or narcolepsy;
- (f) Taking medications such as anticoagulants which thin the blood and/or interferes with blood clotting."

82.402.2 The operator/technician shall require the client to sign a Release Form confirming that the above information was obtained or attempted to be obtained. The client should be asked to disclose any other information that would aid the operator/technician in the client's body art healing process evaluation.

82.402.3 Each body art establishment operator shall keep records of all body art procedures administered; including date, time, identification and location of the body art procedure(s) performed, and operator's name. All client records shall be confidential and be retained for a minimum of three (3) years and made available to the Division upon notification.

82.402.4 Nothing in this section shall be construed to require the operator of a body art establishment to perform a body art procedure upon a client.

**82.403 Records Retention**

82.403.1 The body art establishment shall keep a record of all persons who have had body art procedures performed. The record shall include the name, date of birth, and address of the client, the date of the procedure, name of operator who performed the procedure(s), type and location of procedure performed, signature of client and if the client is a minor, proof of parental or guardian presence and consent, i.e. signature. Such records shall be retained for a minimum of

three (3) years and available to the Division upon request. The Division and the body art establishment shall keep such records confidential.

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**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services is proposing to add new policy to the Division of Social Services Manual, Sections DSSM 2002.1.1: regarding case closures for the Cash Assistance, Food Stamps and Medical Assistance programs and in DSSM 2002.1.2: re-numbered change of address case processing instructions to appear after the policy on case closures; this is a housekeeping change.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2001.

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

**DSSM 2002.1.1 Case Closures:****For Cash Assistance and Food Stamps:**

The Division can terminate benefits if, based on reliable information, the following is true:

- All members of an assistance group/household have died; or
- All members of an assistance group/household have moved from Delaware; or
- DSS mail has been returned by the post office indicating no known forwarding address.

**For Medical Assistance:**

The Division can terminate benefits for an individual if, based on reliable information, the following is true:

- The member of the assistance group has died; or

- The member of the assistance group has moved from Delaware; or
- DSS mail has been returned by the post office indicating no known forwarding address

DSSM 2002.1.2 Change of Address Case Processing Instructions

## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE Food Stamps Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamps Program is proposing to implement several policy changes to the following sections of the Division of Social Services Manual (DSSM): DSSM 6002, 9007.1, 9013.2, 9016, 9016.1, 9016.2, 9016.3, 9016.4, 9018.2, 9027 through 9031, 9032.2, 9032.16, 9033, 9034.2, 9034.3, 9035.1, 9038, 9039.3, 9040, 9042.2, 9057, 9059, 9060, 9061.1, 9061.2, 9068, 9068.1, 9068.2, 9074, 9074.1, 9074.2, 9076, 9076.1, 9076.2, 9076.3, 9076.4, 9078.2, 9081.1, 9081.2, 9082, 9085, and 9091 through 9091.9. These changes are being made as a result of the following rule: Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of PL 104-193, as amended by PL 104-208, 105-33 and 105-185, Final Rule. This rule implements several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by the Omnibus Consolidated Appropriations Act of 1997 (OCA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA).

#### SUMMARY OF CHANGES:

- Medicaid only cases closed in Medicaid (due to agreement with HMOs) are not eligible for Emergency Services.
- Reorganizes policy language regarding citizenship and alien status for ease of reading, clarifies policy on military connection and 40 quarters of coverage eligibility criteria, add non-citizen nationals to list of eligible aliens.
- Adds individuals convicted of drug felonies and time-limited adults to list of non-household members.
- Reorganizes section on authorized representatives for ease of reading, allows authorized representatives to report household changes, requires drug/alcohol center authorized representatives to be prosecuted if drug/alcohol center's authorized representative intentionally misrepresent household circumstances.
- Defines definition of work and good cause for time-limited able-bodied adults, expands the allowable exemptions, and requires the reporting of hours for time-limited adults and counting their income and resources.
- Agency cannot impose additional application requirements as condition of food stamp eligibility.
- Allows filing of applications and signatures by fax or other electronic transmissions, and must encourage households to file application for food stamps when they express concerns about food insecurity.
- Requires agency to provide assistance if there is a question as to the household's refusal of or failure to cooperate.
- Requires workers to explore and resolve incomplete and unclear information with households and to schedule interview for applicants not interviewed the same day they file application in the office.
- Requires agency to give households at least ten days to provide verifications
- Revises verification procedures for alien eligibility
- Requires time-limited able-bodied adults to verify work hours and countable months from other states.
- Allows a statement from a third party that an individual is a US citizen or non-citizen national if normal verifications are not available.
- Requires agency to only disclose information absolutely necessary to get information from collateral contacts, to not disclose that households are applying for food stamps.
- Households who are error prone do not necessarily constitute a lack of verification in order to require a home visit.
- Allows households to supply documents by fax.
- Requires time-limited able-bodied adults' work hours to be verified at recertification.
- Allows agency to deny on the 30<sup>th</sup> day after application if household misses an interview and does not contact agency to pursue application.
- States if household misses 1<sup>st</sup> interview, fails to schedule 2<sup>nd</sup> one or postpones until after 30<sup>th</sup> day, delay is household's fault.
- Adds individuals disqualified for drug related

felony to list of those who cannot be categorically eligible.

- Removes sponsor deeming language and refers to 9081.2.
- Excludes certain diversion payments as income and revises language for energy assistance for ease of reading.
- Allows cost-sharing or spend down expenses incurred by Medicaid as allowable medical expenses, allows well and septic tank maintenance as utility expenses.
- Clarifies the term “initial” month for migrant and seasonal farmworkers.
- Revises guidelines for assigning certification periods, restricts shortening certification periods by using the notice of expiration, allows lengthening certification periods not to exceed 12 months in total.
- Reorganizes section on self-employment income for ease of reading, allows payments on principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods.
- Requires the counting of all the income and resources for individuals disqualified for drug felonies and requires prorating the income and counting the full resources of time-limited able-bodied adults.
- Allows group living arrangement staff to determine whether or not a resident can handle his/her own affairs as far as applying for food stamps, must use food stamps for food prepared and served to those residents who participate in FS.
- Revises definition of sponsored alien.
- Reorganizes section on sponsor deeming for ease of reading and sponsor deeming is not used for ineligible sponsored aliens.
- Revises the rule about the reduction of public assistance benefits to allow for the ban on increasing the food stamps to end when the public assistance case closes.
- Requires time-limited able-bodied adults to report changes in work hours when decreased below 20 hours per week.
- Sets procedures for handling delays in processing recertifications, no proration of benefits if verification period extends past end of certification period.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box

906, New Castle, Delaware by August 31, 2001.

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

#### **6002 Eligibility**

Delaware residents may participate in the Emergency Assistance Program if:

- 1) Individual/Family is in receipt of or eligible for the following:
  - a. Public Assistance receiving households (DABC, GA, SSD);
  - b. 1931; ~~Grant/Payment related Medicaid (DABC/GA/SSD) including Transitional, and Prospective Medicaid\*~~; and
  - c. Poverty-related Pregnant Women, Infants and Children Medicaid\*.
  - e. Poverty related children's Medicaid; and
  - ed. General Assistance Recipients who do not get Medicaid\*.

\* Due to a special arrangement with the Managed Care Organizations (MCO), individuals may receive a Medicaid card from their MCO for up to six months after they are closed in Medicaid. These individuals are not eligible for the Emergency Assistance Program.

OR

- 2) A. Family has children at risk of removal or removed from their home due to, or suspected at risk of, abuse or neglect; or
- 3) B. Family has children removed from, or at risk of removal from, the community.

#### **9007.1 Citizenship and alien status ~~Citizens and Qualified Aliens~~** (273.4)

Household members meeting citizenship or alien status requirements ~~Citizens and qualified aliens~~

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if at least one of the both parents is a are citizens;
2. Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U. S. non-citizen nationals.

3. Individuals who are:

(A) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;

(B) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U. S. to Indians because of their status as Indians;

(C) Lawfully residing in the U. S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U. S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(i) The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(ii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 22; an unmarried child under the age of 18 or if a fulltime student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18<sup>th</sup> birthday.

~~3.4. Individuals who are The following aliens are eligible indefinitely due to being:~~

(A) lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40<sup>th</sup> quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying

quarters total.);

(B) lawfully in US on 8/22/96 and is now under 18 years of age;

(C) lawfully in US on 8/22/96 and is now receiving disability ~~disabled~~ or blind (~~Must be receiving payments listed under DSSM 9013.1~~);

(D) lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).

(E) An alien with one of the following military connections:

(i) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;

(ii) A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed forces of the U. S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(iii) An individual on active duty in the Armed Forces of the U.S. other than for training; or

(iv) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18<sup>th</sup> birthday.

~~military connection (veteran, active duty, spouse, and children) as defined below;~~

~~Aliens who are lawfully residing in any state and are:~~

~~a-) Veterans honorably discharged for reasons other than alienage, and who fulfills the minimum active-duty service requirements of 24 months or the period for which the person was called to active duty, including military personnel who die during active duty service;~~

~~b-) Individuals on active duty, other than active duty for training; or~~

~~e-) Spouses and/or any unmarried dependent children of #a or #b, and or the unremarried surviving spouse of an individual who is deceased if the marriage lasted for at least one year, or was married before the end of a 15-year time span following the end of the period of military service in which the injury or disease was incurred, or married for any period of time if a child was born of the marriage or was born before the marriage;~~

4.5. The following aliens ~~are eligible to participate in the Food Stamp program~~ with a seven-year (7) time limit:

(A) refugees admitted under section 207 of the INA Aet;

(B) asylees admitted and granted asylum under section 208 of the INA Aet;

(C) aliens whose deportation or removal has been withheld under section 241(b)(3) and 243 (h) of the INA Aet.

(D) Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and

(E) Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.

The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).

5.6. An alien who has been battered or subjected to extreme cruelty in the U. S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered. A battered spouse or battered child, or parent or child of a battered person with a petition pending under 203(a)(1)(A) or (B) or 244(a)(3) of INA.

Only eligible if a veteran or on active duty in U.S. armed forces (or spouse or unmarried dependent child of veteran or person on active duty) or lawfully in US on 8/22/96 and under 18 years of age; lawfully in US on 8/22/96 and disabled or blind; or lawfully in US and 65 or older on 8/22/96.

6. ~~The following aliens may be eligible even if they are not qualified aliens and may be eligible for an indefinite period of time:~~

~~- Certain Hmong or Highland Laotians, and spouse and children. Many are admitted as refugees.~~

~~- American Indians born in Canada to which section 289 of INA applies, and members of Indian tribe as defined in section 4(e) of Indian Self Determination and Education Assistance Act. (Cross border Indians)~~

### **9013.2 Non-Household Members**

[273.1(b)]

For the purposes of defining a household under the provisions of this section, the following individuals will not be included as a member of the household unless specifically included as a household member under the special definition at DSSM 9013.1. If not included as a member of the household under the special definition, such individuals will not be included as a member of the household for the purpose of determining household size, eligibility or benefit level. The income and resources of such individuals will be

handled in accordance with DSSM 9077. The following individuals (if otherwise eligible) may participate as separate households:

1) Roomers to whom a household furnishes lodging, but not meals, for compensation.

2) Live-in attendants who reside with a household to provide medical, housekeeping, child care or similar personal services.

3) Other individuals who share living quarters with the household, but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

Some household members are ineligible to receive Program benefits under the provisions of the Food Stamp Act (such as certain aliens and certain students). Others may become ineligible for such reasons as being disqualified for committing an intentional Program violation or refusing to comply with a regulatory requirement. These individuals must be included as a member of the household for the purpose of defining a household under the definition in DSSM 9013.1. However, such individuals must not be included as eligible members of the household when determining the household's size for the purpose of comparing the household's monthly income with the income eligibility standard or assigning a benefit level by household size. The income and resources of such individuals will be handled in accordance with DSSM 9076. These individuals are not eligible to participate as separate households.

Ineligible individuals include the following:

1) Ineligible students who do not meet the eligible student requirement of DSSM 9010.

2) Ineligible aliens who do not meet the citizenship or eligible alien status requirements of DSSM 9032 or the eligible sponsored alien requirements of DSSM 9081.

3) Individuals disqualified for intentional Program violation per DSSM 2023.

4) Individuals disqualified for failure to provide a SSN per DSSM 9032.1.

5) Individuals who do not attest to their citizenship or alien status as required on the Form 100 application form.

6) Individuals found guilty of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive the multiple benefits at the same time per DSSM 2024.

7) Individuals who are fleeing prosecution or custody for a felony or probation/parole violators per DSSM 2025.

8) Individuals convicted of trafficking food stamps of \$500 or more per DSSM 2026.

9) Individuals ineligible due to work requirements per DSSM 9018.

10) Individuals who are ineligible because of a drug-

related felony conviction per DSSM 2027.

11) Individuals ineligible due to the time limit for Able-bodied Adults without Dependents per DSSM 9018.

### 9016 Authorized Representatives

~~[273.1(f)] [273.2(n)]~~

~~[274.5]~~

~~The head of household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in:~~

- ~~- Making application for the Program,~~
- ~~- Obtaining benefits, and/or~~
- ~~- Using benefits at authorized firms.~~

~~An authorized representative may be designated to obtain coupons. The designation should be made at the time the application is completed so that the name of the authorized representative appears on the ID card. The authorized representative for coupon issuance may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make application and obtain benefits, encourage the household to name an authorized representative for obtaining coupons in case of illness or other circumstances which might result in an inability to obtain benefits.~~

~~Ensure that authorized representatives are properly designated. The name of the authorized representative should appear in the casefile.~~

~~Representatives may be authorized to act on behalf of a household in the application process, in obtaining food stamp benefits, and in using food stamp benefits.~~

#### 9016.1 ~~Do Not Limit the Number of Households an Authorized Representative May Represent~~ Application processing and reporting.

~~In the event employers, such as those employing migrant/seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of authorization documents or coupons, exercise caution to assure that:~~

- ~~- Each household has freely requested the assistance of the authorized representative,~~
- ~~- The household's circumstances are correctly represented,~~
- ~~- The household is receiving the correct amount of benefits, and~~
- ~~- The authorized representative is properly using the benefits.~~

~~Unless DSS determines that no other representative is available, the following persons should not serve as authorized representatives:~~

- ~~- DSS employees involved in the eligibility determination,~~
- ~~- Employees of authorized food firms and meal~~

~~services that are authorized to accept food coupons.~~

~~An individual disqualified for fraud cannot serve as an authorized representative during the period of disqualification unless the individual is the only adult in the household and DSS is unable to arrange for another authorized representative. Make a case-by-case determination as to whether these individuals are needed to:~~

- ~~- Apply on behalf of the household,~~
- ~~- Obtain coupons for the household, and~~
- ~~- Use the household's coupons to purchase food.~~

~~In the event that the only adult living with a household is classified as a non-household member per DSSM 9013.2, that individual may serve as an authorized representative for the minor household members.~~

~~Drug or alcohol treatment centers must receive and spend the food stamp benefits for food prepared by and/or served to the participating center residents.~~

~~The head of a group living arrangement acting as the authorized representative for the residents can either receive and spend the resident's benefits for food prepared by and/or served to each eligible resident, or allow each resident to spend all or any portion of the benefits on his/her own behalf. Do not authorize meal providers for the homeless as authorized representatives.~~

~~Inform applicants that a nonhousehold member may be designated as the authorized representative for application processing purposes. The authorized representative may carry out household responsibilities during the certification period such as reporting changes in the household's income or other circumstances. Inform the household that the household will be held liable for any overissuances that results from erroneous information given by the authorized representative.~~

~~A nonhousehold member may be designated as an authorized representative for the application process provided that the person is an adult who is sufficiently aware of relevant household circumstances. The authorized representative designation must be made in writing by the head of the household, the spouse, or another responsible member of the household. DSSM 9016.4 contains more restrictions on who can be designated an authorized representative.~~

~~Residents of drug or alcohol treatment centers must apply and be certified through the use of authorized representatives in accordance with DSSM 9078.1.~~

~~Residents of group living arrangements have the option to apply and be certified through the use of authorized representatives in accordance with DSSM 9078.2.~~

#### 9016.2 Emergency Authorized Representatives Obtaining food stamps benefits.

~~A household may designate an emergency authorized representative to obtain the household's allotment when none of the persons specified on the ID card are available.~~

A document with the signature of the emergency authorized representative and the signature of the household member named on the ID card is required. The household member's signature designates the emergency authorized representative and attests to the signature of the emergency authorized representative. The designation may be on the ATP document or on a separate form. Do not require the household to travel to a DSS office to execute an emergency designation.

The emergency authorized representative must present a separately written and signed statement from the head of the household or his/her spouse authorizing the issuance of the certified household's food stamps to the authorized representative. The emergency representative must sign the written statement from the household and present the statement and the household's ID card to obtain the allotment. A separate written designation is required each time an emergency representative is authorized.

The cashier at the issuing bank will compare the signatures on the ATP and on the ID card. If they do not match, benefits will not be issued. The cashier will record the serial number of the ID card on the ATP.

If the ID card appears to be mutilated or altered, coupons will not be issued until the household obtains a replacement ID card from the Division.

Periodically, the State Office will conduct reviews to determine that these authorized representatives are handling coupons or ATP's in conformance with these regulations.

An authorized representative may be designated to obtain benefits. Encourage households to name an authorized representative for obtaining benefits in case of illness or other circumstances which might prevent the household from obtaining their benefits. The name of the authorized representative must be recorded in the household's case record and on the food stamp identification (ID) card.

The authorized representative for obtaining benefits may or may not be the same individual designated as an authorized representative for the application process or for meeting reporting requirements during the certification period.

When a household needs someone to obtain their food stamp benefits for a particular month, the household may designate an emergency authorized representative. The emergency authorized representative is designated to obtain the household's allotment when none of the persons specified on the ID card are available.

Form 105, Emergency Authorized Representative Designation Form, is used by the household to designate an emergency authorized representative. DSS will fill out and send the Emergency Authorized Representative Designation Form to the client when requested. Do not require households to come into the office to get the Emergency Authorized Representative Designation Form.

The designated emergency authorized representative must present the form that contains the signature of the household member on the ID card and the signature of the emergency authorized representative and the food stamp ID card to the food stamp issuance site. The form must be signed by both the household member and the designated emergency authorized representative before going to the issuance site. A separate written designation is required each time an emergency representative is authorized.

The issuance site teller will compare the signatures on the Emergency Authorized Representative Designation Form and on the ID card. If they do not match, benefits will not be issued. If the ID card appears to be mutilated or altered, coupons will not be issued until the household obtains a replacement ID card from the Division.

### 9016.3 Drug Addict, Alcoholic Treatment Centers and Group Homes as Authorized Representatives Using benefits. {273.1(f)(2)}

Narcotic addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis and disabled or blind residents of group living arrangements who receive benefits under Title II and Title XVI of the Social Security Act may elect to participate in the Food Stamp Program.

The residents of drug or alcoholic treatment centers must apply and be certified for Program participation through the use of an authorized representative who is an employee of and designated by the publicly operated community mental health center or the private non-profit organization or institution that is administering the treatment and rehabilitation program.

All of the residents of the group living arrangements do not have to be certified either through an authorized representative or individually in order for one or the other method to be used.

The center will receive and spend the coupon allotment for food prepared by and/or served to the addict or alcoholic and will be responsible for complying with the requirements set forth in DSSM 9078.

Residents of group living arrangements must either apply and be certified through use of an authorized representative employed and designated by the group living arrangement or apply and be certified on their own behalf or through an authorized representative of their own choice. The group living arrangement will determine if any resident may apply for food stamps on his/her own behalf. The determination should be based on the resident's physical and mental ability to handle his/her own affairs.

If the residents are certified on their own behalf, the coupon allotment may either be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents; used by eligible residents to purchase and prepare food for their own consumption;

and/or to purchase meals prepared and served by the group living arrangement. The group living arrangement is responsible for complying with the requirements set forth in DSSM 9078.

If the group living arrangement has its status as an authorized representative suspended by FNS (see DSSM 9078) residents applying on their own behalf will still be able to participate if otherwise eligible.

A household may allow any household member or nonmember to use its ID card and benefits to purchase food or meals, if authorized, for the household. Drug or alcohol treatment centers and group living arrangements which act as authorized representatives for residents of the facilities must use food stamp benefits for food prepared and served to those residents participating in the Food Stamp Program, except when residents leave the facilities as provided in DSSM 9078.1.

#### **9016.4** Restrictions on designations of authorized representatives. Applying to Authorized Representatives

~~{273.1(f)}~~

~~{274.5(a)}~~

DSS must restrict the use of authorized representatives for purposes of application processing and obtaining food stamp benefits as follows:

1. DSS employees who are involved in the certification and/or issuance processes and retailers that are authorized to accept food coupons may not act as authorized representatives without the specific written approval of the Operations Administrator and only if the Operations Administrator determines that no one else is available to serve as an authorized representative.

2. Individuals disqualified for an intentional Program violation cannot act as authorized representatives during the period of disqualification unless the individual disqualified is the only adult member of the household able to act on its behalf and the agency has determined that no one else is available to serve as authorized representative. In this case it will be determined whether the authorized representative is needed to apply on behalf of the household, or to obtain benefits on behalf of the household, coupons, and to use coupons. Each of these duties will be examined separately and only those duties which cannot be performed by the household or a qualified authorized representative will be assigned to the disqualified member of the household.

3. Homeless meal providers may not act as authorized representatives for homeless food stamp recipients. A "homeless meal provider" is a public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) approved by DHSS, that feeds homeless persons.

4. If DSS determines that an authorized representative has knowingly provided false information about household circumstances or has made improper use of coupons, it may disqualify that person from being an authorized

representative for up to one year. DSS will send written notification to the affected household(s) and the authorized representative 30 days prior to the date of disqualification. The notification must specify the reason for the proposed action and the household's right to request a fair hearing. This provision is not applicable in the case of drug and alcoholic treatment centers and those group homes that act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living arrangements that act as authorized representatives for their residents, and which intentionally misrepresent households circumstances, may be prosecuted under applicable Federal and State statutes for their acts.

There is no limit on the number of households an authorized representative may represent.

In the event that employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or if any one authorized representative has access to a large number of coupons ATP's, caution should be exercised to assure that the household has freely requested the assistance of the authorized representative, the household's circumstances are correctly represented, and the household is receiving the correct amount of benefits. DSS should make sure ~~;~~ and that the authorized representative is properly using the coupons.

Any suspected improper use should be reported to the Chief Social Service Administrator, ~~Policy and Program Development~~ Implementation Unit, who will in turn report the circumstances to FNS for investigation.

#### **9018.2** Time limit for Able-bodied Adults Work Requirement for Able-Bodied Adults Without Dependents Effective November 22, 1996

Individuals are ineligible to continue to receive food stamps if, during the preceding 36-month period they received food stamps at least three (3) months (consecutive or otherwise) while they did not either:

- work at least 20 hours per week (averaged monthly which means 80 hours a month); or
- participate in a work program at least 20 hours per week (averaged monthly); or
- ~~participates in and complies in a work supplementation program; or work and participate in a work program for any combination of hours that totaled 20 hours per week; or~~
- participate and comply in a workfare program.

#### **Definitions**

Work is defined as:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind work);
- Unpaid work, which is verified; or
- Any combination of the above definitions.



paid or non-paid employment, including volunteer work.

Qualifying work programs include programs under:

- Workforce Investment Act Job Training and Partnership Act (JTPA);
- Trade Adjustment Assistance Act; or
- Employment and Training (except for job search or job search training programs).

### **Good Cause**

If the individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirements if:

- the absence from work is temporary; and
- the individual retains his or her job.

Good cause shall include circumstances beyond the individual's control, such as:

- illness;
- illness of another household member requiring the presence of the member;
- a household emergency; or
- the unavailability of transportation.

### **Exemptions**

Individuals are exempt from this work requirement if he or she ~~the individual~~ is:

- Under 18 or over 50 years of age; (The month after an individual turns 18 will be the first month the individual must start meeting the work requirements. The month an individual turns 50 years of age will start the exemption.)
- Medically certified as physically or mentally unfit for employment, ~~which requires a medical form;~~ A person is medically certified as physically or mentally unfit for employment if he or she:
  - Is receiving temporary or permanent disability benefits issued by governmental or private sources.
  - Is obviously mentally or physically unfit for employment; or
  - Provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licenses or certified psychologist, a social worker, or any other medical personnel, that he or she is physically or mentally unfit for employment;
- A parent (natural, adoptive, or step) ~~or other household member with responsibility for a dependent child under the age of 18. (The exemption for non-parents will require a statement about the responsibility).~~ of a household member under age 18, even if the household member who is under 18 is not eligible for food stamps;
- Is residing in a household where a household

member is under age 18, even if the household member who is under 18 is not eligible for food stamps;

- Is pregnant (any trimester); or
- Is otherwise exempt from work requirement under DSSM 9018.3.

### **Regaining Eligibility**

Individuals denied eligibility under this work requirement, or who would have been denied under this work requirement if they had reapplied, can regain eligibility if during a 30-day consecutive period the individual:

- works (paid or non-paid) for 80 hours or more;
- participates in and complies with a work program, as described above, for 80 hours or more; or
- ~~participates in and complies in a work supplementation program;~~ any combination of work and participation in work program for a total of 80 hours; or
- participates in a workfare program, or
- becomes exempt.

Individuals who regain eligibility based on the requirements above will remain eligible as long as they meet the above requirements.

Individuals who lose their employment or cease participation in work or work supplementation programs may continue to receive food stamps for up to three (3) consecutive months beginning from the date DSS is notified that work has ended.

The only remaining cure during the 36-month period is for the individual to:

- comply with the work requirements of this section; or
- to become exempt under other provisions of the requirement.

### **Treatment of Income and Resources**

The income and resources of an individual made ineligible due to the time limit shall be handled according to DSSM 9076.2.

### **Benefits Received Erroneously**

If an individual subject to the time limit receives food stamp benefits erroneously, consider the benefits to have been received unless or until the individual pays it back in full.

### **Verification**

Verification is handled according to DSSM 9032.16 and DSSM 9038.

### **Reporting Requirements**

Individuals subject to the time limit must report changes

in work hours below 20 hours per week, averaged monthly.

Any work performed in a job that was not reported will be counted as work when determining countable months.

### **Countable Months**

Countable months are months during which an individual receives food stamps for the full benefit month while not:

- exempt;
- meeting the work requirements;
- receiving prorated benefits.

### **9027 Application Processing**

[273.2(a)]

DSS will provide timely, accurate, and fair service to applicants and recipients of the Food Stamp Program. DSS will not impose additional application or application processing requirements as a condition of eligibility.

The application process includes filing and completing an application form, being interviewed, and having certain information verified. Prompt action will be taken on all applications and food stamp benefits retroactive to the period of application will be provided to those households that have completed the application process and have been determined eligible. Expedited service will be available to households in immediate need.

### **9028 Filing an Application**

[273.2(c)]

Households must file a food stamp application by submitting the form to a certification office either in person, through an authorized representative, by fax or other electronic transmission, or by mail, or by completing an on-line electronic application. Applications signed through the use of electronic signature techniques or applications containing a handwritten signature and then transmitted by fax or other electronic transmission are acceptable. DSS must document the date the application was filed by recording the date of receipt at the local office.

The length of time DSS has to deliver benefits is calculated from the date the application is filed in the food stamp claim office designated to accept the household's application, except when a resident of a public institution is jointly applying for SSI and food stamps prior to his/her release from an institution in accordance with DSSM 9015. Certify residents of public institutions who apply for food stamps prior to their release from the institution in accordance with DSSM 9039 or DSSM 9041, as appropriate. The date received will be documented on the application.

Each household has the right to file, and should be encouraged to file an application form on the same day it contacts any food stamp office during office hours and expresses interest in obtaining food stamps or expresses concerns which indicate food insecurity, in the project area

~~in which it resides.~~ Mail an application form the same day households request food stamp assistance either by telephone or written notice. Advise the household that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and the signature of a responsible household member or the household's authorized representative. Where there is more than one certification office in a project area, any office must accept applications when filed, but must subsequently refer the household to the proper office for the eligibility determination. Mail applications received in the wrong office to the correct office the same day.

Applications filed at incorrect office locations are considered filed and the receiving office will forward the application to the correct office. If the household is eligible for expedited services, the receiving office will fax the application and proof of identity to the correct office and alert the office by phone about the fax. The correct office will issue the expedited benefits and, if necessary, schedule an appointment for an interview.

When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by DSS on the application is the date of release of the applicant from the institution.

Have application forms readily accessible to potentially eligible households in each regional office and provide them to those groups and organizations involved in outreach efforts. DSS will provide a means for applicants to immediately begin the application process with name, address, and signature by having applicants complete and sign a copy of the on-line Referral for Assistance or the first page of the hard-copy application. Households that complete an on-line electronic application in person have the opportunity to review the information that has been recorded electronically and to receive a copy for their records.

When a household contacts the wrong certification office in person or by telephone, the household will be given the address and phone number of the correct office. The office contacted in person will provide the household an opportunity to file an application that same day. The office will forward the application to the correct office the same day. If the household has mailed its application to the wrong certification office, forward it to the proper office on the same day.

Provide each household at the time of application for (re)-certification with a notice (Form 105) that informs the household of the verification requirements the household must meet as part of the application process. The notice must also inform the household of the Division's responsibility to assist the household in obtaining required verification provided the household is cooperating as specified in DSSM 9029.

**9029 Household Cooperation**

[273.2(d)]

To determine eligibility, the application form must be completed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate in completing this process, the application will be denied at the time of refusal.

To be denied, the household must refuse to cooperate, not merely fail to cooperate or be unable to do so. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process.

The household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility. A subsequent review of eligibility includes, but is not limited to, reviews generated by reported changes, applications for recertifications, reviews of cases certified under disaster food stamp procedures and current eligibility reviews conducted by Audit and Recovery Management Services (ARMS). Benefits will not be terminated for refusal to cooperate with ARMS investigations of past eligibility.

Once denied or terminated for refusal to cooperate, the household may reapply but will not be determined eligible until it cooperates. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household should not be denied, and DSS shall provide assistance.

The household may voluntarily withdraw its application at any time prior to the determination of eligibility. Such action will be documented in the case record to include the reason for withdrawal and that contact was made with the household to confirm the withdrawal. Advise the household of its right to reapply at any time.

Do not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. Do not consider individuals identified as non-household members in DSSM 9013 as individuals outside the household.

**9030 Interviews**

[273.2(e)]

Households must have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter, unless the face-to-face interview has been waived. DSS must inform applicants that the face-to-face interviews will be waived for hardship situations. Hardship conditions include, but are not limited to: being elderly or disabled, illness, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an office interview.

DSS may not require a household to report for an in-office interview during their certification period although they may request a household to do so.

Interview may be conducted at the food stamp office or other mutually acceptable location, including a household residence. Interviews conducted at the household's residence must be scheduled in advance.

~~All applicant households, including those submitting applications by mail, must have a face-to-face interview in a certification site with a qualified eligibility worker, prior to initial certification and all recertifications.~~

The head of household, spouse, any other responsible member of the household, or an authorized representative may be interviewed. Advise the households of their rights and responsibilities during the interview, including the appropriate processing standard and the responsibility to report changes. The interview will be conducted as an official and confidential discussion of household circumstances and will be limited strictly to facts that relate directly to food stamp eligibility criteria. The applicant's right to privacy will be protected during the interview.

The eligibility worker must explore and resolve with the household any unclear and incomplete information.

Waive the office interview if requested by any household which is unable to appoint an authorized representative and which has no household member able to come to the food stamp office because they are elderly or disabled, have transportation difficulties, are working, or similar hardships. Determine if the transportation difficulties or other similar hardship warrants a waiver of the office interview and document in the case record why a request for a waiver was granted or denied.

Waiver of the face-to-face interview does not exempt the household from the verification requirements nor should it affect the length of the households' certification period.

However, special verification procedures may be used such as substituting a collateral contact in cases where documentary evidence would normally be required.

Households for whom the office interview is waived will be offered either a telephone interview or a home visit. Home visits will be scheduled in advance with the household.

DSS will schedule an interview for all applicant households who are not interviewed on the day they submit their applications. All interviews will be scheduled as promptly as possible to ensure eligible households receive an opportunity to participate within 30 days after the application is filed. If the household does not appear for the first interview, reschedule an interview only one time unless the household requests a further appointment.

Applicant and participant households which are unable to obtain certification services without missing time from work must be given appointments for such services.

The applicant may bring any person he or she chooses to

the interview.

### 9031 Definition of Verification

[273.2(f)]

Verification is the use of third party information or documentation to establish the accuracy of statements on the application.

DSS must give households at least 10 days to provide required verifications.

### 9032.2 Alien Status

[273.2(f)(1)(ii)]

1. Based on the application, determine if members identified as aliens are eligible aliens, as defined in DSSM 9007, by requiring that the household present verification for each alien member.

2. Aliens admitted for legal permanent residence specified in DSSM 9007 must present an Immigration and Naturalization Service (INS) form I-151 or I-551 or such other documents which identify the alien's immigration status and which the Division determines are reasonable evidence of the alien's immigration status; or

3. Aliens granted refugee asylee status, or parolee specified in DSSM 9007 must present an INS form I-94, "Arrival-Departure Record," or other documents which identify the alien's immigration status and which the Division determines are reasonable evidence of the alien's immigration status, or

4. Aliens not able to furnish Form I-151, I-551, or I-94 specified in DSSM 9007 must present other documentation such as, but not limited to, a letter, notice of eligibility, or identification and which clearly identifies that the alien has been granted legal status in one of those categories.

5. If an alien is unable to provide any INS document at all (not even an INS form I-94), then the Division has no responsibility to offer to contact INS on the alien's behalf. DSS' responsibility exists only when the alien has an INS document that does not clearly indicate eligible or ineligible alien status.

Do not contact INS to obtain information about the alien's correct status without the alien's written consent.

6. Offer to contact INS when an alien has an INS document that does not clearly indicate eligible or ineligible alien status. When an alien does not present an INS document, the Division has no obligation to offer to contact INS. However, when accepting non-INS documentation determined to be reasonable evidence of the alien's immigration status [See DSSM 9032.2 (2), (3), and (4)], photocopy the document and transmit the photocopy to the SAVE Point-of-Contact person at State Office for forwarding to INS for verification. Pending such verification, do not delay, deny, reduce, or terminate the individual's eligibility for benefits on the basis of the individual's immigration status. The alien applicant's written

consent is not needed to transmit the photocopy to INS.

7. Provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity allows at least ten (10) days from the date of DSS' request for an acceptable document. When DSS accepts non-INS documentation as specified in DSSM 9032.2 (2), (3), and (4) and fails to provide any alien applicant with a reasonable opportunity as of the 30th day following the date of application, provide the household with benefits no later than 30 days following the date of application if the household is otherwise eligible.

8. Except as specified in (7) above and DSSM 9033, the alien applicant whose status is questionable is ineligible until the alien provides acceptable documentation. The income and resources of the ineligible alien shall be treated as specified in DSSM 9076.2.

### 9032.2 Alien Eligibility

A. DSS must verify the eligible status of applicant aliens. If an alien does not wish DSS to contact INS to verify his or her immigration status, DSS will give the household the option of withdrawing its application or participating without that member.

The following information may be relevant to the eligibility of some aliens: date of admission or date status was granted; military connection; battered status; if the alien was lawfully residing in the United States on August 22, 1996; membership in certain Indian tribes; if the person was age 65 or older on August 22, 1996; if a lawful permanent resident can be credited with 40 qualifying quarters of covered work and if any Federal means-tested public benefits were received in any quarter after December 31, 1996; or if the alien was a member of certain Hmong or Highland Laotian tribes during a certain period of time or is the spouse or unmarried dependent of such a person. DSS must verify these factors if applicable to the alien's eligibility.

The SSA Quarters of Coverage History System (QCHS) is used to verify whether a lawful permanent resident has earned or can receive credit for a total of 40 qualifying quarters. The QCHS may not show all qualifying quarters because SSA records do not show current year's earnings and in some cases the last year's earnings, depending on the time of the request. Sometimes an applicant may have work from uncovered employment that is not documented by SSA, but is countable toward the 40 quarters test. In both cases the individual, rather than SSA, will need to provide the evidence needed to verify the quarters.

B. An alien is ineligible until acceptable documentation is provided unless:

1. DSS has submitted a copy of a document provided by the household to INS for verification. Pending

such verification, DSS cannot delay, deny, reduce, or terminated the individual's eligibility for benefits on the basis of the individual's immigration status; or

2. The applicant of DSS has submitted a request to SSA for information regarding the number of quarters of work that can be credited to the individual, SSA has responded that the individual has fewer than 40 quarters, and the individual provides documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited. DSS will certify the individual pending the results of the investigation for up to 6 months from the date of the original determination of insufficient quarters; or

3. The applicant or DSS has submitted a request to a Federal agency for verification of information which bears on the individual's eligible status. DSS will certify the individual pending the results of the investigation for up to 6 months from the date of the original request for verification.

C. DSS must provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30<sup>th</sup> day following the date of application. A reasonable opportunity is at least 10 days from the date of DSS's request for an acceptable document. When DSS fails to provide an alien applicant with a reasonable opportunity as of the 30<sup>th</sup> day following the date of application, DSS must provide the household with benefits no later than 30 days following the date of application, provided the household is otherwise eligible.

D. DSS must verify a household member's citizenship or status as a non-citizen national. DSS will accept participation in another program as acceptable verification if verification of citizenship or non-citizen national was obtained for that program. If the household cannot obtain acceptable verification, DSS must accept a signed third-party statement, under penalty of perjury, which indicates a reasonable basis for personal knowledge that the member in question is a U. S. citizen or a non-citizen national.

**9032.16** Additional verification for able-bodied adults without dependents (ABAWD)

A. Hours worked – individuals who are satisfying the ABAWD work requirements by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State, the individuals' work hours shall be verified.

B. Countable months in another State – for individuals subject to the ABAWD provisions, DSS must verify the number of countable months an individual has used in another State if there is an indication that the individual participated in that State.

**9033 Verification of Questionable Information**

[273.2(f)(2)]

Eligibility factors other than those listed in DSSM 9032 will be verified only if questionable and if they affect a household's eligibility or benefit level.

Questionable information is information inconsistent with statements made by the applicant, with other information on the application or previous applications, or with information received by the agency. Procedures described below will apply when one of the following eligibility factors is questionable:

When expenses claimed by the household for purposes of determining allowable program deductions (per DSSM 9060) or those otherwise reported during the certification interview (e.g., car payments, credit card bills) exceed declared income, ask the household to verify how such expenses were paid. New applicants must satisfactorily explain past management. Possible methods to verify payments are as follows:

Income Source	Type of Verification
Loans and gifts	Statement from lender
Sale of personal property	Receipt from sale
Exchange of services/ in-kind benefits	Statement from landlord, etc.
Gambling proceeds	Lottery tickets
Odd jobs	Note from employer

Benefits may be authorized if the following conditions are met:

a) A new household provides a satisfactory explanation of past management including any verification that is reasonably available to the household.

b) A participating household satisfactorily verifies factors of past management. Verification must be from the month(s) immediately preceding certification/recertification.

Additionally, households where management has been questionable will be notified that they will be responsible for verifications of all cash outflow at times of recertification if management continues to appear questionable.

A. Household Composition. Verify factors affecting the composition of a household, if questionable. Individuals who wish to be a separate household from those with whom they reside will be responsible for proving a claim that they are a separate household to the satisfaction of the Division.

Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors for determining separateness will be responsible for proving a claim of separateness in accordance with DSSM 9032.11.

B. Citizenship. The household must provide acceptable verification for any member whose U.S. citizenship is questionable.

A claim to citizenship may be considered questionable if:

1) The claim of citizenship is inconsistent with statements made by the applicant or with other information

on the application or on previous applications.

2) The claim of citizenship is inconsistent with information received from another source.

3) The individual does not have a Social Security Number.

When a household's statement that one or more of its members are U.S. citizens or has the status as a non-citizen national is questionable, ask the household to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as identification cards for use of resident citizens in the United States (INS form I-179 or INS form I-197), or U.S. passports. Participation in the DABC Program will also be considered acceptable verification if verification of citizenship or non-citizen national status was obtained for that program. If the above forms of verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available, accept a signed statement from a third party indicating a reasonable basis for personal knowledge someone who is a U.S. citizen which declares, under penalty of perjury, that the member in question is a U.S. citizen or non-citizen national. The signed statement must contain a warning of the penalties for helping someone commit fraud, such as: "If you intentionally give false information to help this person get food stamps, you may be fined, imprisoned, or both."

The member whose citizenship or non-citizen national status is in question will be ineligible to participate until proof of U.S. citizenship or non-citizen national status is obtained. Until proof of U.S. citizenship or non-citizen national status is obtained, the member whose citizenship or non-citizen national status is in question will have his or her income, less a prorata share, and all of his or her resources considered available to any remaining household members as set forth in DSSM 9076.2.

C. Deductible expenses. If obtaining verification for a deductible expense may delay certification, advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses per DSSM 9032. Shelter costs would be computed without including the unverified components. The standard utility allowance will be used if the household is entitled to claim it and has not verified higher actual costs.

If the expense cannot be verified within 30 days of the date of application, determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in DSSM 9085. If

the expense could not be verified within the 30-day processing standard because the Division failed to allow the household sufficient time per DSSM 9040 to verify the expense, the household will be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with DSSM 9040. If the household would be ineligible unless the expense is allowed, the household's application will be handled as provided in DSSM 9040.

### 9034.2 Collateral Contacts

A collateral contact is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. Select a collateral contact if the household fails to designate one or designates one that is unacceptable to the Division.

Examples of acceptable collateral contacts are employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third party verification.

When talking with collateral contacts, DSS will disclose only the information that is absolutely necessary to get the information being sought. DSS will avoid disclosing that the household has applied for food stamps, nor should they disclose any information supplied by the household, especially information that is protected by DSSM 1003, or suggest that the household is suspected of doing any wrong doing.

If the Division designates a collateral contact, no contact will be made without providing prior written or oral notice to the household. At the time of this notice, inform the household that it has the following options:

1. Consent to the contact;
2. Provide acceptable verification in another form; or
3. Withdraw the application.

If the household refuses to choose one of these options, its application will be denied in accordance with the normal procedures for failure to verify information.

Systems of records to which DSS has routine access are not considered collateral contacts and, therefore need not be designated by the household.

Examples are the Beneficiary Data Exchange (BENDEX) and the State Data Exchange (SDX) and records of another agency where a routine access agreement exists (such as records from DOL Unemployment Compensation section).

### 9034.3 Home Visits

Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the

household.

Home visits are to be used on a case-by-case basis where the supplied documentation is insufficient. Even though a household fits a profile of an error-prone household, it does not constitute lack of verification, therefore a home visit in this case would not be appropriate. DSS will assist household in obtaining sufficient verification in accordance with DSSM 9305.1 prior to a referral for a home visit by ARMS.

### **9035.1 Responsibility of ~~for~~ Obtaining Verification**

The household has the primary responsibility for providing documentary evidence to support ~~its income~~ statements on the application and to resolve any questionable information. DSS will assist the household in obtaining this verification provided the household is cooperating as defined in DSSM 9029. Households may supply documentary evidence in person, through the mail, by fax or other electronic device, or through an authorized representative. Do not require the household to present verification in person at the food stamp office. Accept any reasonable documentary evidence provided by the household. Be primarily concerned with how adequately the verification proves the statements on the application.

Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level or cannot be obtained, require a collateral contact or a home visit in accordance with DSSM 9034.3. Rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. DSS is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, either designate another collateral contact, ask the household to designate another collateral contact, or provide an alternative form of verification or substitute a home visit. DSS is responsible for obtaining verification from acceptable collateral contacts.

### **9038 Verification Subsequent to Initial Certification**

[273.2(f)(8)]

A. Recertification - Verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25 shall also be verified at recertification. Do not verify income if the source has not changed and if the amount is unchanged or has changed by \$25 or less unless the information is incomplete, inaccurate or inconsistent. Do not verify total medical expenses or actual utility expenses claimed by households which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate or inconsistent.

Verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of actual payments made to nonhousehold members for households eligible for the child support deduction. Verify unchanged child support payments only if questionable.

Verify newly obtained Social Security Numbers at recertification according to procedures outlined in DSSM 9032.5.

Other information, which has changed, may be verified at recertification. Do not verify unchanged information unless the information is incomplete, inaccurate or inconsistent.

For individuals who are satisfying the ABAWD work requirements by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State, the individuals' work hours shall be verified.

### **9039.3 Denying the Application**

Households that are found to be ineligible must be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. If the household has failed to appear for a ~~two~~ scheduled interviews and has made no subsequent contact with DSS to express interest in pursuing the application, send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program.

In cases where DSS was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, DSS may also deny the application on the 30th day if the Division provided assistance to the household in obtaining verification when required per DSSM 9035.1, but the household failed to provide the requested verification.

### **9040 Delays in Processing**

[273.2(h)]

If the agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the agency will take the following action:

A. Determining Cause - The agency must have taken the following actions before a delay is considered the fault of the household:

1. For households that failed to complete the application form: offered or attempted to offer assistance in its completion.

2. For households with members who failed to register for work: informed the household of the need to register for work, determined if the household members are exempt from work registration, and given at least ten (10) days to do so.

3. In cases where verification is incomplete, DSS must have provided the household with a statement of required verification (Form 105) and offered to assist the household in obtaining required verification and allowed the household sufficient time to provide the missing verification.

A delay is considered the fault of the household if the household has failed to complete the application process even though DSS has taken all action required to assist the household. DSS must have taken the following actions before a delay can be considered the fault of the household:

- For households that have failed to complete the application form, offer, or attempt to offer, assistance in its completion.

- Where verification is incomplete, provide assistance as required in DSSM 9035. Allow the household sufficient time to provide the missing verification. Sufficient time is at least ten (10) days from the date of the initial request for the particular verification that was missing.

4. For households that have failed to appear for an interview, DSS must have attempted to reschedule the initial interview within 30 days following the date the application was filed. If the household fails to schedule a second interview, or the ~~However, if the household has failed to appear for the first interview and a subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20 days but before the 30th day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the 30th day; otherwise, the delay will be the fault of the household. If the household has failed to appear for the first interview, fails to schedule a second interview, and/or the~~ ~~and~~ ~~a~~ ~~subsequent~~ ~~interview~~ ~~is~~ ~~postponed~~ ~~at~~ ~~the~~ ~~household's~~ ~~request~~ ~~until~~ ~~after~~ ~~the~~ ~~30th~~ ~~day~~ ~~following~~ ~~the~~ ~~date~~ ~~the~~ ~~application~~ ~~was~~ ~~filed~~, the delay will be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay will be the fault of the household.

#### B. Determine Fault of the Household

1. If by the 30th day the agency cannot take any further action on the application due to the fault of the household, send a notice of denial. If the household takes the required action within 60 days of the date the application was filed, reopen the case without requiring a new application.

2. The household is not entitled to benefits for the month of application when the delay was the fault of the household.

#### C. Determine Fault of DSS

1. Whenever a delay during the initial 30-day period is agency fault, take immediate corrective action. Notify the household of any action it must take to complete the application. If verification is lacking, hold the application pending for only 30 days following the date of

the initial request.

2. Do not deny the application if DSS caused the delay. Instead, notify the household by the 30th day following the date the application was filed that its application is being held pending.

3. If the household is found to be eligible during the second 30-day period, the household will be entitled to benefits retroactive to the month of application. If, however, the household is found to be ineligible, deny the application.

#### D. Delays Beyond 60 Days

1. If DSS is at fault for not completing the application process by the end of the second 30-day period, and the case file is otherwise complete, continue to process the original application until an eligibility determination is reached. If the household is determined eligible, and DSS was at fault for the delay in the initial 30 days, give the household benefits retroactive to the month of application. However, if the initial delay was the household's fault, give the household benefits retroactive only to the month following the month of application. Use the original application to determine the household's eligibility in the months following the 60-day period.

2. If DSS is at fault for not completing the application process by the end of the second 30-day period, but the case file is not complete enough to reach an eligibility determination, deny the case and notify the household to file a new application. If the case is denied, advise the household of its possible entitlement to benefits lost as a result of DSS caused delays in accordance with DSSM 9011. If DSS were also at fault for the delay in the initial 30 days, the amount of benefits lost would be calculated from the month of application. If, however, the household was at fault for the initial delay, the amount of benefits lost would be calculated from the month following the month of application.

3. If the household is at fault for not completing the application process by the end of the second 30-day period, deny the application and require the household to file a new application. As DSS has chosen to hold an application pending only until 30 days following the date of the initial request for the particular verification that was missing, if the verification is not received by that 30th day, immediately deny the application. A notice of denial need not be sent if the notice of pending status informed the household that it would have to file a new application if verification was not received within 30 days of the initial request. The household will not be entitled to any lost benefits, even if the delay in the initial 30 days was the fault of DSS.

#### 9042.2 Categorically Eligible Households

Any household in which all members receive or are authorized to receive DABC/GA and/or SSI benefits are considered eligible for food stamps because of their status as DABC/GA and/or SSI recipients unless the entire household



is institutionalized as defined in DSSM 9015 or disqualified for any reason from receiving food stamps. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with DSSM 9015 are not categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. Consider the individuals categorically eligible. At such time as a final SSI eligibility determination has been made and the individual has been released from the institution. The eligibility factors which are deemed for food stamp eligibility without the verification required in DSSM 9032 because of PA/SSI status are the resource, gross and net income limits, Social Security Number information, sponsored alien information and residency. If any of the following factors are questionable, verify that the household which is considered categorically eligible:

- Contains only members that are DABC/GA or SSI recipients (as defined in DSSM 9042);
- Meets the household definition in DSSM 9013.1;
- Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for DABC/GA or SSI purposes; and
- Includes no persons who have been disqualified.

Households that receive zero benefits will continue to be considered as authorized to receive benefits from the appropriate agency. Assume categorical eligibility at recertification in the absence of a timely redetermination. If a recertified household is subsequently terminated from DABC/GA benefits, follow the procedures in DSSM 9089 as appropriate.

Under no circumstances will any household be considered categorically eligible if any member of that household is disqualified for:

- An intentional Program violation in accordance with DSSM 2023;
- Misrepresenting identity or residence in order to receive multiple food stamp benefits per DSSM 2024;
- Being a fleeing felon, a parole violator, or a probation violator per DSSM 2025;
- Being convicted of trafficking food stamp benefits of \$500 or more per DSSM 2026;
- Failure to comply with the work requirements in DSSM 9018; ~~or~~
- The head of the household is disqualified for failure to comply with the work requirements in DSSM 9018-~~or~~
- Any member of that household is ineligible due to a conviction for a drug-related felony per DSSM 2027.

These households are subject to all food stamp eligibility and benefit provisions and cannot be reinstated in the Program on the basis of categorical eligibility provisions.

Do not include any person as a member in any

household which is otherwise categorically eligible if that person is:

- An ineligible alien as defined in DSSM 9007;
- Ineligible under the student provisions in DSSM 9010; or
- Institutionalized in a non-exempt facility as defined in DSSM 9015.

For the purposes of work registration, apply the exemptions in DSSM 9018 to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in DSSM 9018.

### **9057 Unearned Income**

[273.9(b)(2)]

Unearned income includes, but is not limited to:

~~7. For households containing sponsored aliens (as defined in DSSM 9081), unearned income also includes that amount of the monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien unless the sponsored alien is otherwise exempt from this provision in accordance with DSSM 9081. Actual money paid to the alien by the sponsor or the sponsor's spouse would not be considered income to the alien unless the amount paid exceeds the amount attributed. The amount paid that actually exceeds the amount attributed would be considered income to the alien in addition to the amount attributed to the alien.~~

For a household containing a sponsored alien, the income of the sponsor and the sponsor's spouse must be deemed in accordance with DSSM 9081.2.

### **9059 Income Exclusions**

[273.9(c)]

Only the following items will be excluded from household income and no other income will be excluded:

H. Money received in the form of a non-recurring lump sum payment.

These include, but are not limited to: income tax refunds, rebates or credits; retroactive lump sum Social Security, SSI, public assistance, railroad retirement benefits, or other payments; lump sum insurance settlement; or refunds of security deposits on rental property or utilities. TANF payments made to divert a family from becoming dependent on welfare may be excluded as a nonrecurring lump-sum payment if the payment is not defined as assistance. (All DABC diversion payments are excluded.) These payments will be counted as resources in the month received unless specifically excluded from consideration as a resource by other federal laws.

Payments of large retroactive SSI benefit amounts are required to be made in installments for SSI recipients. These SSI retroactive lump sum installments are excluded from

income.

Earned Income Tax Credit (EITC) payments, whether paid in advance or made as tax refunds, are considered to be non-recurring lump sum payments.

~~K. Payments or allowances made for the purpose of providing energy assistance under any Federal Law, (LIHEAP), including HUD and FMHA (Farmers Home Administration) reimbursements, are excluded as income.~~

~~Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices are also excluded as income.~~

K. Energy assistance as follows:

(a) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than part A of Title IV of the Social Security Act, including utility reimbursements made by the Department of Housing and Urban Development and the rural Housing Service, or

(b) A one-time payment or allowance applied on an as-needed basis and made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down payment followed by a final payment upon completion of the work will be considered a one-time payment for the purposes of this provision.

### 9060 Income Deductions

C. Excess Medical Deductions - That portion of unreimbursed medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is 60 years of age or over or disabled as defined in DSSM 9013.1. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction, but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction.

Allowable medical costs include: Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional, hospitalization, outpatient treatment, nursing home care (including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State).

Prescription drugs and over-the-counter medication when approved by a licensed practitioner or other qualified health professional. Also the cost of medical supplies and sick room equipment (including rental costs) are deductible (when approved by a licensed practitioner or other health professional). Health and hospitalization insurance are deductible, but health and accident insurance policies such as income maintenance or death or dismemberment policies are not deductible.

Any Medicare premiums, cost-sharing or spend

down expenses incurred by Medicaid recipients, dentures, hearing aids and prosthetics are deductible as well as the costs of securing and maintaining a seeing eye or hearing dog including dog food and veterinary bills. Eyeglasses prescribed by a physician skilled in eye disease or by an optometrist and the reasonable costs of transportation and lodging to obtain medical treatment or services are deductible.

Reasonable transportation and lodging costs to obtain medical treatment or services are limited to costs incurred in order to obtain such treatment. These costs are to be verified. Reasonable costs of transportation include, but are not limited to, trips to the doctor, dentist, to fill prescriptions for medicine, dentures, hearing aids or eye glasses. Allowance for mileage in privately owned vehicles should be standard in a State. As for lodging costs, eligibility workers should use good judgement in determining the reasonableness of such costs based on the area and average costs.

Maintaining an attendant, homemaker, home health aide, housekeeper, or childcare services necessary due to age, infirmity, or illness are deductible costs. In addition, an amount equal to the one-person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment allowed shall be the amount in effect at the time of initial certification, and will not be updated until the time of the next scheduled recertification. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the costs shall be treated as a medical expense.

F. Shelter Costs - Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.

Shelter costs will include only the following:

1) Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan that uses the house as collateral.

Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that

the household is billed.

For example, a client rents an apartment in January and must pay January's and the next December's rent in January. Both rental amounts can be used for January's food stamp budget. A rent deduction would not be allowed in December since it was paid in January.

Households required to pay a security deposit before they move into a dwelling cannot claim the deposit as a shelter cost.

For example, a client rents a home and must pay a \$450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.

2) Property taxes, State and local assessments and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings. If separate insurance costs for furniture or personal belongings are not identified, use the total.

3) The costs of:  
fuel for heating;  
electricity or fuel used for purposes other than heating or cooling;  
water;  
sewerage;  
well installation and maintenance;  
septic tank system installation and maintenance;  
garbage and trash collection;  
all service fees for one telephone, including, but not limited to basic service fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and  
fees charged by the utility provider for initial installation of the utility.

One time deposits cannot be included.

~~actual charges for heating and cooking fuel; cooling and electricity; water and sewer; garbage and trash collection fees; the basic fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for installation of the utility. One time deposits are not included as shelter costs.~~

4) The standard heat allowance will be available only to households which incur heating costs separately and apart from their rent or mortgage including residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering. The standard heat allowance is available to households receiving indirect energy assistance payments.

A household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess utility costs is not permitted to use either standard allowance. Such households may claim the actual verified utility expenses which it does

pay separately. Households should be advised of this option at each (re)certification.

Two annualized utility allowances are offered:

· The basic allowance is available to households that do not pay for heat, but incur costs that include electricity and fuel for purposes other than heating, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. ~~yet incur costs for a major utility such as electricity or cooking fuel.~~

· The heat allowance is available to households with heating costs. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility allowances.)

Permit households to switch between their actual utility costs and the appropriate utility standard at the time of recertification. Qualifying households not opting to itemize actual utility costs will be assigned the appropriate standard utility allowance.

If the household is billed separately for only telephone, water, sewer, or garbage collection fees (any one or more of these), the household is not entitled to claim either standard utility allowance.

If one of these households is billed for a telephone, the standard telephone allowance will be used (for these households only and regardless of their actual cost). In addition, these households may claim the actual utility expenses (water, sewer, or garbage) for which they are billed separately from rent or mortgage payments. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the telephone allowance.)

Prorating the SUA

When households live with and share utility expenses with other individuals or households, whether they are participating in the Food Stamp Program or not, the agency will prorate the standard utility allowances based on the number of households sharing the utility costs.

The following are examples of prorating the SUA:

Two (2) households share a residence. They both contribute towards the utility costs. The food stamp household pays \$50 towards the costs each month. The food stamp household is entitled to one-half of the SUA.

A food stamp household shares an apartment and utilities with another individual. The food stamp household pays two-thirds of the utility costs. The household is entitled to one-half of the SUA.

Three (3) households share a residence and utility expenses. The food stamp household pays a different amount each month based on the amount of the costs. The food stamp household is entitled to a one-third proration of the SUA.

~~5)4~~ The shelter costs of the home if not occupied

by the household because of employment away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

6)5) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

### 9061.1 Determination of Eligibility and Benefit Levels

A household's eligibility will be determined for the month of application by considering the household's circumstances for the entire month of application.

Base a household's benefit level for the initial month of certification on the day of the month it applies for benefits. Applicant households consisting of residents of a public institution who apply jointly for SSI and food stamps prior to release from the public institution in accordance with DSSM 9015 will have their eligibility determined for the month in which the applicant household was released from the institution.

Base a household's benefit level for the initial months of certification on the day of the month it applies for benefits. Provide benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution, base the benefit level for the initial month of certification on the date of the month the household is released from the institution and provide the household benefits from the date of the household's release from the institution to the end of the month. Using a 30-day calendar month, households will receive benefits prorated from the day of application to the end of the month. A household applying on the 31st of a month will be treated as though it applied on the 30th of the month. Migrant and seasonal farmworkers will receive a full allotment for the month of application when the household has participated in the Food Stamp Program within 30 days prior to the date of application. When certifying such a household, use the first day of the month as the start date.

To determine the amount of the prorated allotment, use the Food Stamp Allotment Proration Table provided by FNS. Allotments of less than \$10 will not be issued for the initial month.

The term "initial month" means the first month for which the household is certified for participation in the Food

Stamp Program following any period during which the household was not certified for participation, except for migrant and seasonal farmworker households. In the case of migrant and seasonal farmworker households, the term "initial month" means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than 1 month during which the household was not certified for participation.

Those households which are certified using the expedited service procedures in DSSM 9041, and which apply for benefits after the 15th of the month, will be certified for benefits prorated from the day of application to the end of the application month and also for the following month. Benefits for the second full month following the month of application shall not be issued until all postponed verification is provided to DSS.

Do not prorate benefits for migrant/seasonal farmworker households that have participated in the Food Stamp Program within 30 days prior to the date of application.

If an application is held pending beyond 30 days and if the delay is the fault of the household, the first month for which an allotment will be issued to the household will be the month following the month of application. This allotment will be prorated from the date eligibility is established by the household.

### 9061.2 Application for Recertification

Determine eligibility for recertification based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period.

Base the level of benefits on the same anticipated circumstances. ~~If an application for recertification is submitted after the household's certification period has expired, consider that application an initial application and prorate benefits for that month in accordance with DSSM 9061.1.~~ If a household, other than a migrant or seasonal farmworker household, submits an application after the household's certification period has expired, that application shall be considered an initial application and benefits shall be prorated. If a household's failure to timely apply for recertification was due to an agency error causing a break in participation, follow the procedures in DSSM 9091.8. In addition, if the household submits an application for recertification prior to the end of its certification period but is found ineligible for one first month following the end of the certification period, then the first month of a subsequent participation will be considered an initial month. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month will not be an initial month.

**9068 Certification Periods**

[273.10(f)]

Certification periods means the period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility will be established only upon a recertification based upon a newly completed application, an interview and verification. Under no circumstances will benefits be continued beyond the end of a certification period without a new determination of eligibility. The first month of the certification period will be the first month for which the household is eligible to participate.

The certification periods for all households shall not exceed 12 months.

**~~GUIDELINES FOR ASSIGNING CERTIFICATION PERIODS~~**

~~12-month certification periods are assigned to households when:~~

- ~~- Households consist entirely of elderly or unemployable persons with stable income like Social Security, SSI, pension and/or disability benefits; and~~
- ~~- Households receive their primary source of income from self employment or regular farm employment with the same employer.~~

~~7-month certification periods are assigned to households when:~~

- ~~- Households receiving DABC/GA and FS so that the food stamp recertification period expires the month after the cash assistance redetermination date.~~

~~6-month certification periods are assigned to households when:~~

- ~~- Households have stable income such as, but not limited to, pensions, social security, SSI, in-state unemployment compensation, workman's compensation, child support paid through DCSE, and on-going DABC/GA households, and there is little likelihood of major changes in income, deductions and household composition;~~

- ~~- Households consist of ABAWD individuals, because the system will close the case after three months if not meeting the work rules;~~

- ~~- Households claiming a child support deduction have a record of regular child support payments or child support arrearage payments to nonhousehold members.~~

~~3-month certification periods are assigned to households when:~~

- ~~- Households have unstable circumstances, such as households receiving child support payments directly from the absent parent, households receiving out-of-state unemployment compensation, households with an unemployed adult who was employed within 12 months prior to the date of application, households with zero (0) income, households with expenses that exceed income, and all households with earned income;~~

- ~~- Households claiming a child support deduction have a record of irregular child support payments or child support arrearage payments to nonhousehold members;~~

- ~~- Homeless households receive their benefits at a P. O. Box;~~

- ~~- Households receive their benefits at the local office; and~~

~~Households have been closed due to the New Hire Match and they come in verifying they are no longer working.~~

~~Households eligible for the child support deduction shall have the following certification periods:~~

- ~~- Households with no record of regular child support payments or payments of arrearages shall be certified for no more than 3 months.~~

- ~~- Households with a record of regular child support payments or payments of arrearages shall be certified for no more than six months.~~

**9068.1 Certification Period Length**

DSS will assign the longest certification period possible according to each household's circumstances.

Households should be assigned certification periods of at least 6 months, unless the household's circumstances are unstable or the household contains an ABAWD.

Households with unstable circumstances, such as households with zero net income, and households with an ABAWD member should be assigned shorter certification periods but not less than 3 months.

Only assign 1-2 month certification periods when it appears likely that the household will become ineligible for food stamps in the near future.

**9068.2 Shortening Certification Periods**

Do not end a household's certification period earlier than its assigned recertification period unless DSS receives information that the household has become ineligible. Loss of cash assistance or change in employment status is not sufficient in and of itself to shorten a certification period. Close or adjust the household's benefits according to DSSM 9085 in response to reported changes. Do not use the Notice of Expiration to shorten a certification period.

**9068.3 Lengthening Certification Periods**

A household's certification period may be lengthened after it has been assigned as long as the total months of certification do not exceed 12 months.

Households whose certification is lengthened must be informed of the new certification ending date with a notice containing the same information as the notice of eligibility.

**9074 Self-Employment Income**

[273.11(a)]

If the annual support for a household is derived from

self-employment, the income must be annualized over a 12-month period. The income will be annualized even if it is received in a shorter period of time during the year. However, if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, calculate the self-employment income or anticipated earnings. Do not calculate self-employment income on the basis of prior income (e.g., income tax returns) when the household has experienced a substantial increase or decrease in business.

The monthly net self-employment income will be added to any other earned income received by the household. The total monthly earned income less the 20 percent earned income deduction, will then be added to all monthly unearned income received by the household.

Wages paid to the self-employed owner of the business is counted in addition to any profit from the business whether incorporated or not.

If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, offset such losses against any other countable income in the household. Losses from farm self-employment are offset in two phases:

- Offsetting against non-farm self-employment.
- Offsetting against the total of earned and unearned income.

For the purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of \$1,000 or more from the farming enterprise.

Compute the standard deduction, dependent care, and shelter costs in accordance with DSSM 9060 and subtract to determine the monthly net income of the household.

Prorate net losses from the self-employment income of a farmer over a year as described above.

Income received from operation of a commercial boarding house will be also annualized if it provides the annual support of a household. If the household does not operate a commercial boarding house, but does have income from boarders, this income will not be annualized since it does not provide the annual support for a household. Refer to DSSM 9074.

For example, farmers receive their annual income in a short period of time. The income is from self-employment and should be averaged over a 12-month period even if there is other income in addition to the self-employment income.

After annualizing and determining the household's monthly net income, if eligible, the household may elect the option of having its benefit level determined by using either the same net monthly income that was used to establish eligibility or by unevenly prorating the household's total net income to more closely approximate the time when the income is actually received. Naturally, the net income used

in any one month cannot exceed the maximum monthly income eligibility standards for the household's size.

Households who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income should annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

### **9074.1 Changes in Self-Employment Income**

Self-employment income which is received on a monthly basis but which represents a household's annual support will normally be averaged over a 12-month period. If, however, the average amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, calculate the self-employment income based on anticipated earnings.

### **9074.2 Self-Employment Income Which Cannot Be Annualized**

Self-employment income which is to meet the needs of the household for part of a year will be averaged over the time the income is intended to cover.

For example, vendors who work only in the summer and use other sources of income during the rest of the year will have their self-employment income averaged over the summer months only. Self-employment income which has been in existence for less than a year will be calculated by using the income for the period in which the business has been in operation, and the monthly amount projected for the coming year.

However, if the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to base a longer projection.

### **9074.3 Capital Gains**

Capital gains will be included in the household's income. Capital gains are the proceeds from the sale of permanent assets such as machinery, property used in the self-employment enterprise, or other durable goods. The gain will be calculated in the same manner as a gain calculated for Federal income tax purposes except that the gain should not be reduced by 50% as it would be for Federal income tax purposes.

### **9074.4 Allowable Costs of Producing Self-Employment Income**

Allowable costs include, but are not limited to, the identifiable costs of labor, stock, raw material, seed and fertilizers, interest paid to purchase income producing property, insurance premiums, and taxes paid on income producing property.

1. Do not allow the following items as cost of producing self-employment income:

- a) Payments on principal of the purchase price of real estate, capital assets, equipment, machinery, and other durable goods;
- b) Net losses from previous periods;
- c) Federal, State, and local income taxes, money set aside for retirement purposes and other work-related personal expenses, as these expenses are accounted for by the earned income deduction specified in DSSM 9060; and
- d) Depreciation.

#### **9074.5 Certification Periods for Self-Employed Households**

Households that receive their annual support from self-employment and have no other source of income may be certified for up to 12 months. Assign the initial certification period to allow the household to move into an appropriate annual cycle such as the filing of the income tax, or the time when the household receives all or the majority of its annual income.

For households with other sources of income or whose self-employment is intended to cover less than a year, the certification period should be appropriate for the circumstances.

#### **9074.6 Households With Boarders**

[273.11(b)]

Persons paying a reasonable amount for room and board will be excluded from the household when determining the household's eligibility and benefit level. The income of households owning and operating a commercial boarding house will be handled as described in DSSM 9074-9074.4. For all other households, the payments from boarders, except foster care boarders as defined in DSSM 9013.3, will be treated as self-employment income. This income will include all direct payments for room and meals, including contributions for part of the household's shelter expenses. Shelter expenses paid directly to someone outside the household will not be counted as income to the household.

#### **9074.7 Costs of Doing Business**

The cost of doing business will not exceed the payment the household receives from the boarder for lodging and meals. The cost of doing business will be deducted from the income received from boarders in the following amount:

- 1) The cost of the maximum food stamp allotment for a household size equal to the number of boarders;
- 2) The actual documented cost of providing room and meals if the cost exceeds the appropriate maximum food stamp allotment. Only separate and identifiable costs for room and meals may be used.

#### **9074.8 Deductible Expenses**

The net income from self-employment will be added to the other earned income and the earned income deduction will be applied to the total. Shelter costs the household actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, will be computed to determine if the household will receive a shelter deduction. However, the shelter costs will not include any shelter expenses paid directly by the boarder to a third party, such as to the landlord or utility company.

#### **9074.9 Income From Daycare**

Households who have income from day care can select one of the following methods of determining the cost of meals provided to individuals:

- 1) Actual verified costs of meals; or
- 2) Current reimbursement amounts used in the Child and Adult Care Food Program.

#### **9075 Procedure for Calculating Income Which Can Be Annualized to Reflect Monthly Calculations**

1) Add all gross self-employment (including capital gains) for the period of time over which the self-employment income is determined.

2) Subtract the total cost of producing the income.

3) Divide the income by the number of months over which the income will be averaged.

4) For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. Add the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtract the cost of producing the self-employment income. The cost of producing the self-employment income will be calculated by anticipating the monthly allowable costs of producing the self-employment income.

**9074.1** Calculate a household's self-employment income as follows:

(1) Averaging self-employment income.

(i) Average the income over the period the income is intended to cover, even if the household receives income from other sources. If the averaged amount does not accurately reflect the household's current circumstances, calculate the self-employment income on the basis of anticipated earnings, not prior earnings.

(ii) For self-employment that has been in existence for less than a year, average the income over the period of time the business has been in operation. Project that

monthly amount for the coming year.

(2) Determining monthly income from self-employment.

(i) For the period of time over which the self-employment income is determined, add all gross self-employment income (actual or anticipated) and capital gains, exclude the costs of producing the self-employment income, and divide the remaining amount of self-employment income by the number of months over which the income will be averaged. This amount is the monthly net self-employment income. Add the monthly self-employment income to any other earned income received by the household to determine the total monthly earned income.

(ii) If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses must be prorated according to (a)(1) of this section, and then offset against countable income to the household as follows:

(A) Offset farm self-employment losses first against other self-employment income.

(B) Offset any remaining farm self-employment losses against the total amount of earned and unearned income after the earned income deduction has been applied.

(3) Capital Gains

Calculate the proceeds from the sale of capital goods or equipment in the same manner as a capital gain for Federal income tax purposes.

Count the full amount of the capital gain as income for food stamps even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes.

If the self-employment income is calculated on an anticipated basis, count the amount of capital gains the household anticipates receiving during the months over which the income is being averaged.

**9074.2** Allowable costs of producing self-employment income.

(1) Allowable costs of producing self-employment income include, but are not limited to:

The identifiable costs of labor;

stock;

raw material;

seed and fertilizer;

payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;

interest paid to purchase income-producing property;

insurance premiums; and

taxes paid on income-producing property.

(2) The following items are not allowable costs of doing business:

net losses from previous periods;

Federal, State and local income taxes, money set aside for retirement purposes, and other work-related personal expenses like transportation to and from work. (Work-related personal expenses are covered under the 20 percent earned income deduction.)

depreciation; and

any amount that exceeds the payment a household receives from a boarder for lodging and meals.

(3) Calculate the costs of producing self-employment income using the actual costs according to (b)(1) or determine self-employment expenses as follows:

For income from day care, use the current reimbursement amounts used in the Child and Adult Care Food Program.

For income from boarders, other than those in commercial boarding houses or from foster care boarders, use the maximum food stamp allotment for a household size that is equal to the number of boarders.

For income from foster care boarders, refer to DSSM 9013.1.

**Calculation I – Gross Income**

(a) Anticipated capital gains for 12-month period beginning with date of application.

(b) + Anticipated gross self-employment income.

(c) = Gross self-employment income.

**Calculation II – Costs of Operations**

(a) Gross allowable costs of operation.

(b) + Gross depreciation.

(c) = Total cost of operation.

**Calculation III – Net Self-employment Income**

(a) Gross self-employment income.

(b) – Total cost of operation.

(c) Divided by 12

= Net monthly self-employment income.

**9076 Treatment of Income and Resources of Certain Non-Household Members**

[273.11(c)]

During the period of time that a household member cannot participate because (s)he:

· Is an ineligible alien;

· Is ineligible because of disqualification for an intentional Program violation;

· Is ineligible because of disqualification for or refusal to obtain or provide an SSN;

or

· Is ineligible for failing to sign the application attesting to his/her citizenship or alien status;

· Is ineligible because of having made a fraudulent statement or misrepresentation to the identity and/or place of



residence in order to receive multiple benefits at the same time per DSSM 2024 ;

- Is ineligible for being a fleeing felon or probation/parole violator per DSSM 2025;
- Is ineligible for being convicted of trafficking food stamps of \$500 or more per DSSM 2026;
- Is ineligible due to work requirements per DSSM 9018;
- : Individuals who are ineligible because of a drug-related felony conviction per DSSM 2027; or
- : Individuals ineligible due to the time limit for Able-bodied Adults without Dependents per DSSM 9018.

**Exception:**

~~The income and resources of ineligible individuals because of the able-bodied adults without dependents work requirement (ABAWDS) are not counted towards any remaining household members.~~

Determine the eligibility and benefit level of any remaining household members in accordance with the procedures outlined in this section.

**9076.1 Intentional Program Violation, Felony Drug Conviction, or Fleeing Felon Disqualifications, or Work Requirement Sanctions**

Determine as follows the eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of the disqualifications or sanctions listed below:

- Is ineligible because of disqualifications for an intentional Program violation;
- Is ineligible because of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive multiple benefits at the same time;
- Is ineligible for being a fleeing felon or probation/parole violator;
- : Individuals who are ineligible because of a drug-related felony conviction per DSSM 2027; or
- Is ineligible for being convicted of trafficking food stamps of \$500 or more.

1) Income, resources and deductible expenses - the income and resources of the ineligible household member(s) continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, child support payment, and excess shelter deductions continue to apply to the remaining household members.

2) Eligibility and benefit level - the ineligible member is not included when determining the household's size for the purpose of:

- a) Assigning a benefit level to the household;
- b) Comparing the household's monthly income with the income eligibility standards; or
- c) Comparing the household's resources with the

resource eligibility limits. Ensure that no household's coupon allotment is increased as a result of the exclusion of one or more household members.

**9076.2 SSN disqualification and ineligible ABAWDs , ~~Ineligible Alien or Failure to Attest to Citizenship or Alien Status~~**

Determine as follows the eligibility and benefit level of remaining household members of a household containing individuals determined ineligible:

- ~~For being an ineligible alien;~~
- Because of disqualification for refusal to obtain or provide an SSN; or
- : Because of meeting the time limit for able-bodied adults without dependents.
- ~~For failing to attest to citizenship or alien status.~~

1) Resources - The resources of such ineligible members continue to count in their entirety to the remaining household members.

2) Income - Count a prorata share of the income of such ineligible members as income to the remaining members. This prorata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible member's share is counted as income for the remaining household members.

3) Deductible expenses - The earned income deduction applies to the prorated income earned by such ineligible members, which is attributed to their households. That portion of the household's allowable child support payment, shelter, and dependent care expenses which are either paid by or billed to the excluded members, will be divided evenly among the household's members including the ineligible members. All but the ineligible member's share is counted as a deductible child support payment, shelter, or dependent care expense for the remaining household members.

4) Eligibility and benefit level - Such ineligible members will not be included when determining their household's size for the purposes of:

- a) Assigning a benefit level to the household;
- b) Comparing the household's monthly income with the income eligibility standards; or
- c) Comparing the household's resources with the resource eligibility limits.

**9076.3 Ineligible alien.**

Determine as follows the eligibility and benefit level of remaining household members of a household containing individuals determined ineligible:

- : For being an ineligible alien.
- 1) Resources - The resources of such ineligible members continue to count in their entirety to the remaining

household members.

2) Income - Count a prorata share of the income of such ineligible members as income to the remaining members. This prorata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible member's share is counted as income for the remaining household members.

3) Deductible expenses - The earned income deduction applies to the prorated income earned by such ineligible members, which is attributed to their households. That portion of the household's allowable child support payment, shelter, and dependent care expenses which are either paid by or billed to the excluded members, will be divided evenly among the household's members including the ineligible members. All but the ineligible member's share is counted as a deductible child support payment, shelter, or dependent care expense for the remaining household members.

4) Eligibility and benefit level - Such ineligible members will not be included when determining their household's size for the purposes of:

- a) Assigning a benefit level to the household;
- b) Comparing the household's monthly income with the income eligibility standards; or
- d) Comparing the household's resources with the resource eligibility limits.

### **9076.3 9076.4 Reduction or Termination of Benefits Within the Certification Period**

Whenever an individual is determined ineligible within the household's certification period, determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file:

a) Excluded for Intentional Program Violation Disqualification - If a household's benefits are reduced or terminated within the certification period because one of its members was excluded because of disqualification for intentional Program violation, notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification. The household is not entitled to a notice of adverse action, but may request a fair hearing to contest the reduction or termination of benefits, unless the household has already had a fair hearing on the amount of the claim as a result of a consolidation of the administrative disqualification hearing with the fair hearing.

b) Disqualified or determined ineligible for reasons other than intentional Program violation. SSN disqualification, ineligible alien or work requirement sanction - If a household's benefits are reduced or terminated within one certification period for reasons other than an intentional Program violation disqualification, because one

or more of its members is an ineligible alien, or is ineligible because (s)he was disqualified for refusal to obtain or provide an SSN, issue a notice of adverse action in accordance with DSSM 9006, informing the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members and the action the household must take to end the ineligibility.

### **9078.2 Residents of Group Living Arrangements (GLA) Who Receive Benefits Under Title II or Title XVI of the Social Security Act**

Disabled or blind residents of a group living arrangement who are covered under the Food Stamp Act's definition of a disabled person in DSSM 9013.1, (b through k) may voluntarily apply for the Food Stamp Program. ~~If these~~ The GLA must determine if a resident may apply on his or her own behalf based on the resident's physical and mental ability to handle his or her own affairs. Residents may apply through the use of the facility's authorized representative per DSSM 9016.1. Their eligibility will be determined as one-person households. ~~If the~~ Residents can apply on their own behalf or through an authorized representative of their choice. Certify these residents using the same provisions that apply to all other households.

Prior to certifying any residents for food stamps, verify that the group living arrangement is authorized by FNS or is certified by DHSS and that the center is a nonprofit organization.

#### **Shelter and Medical Expenses for Group Home Residents**

Room and medical costs, which can be separately identified, are allowable shelter and medical expenses. Normally the group home will identify the part of the payment that is being charged for separate costs.

If the amount the resident pays for room and meals is combined into one amount, the amount which exceeds the food stamp maximum allotment for a one-person household can be allowed as an identified shelter expense.

For example, a resident is charged \$350 a month for room and meals. If the maximum food stamp allotment is \$120 for a one-person household, then \$120 is subtracted from the \$350 monthly charge. The remainder \$230 is allowed as the shelter cost.

If more than one resident applies as part of the same food stamp household, the food stamp maximum allotment amount for a one-person household would be deducted from the room and board payment for each person.

For example, two residents apply as one food stamp household. They each pay \$350 a month for room and meals. If the maximum food stamp allotment for one-person household is \$120, each resident has the \$120 amount subtracted from the \$350 payment. The remainder \$230 for each person is used for the shelter costs, a \$460 monthly room charge.

Some group homes charge a basic rate for room and board and they have higher rates depending on the amount of medical care that may be needed. In such instances, if a person is charged a higher rate, the basic rate minus the food stamp maximum allotment amount for a one-person household may be used to determine the shelter costs for that person, and the difference between the basic rate and the higher rate may be determined to be medical costs.

For example, a resident is charged a higher rate of \$500 a month for room, meals and medical care. If the maximum food stamp allotment for one-person households is \$120, the \$120 is subtracted from the basic rate of \$350 which leaves \$230 for the shelter cost. The \$350 basic rate is subtracted from the \$500 higher rate to determine the medical costs of \$150.

If the amount paid for medical and shelter costs cannot be separately identified, no deduction is allowed for the costs.

These procedures apply to residents making their own payments and to those instances where a protective payee is handling the payments but is using the resident's own funds.

Each group living arrangement shall provide DSS with a list of currently participating residents on a periodic basis. This list will include a statement signed by a responsible center official attesting to the validity of the list. DSS will conduct periodic random on-site visits to assure the accuracy of the list and that the Division's records are consistent and current.

Processing standards, processing of changes and recertifications and household rights are the same as in DSSM 9078.1 when the facility acts as the resident's authorized representative.

If the resident has made application on his/her own behalf, the household is responsible for reporting changes per DSSM 9085 . If the group living arrangement is acting as authorized representative, the group living arrangement must notify DSS of all changes and must return any household's benefit which is received after the household has left the group living arrangement.

When the household leaves the facility, the group living arrangement either acting as an authorized representative or retaining use of the coupons on behalf of the residents will provide residents with their ID card. The departing household will receive its full allotment if issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. If the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the facility prior to the 16th day of the month, the facility will provide the household with its ID card and one-half of its monthly allotment. If the household leaves on or after the 16th of the month and the coupons have already been issued and used, the household does not receive any coupons. If a group of residents have been

certified as one household and have returned the coupons to the facility to use, the departing residents will be given a prorata share of one-half of the household's allotment if leaving prior to the 16th of the month, and will be instructed to obtain ID cards. Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative.

The group living arrangement will, if possible, provide the household with a change report form and will advise the household to return the form to the appropriate DSS office within ten (10) days.

If a resident or a group of residents apply on their own behalf and if they retain use of their own coupons, they are entitled to keep the coupons when they leave. If a group of residents have applied as one household, a prorata share of the remaining coupons will be provided to any departing household members. The group living arrangement will, if possible, provide the household with a change report form and will advise the household to return the form to the appropriate DSS office within ten (10) days. The group living arrangement will return to DSS any coupons not provided to departing residents at the end of each month. These returned coupons will include those not provided to departing residents because they left on or after the 16th of the month or they left prior to the 16th and the facility was unable to provide them with coupons.

The same provisions applicable to drug and alcoholic treatment centers in DSSM 9078.1 regarding misrepresentation or fraud and overissuances and institutional disqualification also apply to group living arrangements when acting as an authorized representative. A resident applying on his/her own behalf will be responsible for overissuances as would any other household.

The group living arrangement may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at or from a central location. If residents purchase and/or prepare food for home consumption, the group living arrangement will ensure that each resident's food stamps are used for meals intended for that resident. If the resident retains use of his/her own coupon allotment, coupons may be used either to purchase meals prepared by the facility or to purchase food to prepare meals for their own consumption.

#### **9081.1 Definition**

"Sponsored alien" means an alien for whom a person has executed an affidavit of support [INS Form I-864 or I-864A] on behalf of the alien according to section 213A of the INA. ~~those aliens lawfully admitted for permanent residence into the United States as described in DSSM 9032.2.~~

"Sponsor" means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United

States as a permanent resident.

"Date of entry" or "Date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

### **9081.2 Deeming of Sponsor's Income and Resources as That of the Sponsored Alien**

DSS will consider the income and resources of the sponsor and the sponsor's spouse towards the sponsored alien only if the sponsored alien is an eligible alien according to DSSM 9007.1. DSS will deem the income and resources of sponsor and the sponsor's spouse, if he or she has executed INS Form I-864 or I-864A, as the unearned income and resources of the sponsored alien.

~~The gross income and the resources of a sponsor and the sponsor's spouse (if living with the sponsor) will be deemed to be the unearned income and resources of a sponsored alien. The spouse's income and resources will be counted even if the sponsor and spouse were married after signing the agreement.~~

The deeming of the sponsor's income and resources shall continue to apply to an alien until the alien has:

- The alien has become a United States citizen through naturalization; or
- The alien is credited with ~~Worked~~ 40 qualifying quarters of coverage during which time the alien did not receive any Federal means-tested public welfare benefit, or
- The sponsor dies.

~~Whenever an alien is required to reapply for benefits, DSS shall review the income and resources deemed to the alien as follows:~~

The income and resources of sponsors and sponsor's spouses are deemed as follows:

1. The monthly income of the sponsor and sponsor's spouse deemed to be that of the alien will be the total monthly earned and unearned income (including income exclusions provided for in DSSM 9059 ) of the sponsor and the sponsor's spouse (if living with the sponsor) at the time the household containing the sponsored alien member applies or is recertified, reduced by:

(A) A 20 percent earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse.

(B) An amount equal to the monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

~~the appropriate earned income amount for that portion of income determined as earned income of the sponsor and the sponsor's spouse.~~

2. If the alien has already reported gross income information on his/her sponsor due to DABC's sponsored alien rules, that income amount may be used for FSP deeming purposes. ~~However, allowable reductions to be applied to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien, will be limited to the earned income amount in DSSM 9060. However, limit the allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien to amounts listed above in # 1 in this section.~~

3. Actual money paid to the alien by the sponsor or the sponsor's spouse will not be considered as income to the alien unless the amount paid exceeds the amount attributed to the alien under paragraph ~~A~~ 1 above. Only the amount paid that actually exceeds the amount deemed would be considered income to the alien.

4. Resources of the sponsor and the sponsor's spouse to be deemed to be that of the alien will be the total amount of their resources as determined in accordance with DSSM 9045 reduced by \$1,500.

~~D) The amount of income and resources deemed to be that of the sponsored alien in accordance with paragraphs A and C of this Section will be considered in determining the eligibility and benefit level of the household of which the alien is a member.~~

5. If a sponsored alien can demonstrate to the Division's satisfaction that his/her sponsor sponsors other aliens, then the income and resources deemed under the provisions of paragraph ~~A and C~~ 1 and 4 of this Section will be divided by the number of such aliens that apply for or are participating in the program.

#### Exempt aliens:

The deeming of sponsor income in steps 1-5 above do not apply to:

1. An alien who is a member of his or her sponsor's food stamp household;
2. An alien who is sponsored by an organization or group as apposed to an individual;
3. An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;
4. A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after a determination is made that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After 12 months, do not deem the batterer's income and resources if the battery is recognized by a court or the INS and had a substantial connection to the need for benefits, and the alien does not live with the batterer.

The eligible sponsored alien's responsibilities are as

follows:

1. The eligible sponsored alien is responsible for obtaining the cooperation of the sponsor and for providing the information and documentation necessary to calculate deemed income and resources at application and reapplication.

2. The eligible sponsored alien is responsible for providing the names and other identifying factors of other aliens for whom the alien's sponsor has signed an affidavit of support.

3. The eligible sponsored alien is responsible for reporting the required information about the sponsor and the sponsor's spouse should the alien obtain a different sponsor during the certification period. The alien must also report any change in income should the sponsor and the sponsor's spouse change, lose employment, or die during the certification period.

F) If the alien reports that (s)he has changed sponsors during the certification period, then recalculate deemed income and resources based on the required information about the new sponsor and sponsor's spouse. Handle the reported change in accordance with DSSM 9085 and DSSM 2002, as appropriate. If an alien loses his/her sponsor and does not obtain another, the deemed income and resources of the previous sponsor will continue to be attributed to the alien until such time as the alien obtains another sponsor; or the alien becomes U. S. citizen; or the alien works 40 qualifying quarters of coverage. In the event of the death of a sponsor, deemed income and resources of the sponsor are no longer attributed to the alien.

Awaiting verification.

Until the alien provides information or verification needed to calculate deemed income and resources, the sponsored alien is ineligible for benefits. DSS will determine the eligibility of any remaining household members.

The income and resources (excluding the deemed income and resources of the alien's sponsor and the sponsor's spouse) of the ineligible alien will be counted according to DSSM 9076.2.

If the sponsored alien refuses to cooperate in providing information or verification, other adult members are responsible for providing the information or verification required.

Once the information or verification is received, DSS will act on the information as a reported change in household size according to DSSM 9085.

If the same sponsor is responsible for the entire household, the entire household is ineligible until the household provides the needed sponsor information or verification.

DSS will assist aliens in obtaining verification.

**9082 Reduction of Public Assistance Benefits Failure to Comply With Another Assistance Program's Requirements**

[273.11(kj)]

Do not increase food stamp benefits when a household's benefits received under another means-tested Federal, State or local welfare or public assistance program (such as but not limited to DABC, GA or SSI) have been decreased (reduced, suspended or terminated) due to failure to perform an action required under the assistance program or for fraud, ~~comply with a requirement of the program that imposed the benefit decrease. This does not apply to food stamp work sanctions under DSSM 9021.~~ Under no circumstances can the food stamp benefits be allowed to increase.

Actions not considered a failure to perform for this rule include:

Reaching a time limit for time-limited benefits;

Having a child that is not eligible because of family

cap;

Failing to reapply or complete the application process for continued assistance under another program;

Failing to perform an action that the individual is unable to perform; or

Failing to comply with a purely procedural requirement.

A procedural requirement which would not cause a sanction is a step that an individual must take to continue to receive benefits in the assistance program such as providing verification of circumstances.

A substantive requirement, which would cause a sanction, is a behavioral requirement in the assistance program designed to improve the well-being of the recipient family, such as participating in job search activities.

The following conditions apply:

1. The rule applies to individuals who fail to perform a required action while receiving assistance.

2. The rule does not apply to individuals who fail to perform a required action at the time the individual initially applies for assistance.

3. The rule applies to individuals who fail to perform a required action during an application for continued benefits as long as there is no break in participation.

4. The individual must be certified for food stamps at the time of the failure to perform a required action for this rule to apply.

5. Assistance benefits shall be considered reduced if they are decreased, suspended, or terminated.

6. If the means-tested assistance program, like SSI, fails to verify an individual's failure to perform a required action, this rule will not apply and DSS will not be held responsible as long as DSS made a good faith effort to get the information.

7. DSS, not the individual, is responsible for obtaining

information about sanctions from other programs and changes in those sanctions.

8. The rule applies for the duration of the reduction in the assistance program and cannot continue beyond the sanction of the assistance program.

9. When an DABC case reaches the third permanent sanction, the food stamp sanction will be removed because the family is no longer eligible for assistance.

10. DSS must restore lost benefits if it is later discovered that the reduction in the public assistance was not appropriate.

11. DSS must act on changes which are not related to the assistance violation and that would affect the household's benefits.

~~1. This provision must be applied to all applicable cases. If DSS is not able to get necessary information from another means tested welfare program, such as SSI, DSS shall not be held responsible for noncompliance as long as DSS made a good faith effort to obtain the information.~~

~~2. Do not reduce, suspend, or terminate a household's current food stamp allotment amount when the household's benefits under another applicable assistance program have been decreased due to an intentional failure to comply with a requirement of that program.~~

~~3. Adjust food stamp benefits when eligible members are added to the food stamp household regardless of whether or not the household is prohibited from receiving benefits for the additional member under another Federal, State or local welfare or public assistance means tested program.~~

~~4. Changes in household circumstances which are not related to a penalty imposed by another Federal, State, or local welfare or public assistance means tested program shall not be affected by this provision.~~

~~Child Support disregard checks being withheld, or portions being recouped, because of a client caused overpayment owed to DCSE do count as income for food stamp purposes. Amounts being withheld or recouped because of agency caused overpayments do not count as income for food stamp purposes.~~

## 9085 Reporting Changes

[273.12]

Certified households are required to report the following changes in circumstances:

- Changes in the sources of or in the amount of gross unearned income of more than \$25, except changes in the public assistance grants. Since DSS has prior knowledge of all changes in the public assistance grants, action shall be taken on the DSS information. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;
- Changes in the amount of gross earned income will be reported as follows:

a) New source of employment, or  
b) Changes in the hourly rate or salary of current employment, or

c) Changes in employment status from part-time to full-time or full-time to part-time.

- All changes in household composition, such as the addition or loss of a household member;
- Changes in residence and the resulting changes in shelter costs;
- The acquisition of a licensed vehicle not fully excludable under DSSM 9051 ;
- When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000; ~~and~~
- Changes in the legal obligation to pay child support; and
- Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.

Certified households must report changes within ten (10) days of the date the change becomes known to the household.

An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in this Section, which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.

Only the reporting requirements in this Section and no other reporting requirements can be imposed by the Division.

## 9091 Recertification

[273.14]

No household may participate beyond the expiration of the assigned certification period without a determination of eligibility for a new period. Households must apply for recertification and comply with the interview and verification requirements per DSSM 9030 and DSSM 9038.

The joint processing requirements in DSSM 9042 for DABC and/or General Assistance households continue to apply to applications for recertifications.

### 9091.1 Notice of Expiration

All households must be provided with a notice of expiration at the end of its certification prior to the start of the last month of its certification period.

When a household is certified for one month or when the certification action is not completed until the second month of a two-month certification, provide a notice of expiration at the time of certification. All other households must be provided a notice of expiration at least one day before the last month, but no earlier than the next to the last month of the certification period.

The form for notifying a household of the expiration of its certification must contain the following information:

A) The date the current certification period ends.

B) The date by which the household must file an application for certification to receive uninterrupted benefits.

Households certified for one month or certified in the second month if a two-month certification period shall be provided a notice of expiration at the time of certification. All other households must be provided a notice of expiration before the first day of the last month of the certification period.

The notice of expiration (Form 310) contains the following information:

A. The date the current certification period ends.

B. The date by which the household must file an application for recertification to receive uninterrupted benefits.

C. The consequences of failure to comply with the notice of expiration,

D. The household's right to request an application and have DSS accept an application as long as it is signed and contains a legible name and address.

E. The household's right to file the application by mail or through an authorized representative.

F. The address of the office where the application must be filed.

G. The household's right to request a fair hearing.

H. The fact that any household consisting only of SSI applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration.

I. Notice that the household must appear for any interview scheduled on or after the date the application is timely filed in order to receive uninterrupted benefits.

J. Notice that the household is responsible for rescheduling any missed interview and for providing required verification information.

### **9091.2 Application Form**

All households must complete an application form in order for DSS to obtain all information needed to determine eligibility and benefits for a new certification period. A household's signature and date is required at all recertifications regardless of the type of application used. The type of application used can be updating the online version, completing a long version hardcopy, completing the short review form, or updating an initial long version hardcopy application. The recertification process can only be used for households which apply before the end of their current certification period except for the provisions under DSSM 9091.8.

### **9091.3 Interview**

A face-to-face recertification interview will be held with

a member of each applying household or its authorized representative at least once every 12 months for households certified for 12 months or less. Face-to-face interviews can be waived per DSSM 9030, ~~and for households that have no earned income if all the members are elderly or disabled.~~ DSS will conduct a telephone interview or a home visit for households for whom the office interview is waived.

~~The interview may be scheduled prior to the application being filed, provided that the household's application is not denied at that time for failure to appear for the interview. Schedule the interview on or after the date the application was filed if the interview has not been previously scheduled, or the household has failed to appear for any interviews scheduled prior to this time and has requested another interview.~~

Schedule the interview so that the household has at least ten (10) days after the interview in which to provide verification before the certification period expires. If a household misses a scheduled interview, send the household a notice of missed interview. If the household misses its scheduled interview and requests another interview, schedule a second interview.

~~If the household does not appear for any interview scheduled, do not initiate any further action.~~

### **9091.4 Verification**

Information provided by the household shall be verified according to DSSM 9038. Inform households of what required verification must be provided and of the date by which the verifications must be returned. The household has ten (10) calendar days to provide required verification. Households whose eligibility is not determined by the end of the current certification period due to the time period allowed for returning verifications shall receive their benefits, if eligible, within five (5) working days after the household submits the missing verification and benefits cannot be prorated.

### **9091.5 Timely Application for Recertification**

A household submitting a timely application for recertification and meeting all other processing steps in a timely manner has a right to receive uninterrupted benefits.

Households reporting required changes in circumstances that are certified for one month or certified in the second month of a two-month certification period shall have 15 days from the date the notice of expiration is received to file a timely application for recertification.

Other households reporting required changes in circumstances that submit applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification.

For households consisting only of SSI applicants or recipients who apply for food stamp recertification at SSA offices according to DSSM 9043, an application shall be

considered filed for normal processing purposes when the signed application is received by the SSA office.

Households which timely reapply do not lose their right to uninterrupted benefits for failure to submit any requested verification prior to the date the household submits a timely application for recertification.

### 9091.6 Timely Processing

Provide uninterrupted benefits to any household determined eligible after the household has:

1. Timely filed an application,
2. Attended an interview, unless waived per DSSM 9030, and
3. Submitted all necessary verification within the ten (10) day timeframe.

Notify households that were certified for one month or certified for two months in the second month of the certification period and have met all required application procedures of their eligibility or ineligibility. Provide eligible households an opportunity to receive benefits no later than 30 calendar days after the date the household received its last allotment.

Other households that have met all application requirements shall be notified of their eligibility or ineligibility by the end of their current certification period. Provide households determined eligible an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period.

Any household not determined eligible in sufficient time to provide for issuance in that timeframe due to the time period allowed for submitting any missing verification must receive an opportunity to participate, if eligible, within five (5) working days after the household supplies the missing verification.

### 9091.7 Delayed Processing Caused by DSS

~~Households which have submitted an application for recertification in a timely manner but, due to a DSS error, are not determined eligible in sufficient time to provide for issuance of benefits by the household's next normal issuance date shall receive an immediate opportunity to participate after being determined eligible. Restore lost benefits to any household unable to participate for the month following the expiration of the certification period because of such error.~~

If an eligible household files an application before the end of the certification period but DSS does not complete the recertification process within the 30 days after the date of application, continue to process that case and provide a full month's allotment for the first month of the new certification period.

### 9091.8 Delayed Processing Caused by the Household

If a household does not submit a new application by the end of the certification period, the case is closed for failure

to recertify and a notice is sent to the household.

~~If an application is submitted after the certification period expires, it shall be treated the same as an application for initial certification according to DSSM 9061.1 and subject to proration of benefits.~~

~~Do not prorate benefits for households which receive a notice of expiration at the time of certification and which are otherwise eligible if they file their applications for recertification by the filing deadline in the notice of expiration.~~

~~A household which submits an application by the filing deadline but does not appear for an interview scheduled after the application has been filed, or does not submit verification within the required timeframe, loses its right to uninterrupted benefits.~~

~~If the household loses its right to uninterrupted benefits due to such failures but is otherwise eligible after correcting such failures, provide benefits within 30 days after the date the application was filed.~~

~~Denials, including those for failure to appear for an interview after the application has been filed or who fail to provide missing verifications timely, will be sent by the end of the current certification period or within 30 days after the application was filed as long as the household has had adequate time for providing the missing verification.~~

If the household files an application by the end of the certification period, but fails to take a required action, deny the application at the end of 30 days. The household has 30 days after the end of the certification period to complete the process and have its application treated as an application for recertification.

- If the household takes the required action before the end of the certification period, reopen the case and provide a full month's benefits for the initial month of the new certification period.
- If the household takes the required action after the end of the certification period but within 30 days after the end of the certification period, reopen the case and provide benefits retroactive to the date the household takes the required action.

If the household files an application within 30 days after the end of the certification period, the application shall be considered an application for recertification. Prorate benefits from the date of the application. If a household's application for recertification is delayed beyond the first of the month of the new certification period due to agency error, prorate the benefits from the date of the new application and then restore benefits back to the date the household's certification period should have started if not for the agency error.

### 9091.9 Expedited Service for Recertification

Do not apply expedited service provisions of DSSM



9041 to households that apply for recertification before the end of its current certification period.

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**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**  
**Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement a policy change to the Division of Social Services Manual, Section 7004.3. This change sets criteria for determining when a claim of \$125 or less is not established and is as a result of comments received from Roger Waters, State Hearing Officer, regarding policy changes that appeared in the May, 2001 Delaware Register.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2001.

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

**REVISION****7004.3 Collection and Management of Food Stamp Claims**

We shall collect any overissuances of food stamps issued to a household by:

- a) reducing the allotment of the household;
  - b) withholding amounts from unemployment compensation from a member of the household;
  - c) recovering from Federal pay or a Federal income tax refund;
  - d) any other means;
- unless ARMS determines that all of the means listed above are not cost effective.

**Cost effective determination:**

DSS/ARMS can opt to not establish any claim if the

claim referral is \$125 or less; unless the household is currently participating or the claim has already been established or discovered in a Quality Control review.

We will not establish any claim if the claim referral is \$125 or less unless:

- 1) the household is currently participating.
- 2) the claim has already been established.
- 3) there is already an existing Food Stamp claim.
- 4) there are other program(s) claims.
- 5) the claim referral is for multiple programs, or
- 6) the claim was discovered in a Quality Control

review.

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**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**  
**Medicaid/Medical Assistance Programs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Programs is proposing to implement new policy and amend policies to implement changes to the Division of Social Services Manual, Sections 14100.6, 14105, 14120, 14900, 15500 through 15511 and 30405. New policy at DSSM 14120 addresses eligibility of inmates and new policy at DSSM 15500 provides Medicaid eligibility to a new group, titled, The Breast and Cervical Cancer Group. DSSM 14900 is being amended to add this new eligibility group. Remaining policy changes relate to what constitutes a redetermination of eligibility (DSSM 14100.6); unverified social security number (DSSM 14105); and, redetermination requirements for the Delaware Prescription Assistance Program (DSSM 30405).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2001.

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

**14120 Inmate of a Public Institution**

An individual who is an inmate of a public institution is not eligible.

An inmate of a public institution is a person who is living in a public institution. A public institution is a facility that is under the responsibility of a governmental unit or over which a governmental unit exercises administrative control. This control can exist when a facility is actually an organizational part of a governmental unit or when a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates. Administrative control can also exist when a governmental unit is responsible for the ongoing daily activities of a facility; for example, when facility staff members are government employees or when a governmental unit, board, or officer has final authority to hire and fire employees. Privately supported institutions that are not under the control of a governmental unit do not meet the definition of a public institution.

An individual is an inmate and is not eligible when he or she is serving time for a criminal offense or is confined involuntarily awaiting trial, criminal proceedings, penal dispositions, or other involuntary detainment determinations and is living in:

- (a) a State or Federal prison
- (b) jail
- (c) a detention facility
- (d) a wilderness camp under governmental control
- (e) a halfway house under governmental control
- (f) any penal facility.

The following individuals are not inmates of a public institution and may be eligible:

1. An individual who is voluntarily living in a public institution after his or her case has been adjudicated and other living arrangements are being made (such as a transfer to a community residence).
2. An individual who is sent to a privately supported institution as an alternative to a detention or prison sentence.
3. Infants living with the inmate in the public institution
4. Parolees
5. Probationers
6. Individuals living in a halfway house that is not under governmental control

**15500 Breast and Cervical Cancer Group**

The Breast and Cervical Cancer Prevention and Treatment Act of 2000 adds a new optional categorically needy eligibility group at Section 1902(a)(10)(A)(ii)(XVIII) for uninsured women under age 65 who are identified through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and are in need of treatment for breast

or cervical cancer, including pre-cancerous conditions and early stage cancer.

The Breast and Cervical Cancer Group (BCC) is implemented with the earliest effective date of October 1, 2001.

**15501 General Eligibility Requirements**

The Medicaid rules at DSSM 14000 apply to this group.

**15502 Age Requirement**

The woman must be under age 65. If a woman turns age 65 during her period of coverage, her eligibility terminates. Exception: If the woman is an inpatient in a hospital when she turns age 65, her eligibility will continue until she is discharged from the hospital.

**15503 Screening Requirement**

The woman must have been screened for breast or cervical cancer under the CDC Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and found to need treatment for either breast or cervical cancer (including a pre-cancerous condition).

A woman is considered to have met the screening requirement if she comes under any of the following three categories:

1. CDC Title XV funds paid for all or part of the costs of her screening services.
2. The woman is screened under a state Breast and Cervical Cancer Early Detection Program in which her particular clinical service has not been paid for by CDC Title XV funds, but the service was rendered by a provider and/or an entity funded at least in part by CDC Title XV funds; the service was within the scope of a grant, sub-grant or contract under that State program; and the State CDC Title XV grantee has elected to include such screening activities by that provider as screening activities pursuant to CDC Title XV.
3. The woman is screened by any other provider and/or entity and the state CDC Title XV grantee has elected to include screening activities by that provider as screening activities pursuant to CDC Title XV.

**15504 Needs Treatment Requirement**

The woman must need treatment for breast or cervical cancer. The woman meets this requirement when it is the opinion of the woman's treating health professional that the diagnostic test following a breast or cervical cancer screen indicates that the woman is in need of cancer treatment services. These services include diagnostic services that may be necessary to determine the extent and proper course of treatment, as well as treatment itself.

Based on the physician's plan-of-care, a woman who is determined to require only routine monitoring services for a

pre-cancerous breast or cervical condition (such as breast examination and mammograms) is not considered to need treatment.

### **15505 Uninsured Requirement**

The woman must be uninsured. The woman is not eligible if she has:

a) Medicaid or is eligible under any of the Mandatory Categorically Needy coverage groups. The mandatory groups include Section 1931, Transitional or Prospective, IV-E Foster Care, IV-E Adoption Assistance, Low Income Pregnant Woman or Child, SSI, or Deemed SSI.

- b) Medicare
- c) comprehensive health insurance
- d) CHAMPUS

### **15505.1 Definition of Comprehensive Health Insurance**

Comprehensive health insurance is a benefit package comparable in scope to the "basic" benefit package required by the State of Delaware's Small Employer Health Insurance Act at Title 18, Chapter 72 of the Delaware Code. To be considered comprehensive health insurance, the benefits package must cover hospital and physician services, laboratory and radiology and must include coverage for the treatment of breast and cervical cancer.

A woman is not considered to have comprehensive health insurance when she is not actually covered for treatment of breast or cervical cancer. For example, a woman who has comprehensive health insurance but is in a period of exclusion (such as a preexisting condition exclusion) for treatment of breast and cervical cancer. Also, if a woman exhausts her lifetime limit on benefits under the insurance (including treatment for breast and cervical cancer), she is not considered to have coverage.

A woman who has comprehensive health insurance that has limits on benefits (such as limits on the number of outpatient visits per year) or high deductibles, is not eligible under this group.

### **15506 Financial Eligibility**

There are no income or resource limits for this group.

### **15507 Application Process**

Women must complete an application that will be used to determine both presumptive eligibility and final eligibility for Medicaid. Presumptive eligibility is a temporary eligibility determination that will provide expedited Medicaid coverage to women in this group during the application processing period. This special application processing procedure will facilitate the prompt enrollment and immediate access to services for women who are in need of treatment for breast or cervical cancer. An applicant can be determined presumptively eligible when DSS receives

verification that she has been screened for breast or cervical cancer under CDC and needs treatment.

If the information on the application indicates that she may be eligible under one of the mandatory categorically needy groups, DSS will first make a determination of presumptive eligibility under the BCC group. Verification of factors of eligibility for the mandatory group (such as income) are postponed. Postponed verifications must be provided within 30 days from the date of receipt of the application. The verifications that were postponed are required to determine final eligibility for Medicaid. Presumptive eligibility continues until a final eligibility determination is completed. If the required verifications are not provided, eligibility is terminated.

If the information on the application indicates that the woman is not eligible under one of the mandatory categorically needy groups, DSS will make a final determination of eligibility under the BCC group provided all verification requirements are met.

### **15508 Eligibility Period**

Eligibility may begin up to three months prior to the month of application (but no earlier than October 1, 2001), provided the woman meets all eligibility requirements during those prior three months including having been screened and found to need treatment for breast or cervical cancer.

Eligibility continues as long as the woman is receiving treatment for breast or cervical cancer, is under age 65, and is uninsured.

A woman is not limited to one period of eligibility. A new period of eligibility and coverage can begin each time a woman is screened under the CDC program, has been found to need treatment for breast or cervical cancer, and meets the other eligibility requirements.

### **15509 Coverage**

A woman eligible under this group is entitled to full Medicaid coverage. Coverage is not limited to treatment of breast and cervical cancer. There is no managed care enrollment under this group. Medicaid benefits will be provided on a fee-for-service basis.

### **15510 Termination of Eligibility**

Eligibility under this group terminates when the woman:

- a) attains age 65
- b) acquires comprehensive health insurance
- c) is no longer receiving treatment for breast or cervical cancer
- d) no longer meets the general eligibility requirements at DSSM 14000.

### **15511 Redetermination of Eligibility**

An annual redetermination of eligibility must be

completed as required at DSSM 14100.6.

### 14100.6 Redetermination Of Eligibility

Eligibility for continued Medicaid coverage must be redetermined at least annually. A redetermination is a re-evaluation of a recipient's continued eligibility for medical assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. Failure to complete and return a DSS application form will result in termination of eligibility. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.

Eligibility must be promptly redetermined when information is received about changes in a recipient's circumstances that may affect his eligibility. Some changes in circumstances can be anticipated. A redetermination of eligibility must be made at the appropriate time based on those changes. Examples are: Social Security changes, receipt of Child Support, return to work, etc.

Medicaid coverage should not terminate without a specific determination of ineligibility. The individual may be eligible under another category of Medicaid. For example, when an individual loses eligibility because of termination from cash assistance, such as SSI, we must make a separate determination of Medicaid eligibility. Medicaid must continue until the individual is found to be ineligible.

Medical assistance will be terminated when DSS is notified by the recipient that he or she no longer wants coverage.

### 14105 Social Security Number

Each individual applying for Medicaid must furnish his or her Social Security number (SSN). If the individual cannot furnish a SSN, he or she must provide proof of application for one before Medicaid can be approved. This verification of application is usually in the form of a signed receipt or computer printout from the Social Security Administration.

Acceptable documentation of SSN includes a Social Security card, a Social Security award letter, a NUMIDENT, a pay stub, a W-2 form, a driver's license, or an unemployment claim card. If the individual is unable to provide proof of his or her number but can furnish one, the application will be processed using the number the individual has given. The SSNs of individuals who are opened on DCIS are submitted to the Social Security Administration for verification through the Income and Eligibility Verification Systems (IEVS). When a SSN is returned from SSA as unverified, DSS is required to pursue the unverified information with the applicant/recipient. If the individual refuses to cooperate in resolving the

unverified SSN, medical assistance will be terminated. If the individual claims he or she cannot cooperate for reasons beyond his or her control, obtain documentation of the individual's inability to cooperate or medical assistance will be terminated.

Any individual whose income will be considered when determining eligibility for the applicant will be asked to furnish his or her SSN on the application. When the SSN of a financially responsible individual is voluntarily furnished and is included in the case record, IEVS matching will be performed on this individual.

Verification of the SSN, either through IEVS or acceptable documentation, must be obtained by the first redetermination of eligibility.

### 14900 Enrollment In Managed Care

On May 17, 1995, Delaware received approval from the Health Care Financing Administration for a Section 1115 Demonstration Waiver that is known as the Diamond State Health Plan. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The Diamond State Health Plan is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical service while improving cost effectiveness and slowing the rate of growth in health care costs.

The majority of the Medicaid population receiving non institutional services will be enrolled into the Diamond State Health Plan. Recipients in the cash assistance programs (TANF/AFDC, SSI, and GA) as well as the TANF/AFDC-related groups, SSI-related groups, and poverty level groups will be included in the managed care program. The following individuals cannot enroll in Diamond State Health Plan:

- a. Individuals entitled to or eligible to enroll in Medicare
- b. Individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR)
- c. individuals covered under the home and community based waivers
- d. non lawful and non qualified non citizens (aliens)
- e. individuals who have CHAMPUS
- f. individuals eligible under the Breast and Cervical Cancer Group

### 30405 Redetermination of Eligibility

A redetermination of eligibility must be completed by ~~July~~ June 30 of each year. If an individual's initial coverage

begins in April, May, or June, a redetermination will not be required until ~~July~~ June of the following year. A redetermination is a re-evaluation of a recipient's continued eligibility for DPAP coverage. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. Failure to complete and return a DSS application form will result in termination of eligibility. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.

DPAP coverage will be terminated when the Contractor or DSS is notified by the recipient that he or she no longer wants coverage.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR & WASTE MANAGEMENT**

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



**REGISTER NOTICE  
SAN # 2001-09**

**1. TITLE OF THE REGULATION:**

Regulation No. 24, Section 11, "Mobile Equipment Repair and Refinishing"

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

Delaware is not in compliance with the EPA ground-level ozone standard, and must make reductions in volatile organic compound (VOC) emissions which are a factor in the formation of ground-level ozone. The Department is proposing to revise Regulation No. 24, Section 11 to establish 1) requirements for using improved transfer efficiency coating application equipment; 2) requirements for enclosed spray gun cleaning techniques; and 3) minimum training standards in the proper use of equipment and materials. In addition, the Department is proposing to

remove all paint volatile organic compound (VOC) content limits, since existing limits are now redundant with the federal requirements at 40 CFR Part 59, Subpart B, National VOC Emission Standards for Automobile Refinish Coatings.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, Chapter 60

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through August 31, 2001. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Wednesday, August 29, 2001 beginning at 6pm in the Department's Priscilla Building Conference Room, Dover Delaware.

**7. PREPARED BY:**

Deanna Morozowich, 302-739-4791, June 28, 2001

~~Section 11 - Motor Vehicle Refinishing~~

~~11/29/94~~

~~e. Applicability.~~

~~1. This Section applies to any source that applies coatings in a motor vehicle refinishing operation.~~

~~2. This Section does not apply to sources applying coatings to motor vehicle parts if the parts are not a component of a vehicle or mobile equipment being coated at a motor vehicle refinishing operation.~~

~~3. This Section does not apply to any coating operation at a motor vehicle assembly plant.~~

~~4. Existing sources affected by this Section shall comply with the provisions of this Section as soon as practicable, but no later than April 1, 1996. New, modified, or reconstructed sources affected by this Section shall comply with the provisions of this Section upon startup.~~

~~5. Any facility that is currently subject to a state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to those provisions.~~

~~d. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the~~

November 15, 1990 Clean Air Act Amendments (CAAA), or in Section 2 of Regulation 24.

"Adhesion promoter" means a coating that is used to facilitate the bonding of a primer or topcoat to surfaces such as trim moldings, door locks, and door sills, where sanding is impracticable, and on plastic parts and the edges of sanded areas.

"Anti glare/safety coating" means a coating that does not reflect light.

"Assembly line coating operation" means any arrangement of people and machinery that applies a coating finish in a series of successive specialized operations by conveying the work along a slowly moving belt or track from person to person. This definition does not include any touch-up coating operations that occur once the equipment to be coated has left the conveyor.

"As supplied" means the condition of a coating as provided by the coating manufacturer, before it is mixed with components such as dilution solvents and reactive constituents to produce the coating, as applied.

"Basecoat/clearcoat system" (two-stage coating system) means a topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion [grams/liter (g/l), pounds/gallon (lb/gal)].

The VOC content of basecoat/clearcoat systems shall be calculated according to the following formula:

$$VOC_{be/ce} = \frac{VOC_{bc} + 2VOC_{cc}}{3}$$

where:

$VOC_{be/ce}$  is the average VOC content as applied of the basecoat/clearcoat system.

$VOC_{bc}$  is the VOC content as applied of any given basecoat.

$2VOC_{cc}$  is two times the VOC content as applied of any given clearcoat.

"Batch number" means the code number assigned to each lot of coating, as supplied.

"Catalyst" means any chemical that is added to a coating, as supplied, to speed up a chemical reaction.

"Coating category" means the class of coating as specified in paragraph (e) of this Section.

"Controlled air spray system" means a method of spraying a coating, such as a high volume, low pressure (HVLP) or low volume, low pressure (LVLP) spray system that improves the transfer efficiency while maintaining the air pressure of the spray gun between 0.1 and 10 pounds per square inch gauge (psig).

"Elastomeric material" means a coating that is specially formulated for application over flexible parts, such as elastomeric bumpers.

"Electrostatic application" means the application of

charged atomized paint droplets that are deposited by electrostatic attraction.

"Fisheye remover" means a coating that is designed to mask surface depressions in a coating film.

"Group I vehicles" means passenger cars, large/heavy-duty truck cabs and chassis, light/medium duty trucks and vans, and motorcycles.

"Group II vehicles and equipment" means public transit buses and mobile equipment.

"Hardener" means an additive that is specifically designed to promote a faster cure of an enamel finish.

"Large/heavy duty truck" means any truck that has a manufacturer's gross vehicle weight rating of over 10,000 pounds.

"Maximum volatile organic compound content or maximum VOC content, as applied" means the highest VOC content that will be obtained when a coating, as supplied, is mixed according to any mixing instructions that have been issued by the coating manufacturer, importer, or distributor.

"Mixing instructions" means the coating manufacturer's, importer's, or distributor's specification of the quantities of dilution solvents and/or reactive components that are added to the coating, as supplied, to prepare the coating, as applied.

"Mobile equipment" means any equipment that is physically capable of being driven or drawn upon a highway including, but not limited to, the following types of equipment: construction vehicles (such as mobile cranes, bulldozers, concrete mixers); farming equipment (such as wheel tractors, plows, and pesticide sprayers); hauling equipment (such as truck trailers, utility bodies, and camper shells); and miscellaneous equipment (such as street cleaners and golf carts).

"Motor vehicle refinishing operation" means any refinishing operations conducted on after-market automobiles, motorcycles, and light/medium duty trucks and vans that are performed in auto body and repair shops, production paint shops, new car dealer repair and paint shops, fleet operation repair and paint shops, and in any other facility which coats vehicles under the Standard Industrial Classification (SIC) Code 7532 (Top, Body and Upholstery Repair Shops and Paint Shops), including dealer repair of vehicles damaged in transit. This definition does not include refinishing operations for other types of mobile equipment, such as farm machinery and construction equipment.

"Multi-stage coating system" means a topcoat system composed of three or more coatings including: pigmented basecoat portions, semi-transparent midcoat portions, and transparent clearcoat portions [grams/liter (g/l), pounds/gallon (lb/gal)].

The VOC content of multi-stage coating systems shall be calculated according to the following formula:

$$VOC_{ms} = \frac{VOC_{bc} + VOC_{mc} + 2VOC_{cc}}{4}$$

where:

$VOC_{ms}$  is the average VOC content as applied of the multi-stage coating system.

$VOC_{bc}$  is the weighted average VOC content as applied of all basecoats.

$VOC_{mc}$  is the weighted average VOC content as applied of all mideoats.

$2VOC_{cc}$  is two times the weighted average VOC content as applied of all clearcoats.

"Original equipment manufacturer or OEM" means any assembly line manufacturer of automotive vehicles who applies coatings to the vehicles prior to their shipment from the manufacturing plant.

"Precoat" means a coating which is applied to bare metal primarily to deactivate the metal surface for corrosion resistance.

"Pretreatment wash primer" means any coating that contains a minimum of 0.5 percent acid by weight and that is applied directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent coating layers.

"Primer-sealer" means any coating that is applied prior to the application of a topecoat to provide corrosion resistance, topecoat adhesion, and/or color uniformity and to promote the ability of an undercoat to resist penetration by the topecoat.

"Reducer" means any solvent that is used to thin enamels.

"Refinishing" means the process of coating vehicles or their parts and components, including partial body collision repairs, for the purpose of protection or beautification, that is subsequent to the original coating applied in a coating assembly line at the original equipment manufacturing plant.

"Refinishing coating" means a protective or decorative substance that is applied in a thin layer to the surface of passenger cars, light/medium duty trucks, heavy duty trucks, heavy duty truck cabs and chassis, vans, buses, motorcycles, and mobile equipment, and is applied subsequent to coatings that are applied in a coating assembly line at the original equipment manufacturing plant.

"Specialty coating" means a coating which is necessary due to unusual and uncommon job performance requirements. These coatings include, but are not limited to, weld-through primers, adhesion promoters, uniform finish blenders, elastomeric materials, gloss flatteners, bright metal trim repair, anti-glare/safety coatings, rubberized asphaltic underbody coatings, impact resistant coatings and water hold-out coatings.

"Spot repair" means a repair to a motor vehicle in which the damaged area to be repaired is limited to only a portion

of any given panel so that an entire panel need not be repaired.

"Spray booth" means any power ventilated structure that is designed to accommodate refinishing operations.

"Surface preparation product" means a product that is used to remove wax, tar, grease, and silicone from a surface to be refinished.

"Thinner" means any solvent that is used to reduce the viscosity or solids content of a coating.

"Three/four-stage topecoat" means a topecoat that is composed of a pigmented basecoat, a semi-transparent mideoat, and a transparent clearcoat.

"Two-stage topecoat" means a topecoat that consists of a pigmented basecoat and a transparent clearcoat.

"VOC content, less water and exempt compounds" means the amount of VOCs, in grams (pounds), present in 1 liter (gallon) of coating, less the mass of any water or exempt compounds in the coating, as determined using the procedures described in paragraph (f) of this Section.

e. Standards.

1. Except as specified in paragraph (d) of this Section, effective on April 1, 1996, any person who applies coatings to Group I or Group II vehicles, or their parts and components, may not use a coating, as applied, that exceeds the VOC content specified in paragraph (c)(2) of this Section.

2. Coating Standards

TABLE 1. MAXIMUM VOC CONTENT FOR COATINGS AS APPLIED TO GROUP I VEHICLES

Coating Category	Maximum VOC Content on April 1, 1996
Pretreatment	780 g/l (6.5 lbs/gal)
Precoat	660 g/l (5.5 lbs/gal)
Primer/Primer Surfacer	576 g/l (4.8 lbs/gal)
Primer Sealer	552 g/l (4.6 lbs/gal)
Topecoat	600 g/l (5.0 lbs/gal)
Three/four Stage Topecoat	624 g/l (5.2 lbs/gal)
Specialty	840 g/l (7.0 lbs/gal)

g/l — grams per liter.

lbs/gal — pounds per gallon.

TABLE 2. MAXIMUM VOC CONTENT FOR COATINGS AS APPLIED TO GROUP II VEHICLES

Coating Category	Maximum VOC Content on April 1, 1996
Pretreatment	780 g/l (6.5 lbs/gal)
Precoat	660 g/l (5.5 lbs/gal)
Primer/Primer Surfacer	336 g/l (2.8 lbs/gal)
Primer Sealer	420 g/l (3.5 lbs/gal)
Topcoat	420 g/l (3.5 lbs/gal)
Extreme Performancee	744 g/l (6.2 lbs/gal)
Specialty	840 g/l (7.0 lbs/gal)

g/l—grams per liter.  
lbs/gal—pounds per gallon.

3. All coating standards established in this Section apply to coatings as applied at the application equipment, after all viscosity adjustments have been made.

#### d. Alternative Controls.

1. In lieu of meeting the requirements of paragraph (c) of this Section, the owner or operator of a facility subject to any control requirements of this Section may comply with an alternative control plan that has been approved by the Department and the U.S. EPA.

2. Any owner or operator of a motor vehicle refinishing operation subject to any control requirements of this Section may comply by using a destructive device (such as an incinerator) or a recovery device that achieves an overall reduction in uncontrolled VOC emissions of at least 81 weight percent. A technical support document adequately justifying the emission capture and control techniques and complying with **Appendix "A"** and **Appendix "D"** of this regulation, shall be submitted to the Department.

#### e. Compliance Certification.

1. To establish the records required under this Section, the VOC content of each coating, as applied, may be based on the manufacturer's technical information for compliant coatings. The efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in **Appendix "B"** and **Appendix "D"** of Regulation 24.

2. By April 1, 1996, or upon startup of a new coating operation or upon changing the method of compliance for an existing subject coating operation, the owner or operator shall certify to the Department that the coating operation is or will be in compliance with the requirements of this Section on and after April 1, 1996, or on and after the initial startup date. Such certification shall include the following

information:

- i. The name and location of the facility.
- ii. The address and telephone number of the person responsible for the facility.
- iii. The identification of subject sources.
- iv. The name and identification number, including the manufacturer, of each coating as applied on each coating operation.
- v. The total volume of coatings purchased during each calendar quarter and the VOC content of each.
- vi. The time at which the facility's day begins if a time other than midnight local time is used to define a day.

f. Test Methods. The appropriate test methods to be used to determine VOC content of coatings are found in **Appendix "B"** in Regulation 24; the emission capture, destruction and removal efficiency, and monitoring requirements are found in **Appendix "D"** in Regulation 24.

#### g. Recordkeeping and Reporting.

1. A person who owns or operates a motor vehicle refinishing operation subject to this Section shall maintain records of the following data:

- i. The total volume of coatings purchased during each calendar quarter and the VOC content of each.
- ii. The total volume of specialty coatings purchased during each calendar quarter and the VOC content of each.

2. All records shall be maintained for at least five years and made available to the Department upon request.

3. Data collection and maintenance shall commence with the first quarter of calendar year 1996.

### **Section 11 - Mobile Equipment Repair and Refinishing.** 10/31/01

#### a. Applicability.

1. This Section applies to any person who applies coatings, for the purpose of protection and/or beautification, to mobile equipment or mobile equipment components in the State of Delaware, except:

- i. The surface coating process at any automobile assembly plant.
- ii. Persons who do not receive compensation for the application of the coatings.
- iii. The application of coatings sold in non-refillable aerosol cans.

2. Any person subject to the requirements of this Section shall be in compliance on or after October 31, 2003.

3. Any person who is currently subject to a state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to those provisions.

4. Compliance with the requirements of this section



are in addition to all other state and federal requirements, to include the requirements of 40 CFR 59, Subpart B, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings".

b. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments (CAAA), or in Section 2 of Regulation 24.

"Airless Spray" means a spray coating method in which the coating is atomized by forcing it through a small nozzle at high pressure. The coating is not mixed with air before exiting from the nozzle opening.

"Electrostatic spray" means the application of charged atomized paint droplets that are deposited by electrostatic attraction.

"High Volume Low Pressure" or "HVLP" means a method of spraying a coating, that improves the transfer efficiency while maintaining the air pressure between 0.1 and 10 pounds per square inch gauge (psig).

"Mobile equipment" means any equipment that is physically capable of being driven or drawn upon a highway including, but not limited to, the following types of equipment: automobiles; trucks, truck cabs, truck bodies; buses; motorcycles; ground support vehicles, used in support of aircraft activities at airports; construction vehicles (such as mobile cranes, bulldozers, concrete mixers); farming equipment (such as wheel tractors, plows, and pesticide sprayers); hauling equipment (such as truck trailers, utility bodies, and camper shells); and miscellaneous equipment (such as street cleaners and golf carts).

c. Standards.

1. Any person subject to the requirements of this Section shall use only the following application techniques:

ii. Any non-atomized application technique (e.g., Flow/curtain coating, Dip coating, Roller coating, Brush coating, Cotton-tipped swab application coating, Electrodeposition coating, etc.)

ii. High Volume Low Pressure (HVLP) spraying;

iii. Electrostatic spray;

iv. Airless spray;

v. Any other coating application technique that the person has demonstrated and the Department has determined achieves emission reductions equivalent to HVLP or electrostatic spray.

2. The following are exempt from the requirements of paragraph (c)(1) of this Section:

i. The use of airbrush application methods for graphics, stenciling, lettering, and other identification markings;

ii. The applications of coatings to cover finish imperfections equal to or less than 1 inch in diameter.

3. Spray guns used to apply coatings to mobile

equipment or mobile equipment components shall be cleaned by one of the following methods:

i. Use of an enclosed spray gun cleaning system that is kept closed when not in use.

ii. The unatomized discharge of solvent into a paint waste container that is kept closed when not in use.

iii. The disassembly of the spray gun and cleaning in a vat that is kept closed when not in use.

iv. The atomized spray into a paint waste container that is fitted with a device designed to capture atomized solvent emissions.

4. Any person subject to the provisions of this Section shall implement the following housekeeping and pollution prevention measures:

i. Fresh and used coatings, solvent, and cleaning solvents shall be stored in non-absorbent, non-leaking containers. The containers shall be kept closed at all times except when filling or emptying.

ii. Cloth and paper, or other absorbent applicators, moistened with coatings, solvents, or cleaning solvents shall be stored in closed, non-absorbent, non-leaking containers.

iii. Handling and transfer procedures shall minimize spills during the transfer of coatings, solvents, and cleaning solvents.

5. Any person subject to the requirements of this Section shall be trained in the proper use and handling of coatings, solvents and waste products in order to minimize the emission of air contaminants.

i. Proof of training for any person subject to the requirements of this Section shall be maintained on the facility premises.

ii. Acceptable forms of training include equipment or paint manufacturer's seminars, classes, workshops, or any other training approved by the Department.

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## **DIVISION OF AIR & WASTE MANAGEMENT**

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

### **REGISTER NOTICE**

**SAN # 2000-21**

#### **1. TITLE OF THE REGULATIONS:**

REGULATION 24 - "CONTROL OF VOLATILE ORGANIC COMPOUNDS EMISSIONS"

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

The Department is proposing to amend Regulation 24 by replacing existing Section 33 "Solvent Metal Cleaning"

with language patterned after an Ozone Transport Commission (OTC) model rule for solvent cleaning and drying machines. This model rule is one of several OTC model rules being developed. This regulatory action will allow Delaware to obtain additional volatile organic compound reductions needed for EPA's approval of Delaware's one-hour ozone attainment demonstration State Implementation Plan. This action establishes emission limitations, required control technologies, work practice standards, and defines the compliance, notification, monitoring, recordkeeping and reporting requirements.

### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

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

None

### 6. NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed amendment will extend through August 31, 2001. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, August 28, 2001 beginning at 7:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

### 7. PREPARED BY:

James R. Snead (302) 323-4542 July 2, 2001

### ~~Section 33—Solvent Metal Cleaning, 1/11/93~~

a. Applicability. This Section applies to all solvent metal cleaning sources with the following exemptions:

1. Any open-top vapor degreasing operation with an open area smaller than 1 square meter ( $m^2$ ) (10.8 square feet [ $ft^2$ ]) is exempt from paragraphs (c)(2)(iii)(B) and (c)(2)(iii)(D) of this Section.

2. Any conveyORIZED degreaser with an air/solvent interface smaller than  $2.0 m^2$  (21.5  $ft^2$ ) is exempt from paragraph (c)(3)(ii) of this Section.

b. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the

November 15, 1990 Clean Air Act Amendments, or in Section 2 of this regulation.

"Air/solvent interface" means the surface area defined by points of contact between the solvent liquid or vapor in the cleaner/degreaser and the surrounding air.

"Cold cleaning" means the batch process of cleaning and removing soils from a metal surface by spraying, brushing, flushing, or immersion while maintaining the solvent below its boiling point. Wipe cleaning is not included in this definition.

"Conveyorized degreasing" means the process of cleaning and removing soils from a continuous stream of metal parts using either cold or vaporized solvents.

"Freeboard height" means, for a cold cleaner, the distance from the liquid solvent level in the degreaser tank to the lip of the tank. For an open-top vapor degreaser, it is the distance from the vapor level in the tank during idling to the lip of the tank. For a vapor-conveyorized degreaser, it is the distance from the vapor level to the bottom of the entrance or exit opening, whichever is lower. For a cold-conveyorized degreaser, it is the distance from the liquid solvent level to the bottom of the entrance or exit opening, whichever is lower.

"Freeboard ratio" means the freeboard height divided by the smaller interior dimension (length, width, or diameter) of the degreaser tank.

"Open-top vapor degreasing" means the process using condensation of hot solvent vapor to clean and remove soils from a batch of metal parts.

"Refrigerated chiller" means a device mounted above both the water jacket and the primary condenser coils which carries a refrigerant that provides a chilled air blanket above the solvent vapor, thereby reducing emissions from the degreaser bath.

"Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open-top vapor degreasing, or conveyorized degreasing.

#### e. Standards:

1. Cold cleaning facilities. The owner or operator of a cold cleaning facility shall:

i. Equip the cleaner with a cover that is easily operated with one hand, if any one of the following:

A. The solvent true vapor pressure is greater than 2 kiloPascals (kPa) (15 millimeters of Mercury [mm Hg] or 0.3 pound per square inch [psi]) measured at  $38^{\circ}C$  ( $100^{\circ}F$ ) by ASTM D323-89.

B. The solvent is agitated.

C. The solvent is heated.

ii. Equip the cleaner with an internal drainage facility so that parts are enclosed under the cover while draining if the solvent true vapor pressure is greater than 4.3 kPa (32 mm Hg or 0.6 psi) measured at  $38^{\circ}C$  ( $100^{\circ}F$ ) by

ASTM D323-89, except that the drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

iii. Implement one of the following control measures if the solvent true vapor pressure is greater than 4.3 kPa (32 mm Hg or 0.6psi) measured at 38°C (100°F) by ASTM D323-89, or if the solvent is heated above 50°C (120°F):

A. Freeboard that gives a freeboard ratio greater than or equal to 0.7.

B. Water cover at least 2.54 cm (1 in.) deep (solvent shall be insoluble in and heavier than water).

C. Another system of equivalent control, such as a refrigerated chiller or a carbon adsorber, approved by the Administrator of the U.S. EPA as part of a State Implementation Plan (SIP) or Federal Implementation Plan (FIP) revision.

iv. Provide a permanent, legible, conspicuous label, summarizing the operating requirements.

v. Store waste solvent in covered containers.

vi. Close the cover whenever parts are not being handled in the cleaner.

vii. Drain the cleaned parts until dripping ceases.

viii. If used, supply a solvent spray that is a solid fluid stream (not a fine, atomized, or shower type spray) at a pressure that does not exceed 10 pounds per square inch gauge (psig).

ix. Degrease only materials that are neither porous nor absorbent.

2. ~~Open top vapor degreasers.~~ Except as provided under paragraph (a)(i) of this Section, the owner or operator of an open top vapor degreaser shall:

i. Equip the vapor degreaser with a cover that can be opened and closed easily without disturbing the vapor zone.

ii. Provide the following safety switches:

A. A vapor level thermostat that shuts off the sump heat if the condenser coolant is either not circulating or too warm.

B. A spray safety switch that shuts off the spray pump if the vapor level drops more than 10 centimeters (cm) (4 inches [in.]).

iii. Implement one of the following control measures:

A. Freeboard ratio greater than or equal to 0.75 and, if the degreaser opening is greater than 1 m<sup>2</sup> (10.8 ft<sup>2</sup>), a powered cover.

B. Refrigerated chiller.

C. Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser).

D. Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per

minute per square meter (m<sup>3</sup>/min/m<sup>2</sup>) (50 cubic feet per minute per square foot [ft<sup>3</sup>/min/ft<sup>2</sup>]) of air/solvent interface (when cover is open), and exhausting less than 25 parts per million (ppm) of solvent averaged over one complete adsorption cycle, or 24 hours, whichever is less.

E. A control system, demonstrated to have a control efficiency equivalent to or greater than any of the above and approved by the Administrator of the U.S. EPA as part of a SIP or FIP revision.

iv. Keep the cover closed at all times except when processing work loads through the degreaser.

v. Minimize solvent carryout by:

A. Racking parts so that solvent drains freely and is trapped.

B. Moving parts in and out of the degreaser at less than 3.3 meters per minute (m/min) (11 feet per minute [ft/min]):

C. Holding the parts in the vapor zone at least 30 seconds or until condensation ceases, whichever is longer.

D. Tipping out any pools of solvent on the cleaned parts before removal from the vapor zone.

E. Allowing parts to dry within the degreaser for at least 15 seconds or until visually dry, whichever is longer.

vi. Degrease only materials that are neither porous nor absorbent.

vii. Occupy no more than one half of the degreaser's open top area with a workload.

viii. Always spray within the vapor level.

ix. Repair solvent leaks immediately, or shut down the degreaser.

x. Store waste solvent only in covered containers.

xi. Operate the cleaner such that water cannot be visually detected in solvent exiting the water separator.

xii. Use no ventilation fans near the degreaser opening.

xiii. When the cover is open, not expose the open top vapor degreaser to drafts greater than 40 m/min (131 ft/min), as measured between 1 and 2 m upwind and at the same elevation as the tank lip.

xiv. If a lip exhaust is used on the open top vapor degreaser, not use a ventilation rate that exceeds 20 m<sup>3</sup>/min/m<sup>2</sup> (65 ft<sup>3</sup>/min/ft<sup>2</sup>) of degreaser open area, unless a higher rate is necessary to meet OSHA requirements.

xv. Provide a permanent, conspicuous label, summarizing the operating procedures of paragraphs (e)(2)(iv) through (e)(2)(xiv) of this Section.

3. ~~Conveyorized degreasers.~~ Except as provided under paragraph (a)(3) of this Section, the owner or operator of a conveyorized degreaser shall:

i. Use no workplace fans near the degreaser opening, and ensure that exhaust ventilation does not exceed

~~20 m<sup>3</sup>/min/m<sup>2</sup> (65 ft<sup>3</sup>/min/ft<sup>2</sup>) of degreaser opening, unless a higher rate is necessary to meet OSHA requirements.~~

~~ii. Install one of the following control devices:~~

~~A. Refrigerated chiller.~~

~~B. Carbon adsorption system, with ventilation greater than or equal to 15 m<sup>3</sup>/min/m<sup>2</sup> (50 ft<sup>3</sup>/min/ft<sup>2</sup>) of air/solvent interface (when downtime covers are open), and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle, or 24 hours, whichever is less.~~

~~C. A system demonstrated to have a control efficiency equivalent to or greater than the devices listed in paragraph (e)(3)(ii)(A) or (e)(3)(ii)(B) of this Section and approved by the Administrator of the U.S. EPA as part of a SIP or FIP revision.~~

~~iii. Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.~~

~~iv. Provide the following safety switches:~~

~~A. A condenser flow switch and thermostat that shut off the sump heat if the condenser coolant is either not circulating or too warm.~~

~~B. A spray safety switch which shuts off the spray pump or the conveyor if the vapor level drops more than 10 cm (4 in.).~~

~~C. A vapor level control thermostat that shuts off the pump heat when the vapor level rises too high.~~

~~v. Minimize openings during operation so that entrances and exits silhouette workloads with an average clearance between the parts and the edge of the degreaser opening of less than 10 cm (4 in.) or less than 10 percent of the width of the opening.~~

~~vi. Provide downtime covers for closing off the entrance and exit during shutdown hours.~~

~~vii. Minimize carryout emissions by:~~

~~A. Racking parts so that solvent drains freely from parts and is not trapped.~~

~~B. Maintaining the vertical conveyor speed at less than 3.3 m/min (11 ft/min).~~

~~viii. Store waste solvent only in covered containers.~~

~~ix. Repair solvent leaks immediately, or shut down the degreaser.~~

~~x. Operate the cleaner such that water cannot be visually detected in solvent exiting the water separator.~~

~~xi. Place downtime covers over entrances and exits of the conveyorized degreaser at all times when the conveyors and exhausts are not being operated.~~

~~xii. Degrease only materials that are neither porous nor absorbent.~~

~~d. Test methods. Compliance with paragraphs (e)(1)(i) through (iii), (e)(2)(iii)(D), (e)(2)(xii) through (xiv),~~

~~(e)(3)(i), and (e)(3)(ii)(B) of this Section shall be determined by applying the following test methods, which are found at 40 CFR, Part 60, Appendix A (July 1, 1992), or the American Society for Testing and Materials (ASTM) methods, as appropriate:~~

~~1. Methods 1-4 for determining flow rates.~~

~~2. Method 18 for determining gaseous organic compound emissions by gas chromatography.~~

~~3. Method 25 for determining total gaseous nonmethane organic emissions as carbon except in cases where the outlet VOC concentration of the control device is less than 50 ppm as carbon, in which case Method 25A shall be used.~~

~~4. Method 25A or 25B for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.~~

~~5. ASTM D323-89 for measuring solvent true vapor pressure.~~

~~e. Recordkeeping. Each owner or operator of a solvent metal cleaning source subject to this Section shall maintain the following records in a readily accessible location for at least 5 years and shall make these records available to the Department upon verbal or written request:~~

~~1. A record of central equipment maintenance, such as replacement of the carbon in a carbon adsorption unit.~~

~~2. The results of all tests conducted in accordance with the requirements in paragraph (d) of this Section.~~

~~f. Reporting. The owner or operator of any facility containing sources subject to this Section shall:~~

~~1. Comply with the initial compliance certification requirements of Section 5(a) of this regulation.~~

~~2. Comply with the requirements of Section 5(b) of this regulation regarding reports of excess emissions, as well as complying with other State of Delaware exceedance reporting requirements.~~

~~3. Comply with the requirements of Section 5(e) of this regulation for excess emissions related to any control devices used to comply with paragraphs (e)(1)(iii)(C), (e)(2)(iii)(D) or (E), and (e)(3)(ii)(B) or (C) of this Section. This requirement is in addition to any other State of Delaware exceedance reporting requirement.~~

### **Section 33 - Solvent Cleaning and Drying** **10/11/01**

a. Applicability.

1. This Section applies to any person who owns or operates a solvent cleaning machine that meets the criteria of paragraphs a.1.i. and a.1.ii.

i. Contains more than 1 liter of solvent.

ii. Uses any solvent containing volatile organic compounds in a total concentration greater than 5 percent by

weight, as a cleaning and/or drying agent.

2. Existing sources affected by this Section shall comply with the provisions of this Section as soon as practicable, but no later than October 11, 2002. New, modified, or reconstructed sources affected by this Section shall comply with the provisions of this Section upon start-up.

3. Any person subject to both this Section and Regulation 30 of the State of Delaware "Regulations Governing the Control of Air Pollution" shall submit to the Department a request to amend the existing Title V permit, consistent with the permitting requirements of Regulation 30. Any person subject to paragraph c. of this Section, but not subject to Regulation 30, shall request to be covered under a source category permit, consistent with Regulation 2 of the State of Delaware "Regulations Governing the Control of Air Pollution" within 90 days of the Department's establishment of a source category permit covering solvent cleaning and drying. Any person subject to paragraphs d. through g. of this Section, but not subject to Regulation 30, shall submit to the Department a request to amend the existing Regulation 2 permit, consistent with the permitting requirements of Regulation 2.

b. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments, in Regulation 1, or in Section 2 of this regulation.

"Airless cleaning system" means a solvent cleaning machine that is automatically operated and seals at a differential pressure of 0.50 pounds per square inch gauge (psig) or less, prior to the introduction of solvent or solvent vapor into the cleaning chamber and maintains differential pressure under vacuum during all cleaning and drying cycles.

"Airtight cleaning system" means a solvent cleaning machine that is automatically operated and seals at a differential pressure of 0.50 pounds per square inch gauge (psig) or less, prior to the introduction of solvent or solvent vapor into the cleaning chamber and during all cleaning and drying cycles.

"Automated parts handling system" means a mechanical device that carries all parts and parts baskets at a controlled speed from the initial loading of soiled or wet parts through the removal of the cleaned or dried parts. Automated parts handling systems include, but are not limited to, hoists and conveyors.

"Batch vapor cleaning machine" means a vapor solvent cleaning machine in which individual parts or a set of parts move through the entire cleaning or drying cycle before new parts are introduced into the cleaning machine. The term does not include machines that do not have a solvent/air interface, such as airless and airtight cleaning systems.

"Carbon adsorber" means a bed of activated carbon into

which an air/solvent gas-vapor stream is routed and which adsorbs the solvent on the carbon.

"Cold cleaning machine" means a solvent cleaning machine that contains and/or uses unheated liquid solvent into which parts are placed to remove soils from the surfaces of the parts or to dry the parts. The term does not include machines that do not have a solvent/air interface, such as airless and airtight cleaning systems.

"Downtime mode" means the time period when a solvent cleaning machine is not cleaning or drying parts and the sump heating coils, if present, are turned off.

"Dwell" means the technique of holding parts within the freeboard area but above the vapor zone of a solvent cleaning machine. Dwell occurs after cleaning or drying to allow solvent to drain from the parts or parts baskets back into the solvent cleaning machine.

"Dwell time" means the period of time between when parts or a parts basket is placed in the vapor zone of a batch vapor or in-line vapor cleaning machine and when solvent dripping ceases.

"Freeboard height" means, for a batch cold cleaning machine, the distance from the liquid solvent level to the top of the solvent cleaning machine. For a batch vapor cleaning machine, it is the distance from the solvent/air interface to the top of the solvent cleaning machine, as measured during idling mode. For an in-line cleaning machine, it is the distance from the solvent/air interface to the bottom of the entrance or exit opening, whichever is lower, as measured during idling mode.

"Freeboard ratio" means the ratio of the solvent cleaning machine freeboard height to the smaller interior dimension (length, width, or diameter) of the solvent cleaning machine.

"Freeboard refrigeration device" means a set of secondary coils mounted in the freeboard area that carries a refrigerant or other chilled substance to provide a chilled air blanket above the solvent vapor. A primary condenser that is capable of maintaining a temperature, in °F, in the center of the chilled air blanket at not more than 30 percent of the solvent's boiling point is both a primary condenser and a freeboard refrigeration device.

"Idling mode" means the time period when a solvent cleaning machine is not actively cleaning or drying parts and the sump heating coils, if present, are turned on.

"Immersion cold cleaning machine" means a cold solvent cleaning machine in which the parts are immersed in the solvent when being cleaned or dried. A remote reservoir cold cleaning machine that is also an immersion cold cleaning machine is considered an immersion cold cleaning machine for purposes of this Section.

"In-line vapor cleaning machine" means a vapor solvent cleaning machine that uses an automated parts handling system, typically a conveyor, to automatically provide a

continuous supply of parts to be cleaned or dried. These units are fully enclosed except for the conveyor inlet and exit portals.

“Primary condenser” means a series of circumferential cooling coils on a vapor cleaning machine through which a chilled substance is circulated or recirculated to provide continuous condensation of rising solvent vapors and, thereby, creating a concentrated solvent vapor zone.

“Reduced room draft” means decreasing the flow or movement of air across the top of the freeboard area of a solvent cleaning machine to less than 15.2 meters per minute (50 feet per minute) by methods including, but not limited to, redirecting fans and/or air vents to not blow across the cleaning machine, moving the cleaning machine to a corner where there is less room draft, and constructing a partial or complete enclosure around the cleaning machine.

“Remote reservoir cold cleaning machine” means a solvent cleaning machine in which liquid solvent is pumped to a sink-like work area that immediately drains solvent back into an enclosed container while parts are being cleaned or dried, allowing no solvent to pool in the work area.

“Soils” means contaminants that are removed from the parts being cleaned. Soils include, but are not limited to, grease, oils, waxes, metal chips, carbon deposits, fluxes, and tars.

“Solvent/air interface” means, for a vapor cleaning machine, the location of contact between the concentrated solvent vapor layer and the air. This location of contact is defined as the mid-line height of the primary condenser coils. For a cold cleaning machine, it is the location of contact between the liquid solvent and the air.

“Solvent cleaning machine” means any device or piece of equipment that uses volatile organic compounds, liquid or vapor, to remove soils from parts or to dry parts. Types of solvent cleaning machines include, but are not limited to, batch vapor, in-line vapor, in-line cold, immersion cold, and remote reservoir cold cleaning machines, as well as, airless cleaning and airtight cleaning systems.

“Superheated vapor system” means a system that heats the solvent vapor, either passively or actively, to a temperature 10°F above the solvent’s boiling point. Parts are held in the superheated vapor before exiting the machine to evaporate the liquid solvent on the parts. Hot vapor recycle is an example of a superheated vapor system.

“Vapor cleaning machine” means a batch or in-line solvent cleaning machine that heats liquid solvent that is used as part of the cleaning or drying cycle. The heated solvent may or may not be boiling. The term does not include machines that do not have a solvent/air interface, such as airless and airtight cleaning systems.

“Vapor up control switch” means a thermostatically controlled switch that shuts off or prevents solvent from being sprayed when there is no vapor. On in-line vapor

cleaning machines the switch also prevents the conveyor from operating when there is no vapor.

“Working mode” means the time period when the solvent cleaning machine is actively cleaning or drying parts.

“Working mode cover” means any cover or solvent cleaning machine design that allows the cover to shield the cleaning machine openings from outside air disturbances while parts are being cleaned or dried in the cleaning machine. A cover that is used during the working mode is opened only during parts entry and removal.

c. Standards for batch cold cleaning machines. This paragraph applies to all batch cold cleaning machines. The provisions of this paragraph shall not apply if the owner or operator of the cold cleaning machine demonstrates and the Department approves in writing that compliance with the paragraph will result in unsafe operating conditions.

1. Immersion cold cleaning machines shall have a freeboard ratio of 0.75 or greater unless the machines are equipped with working mode covers that shall be closed except when parts are being placed into or being removed from the machine. Covers shall be free of cracks, holes, and other defects, and easily opened or closed.

2. Immersion cold cleaning machines and remote reservoir cold cleaning machines shall:

i. Have a permanent, conspicuous label summarizing the operating requirements in paragraph c.3. of this Section.

ii. Be equipped with a downtime mode cover that shall be closed at all times except during cleaning or drying of parts or the addition or removal of solvent. Cover shall be free of cracks, holes, and other defects, and readily opened or closed.

3. Cold cleaning machines shall be operated in accordance with the following procedures:

i. Waste solvent, still bottoms, and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

ii. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping or rotating, the parts shall be positioned so that solvent drains directly back to the cleaning machine.

iii. Flushing of parts using a flexible hose or other flushing device shall be performed only within the freeboard area of the cold cleaning machine. The solvent flushing shall be a solid fluid stream, not an atomized or shower spray, at a pressure that does not exceed 10 pounds per square inch gauge (psig).

iv. Work area fans shall be located and positioned

so that they do not blow across the opening of the cold cleaning machine.

v. Sponges, fabric, wood, leather, paper products, and other absorbent materials shall not be cleaned or dried in the cold cleaning machine.

vi. Any solvent bath agitator shall be operated to produce a rolling motion of the solvent with no observable splashing of the solvent against the tank walls or the parts being cleaned. Air agitated solvent baths may not be used.

vii. Spills during solvent transfer and use of the cold cleaning machine shall be cleaned up immediately, and the wipe rags or other absorbent material shall be immediately stored in covered containers for disposal or recycling.

viii. The owner or operator shall ensure that the solvent level does not exceed the fill line.

4. On and after October 11, 2002, no person shall use, sell, or offer for sale for use in a cold cleaning machine any solvent with a vapor pressure of 1.0 millimeters of mercury (mm Hg) or greater, measured at 20°C (68°F) that contains volatile organic compounds.

5. On and after October 11, 2002, a person who sells or offers for sale any solvent containing volatile organic compounds for use in a cold cleaning machine shall provide, to the purchaser, the following written information:

i. The name and address of the solvent supplier.

ii. The type of solvent including the product or vendor identification number.

iii. The vapor pressure of the solvent measured in mm Hg at 20°C (68°F).

6. The owner or operator of a cold cleaning machine shall maintain for not less than five years, and shall provide to the Department, on request, the information specified in paragraph c.5. An invoice, bill of sale, certificate that corresponds to a number of sales, Material Safety Data Sheet (MSDS), or other appropriate documentation acceptable to the Department may be used to comply with this Section.

d. Standards for batch vapor cleaning machines. This paragraph applies to batch vapor cleaning machines.

1. Batch vapor cleaning machines shall be equipped with:

i. Either a fully enclosed design or idling and downtime mode covers that completely covers the cleaning machine openings when in place. Covers shall be free of cracks, holes, and other defects, and readily opened or closed without disturbing the vapor zone. If the solvent cleaning machine opening is greater than 10 square feet, the covers must be powered. If a lip exhaust is used, the closed covers shall be below the level of the lip exhaust.

ii. A freeboard ratio of 0.75 or greater.

iii. A primary condenser.

iv. A vapor up control switch.

v. A device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils.

vi. A vapor level control device that shuts off the sump heat if the vapor level in the vapor cleaning machine rises above the height of the primary condenser.

vii. An automated parts handling system that moves parts or parts baskets at a speed of 3.4 meters per minute (11 feet per minute) or less when the parts are entering or exiting the vapor zone. If the parts or parts basket being cleaned or dried occupy more than 50% of the solvent/air interface area, the automated parts handling system shall move parts or parts baskets at a speed of 0.93 meters per minute (3 feet per minute) or less.

viii. Each vapor cleaning machine that uses a lip exhaust shall be designed and operated to route all collected solvent vapors through a properly operated and maintained carbon adsorber. The concentration of organic solvent in the exhaust shall not exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

ix. A permanent, conspicuous label summarizing the operating requirements in paragraph d.4. of this Section.

2. In addition to the requirements of paragraph d.1. of this Section, the owner or operator of a batch vapor cleaning machine with a solvent/air interface area of 13 square feet or less shall implement one of the following control options:

i. A working mode cover, a freeboard ratio of 1.0, and superheated vapor.

ii. Superheated vapor and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature is no greater than 30 percent of the solvent's boiling point.

iii. A working mode cover and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point.

iv. Reduced room draft, a freeboard ratio of 1.0, and superheated vapor.

v. Reduced room draft and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point.

vi. A freeboard ratio of 1.0 and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point.

vii. Dwell and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point. Dwell shall be not less than 35 percent of the dwell time determined for the part or parts basket.

viii. Reduced room draft, a freeboard ratio of 1.0, and dwell. Dwell shall be not less than 35 percent of the

dwelt time determined for the part or parts basket.

ix. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point and a carbon adsorber that reduces solvent emissions in the exhaust to a level not to exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

x. A freeboard ratio of 1.0, superheated vapor, and a carbon adsorber that reduces solvent emissions in the exhaust to a level not to exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

3. In addition to the requirements of paragraph d.1. of this Section, the owner or operator of a batch vapor cleaning machine with a solvent/air interface area of greater than 13 square feet shall implement one of the following control options:

i. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, a freeboard ratio of 1.0, and superheated vapor.

ii. Dwell, a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, and reduced room draft. Dwell shall be not less than 35 percent of the dwell time determined for the part or parts basket.

iii. A working mode cover, a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, and superheated vapor.

iv. Reduced room draft, freeboard ratio of 1.0, and superheated vapor.

v. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, reduced room draft, and superheated vapor.

vi. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point, a freeboard ratio of 1.0, and reduced room draft.

vii. A freeboard refrigeration device operated to ensure that the chilled air blanket temperature is no greater than 30 percent of the solvent's boiling point, superheated vapor, and a carbon adsorber that reduces solvent emissions in the exhaust to a level not to exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

4. Batch vapor cleaning machines shall be operated in accordance with the following procedures:

i. Waste solvent, still bottoms, and sump bottoms

shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

ii. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping or rotating, the parts shall be positioned so that solvent drains directly back to the batch vapor cleaning machine. A superheated vapor system shall be an acceptable alternate technology.

iii. Parts or parts baskets shall not be removed from the batch vapor cleaning machine until dripping has ceased.

iv. Flushing of parts using a flexible hose or other flushing device shall be performed within the vapor zone of the batch vapor cleaning machine or within a section of the machine that is not exposed to the ambient air. The solvent flushing shall be a solid fluid stream, not an atomized or shower spray.

v. When the cover is open, the batch vapor cleaning machine shall not be exposed to drafts greater than 40 meters per minute (132 feet per minute), as measured between 1 and 2 meters (3.3 and 6.6 feet) upwind and at the same elevation as the tank lip.

vi. Sponges, fabric, wood, leather, paper products, and other absorbent materials shall not be cleaned or dried in the batch vapor cleaning machine.

vii. Spills during solvent transfer and use of the batch vapor cleaning machine shall be cleaned up immediately, and the wipe rags or other absorbent material shall be immediately stored in covered containers for disposal or recycling.

viii. Work area fans shall be located and positioned so that they do not blow across the opening of the batch vapor cleaning machine.

ix. During startup of each batch vapor cleaning machine, the primary condenser shall be turned on before the sump heater.

x. During shutdown of each batch vapor cleaning machine, the sump heater shall be turned off and the solvent vapor layer allowed to collapse before the primary condenser is turned off.

xi. When solvent is added to or drained from the batch vapor cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings, and the discharge end of the pipe shall be located beneath the liquid solvent surface.

xii. The idling and downtime mode covers shall be closed at all times during idling and downtimes except during maintenance of the machine when the solvent has been removed and during addition of solvent to the machine.

xiii. If a lip exhaust is used on the open top batch



vapor cleaning machine, the ventilation rate shall not exceed 20 m<sup>3</sup>/min/m<sup>2</sup> (65 ft<sup>3</sup>/min/ft<sup>2</sup>) of batch vapor cleaning machine open area, unless a higher rate is necessary to meet OSHA requirements.

e. Standards for in-line cleaning machines. This paragraph applies to in-line cold and vapor cleaning machines.

1. In-line cleaning machines shall be equipped with:

i. Either a fully enclosed design or idling and downtime mode covers that completely covers the in-line cleaning machine openings when in place. Covers shall be free of cracks, holes, and other defects, and readily opened or closed without disturbing the vapor zone.

ii. A freeboard ratio of 0.75 or greater.

iii. A primary condenser.

iv. A vapor up control switch.

v. A device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils.

vi. A vapor level control device that shuts off the sump heat if the vapor level in the in-line cleaning machine rises above the height of the primary condenser.

vii. An automated parts handling system that moves parts or parts baskets at a speed of 3.4 meters per minute (11 feet per minute) or less when the parts are entering or exiting the vapor zone. If the parts or parts basket being cleaned or dried occupy more than 50% of the solvent/air interface area, the automated parts handling system shall move parts or parts baskets at a speed of 0.93 meters per minute (3 feet per minute) or less.

viii. Each in-line machine that uses a lip exhaust shall be designed and operated to route all collected solvent vapors through a properly operated and maintained carbon adsorber. The concentration of organic solvent in the exhaust shall not exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

ix. A permanent, conspicuous label summarizing the operating requirements in paragraph e.3.

2. In addition to the requirements of paragraph e.1. of this Section, the owner or operator of an in-line cleaning machine shall implement one of the following control options:

i. A freeboard ratio of 1.0 and superheated vapor.

ii. A freeboard ratio of 1.0 and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point.

iii. Dwell and a freeboard refrigeration device operated to ensure that the chilled air blanket temperature, in °F, is no greater than 30 percent of the solvent's boiling point. Dwell shall be not less than 35 percent of the dwell time determined for the part or parts basket.

iv. Dwell and a carbon adsorber that reduces

solvent emissions in the exhaust to a level not to exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less. Dwell shall be not less than 35 percent of the dwell time determined for the part or parts basket.

3. In-line cleaning machines shall be operated in accordance with the following procedures:

i. Waste solvent, still bottoms, and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

ii. Parts shall be oriented so that the solvent drains freely from the parts. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping or rotating, the parts shall be positioned so that solvent drains directly within the in-line cleaning machine.

iii. Parts or parts baskets shall not be removed from the in-line cleaning machine until dripping has ceased.

iv. Flushing of parts using a flexible hose or other flushing device shall be performed within the vapor zone of the in-line cleaning machine or within a section of the machine that is not exposed to the ambient air. The solvent flushing shall be a solid fluid stream, not an atomized or shower spray.

v. When the in-line cleaning machine is operating, the entrance and exit portals shall not be exposed to drafts greater than 40 meters per minute (132 feet per minute), as measured between 1 and 2 meters (3.3 and 6.6 feet) upwind and at the same elevation as the portals.

vi. Sponges, fabric, wood, leather, paper products, and other absorbent materials shall not be cleaned or dried in the in-line cleaning machine.

vii. Spills during solvent transfer and use of the in-line cleaning machine shall be cleaned up immediately, and the wipe rags or other absorbent material shall be immediately stored in covered containers for disposal or recycling.

viii. Work area fans shall be located and positioned so that they do not blow across the openings of the in-line cleaning machine.

ix. During startup of each in-line cleaning machine, the primary condenser shall be turned on before the sump heater.

x. During shutdown of each in-line cleaning machine, the sump heater shall be turned off and the solvent vapor layer allowed to collapse before the primary condenser is turned off.

xi. When solvent is added to or drained from the in-line cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings and the discharge end of the pipe shall be located beneath the liquid

solvent surface.

xii. The idling and downtime mode covers shall be closed at all times during idling and downtimes except during maintenance of the machine when the solvent has been removed and during addition of solvent to the machine.

xiii. If a lip exhaust is used on the on-line cleaning machine, the ventilation rate shall not exceed  $20 \text{ m}^3/\text{min}/\text{m}^2$  ( $65 \text{ ft}^3/\text{min}/\text{ft}^2$ ) of on-line cleaning machine open area, unless a higher rate is necessary to meet OSHA requirements.

xiv. Minimize openings during operation so that entrances and exits silhouette workloads with an average clearance between the parts and the edge of the portal opening of less than 10 centimeters (4 inches) or less than 10 percent of the width of the opening.

f. Standards for cleaning machines not having a solvent/air interface. This paragraph applies to cleaning machines that do not have a solvent/air interface. These cleaning machines include, but are not limited to, airless and airtight cleaning systems.

1. The owner or operator of each machine shall maintain a log of solvent additions and deletions for each machine including the weight of solvent contained in activated carbon or other adsorbent material used to control emissions from the cleaning machine.

2. The owner or operator of each machine shall demonstrate that the emissions from each machine, on a three-month rolling average, are equal to or less than the allowable emission limit determined using Equation 1 below.

$$EL = 330 (\text{Vol})^{0.6} \quad (\text{Eq. 1})$$

where:

EL = the three-month rolling average monthly emission limit (kilograms/month).

Vol = the cleaning capacity of machine (cubic meters).

3. The owner or operator of each machine shall operate the machine in conformance with the manufacturer's instructions and good air pollution control practices.

4. The owner or operator of each machine equipped with a carbon adsorber shall maintain and operate the carbon adsorber system to reduce solvent emissions in the exhaust to a level not exceed 25 parts per million, averaged over one complete adsorption cycle or 24 hours, whichever is less.

5. A permanent, conspicuous label summarizing the operating requirements in paragraph f.7. below.

6. The owner or operator of a solvent cleaning machine complying with paragraph f. shall demonstrate compliance with the applicable 3-month rolling average monthly emission limit on a monthly basis. If the applicable

3-month rolling average monthly emission limit is not met, an exceedance has occurred. All exceedances shall be reported to the Department within 30 days of the determination of the exceedance.

7. Cleaning machines not having a solvent/air interface shall be operated in accordance with the following procedures:

i. Waste solvent, still bottoms, and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

ii. Cleaned parts shall be drained at least 15 seconds or until dripping ceases, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping or rotating, the parts shall be positioned so that solvent drains directly into the cleaning machine.

iii. Parts or parts baskets shall not be removed from the cleaning machine until dripping has ceased.

iv. Sponges, fabric, wood, leather, paper products, and other absorbent materials shall not be cleaned or dried in the cleaning machines.

v. Spills during solvent transfer and use of the cleaning machines shall be cleaned up immediately, and the wipe rags or other absorbent material shall be immediately stored in covered containers for disposal or recycling.

vi. Work area fans shall be located and positioned so that they do not blow across the opening of the cleaning machine.

vii. When solvent is added to or drained from the cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings and the discharge end of the pipe shall be located beneath the liquid solvent surface.

8. The owner or operator of a solvent cleaning machine complying with paragraph f. shall maintain records and determine compliance with the applicable provisions in accordance with the following:

i. On the first operating day of every month ensure that the solvent cleaning machine system contains only clean liquid solvent. This includes, but is not limited to, fresh unused solvent, recycled solvent, and used solvent that have been cleaned of soils. A fill line must be indicated during the first month the measurements are made. The solvent level within the machine must be returned to the same fill-line each month, immediately prior to calculating monthly emissions. The solvent cleaning machine does not have to be emptied and filled with fresh unused solvent prior to the calculations.

ii. Using the records of all solvent additions and deletions for the previous monthly reporting period, determine total solvent emissions, E, using Equation 2, below:

$$E = SA - LSR - SSR \quad (\text{Eq. 2})$$

where:

E = the total VOC solvent emissions from the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per month).

SA = the total amount of VOC liquid solvent added to the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per month).

LSR = the total amount of VOC liquid solvent removed from the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per month).

SSR = the total amount of VOC solvent removed from the solvent cleaning machine in solid waste during the most recent monthly reporting period (kilograms of solvent per month), as determined from tests conducted using Method 25D in appendix A of 40 CFR part 60 or by engineering calculations included in the compliance report.

iii. Determine the monthly rolling average solvent emission, EA, using Equation 3, below:

$$EA = (E_{j=1} + E_{j=2} + E_{j=3}) / 3 \quad (\text{Eq. 3})$$

where:

EA = the average VOC solvent emissions over the preceding 3 monthly reporting periods (kilograms of solvent per month).

E = the total VOC solvent emissions for each month (j) for the most recent 3 monthly reporting periods (kilograms of solvent per month).

j = 1 = the most recent monthly reporting period.

j = 2 = the monthly reporting period immediately prior to j = 1.

j = 3 = the monthly reporting period immediately prior to j = 2.

g. Alternative standard. As an alternative to meeting the requirements of paragraphs d. or e. of this Section, the owner or operator of a batch vapor or in-line cleaning machine can elect to comply with the requirements of paragraphs g.1. through g.4. The owner or operator shall maintain records sufficient to demonstrate compliance. The records shall include, at a minimum, the quantity of solvent added to and removed from the solvent cleaning machine, the dates of the addition and removal, and the calculations of the monthly rolling 3-month average emission limit.

1. The owner or operator shall:

i. Maintain a log of solvent additions and deletions for each solvent cleaning machine.

ii. Ensure that emissions from each solvent cleaning machine are equal to or less than the allowable

emission limit presented in Table 1.

Table 1 -- Emission Limits for Batch Vapor and In-line Cleaning Machines

<u>Solvent cleaning machine</u>	<u>3-Month rolling average monthly emission limit</u> <u>(kilograms/square meters/month)</u>
<u>Batch vapor cleaning machines</u>	<u>150</u>
<u>Existing in-line cleaning machines</u>	<u>153</u>
<u>New in-line cleaning machines</u>	<u>99</u>

2. In addition to the requirements of paragraph g.1. of this Section, the owner or operator of a cleaning machine shall comply with the following:

i. Paragraphs d.1.ix. and d.4. for batch vapor cleaning machines.

ii. Paragraphs e.1.ix. and e.3. for in-line cleaning machines.

3. The owner or operator of a solvent cleaning machine complying with paragraph g. shall demonstrate compliance with the applicable 3-month rolling average monthly emission limit on a monthly basis. If the applicable 3-month rolling average monthly emission limit is not met, an exceedance has occurred. All exceedances shall be reported to the Department within 30 days of the determination of the exceedance.

4. The owner or operator of a solvent cleaning machine complying with paragraph g. shall maintain records and determine compliance with the applicable provisions in accordance with the following:

i. On the first operating day of every month ensure that the solvent cleaning machine system contains only clean liquid solvent. This includes, but is not limited to, fresh unused solvent, recycled solvent, and used solvent that have been cleaned of soils. A fill line must be indicated during the first month the measurements are made. The solvent level within the machine must be returned to the same fill-line each month, immediately prior to calculating monthly emissions. The solvent cleaning machine does not have to be emptied and filled with fresh unused solvent prior to the calculations.

ii. Using the records of all solvent additions and deletions for the previous monthly reporting period, determine total solvent emissions, E, using Equation 4, below:

$$E = (SA - LSR - SSR) / \text{AREA} \quad (\text{Eq. 4})$$

where:

E = the total VOC solvent emissions from the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per square meter of solvent/air interface area per month).

SA = the total amount of VOC liquid solvent added to the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per month).

LSR = the total amount of VOC liquid solvent removed from the solvent cleaning machine during the most recent monthly reporting period (kilograms of solvent per month).

SSR = the total amount of VOC solvent removed from the solvent cleaning machine in solid waste during the most recent monthly reporting period (kilograms of solvent per month), as determined from tests conducted using Method 25D in appendix A of 40 CFR part 60 or by engineering calculations included in the compliance report.

Area = the solvent/air interface area of the solvent cleaning machine (square meters).

iii. Determine the monthly rolling average solvent emission, EA, using Equation 5, below:

$$EA = (E_{j=1} + E_{j=2} + E_{j=3}) / 3 \quad (\text{Eq. 5})$$

where:

EA = the average VOC solvent emissions over the preceding 3 monthly reporting periods (kilograms of solvent per square meter of solvent/air interface area per month).

E = the total VOC solvent emissions for each month (j) for the most recent 3 monthly reporting periods (kilograms of solvent per square meter of solvent/air interface area per month).

j = 1 = the most recent monthly reporting period.

j = 2 = the monthly reporting period immediately prior to j = 1.

j = 3 = the monthly reporting period immediately prior to j = 2.

h. Monitoring. The owner or operator of a solvent cleaning machine subject to the provisions of paragraphs d. through g. of this Section shall conduct monitoring as follows.

1. If a freeboard refrigeration device is used to comply with this Section, the owner or operator shall use a thermometer or thermocouple to measure the temperature at the center of the air blanket during the idling mode. Measurements and recordings shall be made weekly.

2. If a superheated vapor system is used to comply with this Section, the owner or operator shall use a thermometer or thermocouple to measure the temperature at the center of the superheated solvent vapor zone while the solvent cleaning machine is in the idling mode.

Measurements and recordings shall be made weekly.

3. If a cover (working mode, downtime mode, and/or idling mode cover) is used to comply with this Section, the owner or operator shall conduct a visual inspection to determine if the cover is opening and closing properly, completely covers the cleaning machine openings when closed, and is free of cracks, holes, and other defects. Observations and recordings shall be made monthly.

4. If dwell is used to comply with this Section, the owner or operator shall determine the actual dwell time by measuring the period of time that parts are held within the freeboard area of the solvent cleaning machine after cleaning or drying. Measurements and recordings shall be made monthly.

5. The owner or operator shall determine the automated parts handling system speed by measuring the time it takes to travel a measured distance. The speed is equal to the distance in meters or feet divided by the time in minutes (meters or feet per minute). Measurements and recordings shall be made monthly.

6. If reduced room draft is used to comply with this Section, the owner or operator shall determine the average wind speed and controlling room parameters (i.e., redirecting fans, closing doors and windows, etc.) as follows.

i. Initially measure the wind speed within 6 inches above the top of the freeboard area of the solvent cleaning machine in accordance with the following:

A. Determine the direction of the wind current by slowly rotating a velometer or similar device until the maximum speed is located.

B. Orient a velometer in the direction of the wind current at the four corners of the machine.

C. Record the reading for each corner.

D. Average the values obtained at each corner and record the average wind speed.

ii. Record the room parameters established during the initial compliance test to achieve the reduced room draft.

iii. Quarterly monitor of the wind speed in accordance with paragraph h.6.i.

iv. Weekly monitoring of the room parameters as specified in paragraph h.6.

7. If an enclosure (full or partial) is used to achieve reduced room draft, the owner or operator shall conduct an initial monitoring test of the wind speed within the enclosure by slowly rotating a velometer inside the entrance to the enclosure until the maximum speed is located and recorded. Measurements and recordings shall be made monthly. The owner or operator shall also conduct a monthly visual inspection of the enclosure to determine if it is free of cracks, holes, and other defects.

8. The owner or operator of a using a carbon adsorber to comply with this Section shall measure and record the concentration of VOC solvent in the exhaust of the carbon adsorber whenever the solvent cleaning machine is in the

working mode and/or is venting to the carbon adsorber. The concentration shall be determined through a sampling port within the exhaust outlet that is easily accessible, located downstream from no other inlet, and located at least 8 stack or duct diameters downstream and 2 stack or duct diameters upstream from any flow disturbance such as a bend, expansion, contraction, or outlet

i. Recordkeeping. The owner or operator of a solvent cleaning machine subject to this Section shall maintain the following records in a readily accessible location for a least 5 years and shall make these records available to the Department, upon verbal or written request:

1. The log of operating times for the carbon adsorber, if applicable.

2. The maintenance record for the carbon adsorber, such as replacement of the activated carbon bed, if applicable.

3. The maintenance record for each control option used, such as replacement of a heater in the superheated vapor recycle system, if applicable.

4. The logs and calculations demonstrating compliance with the allowable emission limits in paragraphs f. and g. of this Section.

5. The results of all monitoring conducted in accordance with the requirements in paragraph h. of this Section.

j. Reporting. The owner or operator of a solvent cleaning machine subject to this Section shall:

1. Comply with the initial compliance certification requirements of Section 5.a. of this regulation.

2. Comply with the requirements of Section 5.b. of this regulation regarding reports of excess emissions, as well as complying with other State of Delaware exceedance reporting requirements.

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## **DIVISION OF AIR & WASTE MANAGEMENT**

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

### **REGISTER NOTICE** **SAN # 2000-23**

#### **1. TITLE OF THE REGULATIONS:**

REGULATION 24 - "CONTROL OF VOLATILE ORGANIC COMPOUNDS EMISSIONS"

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

Regulation 24 establishes emission standards, as well

as, the compliance demonstration, recordkeeping and reporting requirements for sources emitting volatile organic compounds (VOCs). This amendment proposes to add a new section, Section 46, to control the emissions of VOCs from lightering operations that occur in the waters of the State. Lightering is the bulk transfer of cargo (usually crude oil) from ocean going vessels to smaller vessels, thereby allowing the ocean going vessels to proceed upriver. In 1996, more than 1,687 tons of VOCs were emitted during lightering operations. Lightering operations represented the single, largest VOC emission source listed amongst the 105 stationary point sources in Delaware's 1996 Emissions Inventory.

Some of the VOCs being emitted during lightering operations are also classified as hazardous air pollutants (HAPs). It was estimated that in 1996 approximately 138 tons of HAPs were emitted during lightering operations. These HAPs include benzene, toluene, xylenes and polycyclic aromatic hydrocarbons (PAHs). The EPA has classified benzene as a known human carcinogen and benzo(a)pyrene, a PAH, as a probable human carcinogen of medium carcinogenic hazard. The emissions of these HAPs will also be reduced under this amendment.

#### **3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

#### **4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, Chapter 60

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

None

#### **6. NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed amendment will extend through August 31, 2001. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 30, 2001 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

#### **7. PREPARED BY:**

James R. Snead (302) 323-4542 July 2, 2001

The Department proposes to amend Regulation 24 by replacing Section 46, which is reserved, with the following. Section 46 does not change any of the other sections of Regulation 24.

## Section 46 - Lightering Operations.

10/11/01

### a. Applicability.

1. This Section applies to any person who owns or operates a service vessel that conducts lightering operations in the waters of the State, except as exempted in paragraph a.2. of this Section.

2. Any person performing emergency lightering shall be exempt from the requirements of this Section, provided that person submits to the Department a notice in accordance with paragraph h.3. of this Section. The volume transferred during emergency lightering shall be excluded from the volume of uncontrolled lightering operations determination in paragraph d.2.ii. of this Section.

3. Nothing in this Section shall be construed to require any act or omission that would violate any regulation or other requirement of the United States Coast Guard, or prevent any act that is necessary to secure the safety of a vessel or the safety of its passengers and crew.

4. The requirements of this Section are in addition to all other applicable State and Federal rules and regulations.

b. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in Regulation 1 or in Section 2 of this regulation.

"Baseline volume" means the average volume, in barrels per year, of volatile organic liquid lightered in the waters of the State during the two calendar years that immediately precede the effective date of this Section. The Department may allow the use of a different 2-year time period, within the five year period that precede the effective date, upon a determination that it is more representative of normal lightering operations.

"Emergency lightering" means the transfer of bulk liquid cargo to mitigate or prevent a cargo spill or to stabilize a vessel whose integrity has been compromised.

"Lightering" or "lightering operation" means the transferring of a volatile organic liquid from the cargo tank of a ship to be lightered (STBL) to the cargo tank of a service vessel.

"Liquid leak" means a leak of more than three drops per minute of volatile organic liquid.

"Marine tank vessel" means any tugboat, tanker, freighter, passenger ship, barge, boat, ship or watercraft, which is specifically constructed or converted to carry liquid bulk cargo in tanks.

"Ozone Action Day (OAD)" means a day that is predicted, based on forecasted weather conditions, to reach unhealthy ozone concentrations. Ozone Action Days are announced prior to 1430 hours for the following day.

"Service vessel" means the marine tank vessel that transports bulk liquid cargo between a facility and another vessel.

"Ship to be lightered (STBL)" means the marine tank vessel delivering the liquid cargo during lightering operations.

"Vapor balancing" means the transfer of vapors displaced by the incoming cargo from the tank of a vessel receiving cargo into a tank of the vessel or facility delivering cargo via a vapor collection system.

"Vapor collection system" means an arrangement of piping and hoses used to collect vapor emitted from a marine tank vessel's cargo tanks and to transport the vapor to a vapor processing unit.

"Vapor control system" means an arrangement of piping and equipment used to control vapor emissions collected from a marine tank vessel. It includes the vapor collection system and vapor processing unit. For the purposes of this Section, it, also, includes vapor balancing.

"Vapor leak" means a condition that exists when the reading on a portable hydrocarbon meter, measured 1 centimeter or less from any source, exceeds 10,000 parts per million, expressed as propane or butane, above background.

"Vapor processing unit" means the components of a vapor control system that recovers, destroys or disperses vapor collected from a vessel.

"Vapor tight" means a marine tank vessel has successfully demonstrated vapor tightness, as provided in paragraph f.1.iii. of this Section, within the preceding 12 months.

"Waters of the State" means those waters within the boundaries of the State, including the 12 mile circle described from New Castle and extended to the low water mark on the eastern side of the Delaware River and extending below the 12 mile circle with the middle of the shipping channel through the Delaware River and Bay and extending to the Atlantic Ocean and including those waters of the territorial sea which are in direct contact with the coast of Delaware, extending from the line of ordinary low water seaward for a distance of 3 geographical miles. This definition shall include any waters beyond the 3-mile mark as authorized by Federal Law.

### c. Standards.

1. Each person subject to this Section shall comply with either paragraph c.1.i., c.1.ii. or c.1.iii. of this Section.

i. Limit the VOC emissions from the service vessel to 5.7 grams per cubic meter (2 pounds per 1,000 barrels) of volatile organic liquid transferred.

ii. Reduce the VOC emissions from the service vessel by at least 95 percent by weight from uncontrolled conditions.

iii. Limit the VOC emissions from the service vessel by vapor balancing with STBLs equipped with a vapor collection system that is compatible with and connected to the vapor collection system of the service vessel.

2. Each person subject to this Section shall load volatile organic liquid only into service vessels that are vapor tight.

3. Each person subject to this Section shall ensure that the maximum operating pressure of the service vessel's vapor collection system shall not exceed 90 percent of the lowest pressure relief valve setting in the vapor collection system.

4. During each lightering operation, each person subject to this Section shall inspect the vapor control system of the associated service vessel for liquid and vapor leaks during the transfer of volatile organic liquid to that service vessel. For purposes of this paragraph, leak detection methods incorporating sight, sound or smell are acceptable. Whenever a leak is detected, the leak shall be tagged and recorded pursuant to paragraph g.3. of this Section. A first attempt at repair shall be made within 5 calendar days, with the leak repaired within 15 calendar days after the leak is detected or prior to the date that service vessel is loaded again, whichever date is later. Each person shall use the method approved in paragraph f.1.iii. to confirm the repair of all liquid and vapor leaks.

5. Beginning May 1, 2002, uncontrolled lightering operation shall be curtailed from 0230 hours until 1430 hours on any day that the Department declares an Ozone Action Day (OAD). If cargo transfer from a STBL to a service vessel begins prior to 1430 hours, that lightering operation may continue until 0230 hours or until the service vessel is fully loaded, whichever is later. If the Department declares a second OAD before 1430 hours of the first curtailment period, then such uncontrolled lightering shall be curtailed for an additional 24 hours until 1430 hours on the second day. If a third OAD in a row is declared, then uncontrolled lightering is permissible for a 12-hour period starting at 1430 hours on the second OAD and ending at 0230 hours on the third OAD. Uncontrolled lightering shall be curtailed from 0230 hours until 1430 hours on the third OAD. If the Department continues to declare OADs consecutively after the third day, the curtailment and loading pattern used for the third OAD shall apply.

6. Each person subject to this Section shall load volatile organic liquid into service vessels only using submerged fill.

d. Compliance schedule.

1. Not later than January 1, 2003, each person subject to this Section shall provide the following information to the Department:

i. The type(s) of vapor control system that will be installed on service vessels to comply with paragraph c.1. of this Section.

ii. The expected date(s) that the vapor control system(s) will be installed on service vessels.

2. Beginning May 1, 2005, each person subject to this

Section shall fully comply with all requirements of this Section, except as exempted in paragraphs d.2.i. and d.2.ii. of this Section.

i. In compliance with the requirements of paragraphs c.1. through c.4. of this Section to the greatest extent practicable.

ii. The volume of uncontrolled lightering operations in the waters of the State between May 1 and September 30 of each year shall not exceed the maximum allowable volume,  $V_{ma}$ , as determined using the following equation:

$$V_{ma} = CF \times BLV \times (5/12)$$

where

$V_{ma}$  = the maximum allowable volume that can be lightered without controls in the waters of the State during the ozone season, barrels.

CF = a phased-in compliance factor. Beginning May 1<sup>st</sup> of the years 2005, 2008, 2012, 2016 and 2020, the phased-in compliance factor shall be 0.85, 0.75, 0.50, 0.25, and 0.05, respectively.

BLV = the baseline volume, barrels.

(5/12) = a factor to adjust annual volumes for the 5-month ozone season.

3. No later than May 1, 2004, and every four years thereafter, if needed, the Department and each person subject to this Section shall re-evaluate the feasibility of the compliance schedule in paragraph d.2. of this Section. The re-evaluations will be based, at minimum, on the current Delaware air quality and air quality planning needs, historical records gathered pursuant to paragraph g.7. of this Section, national and international standards and other maritime initiatives under development. If re-evaluation is not needed, the terms and conditions of this Section remain unchanged. Any changes to the requirements of paragraph d.2. shall be made in accordance with the requirements of Title 7 Delaware Code, Chapter 60.

e. Construction and operating permits. Any permit required, pursuant to Regulations 2, 25 or 30, shall be secured prior to commencing construction, as applicable. Operation of the vapor control system shall not commence until an operating permit is issued by the Department making all of the requirements of this Section federally enforceable, to include all standards, monitoring, testing, recordkeeping and reporting requirements.

f. Compliance demonstration.

1. Each person subject to this Section shall submit to the Department a compliance demonstration plan that shall include, at a minimum, the information specified in

paragraphs f.1.i. through f.1.iv. of this Section.

i. Performance test plan necessary to demonstrate initial compliance with the requirements of paragraph c. The performance test plan shall include, at minimum, the following:

A. Operating conditions and sample location(s).

B. Performance test equipment, procedures and logs.

C. Test methods used.

D. Number of test runs and sampling frequencies.

E. Sample data sheets and calculations necessary to demonstrate initial compliance with the requirements of paragraph c.

ii. Compliance monitoring plan necessary to demonstrate ongoing compliance with the requirements of paragraph c. The compliance monitoring plan shall include, at minimum, the following:

A. Parameters to be monitored.

B. Type of monitoring devices to be used.

C. Type of data recording devices to be used.

D. Sample location(s) and frequency.

E. Quality assurance program.

F. Operating and maintenance procedures and logs.

G. Sample calculations.

iii. Vapor tight test method(s) for the service vessel and the vapor recovery system.

iv. Pollution prevention plan and monitoring procedures for all valves that if opened would allow VOCs to be emitted uncontrolled, either directly or indirectly, to the atmosphere.

2. Performance test equipment shall be prepared and installed as specified in the test methods approved by the Department in paragraph f.1.i.C.

3. A performance test of the vapor control system required to comply with paragraph hc. of this Section shall be conducted within 180 days after the system is first operated. The Department shall be notified at least 60 working days prior to the conduct of any performance test. The results of any performance test shall be submitted to the Department within 60 calendar days following the completion of the performance test.

g. Recordkeeping. Each person subject to this Section shall keep the records specified in this paragraph in a readily accessible location for at least 5 years. These records shall be made available to the Department immediately upon verbal or written request.

1. Records of information collected during all performance tests and all calculations used to demonstrate compliance with paragraph c. of this Section, as specified in the compliance demonstration plan approved by the

Department in paragraph f.1. of this Section.

2. Records of information collected during all lightering operations and all calculations used demonstrate ongoing compliance, as specified in the compliance demonstration plan approved by the Department in paragraph f.1. of this Section. All periods of lightering operations where the monitored results exceeded the parameters established in the most recent performance test shall be highlighted.

3. Records of inspections conducted in accordance with paragraph c.4. of this Section.

4. Records of the pollution prevention monitoring conducted, as specified in paragraph f.1.iv.

5. Vapor tightness documentation for each service vessel used in lightering operations. The documentation shall include as a minimum the following:

i. Service vessel owner(s) name and address.

ii. Service vessel identification number.

iii. Date and location of test.

iv. Type of vapor tightness testing conducted.

v. Test results.

vi. Tester's name and signature.

6. The operating and maintenance logs for the vapor collection system, vapor processing unit and monitoring equipment.

7. Beginning on January 1, 2002, each person complying with paragraph c.1.iii. of this Section shall develop and keep an ongoing database of STBLs lightered that would or would not be compatible for vapor balancing with each service vessel. This database shall include, at a minimum, all of the following information:

i. All of the information specified in paragraph g.8. of this Section.

ii. Name of the STBL.

iii. Country of registry.

iv. Whether or not the STBL had a vapor collection system and, if it did, whether or not the vapor collection system was compatible with the service vessel. If applicable, identify all of the specific areas of incompatibility.

v. Certification as to whether or not the emissions from that lightering operation were conducted in full compliance with the requirements of this Section.

8. Beginning on January 1, 2002, each person subject to this Section shall keep, at minimum, the following information for each lightering operation:

i. Name of the service vessel.

ii. Date and time that the lightering operation commenced and ended.

iii. Volume of volatile organic liquid lightered.

iv. The volume of volatile organic liquid lightered where the associated emissions were controlled in full compliance with the requirements of this Section.



h. Reporting requirements. Each person subject to this Section shall:

1. Comply with the initial compliance certification requirements of paragraph a. in Section 5 of Regulation 24.

2. Comply with the requirements of paragraph b. in Section 5 of Regulation 24 regarding excess emissions related to the vapor control system required to comply with this Section, as well as any other State of Delaware exceedance reporting requirements.

3. Submit to the Department within two (2) business days of the emergency lightering operation a description of the emergency, and the identity and telephone number of a person representing the entity requesting the emergency lightering operation.

4. Submit, not later than February 1<sup>st</sup> of each year, beginning in the year 2003, to the Department the information collected pursuant to paragraph g.7. of this Section for the previous calendar year, if complying with paragraph c.1.iii of this Section.

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**DIVISION OF AIR & WASTE MANAGEMENT**

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

**REGISTER NOTICE**  
**SAN # 2000-22**

**1. TITLE OF THE REGULATIONS:**

REGULATION 38 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES"

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

The Department is proposing to amend Regulation 38 by adopting by reference the National Emission Standards for Hazardous Air Pollutants for Source Categories found at 40 CFR Part 63 Subpart T.

Subpart T addresses the emissions of halogenated solvents; establishes required control technologies and work practice standards; and defines the compliance, notification, monitoring, recordkeeping and reporting requirements. Owners or operators of solvent cleaning machines that use any of the following halogenated solvents will be affected: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY**

**TO ACT:**

7 Delaware Code, Chapter 60

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed amendment will extend through August 31, 2001. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, August 28, 2001 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

**7. PREPARED BY:**

James R. Snead (302) 323-4542 July 2, 2001

The Department proposes to amend Regulation 38 by adding Subpart T, which follows. Subpart T does not change any of the existing subparts of Regulation 38 and shall be placed following Subpart Q.

**10/11/01**

**Subpart T Emission Standards for Halogenated Solvent Cleaning**

The provisions of Subpart T - National Emission Standards for Halogenated Solvent Cleaning, of Title 40, Part 63 of the Code of Federal Regulations, dated of July 1, 2000 and as amended on Sept. 8, 2000, are hereby adopted by reference with the following changes:

(a) Except as shown in Table T-1 of Subpart T, "Department" shall replace "Administrator".

(b) Paragraph 63.460(b) shall be replaced with the following language: "Owners or operators of affected sources subject to the provisions of this subpart must also comply with the requirements of subpart A of this regulation, according to the applicability of subpart A of this regulation to such sources, as identified in Table 1 of this subpart."

(c) The following dates shall be replaced by the date October 11, 2001:

(i) December 2, 1994;

(ii) August 29, 1995;

(iii) December 2, 1997; and

(iv) December 2, 1999.

(d) The opening sentence of Section 63.461 shall be replaced with the following language: "Unless defined below, all terms in this subpart have the meanings given

them in the Act or in subpart A of this regulation.”.

(e) The definition of Administrator in Section 63.461 shall be replaced with the following language: “Administrator means the Administrator of the United States Environmental Protection Agency.”

(f) The definition of Existing in Section 63.461 shall be replaced with the following language: “Existing means any solvent cleaning machine the construction or reconstruction of which was commenced on or before November 29, 1993. An existing solvent cleaning machine moved within a contiguous facility or to another facility under the same ownership remains an existing machine.”

(g) The definition of Part in Section 63.461 shall be replaced with the following language: “Part means any object that is cleaned or dried in a solvent cleaning machine. Parts include, but are not limited to, discrete parts, assemblies, sets of parts, and parts cleaned or dried in a continuous web cleaning machine (i.e., continuous sheets of metal or film).”

(h) The definition of Solvent cleaning machine in Section 63.461 shall be replaced with the following language: “Solvent cleaning machine means any device or piece of equipment that uses halogenated HAP solvent liquid or vapor to remove soils from the surfaces of materials. Types of solvent cleaning machines include, but are not limited to, batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines. Buckets, pails, and beakers with capacities of one liter (30 ounces) or less are not considered solvent cleaning machines.”

(i) The definition of Working mode in Section 63.461 shall be replaced with the following language: “Working mode means the time period when the solvent cleaning machine is actively cleaning or drying parts.”

(j) Paragraph 63.462(b) shall be replaced with the following language: “Each owner or operator of a remote-reservoir batch cold solvent cleaning machine shall employ a tightly fitting cover over the sink-like work area that shall be closed at all times except during the cleaning of parts.”

(k) Paragraph 63.462(c) shall be replaced with the following language: “Each owner or operator of a batch cold solvent cleaning machine complying with paragraph (a) or (b) of this section shall comply with the work and operational practice requirements specified in paragraphs (c)(1) through (c)(11) of this section as applicable.”

(l) Paragraph 63.462(c)(2) shall be replaced with the following language: “If a flexible hose or flushing device is used, flushing shall be performed only within the freeboard area of the solvent cleaning machine. The solvent spray shall be a solid fluid stream, not an atomized or shower spray, at a pressure that does not exceed 10 pounds per square inch gauge.”

(m) Paragraph 63.462(c)(3) shall be replaced with the following language: “The owner or operator shall drain solvent cleaned parts for 15 seconds or until dripping has

stopped, whichever is longer. Parts having cavities or blind holes shall be tipped or rotated while draining. During the draining, tipping or rotating, the parts shall be positioned so the solvent drains directly into the solvent cleaning machine.”

(n) Paragraph 63.462(c)(5) shall be replaced with the following language: “Spills during solvent transfer or use of the solvent cleaning machine shall be wiped up immediately. The wipe rags or other sorbent material shall be stored in closed containers meeting the requirements of paragraph (c)(1) of this section.”

(o) Paragraph 63.462(c)(6) shall be replaced with the following language: “When a pump-agitated solvent bath is used, the owner or operator shall ensure that the agitator is operated to produce a rolling motion of the solvent with no observable splashing against tank walls or parts being cleaned. Air-agitated solvent baths shall not be used.”

(p) Paragraph 63.462(c)(7) shall be replaced with the following language: “The owner or operator shall ensure that, when the cover is open, the cold cleaning machine is not exposed to drafts greater than 40 meters per minute (132 feet per minute), as measured between 1 and 2 meters (3.3 and 6.6 feet) upwind and at the same elevation as the tank lip. In addition, work area fans shall be located and positioned so that they do not blow across the opening of the solvent cleaning machine.”

(q) Paragraphs 63.462(c)(10), 63.463(g)(4)(x), and 63.463(h)(3)(ix) shall be added and paragraph 63.463(d)(10) shall be replaced with the following language: “Each operator of a solvent cleaning machine shall complete and pass the applicable sections of the test of solvent cleaning procedures in appendix A of this subpart if requested during an inspection by the Department.”

(r) Paragraph 63.462(c)(11) shall be added with the following language: “The owner or operator shall provide a permanent, legible, conspicuous label summarizing the operating requirements in paragraph (c) of this section.”

(s) Paragraph 63.463(b)(1)(i) shall be replaced with the following language: “Employ one of the control combinations listed in Table 463-1 of this subpart. Alternatively, equivalent methods of control can be submitted to and approved by the Administrator, using the procedure in Sec. 63.469.”

(t) Replace the title of Table 1 in Section 63.463 with the following title: “Table 463-1 -- Control Combinations for Batch Vapor Solvent Cleaning Machines With a Solvent/Air Interface Area of 1.21 Square Meters (13 Square Feet) or Less”.

(u) Paragraph 63.463(b)(1)(ii) shall be replaced with the following language: “Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.22 kilograms per hour per square meter (0.045 pounds per hour per square foot) of solvent/air interface area as determined using the procedures in Sec.

63.465(a) and Method 307 in appendix A of 40 CFR part 63.”

(v) Paragraph 63.463(b)(2)(i) shall be replaced with the following language: “Employ one of the control combinations listed in Table 463-2 of this subpart. Alternatively, equivalent methods of control can be submitted to and approved by the Administrator, using the procedure in Sec. 63.469.”

(w) Replace the title of Table 2 in Section 63.463 with the following title: “Table 463-2 -- Control Combinations for Batch Vapor Solvent Cleaning Machines With a Solvent/Air Interface Area Greater than 1.21 Square Meters (13 Square Feet)”.

(x) Paragraph 63.463(b)(2)(ii) shall be replaced with the following language: “Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.22 kilograms per hour per square meter (0.045 pounds per hour per square foot) of solvent/air interface area as determined using the procedures in Sec. 63.465(a) and Method 307 in appendix A of 40 CFR part 63.”

(y) Paragraph 63.463(c)(1)(i) shall be replaced with the following language: “Employ one of the control combinations listed in Table 463-3 of this subpart. Alternatively, equivalent methods of control can be submitted to and approved by the Administrator, using the procedure in Sec. 63.469.”

(z) Replace the title of Table 3 in Section 63.463 with the following title: “Table 463-3 -- Control Combinations for Existing In-Line Solvent Cleaning Machines”.

(aa) Paragraph 63.463(c)(1)(ii) shall be replaced with the following language: “Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.10 kilograms per hour per square meter (0.021 pounds per hour per square foot) of solvent/air interface area as determined using the procedures in Sec. 63.465(a) and Method 307 in appendix A of 40 CFR part 63.”

(bb) Paragraph 63.463(c)(2)(i) shall be replaced with the following language: “Employ one of the control combinations listed in Table 463-4 of this subpart. Alternatively, equivalent methods of control can be submitted to and approved by the Administrator, using the procedure in Sec. 63.469.”

(cc) Replace the title of Table 4 in Section 63.463 with the following title: “Table 463-4 -- Control Combinations for New In-Line Solvent Cleaning Machines”.

(dd) Paragraph 63.463(c)(2)(ii) shall be replaced with the following language: “Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.10 kilograms per hour per square meter (0.021 pounds per hour per square foot) of solvent/air interface area as determined using the procedures in Sec. 63.465(a) and Method 307 in appendix A of 40 CFR part

63.”

(ee) Paragraph 63.463(d) shall be replaced with the following language: “Except as provided in Sec. 63.464 for all cleaning machines, each owner or operator of an existing or new batch vapor or in-line solvent cleaning machine shall meet all of the following required work and operational practices specified in paragraphs (d)(1) through (d)(15) of this section as applicable. The owner or operator of a continuous web cleaning machine shall comply with the requirements of paragraph (g) or (h) of this section, as appropriate, in lieu of complying with this paragraph.”

(ff) Add the following language at the end of paragraphs 63.463(d)(3), 63.463(g)(4)(ii), and 63.463(h)(3)(i): “The solvent spray shall be a solid fluid stream, not an atomized or shower spray.”

(gg) Paragraphs 63.463(d)(8), 63.463(g)(4)(v), and 63.463(h)(3)(iv) shall be replaced with the following language: “When solvent is added to or drained from any solvent cleaning machine, the solvent shall be transferred using threaded or other leak-proof couplings, and the discharge end of the pipe shall be located beneath the liquid solvent surface.”

(hh) Paragraph 63.463(d)(13) shall be added with the following language: “Spills during solvent transfer or use of the solvent cleaning machine shall be wiped up immediately. The wipe rags or other sorbent material shall be stored in closed containers meeting the requirements of paragraph (d)(11) of this section.”

(ii) Paragraphs 63.463(d)(14), 63.463(g)(4)(xii), and 63.463(h)(3)(xi) shall be added with the following language: “Work area fans shall be located and positioned so that they do not blow across the opening of the solvent cleaning machine.”

(jj) Paragraph 63.463(d)(15) shall be added with the following language: “The owner or operator shall provide a permanent, legible, conspicuous label summarizing the operating requirements in paragraph (d) of this section.”

(kk) Paragraph 63.463(e)(2)(vii)(A) shall be replaced with the following language: “Ensure that the concentration of halogenated HAP solvents in the exhaust from this device does not exceed 25 parts per million of halogenated HAP solvents as measured using the procedure in Sec. 63.466(e). If the halogenated HAP solvent concentration in the carbon adsorber exhaust exceeds 25 parts per million, the owner or operator shall adjust the desorption schedule or replace the disposable canister, if not a regenerative system, so that the exhaust concentration of halogenated HAP solvent is brought below 25 parts per million.”

(ll) Paragraph 63.463(e)(2)(x)(B) shall be replaced with the following language: “Maintain the selected air knife parameter value at the level determined in paragraph (e)(2)(x)(A) of this section.”

(mm) Paragraph 63. 463(e)(2)(xi)(B) shall be replaced with the following language: "Maintain the selected parameter value at the level determined in paragraph (e)(2)(xi)(A) of this section."

(nn) Paragraph 63. 463(e)(3)(i) shall be replaced with the following language: "An exceedance has occurred if the requirements of paragraphs (e)(2)(ii)(B), (e)(2)(iii)(A), (e)(2)(iv)(A), (e)(2)(v), (e)(2)(vi)(B), (e)(2)(vi)(C), (e)(2)(vii)(B), (e)(2)(vii)(C), (e)(2)(viii), (e)(2)(ix)(A) through (e)(2)(ix)(D), (e)(2)(x)(A) through (e)(2)(x)(C), or (e)(2)(xi)(A) through (e)(2)(xi)(C) of this section have not been met."

(oo) Paragraph 63. 463(e)(3)(ii) shall be replaced with the following language: "An exceedance has occurred if the requirements of paragraphs (e)(2)(i), (e)(2)(ii)(A), (e)(2)(iii)(B), (e)(2)(iv)(B), (e)(2)(vi)(A), (e)(2)(vii)(A), (e)(2)(ix)(E), (e)(2)(x)(D), or (e)(2)(xi)(D) of this section have not been met and are not corrected within 15 days of detection. Adjustments or repairs shall be made to the solvent cleaning system or control device to reestablish required levels. The parameter must be remeasured immediately upon adjustment or repair and demonstrated to be within required limits."

(pp) Paragraph 63. 463(g)(2) shall be replaced with the following language: "If a carbon adsorber system can be demonstrated to the Department's satisfaction to have an overall solvent control efficiency (i.e., capture efficiency times removal efficiency) of 70 percent or greater, this system is equivalent to the options in paragraph (g) of this section."

(qq) Paragraph 63. 463(g)(4)(i)(A) shall be replaced with the following language: "Cover(s) to each solvent cleaning machine shall be in place during the idling mode and during the downtime mode unless either the solvent has been removed from the machine or maintenance or monitoring is being performed that requires the cover(s) to not be in place. A continuous web part that completely occupies an entry or exit port when the machine is idle is considered to meet this requirement."

(rr) Paragraph 63. 463(g)(4)(xi) shall be added with the following language: "Spills during solvent transfer or use of the solvent cleaning machine shall be wiped up immediately. The wipe rags or other sorbent material shall be stored in closed containers meeting the requirements of paragraph (g)(4)(vii) of this section."

(ss) Paragraph 63. 463(g)(4)(xiii) shall be added with the following language: "The owner or operator shall provide a permanent, legible, conspicuous label summarizing the operating requirements in paragraph (g)(4) of this section."

(tt) Paragraph 63. 463(h) shall be replaced with the following language: "Except as provided in Sec. 63.464, each owner or operator of a remote reservoir continuous web cleaning machine shall comply with paragraphs (h)(1)

through (h)(3) of this section."

(uu) Paragraph 63. 463(h)(1)(iii) shall be replaced with the following language: "If a carbon adsorber system can be demonstrated to the Department's satisfaction to have an overall solvent control efficiency (i.e., capture efficiency times removal efficiency) of 70 percent or greater, this system is equivalent to the options in paragraphs (h)(1)(i) and (h)(1)(ii) of this section."

(vv) Paragraph 63. 463(h)(3)(x) shall be added with the following language: "Spills during solvent transfer or use of the solvent cleaning machine shall be wiped up immediately. The wipe rags or other sorbent material shall be stored in closed containers meeting the requirements of paragraph (h)(3)(vi) of this section."

(ww) Paragraph 63. 463(h)(3)(xii) shall be added with the following language: "The owner or operator shall provide a permanent, legible, conspicuous label summarizing the operating requirements in paragraph (h)(3) of this section."

(xx) Paragraph 63. 464(a)(1)(ii) shall be replaced with the following language: "Ensure that the emissions from each solvent cleaning machine are equal to or less than the applicable emission limit presented in Table 464-1 of this subpart as determined using the procedures in Sec. 63.465(b) and (c)."

(yy) Replace the title of Table 5 in Section 63.464 with the following title: "Table 464-1 -- Emission Limits for Batch Vapor and In-Line Solvent Cleaning Machines With a Solvent/Air Interface".

(zz) Paragraph 63. 464(a)(2)(ii) shall be added with the following language: "Ensure that the emissions from each solvent cleaning machine are equal to or less than the appropriate limits as described in paragraphs (a)(2)(ii)(A) or (a)(2)(ii)(B) of this section, as applicable."

(aaa) Paragraph 63. 464(a)(2)(ii)(A) shall be replaced with the following language: "For cleaning machines with a cleaning capacity, as reported in Sec. 63.468(d), that is less than or equal to 2.95 cubic meters (10 cubic feet), the emission limit shall be determined using Table 464-2. If the cleaning capacity of the cleaning machine falls between two cleaning capacity sizes, then the lower of the two emission limits applies."

(bbb) Replace the title of Table 6 in Section 63.464 with the following title: "Table 464-2 -- Emission Limits for Cleaning Machines Without a Solvent/Air Interface".

(ccc) Paragraph 63. 465(a) shall be replaced with the following language: "Except as provided in paragraphs (f) and (g) of this section for continuous web cleaning machines, each owner or operator of a batch vapor or in-line solvent cleaning machine complying with an idling emission limit standard in Sec. 63.463(b)(1)(ii), (b)(2)(ii), (c)(1)(ii), or (c)(2)(ii) shall determine the idling emission rate of the solvent cleaning machine using Method 307 in appendix A of 40 CFR part 63."

(ddd) Replace the definitions of E<sub>i</sub> in paragraph 63.365(c)(3) with the following language: "E<sub>i</sub> = halogenated HAP solvent emissions for each month (j) for the most recent 3 monthly reporting periods, (kilograms of solvent per square meter of solvent/air interface area per month)."

(eee) Equation 8 shall be replaced with the following equation: "E<sub>o</sub> = (R<sub>i</sub> \* 100) / (R<sub>i</sub> + S<sub>ai</sub> - SS<sub>Ri</sub>) (Eq. 8)"

(fff) Paragraph 63.466(c) shall be replaced with the following language: "Except as provided in paragraph (g) of this section, each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the equipment or idling standards in Sec. 63.463 shall monitor the hoist speed and record the results as described in paragraphs (c)(1) through (c)(4) of this section."

(ggg) The entire content of Paragraph 63.466(e) shall be replaced with the following language: "Except as provided in paragraph (g) of this section, each owner or operator using a carbon adsorber to comply with this subpart shall measure and record the concentration of halogenated HAP solvents in the exhaust of the carbon adsorber daily. This test shall be conducted while the solvent cleaning machine is in the working mode and is venting to the carbon adsorber. The exhaust concentration shall be determined as specified in paragraphs (e)(1) and (e)(2) of this section.

(1) Measure the solvent concentration in the exhaust using one of the following analytical techniques:

(A) A colorimetric detector tube designed to measure a concentration of 25 parts per million by volume of the halogenated HAP solvent in air to an accuracy of ± 25 percent and used in accordance with the manufacturer's instructions.

(B) A flame ionization analyzer used in accordance with Method 25A in appendix A of 40 CFR part 60.

(C) A nondispersive infrared analyzer used in accordance with Method 25B in appendix A of 40 CFR part 60.

(2) Provide a sampling port for monitoring within the exhaust outlet of the carbon adsorber that is easily accessible and located at least 8 stack or duct diameters downstream from any flow disturbance such as a bend, expansion, contraction, or outlet; downstream from no other inlet; and 2 stack or duct diameters upstream from any flow disturbance such as a bend, expansion, contraction, inlet or outlet."

(hhh) Paragraph 63.467(b)(4) shall be replaced with the following language: "If a carbon adsorber is used to comply with these standards, records of the date and results of the daily measurement of the halogenated HAP solvent concentration in the carbon adsorber exhaust required in Sec. 63.466(e)."

(iii) Paragraph 63.468(b) shall be replaced with the following language: "Each owner or operator of a new solvent cleaning machine subject to the provisions of this

subpart shall submit an initial notification report to the Department. New sources shall submit this report as soon as practicable before the construction or reconstruction is planned to commence or October 11, 2001, whichever is later. This report shall include all of the information required in Sec. 63.5(d)(1) of subpart A of this regulation, with the revisions and additions in paragraphs (b)(1) through (b)(3) of this section."

(jjj) Paragraph 63.468(b)(1) shall be replaced with the following language: "The report shall include a brief description of each solvent cleaning machine including machine type (batch vapor, batch cold, vapor in-line or cold in-line), solvent/air interface area, and existing controls."

(kkk) Paragraph 63.468(b)(3) shall be replaced with the following language: "In lieu of Sec. 63.5(d)(1)(ii)(H) of subpart A of this regulation, the owner or operator must report an estimate of annual halogenated HAP solvent consumption for each solvent cleaning machine."

(lll) Paragraph 63.468(c) shall be replaced with the following language: "Each owner or operator of a batch cold solvent cleaning machine subject to the provisions of this subpart shall submit a compliance report to the Department. For existing sources, this report shall be submitted to the Department no later than October 11, 2001. For new sources, this report shall be submitted to the Department no later than 150 days after startup or October 11, 2001, whichever is later. This report shall include the requirements specified in paragraphs (c)(1) through (c)(4) of this section."

(mmm) Paragraph 63.468(d) shall be replaced with the following language: "Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of Sec. 63.463 shall submit to the Department an initial statement of compliance for each solvent cleaning machine. For existing sources, this report shall be submitted to the Department no later than October 11, 2001. For new sources, this report shall be submitted to the Department no later than 150 days after startup or October 11, 2001, whichever is later. This statement shall include the requirements specified in paragraphs (d)(1) through (d)(7) of this section."

(nnn) Paragraph 63.468(d)(6) shall be replaced with the following language: "Each owner or operator of a solvent cleaning machine complying with the idling emission limit standards of Sec. 63.463(b)(1)(ii), (b)(2)(ii), (c)(1)(ii), and (c)(2)(ii) shall submit a test report for tests of idling emissions meeting the specifications in Method 307 in appendix A of 40 CFR part 63. This report shall comply with the requirements specified in paragraphs (d)(6)(i) through (d)(6)(iv) of this section."

(ooo) Paragraph 63.468(d)(6)(iv) shall be replaced with the following language: "If a solvent cleaning machine vendor or third party test report is used, the owner or operator of the solvent cleaning machine shall comply with the requirements specified in paragraphs (d)(6)(iv)(A) and

(d)(6)(iv)(B) of this section.”

(ppp) Paragraph 63.468(d)(7) shall be replaced with the following language: “If a carbon adsorber is used to comply with these standards, the date and results of the daily measurement of the halogenated HAP solvent concentration in the carbon adsorber exhaust required in Sec. 63.466(e).”

(qqq) Paragraph 63.468(e) shall be replaced with the following language: “Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of Sec. 63.464 shall submit to the Department an initial statement of compliance for each solvent cleaning machine. For existing sources, this report shall be submitted to the Department no later than October 11, 2001. For new sources, this report shall be submitted to the Department no later than 150 days after startup or October 11, 2001, whichever is later. The statement shall include the information specified in paragraphs (e)(1) through (e)(4) of this section.”

(rrr) Paragraph 63.468(i)(3) shall be replaced with the following language: “The Department does not object to a reduced frequency of reporting for the affected source as provided in paragraph (e)(3)(iii) in Sect. 63.10 of subpart A of this regulation.”

(sss) Paragraph 63.468(j) shall be replaced with the following language: “The owner or operator of any batch cold solvent cleaning machine that is not a major source and is not located at a major source, as defined in Regulation 30 of State of Delaware “Regulations Governing the Control of Air Pollution”, is exempt from title V permitting requirements in Regulation 30 for that source, provided the owner or operator is not otherwise required to obtain a title V permit. The owner or operator of any other solvent cleaning machine subject to the provisions of this subpart is also subject to title V permitting requirements. These sources are deferred from title V permitting requirements until December 9, 2004, if the source is not a major source and is not located at a major source, as defined in Regulation 30, and is not otherwise required to obtain a title V permit. All sources receiving a deferral under this section shall submit a title V permit application by December 9, 2005. All sources receiving a deferral from title V permitting requirements shall comply with the provisions of this subpart applicable to area sources.”

(ttt) Paragraph 63.468(k) shall be replaced with the following language: “Each owner or operator of a solvent cleaning machine requesting an equivalency determination, as described in Sec. 63.469 shall submit an equivalency request report to the Administrator (with copy to the Department). For existing sources, this report must be submitted to and approved by the Administrator no later than October 11, 2001. For new sources, this report must be submitted to and approved by the Administrator prior to startup or October 11, 2001, whichever is later.”

(uuu) The first sentence in Section 63.469 shall be

replaced with the following language: “Upon written application to the Administrator (with copy to the Department), the Administrator may approve the use of equipment or procedures after they have been satisfactorily demonstrated to be equivalent, in terms of reducing emissions of methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride or chloroform to the atmosphere, to those prescribed for compliance within a specified paragraph of this subpart.”

(vvv) Add the following language after Section 63.470: “[59 FR 61805, Dec. 2, 1994; as amended at 63 FR 68400, Dec. 11, 1998]”

(www) Option B. for test question 9 in Appendix A to Subpart T shall be replaced with the following language: “With the discharge end of the pipe below the liquid solvent surface”.

(xxx) Replace the title of table following Section 63.470 with the following title: “Table 1 of Subpart T of Regulation 38 - Subpart A (General Provisions) Applicability to Subpart T”.

(yyy) In Table 1 of Subpart T, change the applicability from each “No” to “Yes” for the following “General provision references”:

- (i) “63.1(b)(2)”;
- (ii) “63.1(b)(3)”;
- (iii) “63.1(e)”;
- (iv) “63.5(b)(3)”;
- (v) “63.5(c)”;
- (vi) “63.5(d)-(f)”;
- (vii) “63.9(b)(4)”.

(zzz) In Table 1 of Subpart T, delete the comment(s) for the following “General provision references”:

- (i) “63.1(b)(3)”;
- (ii) “63.5(b)(3)”;
- (iii) “63.5(d)-(f)”;
- (iv) “63.6(c)(1)-(2)”;
- (v) “63.9(b)(4)”.

(aaaa) In Table 1 of Subpart T, the comment for 63.1(a)(4) under “General provision references” shall be replaced with the following language: “Table 1 to Subpart T specifies applicability of each paragraph in subpart A to subpart T.”

(bbbb) In Table 1 of Subpart T, the comment for 63.1(b)(2) under “General provision references” shall be replaced with the following language: “However, subpart T exempts certain BCC from Regulation 30 permitting requirements.”

(cccc) In Table 1 of Subpart T, the comments for 63.1(c)(2) under “General provision references” shall be replaced with the following language: “Subpart T, Sec. 63.468(h), indicates a title V permit exemption for halogenated HAP batch cold solvent cleaning machines that are not major sources or located at a major source. This section also specifies a deferral from the requirement of a

title V permit for owners or operators of solvent cleaning machines subject to subpart T provisions that are not major sources or located at a major source.”

(dddd) In Table 1 of Subpart T, the comments for 63.1(c)(5) under “General provision references” shall be replaced with the following language: “Subpart T does not require continuous monitoring systems (CMS) or continuous opacity monitoring systems (COMS). Therefore, notifications and requirements for CMS and COMS specified in subpart A do not apply to subpart T.”

(eeee) In Table 1 of Subpart T, the comments for 63.6(c)(5) under “General provision references” shall be replaced with the following language: “Subpart T has the same requirements for affected halogenated HAP solvent cleaning machine subcategories that are located at area sources as it does for those located at major sources.”

(ffff) In Table 1 of Subpart T, the comments for 63.7(g) under “General provision references” shall be replaced with the following language: “Subpart T specifies what is required to demonstrate idling emission standard compliance through the use of Method 307 in appendix A of 40 CFR part 63 and control device monitoring. Reports and records of testing and monitoring are required for compliance verification. Three runs of the test are required for compliance, as specified in Sec. 63.7(e) of subpart A.”

(gggg) In Table 1 of Subpart T, the replace 63.9(g)(1) under “General provision references” with the following language: “63.9(g)”.

(hhhh) In Table 1 of Subpart T, the comments for 63.9(h) under “General provision references” shall be replaced with the following language: “Section 63.468 of subpart T requires an initial statement of compliance for existing sources to be submitted to the Department no later than October 11, 2001. For new sources, this report is to be submitted to the Department no later than 150 days after startup or October 11, 2001, whichever is later.”

**Table T-1 of Subpart T - Exceptions to “Department” as replacement of “Administrator” under Subpart T**

<u>Reference</u>	<u>“Administrator” means “Administrator”</u>	<u>Comment</u>
<u>63.460(e)</u>	<u>Yes</u>	<u>=</u>
<u>63.461</u>	<u>Yes</u>	<u>As replaced.</u>
<u>63.463(b)(1)(i)</u>	<u>Yes</u>	<u>As replaced.</u>
<u>63.463(b)(2)(i)</u>	<u>Yes</u>	<u>As replaced.</u>
<u>63.463(c)(1)(i)</u>	<u>Yes</u>	<u>As replaced.</u>
<u>63.463(c)(2)(i)</u>	<u>Yes</u>	<u>As replaced.</u>
<u>63.463(d)(4)</u>	<u>Yes</u>	<u>As replaced.</u>
<u>63.463(d)(9)</u>	<u>Yes</u>	<u>=</u>
<u>63.463(f)(1)(ii)</u>	<u>Yes</u>	<u>=</u>

<u>63.463(f)(4)(ii)</u>	<u>Yes</u>	<u>=</u>
<u>63.463(g)(4)(vi)</u>	<u>Yes</u>	<u>=</u>
<u>63.463(h)(3)(v)</u>	<u>Yes</u>	<u>=</u>
<u>63.464(d)</u>	<u>Yes</u>	<u>=</u>
<u>63.466(a)(5)</u>	<u>Yes</u>	<u>=</u>
<u>63.466(f)(2)</u>	<u>Yes</u>	<u>=</u>
<u>63.466(g)</u>	<u>Yes</u>	<u>=</u>
<u>63.468(d)(6)(iv)(B)</u>	<u>Yes</u>	<u>=</u>
<u>63.468(k)</u>	<u>Yes</u>	<u>As replaced.</u>
<u>63.469</u>	<u>Yes</u>	<u>As replaced.</u>
<u>Table 1 of Subpart T</u>	<u>Yes</u>	<u>=</u>

**DIVISION OF AIR & WASTE MANAGEMENT**

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

**REGISTER NOTICE**

**SAN # 01-03**

**1. TITLE OF THE REGULATION:**

REGULATION No. 41, “LIMITING EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS”, SECTION 1, “ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS”

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

Delaware is not in compliance with the EPA ground-level ozone standard and must make reductions in volatile organic compound (VOC) emissions which are a factor in the formation of ground-level ozone. Section 1 of Regulation 41 will limit the VOC content (hence emissions) of certain consumer and industrial coatings. Limits will be reduced below those now listed in the federal rule (40CFR59 Subpart D) to obtain an emission reduction of one t/d over the federal rule. This regulation is patterned after a similar California rule due to go into effect in 2004. The VOC limits may present a serious challenge to manufacturers and may drive some solvent-based coatings off the market in favor of water-based coatings. The implementation date of 2005 is meant to give manufacturers sufficient time to reformulate products.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, Chapter 60

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

None

## 6. NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed regulation will extend through August 31, 2001. Interested parties may submit comments in writing during this period to: Gene Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Wednesday, August 22, 2001 beginning at 6pm in the DNREC auditorium at the Richardson & Robbins Building, 89 Kings Highway, Dover Delaware.

## 7. PREPARED BY:

Gene Pettingill 302-323-4542

### ARCHITECTURAL & INDUSTRIAL MAINTENANCE COATINGS

(06/26/01)

#### REGULATION NO. 41

### LIMITING EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS

#### Section 1 - Architectural and Industrial Maintenance Coatings

11/11/01 (this is the likely adoption date)

##### a. Applicability

1. Except as provided in (a)(2) and (a)(3), this Section applies to any person who supplies, sells, offers for sale, blends, repackages for sale, or manufactures any architectural coating for use in the State of Delaware, as well as any person who applies or solicits the application of any architectural coating in the State of Delaware on or after January 1, 2005.

2. A coating manufactured prior to January 1, 2005, may be sold, supplied, or offered for sale on or after January 1, 2005. In addition, a coating manufactured before January 1, 2005 may be applied at anytime, both before and after January 1, 2005, so long as the coating complied with the standards in effect at the time the coating was manufactured. This does not apply to any coating that does not display the date code required by (d)(1).

3. This Section does not apply to,

(i) any architectural coating that is sold or manufactured for use outside the State of Delaware or for shipment to other manufacturers for reformulation or repackaging.

(ii) any aerosol coating product, or

(iii) any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

##### b. Definitions

Terms used but not defined in this Section shall have the meaning given them in Regulation 1 or the CAA, in that order of priority.

1. "Adhesive" means any chemical substance that is applied for the purposes of bonding two surfaces together other than by mechanical means.

2. "Aerosol coating product" means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic marking applications.

3. "Antenna coating" means a coating labeled and formulated exclusively for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

4. "Anti-fouling coating" means a coating labeled and formulated for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an anti-fouling coating, the coating must be registered with the U.S. EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.) and with the Department of Agriculture of the State of Delaware under Title 3 Chapter 12 of the Delaware Code.

5. "Appurtenance" means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment; air conditioning equipment, and other fixed mechanical equipment or stationary tools; lampposts; partitions; pipes and piping systems; rain gutters and downspouts; stairways; fixed ladders; catwalks and fire escapes; and window screens.

6. "Architectural coating" means a coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purpose of this Section.

7. "ASTM" means the American Society for Testing and Materials.

8. "BAAQMD" means the Bay Area Air Quality Management District, a part of the California Air Resources Board (CARB) which regulates air quality in the State of



California.

9. "Bitumens" means black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

10. "Bituminous roof coating" means a coating which incorporates bitumens that is labeled and formulated exclusively for roofing.

11. "Bituminous roof primer" means a primer which incorporates bitumens that is labeled and formulated exclusively for roofing.

12. "Bond breaker" means a coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it was poured.

13. "CAA" means the Clean Air Act, as amended in 1990.

14. "Clear brushing lacquers" means clear wood coatings, excluding clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid protective film, which are intended exclusively for application by brush and which are labeled as specified in (d)(5).

15. "Clear wood coatings" means clear and semi-transparent coatings, including clear brushing lacquers, clear lacquer sanding sealers, sanding sealers other than clear lacquer sanding sealers and varnishes, applied to wood substrates to provide a transparent or translucent film.

16. "Coating" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, and stains.

17. "Colorant" means a concentrated pigment dispersion in water, solvent, and/or binder that is added to an architectural coating after packaging in sales units to produce the desired color.

18. "Concrete curing compound" means a coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water.

19. "Conversion varnish" means a clear acid-curing coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product. Conversion varnishes produce a hard, durable, clear finish designed for professional application to wood flooring. Film formation is the result of an acid-catalyzed condensation reaction, affecting a transesterification at the reactive ethers of the amino resins.

20. "Dry fog coating" means a coating labeled and formulated only for spray application such that over spray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

21. "Exempt compound" means a compound identified

as exempt under the definition of Volatile Organic Compound (VOC) in Regulation 1. Exempt compound content of a coating shall be determined by U. S. EPA Method 24 or South Coast Air Quality Management District (SCAQMD) Method 303-91 (Revised February 1993), incorporated by reference in (f)(5)(x).

22. "Faux finishing coating" means a coating labeled and formulated as a stain or glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.

23. "Fire-resistive coating" means an opaque coating labeled and formulated to protect structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials, that has been fire tested and rated by a testing agency and approved by State of Delaware building code officials for the County or local jurisdiction for use in bringing assemblies of structural materials into compliance with federal, state and local building code requirements. The fire-resistive coating and the testing agency must be approved by State of Delaware building code officials for the County or local jurisdiction. The fire-resistive coating shall be tested in accordance with ASTM Designation E 119-98, incorporated by reference in (f)(5)(ii).

24. "Fire-retardant coating" means a coating labeled and formulated to retard ignition and flame spread, that has been fire tested and rated by a testing agency approved by State of Delaware building code officials for the County or local jurisdiction for use in bringing building and construction materials into compliance with federal, state and local building code requirements. The fire-retardant coating and the testing agency must be approved by State of Delaware building code officials for the County or local jurisdiction. The fire-retardant coating shall be tested in accordance with ASTM Designation E 84-99, incorporated by reference in (f)(5)(i).

25. "Flat coating" means a coating that is undefined under any other definition in (b) and that registers gloss less than 15 on an 85-degree meter or less than five on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in (f)(5)(iii).

26. "Floor coating" means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, and other horizontal surfaces, which may be subjected to foot traffic.

27. "Flow coating" means a coating labeled and formulated exclusively for use by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

28. "Form-release compound" means a coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

29. "Graphic arts coating or sign paint" means a

coating labeled and formulated for hand application by artists using brush or roller techniques to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.

30. “High-temperature coating” means a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204<sup>o</sup>C (400<sup>o</sup>F).

31. “Industrial maintenance coating” means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates exposed to one or more of the extreme environmental conditions listed in (b)(31)(i) through (b)(31)(v) and labeled as specified in (d)(4):

(i) immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation;

(ii) acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes or chemical mixtures or solutions;

(iii) repeated exposure to temperatures above 121<sup>o</sup>C (250<sup>o</sup>F);

(iv) repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; or

(v) exterior exposure of metal structures and structural components.

32. “Lacquer” means a clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film.

33. “Low-solids coating” means a coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per gallon) of coating material.

34. “Magnesite cement coating” means a coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

35. “Mastic texture coating” means a coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, that is recommended to be applied in a single coat of at least 10 mils (0.010 inch) dry film thickness.

36. “Metallic pigmented coating” means a coating containing at least 48 grams of elemental metallic pigment per liter of coating as applied (0.4 pounds per gallon), when tested in accordance with SCAQMD Method 318-95, incorporated by reference in (f)(5)(iv).

37. “Multi-color coating” means a coating that is

packaged in a single container and that exhibits more than one color when applied in a single coat.

38. “Non-flat coating” means a coating that is undefined under any other definition in (b) and that registers a gloss of 15 or greater on an 85-degree meter and 5 or greater on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in (f)(5)(iii).

39. “Non-flat - high gloss coating” means a non-flat coating that registers a gloss of 70 or above on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in (f)(5)(iii).

40. “Non-industrial use” means any use of architectural coatings except in the construction or maintenance of any of the following: facilities used in the manufacturing of goods and commodities; transportation infrastructure, including highways, bridges, airports and railroads; facilities used in mining activities, including petroleum extraction; and utilities infrastructure, including power generation and distribution, and water treatment and distribution systems.

41. “Post-consumer coating” means a finished coating that would have been disposed of in a landfill, having completed its usefulness to a consumer, and does not include manufacturing wastes.

42. “Pre-treatment wash primer” means a primer that contains a minimum of 0.5 percent acid, by weight, when tested in accordance with ASTM Designation D 1613-96, incorporated by reference into (f)(5)(v), that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

43. “Primer” means a coating labeled and formulated for application to a substrate to provide a firm bond between the substrate and subsequent coats.

44. “Quick-dry enamel” means a non-flat coating that is labeled as specified in (d)(8) and that is formulated to have the following characteristics:

(i) can be applied directly from the container under normal conditions with ambient temperatures between 16<sup>o</sup> and 27<sup>o</sup>C (60<sup>o</sup> and 80<sup>o</sup>F);

(ii) when tested in accordance with ASTM Designation D 1640-95, incorporated by reference in (f)(5)(vi), sets to the touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and

(iii) has a dried film gloss of 70 or above on a 60-degree meter.

45. “Quick-dry primer, sealer and undercoater” means a primer, sealer, or undercoater that is dry to the touch in 30 minutes and can be re-coated in two hours when tested in accordance with ASTM Designation D 1640-95, incorporated by reference in (f)(5)(vi).

46. “Recycled coating” means an architectural coating

formulated such that not less than 50 percent of the total weight consists of secondary and post-consumer coating, with not less than 10 percent of the total weight consisting of post-consumer coating.

47. “Roof coating” means a non-bituminous coating labeled and formulated exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat or ultraviolet radiation. Metallic pigmented roof coatings, which qualify as metallic pigmented coatings, shall be considered to be in the metallic pigmented coatings category.

48. “Rust preventive coating” means a coating formulated exclusively for non-industrial use to prevent the corrosion of metal surfaces and labeled as specified in (d)(6).

49. “Sanding sealer” means a clear wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A sanding sealer that also meets the definition of a lacquer is not included in this category, but is included in the lacquer category.

50. “SCAQMD” means the South Coast Air Quality Management District, a part of the California Air Resources Board (CARB), which is responsible for regulation of air quality in the State of California.

51. “Sealer” means a coating labeled and formulated for application to a substrate for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

52. “Secondary coating (rework)” means a fragment of a finished coating or a finished coating from a manufacturing process that has converted resources into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process.

53. “Shellac” means a clear or opaque coating formulated solely with the resinous secretions of the lac beetle (*lacifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

54. “Shop application” means application of a coating to a product or a component of a product in or on the premises of a factory or shop as part of a manufacturing, production, or repairing process (e.g., original equipment manufacturing coatings).

55. “Solicit” means to require for use or to specify, by written or oral contract.

56. “Specialty primer, sealer, and undercoater” means a coating labeled as specified in (d)(7) and that is formulated for application to a substrate to seal fire, smoke or water damage; to condition excessively chalky surfaces; or to block stains. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM Designation D 4214-98, incorporated by reference in (f)(5)(vii).

57. “Stain” means a clear, semi-transparent, or opaque coating labeled and formulated to change the color of a surface, but not to conceal the grain pattern or texture.

58. “Swimming pool coating” means a coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

59. “Swimming pool repair and maintenance coating” means a rubber-based coating labeled and formulated to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

60. “Temperature-indicator safety coating” means a coating labeled and formulated as a color changing indicator coating for the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

61. “Thermoplastic rubber coating and mastic” means a coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to, fillers, pigments and modifying resins.

62. “Tint base” means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

63. “Traffic marking coating” means a coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.

64. “Undercoater” means a coating labeled and formulated to provide a smooth surface for subsequent coatings.

65. “Varnish” means a clear wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

66. “VOC content” means the weight of VOC per volume of coating, calculated according to the procedures specified in (f)(1).

67. “Waterproofing sealer” means a coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.

68. “Waterproofing concrete/masonry sealer” means a clear or pigmented film-forming coating that is labeled and formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light and staining.

69. “Wood preservative” means a coating labeled and formulated to protect exposed wood from decay or insect

attack, that is registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136, et. seq.) and with the Department of Agriculture of the State of Delaware under Title 3 Chapter 12 of the Delaware Code.

### c. Standards

1. Except as provided in (c)(2), and (c)(7), no person subject to the requirements of this Section shall manufacture, blend, repackage for sale, supply, sell or offer for sale, solicit for application or apply in the State of Delaware, any architectural coating with a VOC content in excess of the corresponding limit specified in Table 1.

2. If anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by the manufacturer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in Table 1, then the most restrictive VOC content limit shall apply. This provision does not apply to the coating categories specified in (c)(2)(i) through (c)(2)(xvi).

- (i) Antenna coatings.
- (ii) Anti-fouling coatings.
- (iii) Bituminous roof primers.
- (iv) Fire-retardant coatings.
- (v) Flow coatings.
- (vi) High-temperature coatings.
- (vii) Industrial maintenance coatings.
- (viii) Lacquer coatings (including clear lacquer sanding sealers).
- (ix) Low-solids coating
- (x) Metallic pigmented coatings
- (xi) Pre-treatment wash primers.
- (xii) Shellacs.
- (xiii) Specialty primers, sealers, and undercoaters.
- (xiv) Temperature-indicator safety coatings.
- (xv) Thermoplastic rubber coatings and mastic
- (xvi) Wood preservatives.

3. All architectural coating containers used to apply the contents therein to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging, or other means, shall be closed when not in use. These architectural coating containers include, but are not limited to, drums, buckets, cans, pails, trays, or other application containers. Containers of any VOC-containing materials used for thinning or cleanup shall also be closed when not in use.

4. No person shall apply or solicit the application of any architectural coating that is thinned to exceed the applicable VOC limit specified in Table 1.

5. No person shall apply or solicit the application of any rust preventive coating for industrial use unless such rust

preventive coating complies with the industrial maintenance coating VOC limit specified in Table 1.

6. For any coating that does not meet any of the definitions for the specialty coatings categories listed in Table 1, the VOC content limit shall be determined by classifying the coating as a flat coating or a non-flat coating, based on its gloss, as defined in (b)(25), (b)(38), (b)(39) and the corresponding flat or non-flat coating limit shall apply.

7. Notwithstanding the provisions of (c)(1), a person or facility may add up to 10 percent by volume of VOC to a lacquer to avoid blushing of the finish during days with relative humidity greater than 70 percent and the temperature below 65°F, at the time of application, provided that the coating contains acetone and no more than 550 grams of VOC per liter of coating, less water and exempt compounds, prior to the addition of VOC.

### d. Container Labeling Requirements

Each manufacturer of any architectural coatings subject to this rule shall display the information listed in (d)(1) through (d)(9) on the coating container (or label) in which the coating is sold or distributed, on or after January 1, 2005.

1. The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid, or bottom of the container. If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the Department.

2. A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the container. This requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning.

3. Each container of any coating subject to this rule shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated using product formulation data, or shall be determined using the test methods in (f)(2). The equations in (f)(1) shall be used to calculate VOC content.

4. All industrial maintenance coatings shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the descriptions noted below:

- (i) For industrial use only
- (ii) For professional use only
- (iii) Not for residential use
- (iv) Not intended for residential use

5. The labels of all clear brushing lacquers shall

prominently display the statements “For brush application only”, and “This product must not be thinned or sprayed”.

6. The labels of all rust preventive coatings shall prominently display the statement “For metal substrates only”.

7. The labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the descriptions listed below:

- (i) For blocking stains
- (ii) For fire-damaged substrates
- (iii) For smoke-damaged substrates
- (iv) For water-damaged substrates
- (v) For excessively chalky substrates

8. The labels of all quick dry enamels shall prominently display the words “Quick Dry” and the dry hard time.

9. The labels of all non-flat-high gloss coatings shall prominently display the words “High Gloss”.

**e. Reporting Requirements**

1. Each manufacturer of clear brushing lacquers, shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the Department. The report shall specify the number of gallons of clear brushing lacquers sold in the State of Delaware during the preceding calendar year, and shall describe the method used by the manufacturer to calculate state sales.

2. Each manufacturer of rust preventive coatings shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the Department. The report shall specify the number of gallons of rust preventive coatings sold in the State of Delaware during the preceding calendar year, and shall describe the method used by the manufacturer to calculate state sales.

3. Each manufacturer of specialty primers, sealers, and undercoaters shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the Department. The report shall specify the number of gallons of specialty primers, sealers, and undercoaters sold in the State of Delaware during the preceding calendar year, and shall describe the method used by the manufacturer to calculate state sales.

4. Manufacturers of recycled coatings must submit a letter to the Department certifying their status as a Recycled Paint Manufacturer. The manufacturer shall, on or before April 1 of each calendar year beginning with the year 2006, submit a report to the Department. The report shall include, for all recycled coatings, the total number of gallons distributed in the State of Delaware during the preceding year, and shall describe the method used by the manufacturer to calculate state distribution.

5. Each manufacturer of bituminous roof coatings or bituminous roof primers shall, on or before April 1 of each calendar year beginning with the year 2006, submit an

annual report to the Department. The report shall specify the number of gallons of bituminous roof coatings or bituminous roof primers sold in the State of Delaware during the preceding calendar year, and shall describe the method used by the manufacturer to calculate state sales.

**f. Compliance Provisions and Test Methods**

1. For the purpose of determining compliance with the VOC content limits in Table 1, the VOC content of a coating shall be determined by using the procedures described in (f)(1)(i) or (f)(1)(ii), as appropriate. The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured.

(i) With the exception of low-solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer’s maximum recommendation, excluding the volume of any water and exempt compounds. Determine the VOC content using equation 1 as follows:

$$(1) \text{ VOC Content} = \frac{(W_s - W_w - W_{ec})}{(V_m - V_w - V_{ec})}$$

Where:

VOC Content = grams of VOC per liter of coating

Ws = weight of volatiles, in grams

Ww = weight of water, in grams

Wec = weight of exempt compounds, in grams

Vm = volume of coating, in liters

Vw = volume of water, in liters

Vec = volume of exempt compounds, in liters

(ii) For low-solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer’s maximum recommendation, including the volume of any water and exempt compounds. Determine the VOC content using equation 2 as follows:

$$(2) \text{ VOC Content (ls)} = \frac{(W_s - W_w - W_{ec})}{(V_m)}$$

Where:

VOC Content (ls) = the VOC content of a low-solids coating in grams per liter of coating

Ws = weight of volatile, in grams

Ww = weight of water, in grams

Wec = weight of exempt compounds, in grams

Vm = volume of coating, in liters

2. To determine the physical properties of a coating in order to perform the calculations in (f)(1), the reference method for VOC content is U.S. EPA Method 24 (40CFR60 Appendix A), incorporated by reference in (f)(5)(xi), except as provided in (f)(3) and (f)(4). An alternative method to determine the VOC content of coatings is SCAQMD Method 304-91 (Revised February 1996), incorporated by reference in (f)(5)(xii).

To determine the VOC content of a coating, the manufacturer may use U.S. EPA Method 24, or an alternative method, as provided in (f)(3), formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (e.g. quality assurance checks, recordkeeping). However, if there are any inconsistencies between the results of a Method 24 test and any other means for determining VOC content, the Method 24 results will govern, except when an alternative method is approved as specified in (f)(3). The Secretary may require the manufacturer to conduct a Method 24 analysis.

Exempt compound content shall be determined by SCAQMD Method 303-91 (revised August 1996), incorporated by reference in (f)(5)(x). The exempt compound parachlorobenzotrifluoride (PCBTF) shall be determined by BAAQMD Method 41, incorporated by reference in (f)(5)(ix). Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be determined by BAAQMD Method 43, incorporated by reference in (f)(5)(viii).

3. Other test methods demonstrated to provide results that are acceptable for the purposes of determining compliance with (f)(2), after review and approval in writing by the Department and by the EPA, also may be used.

4. Analysis of methacrylate multi-component coatings used as traffic marking coatings shall be conducted according to a modification of U.S. EPA Method 24 (40CFR59, subpart D, Appendix A), incorporated by reference in (f)(5)(xiii). This method has not been approved for methacrylate multi-component coatings used for purposes other than as traffic marking coatings or for other classes of multi-component coatings.

5. The following test methods are incorporated by reference herein, and shall be used to test coatings subject to the provisions of this rule:

(i) The flame spread index of a fire-retardant coating shall be determined by the ASTM Designation E 84-99, "Standard Test Method for Surface Burning Characteristics of Building Materials," [see(b)(24), Fire-retardant coating].

(ii) The fire-resistance rating of a fire-resistive coating shall be determined by ASTM Designation E 119-98, "Standard Test Methods for Fire Tests on Building Construction Materials," [see (b)(23), Fire-resistive coating].

(iii) The gloss of a coating shall be determined by ASTM Designation D 523-89 (1999), "Standard Test Method for Specular Gloss" [see (b)(25), Flat coating; (b)(38), Non-flat coating; (b)(39), Non-flat-high gloss coating; (b)(44), Quick-dry enamel].

(iv) The metallic content of a coating shall be determined by SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," [see (b)(36), Metallic pigmented

coating].

(v) The acid content of a coating shall be determined by ASTM Designation D 1613-96, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products," [see(b)(42), Pre-treatment wash primer].

(vi) The set-to-touch and dry-to-recoat times of a coating shall be determined by ASTM Designation D 1640-95, "Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature," [see (b)(44), Quick-dry enamel and (b)(45), Quick-dry primer, sealer, and undercoater]. The tack free time of a quick-dry enamel coating shall be determined by the Mechanical Test Method of ASTM Designation D 1640-95.

(vii) The chalkiness of a surface shall be determined using ASTM Designation D 4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films," [see (b)(56), Specialty primer, sealer, and undercoater].

(viii) Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be analyzed as exempt compounds for compliance with (f) by BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996 [see (f)(2)].

(ix) The exempt compound parachlorobenzotrifluoride (PCBTF), shall be analyzed as an exempt compound for compliance with (f) by BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride," BAAQMD Manual of Procedures, Volume III, adopted December 20, 1995, [see (f)(2)].

(x) Exempt compound content shall be analyzed by SCAQMD Method 303-91 (Revised 1993), "Determination of Exempt Compounds," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," [see (f)(2)].

(xi) The VOC content of a coating shall be determined by U.S. EPA Method 24 as it exists in Appendix A of 40 Code of Federal Regulations (CFR) Part 60, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," [see (f)(2)].

(xii) The VOC content of coatings may be analyzed by either U.S. EPA Method 24 or SCAQMD Method 304-91 (Revised 1996), "Determination of Volatile Organic Compounds (VOC) in Various Materials," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," [see (f)(2)].

(xiii) The VOC content of methacrylate multi-component coatings used as traffic marking coatings shall be analyzed by the procedures in 40 CFR part 59, subpart D,

Appendix A, “Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.” (September 11, 1998), [see (f)(4)].

**g. Test Method Availability**

1. ASTM methods described in (f) can be purchased from American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585. Fax (610) 832-9555.

2. SCAQMD methods described in (f) can be purchased from South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934. Telephone (909) 396-2162.

3. BAAQMD methods described in (f) can be purchased from Bay Area Air Quality Management District (BAAQMD), 939 Ellis Street, San Francisco, California 94109. Telephone (415) 749-4900.

**TABLE 1  
VOC CONTENT LIMITS FOR ARCHITECTURAL COATINGS**

Note: Limits are expressed in grams of VOC per liter of coating thinned to the manufacturer’s maximum recommendation (as indicated on the label or lid of the coating container), excluding the volume of any water, exempt compounds, or colorant added to tint bases.

**COATING CATEGORY                      VOC CONTENT LIMIT**

Flat Coatings	100
Non-Flat Coatings	150
Non-Flat – High Gloss Coatings	250

**SPECIALTY COATINGS**

Antenna Coatings	530 *
Anti-fouling Coatings	400
Bituminous Roof Coatings	300
Bituminous Roof Primers	350
Bond Breakers	350
Clear Wood Coatings	
Clear Brushing Lacquers	680
Lacquers (including clear lacquer sanding sealers)	550
Sanding Sealers (other than clear lacquer sanding sealers)	350
Varnishes	350
Conversion Varnish	725 *
Concrete Curing Compounds	350 *
Dry Fog Coatings	400 *
Faux Finishing Coatings	350

Fire-resistive Coatings	350
Fire-retardant Coatings	
Clear	650
Opaque	350
Floor Coatings	250
Flow Coatings	420
Form-Release Compounds	250
Graphic Arts Coatings (Sign Paints)	500 *
High-Temperature Coatings	420
Industrial Maintenance Coatings	340
Low-Solids Coatings	120 *
Magnesite Cement Coatings	450
Mastic Texture Coatings	300 *
Metallic Pigmented Coatings	500
Multi-Color Coatings	250
Pre-Treatment Wash Primers	420
Primers, Sealers, and Undercoaters	200
Quick-Dry Enamels	250
Quick-Dry Primers, Sealers and Undercoaters	200
Recycled Coatings	250
Roof Coatings	250
Rust Preventive Coatings	400 *
Shellacs	
Clear	730
Opaque	550
Specialty Primers, Sealers, and Undercoaters	350
Stains	250
Swimming Pool Coatings	340
Swimming Pool Repair and Maintenance Coatings	340
Temperature-Indicator Safety Coatings	550
Thermoplastic Rubber Coatings and Mastic	550 *
Traffic Marking Coatings	150 *
Waterproofing Sealers	250
Waterproofing Concrete/Masonry Sealers	400
Wood Preservatives	350

\* Indicates limits and definition unchanged from the Federal rule (40CFR59 Subpart D) “National Volatile Organic Compound Emission Standards for Architectural Coatings” which is still in effect.

## DIVISION OF AIR & WASTE MANAGEMENT

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

### REGISTER NOTICE SAN # 2001-08

#### 1. TITLE OF THE REGULATION:

Regulation No. 41, Section 3, "Portable Fuel Containers"

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

Delaware is not in compliance with the EPA ground-level ozone standard, and must make reductions in volatile organic compound (VOC) emissions which are a factor in the formation of ground-level ozone. The Department is proposing to adopt a new regulation that will require each portable fuel container and/or spot that is sold in Delaware to 1) have an automatic shut-off and closure device, 2) contain one opening for filling, pouring, and venting, 3) meet minimum fuel flow and fill requirements based on capacity, and 4) meet a permeation standard. The proposed regulation will reduce refueling emissions associated with small off-road engines.

#### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

#### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

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

None

#### 6. NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed regulation will extend through August 31, 2001. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Wednesday, August 29, 2001 beginning at 6pm in the Department's Priscilla Building Conference Room, Dover Delaware.

#### 7. PREPARED BY:

Deanna Morozowich, 302-739-4791, June 28, 2001

#### Section 3 - Portable Fuel Containers 10/31/01

#### a. Applicability.

1. This Section applies to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel container(s) or spout(s) or both portable fuel container(s) and spout(s) for use in the State of Delaware; except:

i Safety cans meeting the requirements of 29 CFR 1926, Subpart F.

ii Portable fuel containers with a nominal capacity less than or equal to one quart.

iii Rapid refueling devices with nominal capacities greater than or equal to four gallons provided such devices are designed for use in officially sanctioned off-highway motorcycle competitions, and either create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

iv. Portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and an outboard engine for the purpose of operating that outboard engine.

2. Compliance with the requirements of this Section does not exempt any spill-proof system or spill-proof spout from compliance with other applicable Federal or State requirements.

3. The requirements of this Section apply on and after January 1, 2003, except that, any portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003 that does not meet the requirements of this Section, may be sold, supplied, or offered for sale until January 1, 2004, provided that the date of manufacture or a date code, representing the date of manufacture, is clearly displayed on the portable fuel container or spout.

4. Any person subject to any requirement of this Section may comply with an alternative control plan that has been approved by the Department and the U.S. EPA as part of Delaware's State Implementation Plan.

#### b. Definitions.

For the purpose of this Section, the following definitions apply:

"Fuel" means a hydrocarbon mixture used to power any spark ignition internal combustion engine.

"Manufacturer" means any person who imports, manufactures, produces, assembles, packages, repackages, or re-labels a portable fuel container or spout or both portable fuel container and spout.

"Nominal Capacity" means the volume, indicated by the manufacturer that represents the maximum recommended filling level.

"Outboard Engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the operating position, houses the engine and drive unit external to the hull of the marine watercraft.



“Permeation” means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

“Person” means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, co-partnership, association, firm, estate or any legal entity whatsoever.

“Portable Fuel Container” means any container or vessel with a nominal capacity of ten gallons or less that is intended for reuse and that is designed or used primarily for receiving, transporting, storing, and dispensing fuel.

“Spill-Proof Spout” means any spout that complies with all of the performance standards specified in paragraph (c)(2) of this Section.

“Spill-Proof System” means any configuration of portable fuel container and firmly attached spout that complies with all of the performance standards in paragraph (c)(1) of this Section.

“Spout” means any device that can be firmly attached to a portable fuel container, through which the contents of a portable fuel container can be dispensed.

“Target Fuel Tank” means any receptacle that receives fuel from a portable fuel container.

**c. Standards.**

1. No person subject to the requirements of this Section shall sell, supply, offer for sale, or manufactures for sale portable fuel container(s) or spout(s) or both portable fuel container(s) and spout(s) for use in the State of Delaware which does not:

i. Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

ii. Automatically close and seal when removed from the target fuel tank, and remain completely closed when not dispensing fuel.

iii. Have only one opening for both filling and pouring.

iv. Provide a fuel flow rate and fill level of:

A. not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

1. less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening; or

2. greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase “Low Flow Rate” in type of 34 point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any; or

B. not less than one gallon per minute for portable fuel containers with a nominal capacity greater than

1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

C. not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

v. Meet a permeation rate of 0.4 grams per gallon per day or less.

vi. Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.

2. No person subject to the requirements of this Section shall sell, supply, offer for sale, or manufacture for sale any spout for use in the State of Delaware, which does not:

i. Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

ii. Automatically close and seal when removed from the target fuel tank, and remain completely closed when not dispensing fuel.

iii. Provide a fuel flow rate and fill level of:

A. not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

1. less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening; or,

2. greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase “Low Flow Rate” in type of 34 point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto; or,

B. not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

C. not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

iv. Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.

**d. Testing Procedures.**

1. Any manufacturer subject to the requirements of paragraph (c) of this Section shall perform the following compliance tests in accordance with test methods and procedures stated, or as otherwise approved by the Department and the Administrator of the EPA. Records of compliance testing shall be maintained for as long as the product is available for sale in Delaware, and test results shall be made available to the Department within 60 days of

request.

i. The following tests shall be carried out to determine compliance with paragraph (c)(2) of this Section prior to the product being manufactured for sale in Delaware:

A. “Test Method 510, Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts” adopted by California Air Resources Board (CARB) on July 6, 2000. This test method is hereby adopted by reference.

B. “Test Method 511, Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts” adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

C. “Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts” adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

ii. The following tests shall be carried out to determine compliance with paragraph (c)(1) of this Section prior to the product being manufactured for sale:

A. All of the test procedures stated in paragraph (d)(1)(i) of this Section.

B. “Test Method 513, Determination of Permeation Rate for Spill-Proof Systems,” adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

e. Administrative Requirements.

1. Any manufacturer subject to the requirements of paragraph (c)(1) of this Section shall clearly display on each spill-proof system:

i. the phrase “Spill-Proof System”;

ii. a date of manufacture or representative date code; and

iii. a representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with the requirements of paragraph (c)(1) of this Section.

2. Any person subject to the requirements of paragraph (c)(2) of this Section shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

i. the phrase “Spill-Proof Spout”;

ii. a date of manufacture or representative date code; and

iii. a representative code identifying the spout as subject to and complying with the requirements of paragraph (c)(2) of this Section.

3. Any manufacturer subject to paragraph (e)(1) and/or paragraph (e)(2) of this Section shall file an explanation of both the date code and representative code with the Department prior to manufacturing the product for sale in the

State of Delaware.

4. Any person subject to paragraph (e)(1) and/or paragraph (e)(2) of this Section shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

5. Any person subject to paragraph (e)(2) of this Section shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate.

6. Any person not subject to or not in compliance with paragraph (c) of this Section may not display the phrase “Spill-Proof System” or “Spill-Proof Spout” on the portable fuel container or spout, respectively, on any sticker or label affixed thereto, or on any accompanying package.

7. Any person subject to and complying with paragraph (c) of this Section, that due to its design or other features, cannot be used to refuel on-road motor vehicles shall clearly display the phrase “Not Intended For Refueling On-Road Motor Vehicles” in type of 34 point or greater on each of the following:

i. For a portable fuel container or portable fuel container and spouts sold together as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

ii. For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

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## DIVISION OF AIR & WASTE MANAGEMENT

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

### REGISTER NOTICE SAN # 2001-12

#### 1. TITLE OF THE REGULATION:

Regulation No. 42, Section 1, “Control of NO<sub>x</sub> Emissions from Industrial Boilers”

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

Delaware is not in compliance with the EPA ground-level ozone standard, and must make reductions in Nitrogen Oxide (NO<sub>x</sub>) emissions which are a factor in the formation of ground-level ozone. The Department is proposing to adopt a new regulation that will reduce NO<sub>x</sub> emissions from certain large industrial boilers. Affected units include all combustion units with a maximum heat input capacity of equal to or greater than 100 mmbtu/hr except for certain low emitting units, units equipped with NO<sub>x</sub> controls, and units

subject to Delaware Regulation No. 39, NO<sub>x</sub> Budget Trading Program.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**  
None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**  
7 Delaware Code, Chapter 60

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

**6. NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through August 31, 2001. Interested parties may submit comments in writing during this period to: Ronald A. Amirikian, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Wednesday, August 29, 2001 beginning at 6pm in the Department's Priscilla Building Conference Room, Dover Delaware.

**7. PREPARED BY:**

Ronald A. Amirikian, 302-739-4791, June 28, 2001

**Regulation No. 42**  
**Specific Emission Control Requirements**

**Section 1 - Control of NO<sub>x</sub> Emissions from Industrial Boilers**  
XX/XX/2001

**a. Purpose.**

New Castle County and Kent County are part of the Philadelphia-Wilmington-Trenton 1-hour ozone non-attainment area. All areas of Delaware impact this non-attainment area. On December 19, 1999 the EPA identified an emission reduction "shortfall" associated with this non-attainment area. Promulgation of Section 1 of this regulation is one measure that the Department is taking to mitigate this shortfall.

In determining the applicability of this Section the Department attempted to minimize the impact on facilities that recently installed NO<sub>x</sub> controls under Regulation No. 12 (NO<sub>x</sub> RACT) and Regulation No. 37/39 (NO<sub>x</sub> Budget Trading Program). The Department did this by regulating only large sources that, as of the effective date of this Section, emitted NO<sub>x</sub> at a rate greater than the rate identified in Table I of Regulation No. 12, were not equipped with NO<sub>x</sub> emission control technology, and were not subject to

the requirements of Regulation No. 39. In effect, this Section regulates sources that remain high NO<sub>x</sub> emitters after the application of RACT and post RACT requirements, and that have not committed substantial capital funds to reduce NO<sub>x</sub> emissions.

**b. Applicability.**

1. This section applies to any person that owns or operates any combustion unit with a maximum heat input capacity of equal to or greater than 100 million btu per hour, except that this section shall not apply to any unit that, as of the effective date of this Section:

A. Emits NO<sub>x</sub> at a rate equal to or less than the rate identified in Table I of Regulation No. 12 of the State of Delaware "Regulations Governing the Control of Air Pollution."

B. Is equipped with low NO<sub>x</sub> burner, flue gas recirculation, selective catalytic reduction, or selective noncatalytic reduction technology.

C. Is subject to the requirements of Regulation No. 39 of the State of Delaware "Regulations Governing the Control of Air Pollution."

2. The requirements of this section are in addition to all other state and federal requirements.

3. Affected persons shall comply with the requirements of paragraph (c) of this Section as soon as practicable, but no later than May 1, 2004.

**c. Standards.**

1. The NO<sub>x</sub> emission rate from any unit subject to this Section shall be equal to or less than the following:

A. Between May 1<sup>st</sup> through September 30<sup>th</sup> of each year, inclusive: 0.10 lb/mmBTU, 24-hour calendar day average.

B. During all times that gaseous fuel is being fired: 0.10 lb/mmBTU, 24-hour calendar day average.

C. During all times not covered by Section 1(c)(1)(A) and (B): 0.25 lb/mmBTU, 24-hour calendar day average.

2. As an alternative to compliance with the requirements of paragraph (c)(1) of this Section, compliance may be achieved through the procurement and retirement of NO<sub>x</sub> allowances authorized for use under Regulation No. 39 of the State of Delaware "Regulations Governing the Control of Air Pollution." as follows:

A. The actual 24-hour calendar day average NO<sub>x</sub> emission rate in pounds per million btu shall be determined for each day of unit operation, using CEMs operated in accordance with paragraph (d) of this section.

B. The actual heat input to each unit in million btu shall be determined for each day of unit operation, using methods proposed by the person subject to this Section and

acceptable to the Department.

C. 0.10 or 0.25, as applicable and consistent with paragraph (c)(1) of this section, shall be subtracted from the rate determined in paragraph (c)(2)(A) of this section.

D. To obtain the number of pounds of NO<sub>x</sub> emitted for a particular day the emission rate determined in paragraph (c)(2)(C) of this section shall be multiplied by the heat input to the unit for that day determined in paragraph (c)(2)(B) of this section. If the emission rate determined in paragraph (c)(2)(C) of this section is equal to or less than zero, then the number of pounds of NO<sub>x</sub> emitted for that day shall be zero.

E. The number of pounds of NO<sub>x</sub> emissions calculated pursuant to paragraph (c)(2)(D) of this section shall be summed for each calendar month, the result shall be divided by 2000, and shall be rounded to the nearest whole ton.

F. Not later than 20<sup>th</sup> day of each calendar month, a number of NO<sub>x</sub> allowances equal to the number of tons of NO<sub>x</sub> calculated in accordance with paragraph (c)(2)(E) for the previous calendar month shall be submitted to the Department for retirement. Such submission shall detail the calculations specified in (c)(2)(A) through (c)(2)(E) above, and shall indicate the serial number of each allowance to be retired.

d. Monitoring Requirements. Compliance with the NO<sub>x</sub> emission standards specified in this section shall be determined based on CEM data collected in accordance with the requirements of Regulation 17, Section 3.1.2 (Performance Specification 2), and in compliance with the requirements of 40 CFR, Part 60, Appendix F.

e. Recordkeeping and Reporting Requirements.

1. Not later than 180 days after the effective date of this Section, any person subject to this Section shall develop, and submit to the Department for approval, a schedule for bringing the affected emission unit(s) into compliance with the requirements of this Section. Such schedule shall include, at a minimum, all of the following:

A. The method by which compliance will be achieved

B. The dates by which the affected person commits to completing the following major increments of progress, as applicable:

- a. Completion of engineering
- b. Submission of permit applications
- c. Awarding of contracts for construction and/or installation
- d. Initiation of construction
- e. Completion of construction
- f. Commencement of trial operation
- g. Initial compliance testing

h. Submission of compliance testing reports

i. Commencement of normal operations (in full compliance)

2. Any person subject to this Section shall submit to the Department an initial compliance certification not later than May 1, 2004. The initial compliance certification shall, at a minimum, include the following information:

A. The name and the location of the facility.

B. The address and telephone number of the person responsible for the facility.

C. Identification of the subject source(s).

D. The applicable standard.

E. The method of compliance.

F. Certification that each subject source is in compliance with the applicable standard

G. All records necessary for determining compliance with the standards of this Section shall be maintained at the facility for a period of five years.

3. Any person subject to this Section shall, for each occurrence of excess emissions, within 30 calendar days of becoming aware of such occurrence, supply the Department with the following information:

A. The name and location of the facility.

B. The subject source(s) that caused the excess emissions.

C. The time and date of first observation of the excess emissions.

D. The cause and expected duration of the excess emissions.

E. The estimated rate of emissions (expressed in the units of the applicable emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions.

F. The proposed corrective actions and schedule to correct the conditions causing the excess emissions.

4. Any person subject to this section shall maintain all information necessary to demonstrate compliance with the requirements of this section for a minimum period of five years. Such information shall be immediately made available to the Department upon verbal and written request.

## Section 2 - Reserved.

### DIVISION OF FISH & WILDLIFE

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

### REGISTER NOTICE SAN# 2001-18

1. **TITLE OF THE REGULATIONS:**  
OYSTER REGULATIONS

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

SB 185 established the direct sale of oysters harvested from the State's natural oyster beds. New shellfish regulations are required to govern the seasons, locations for landing oysters, the type and amount of harvesting gear, the minimum size of oysters and an annual quota of oysters allowed to be harvested.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

These proposed regulations will remain in effect indefinitely.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del. C. §2106

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

Repeal Shellfish Regulation Nos. S-7, S-9, S-11, S-13 and S-37 as no longer needed.

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing on proposed shellfish regulations is scheduled for August 23, 2001 at 7:30 PM in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comment until 4:30 PM on August 30, 2001. Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441.

**7. PREPARED BY:**

Charles A. Lesser, (302)739-3441, May 7, 2001

**S-7 NATURAL OYSTER BEDS - LOCATION**

(a) "Natural oyster beds" shall mean those shellfish grounds located to the North of the "East Line" in Delaware Bay and River and shellfish grounds located upstream of the entrances of all tributaries entering the Delaware River and Delaware Bay under the jurisdiction of the State.

(b) The Department shall designate specific natural oyster beds that will be open for taking seed oysters on specific dates prior to April 1, in any given year.

**~~S-9 OYSTERS - PUBLIC TONGING AREAS - LOCATION~~**

~~(a) "Public tonging areas for oysters" shall mean those shellfish grounds located in th Delaware Bay approximately two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay and more specifically described as plotted on the Delaware Bay Chart No. 12304 22nd edition, published by the National Oceanic and Atmospheric~~

~~Administration, U.S. Department of Commerce, Washington D.C., November, 1975 with Loran C overprinted as follows:~~

**~~CORNER LOCATION LORAN READING~~**

<del>1. Northwest Corner</del>	<del>9930-Y-52260.91</del>
	<del>9930-Z-70042.54</del>
<del>2. Northeast Corner</del>	<del>9930-Y-52259.36</del>
	<del>9930-Z-70043.20</del>
<del>3. Southwest Corner</del>	<del>9930-Y-52262.10</del>
	<del>9930-Z-70043.80</del>
<del>4. Southeast Corner</del>	<del>9930-Y-52260.65</del>
	<del>9930-Z-70043.95</del>

**~~S-11 OYSTERS - PUBLIC TONGING AREAS - SEASON~~**

~~(a) It shall be unlawful for any person to harvest oysters from the public tonging area located in the Delaware Bay two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay at any time other than September 1 through April 30 next ensuing for each year.~~

~~**Note:** It is unlawful for any person to harvest oysters from any public tonging areas unless said person has a valid public oyster tongers license.~~

**~~S-13 OYSTERS - DAILY TAKE LIMITS - PUBLIC TONGING AREA~~**

~~It shall be unlawful for any person to take more than fifteen (15) bushels of oysters in any one (1) day from the oyster public tonging grounds.~~

**~~S-37 OYSTER VESSEL LICENSING FOR TRANSPLANTING OYSTERS FROM NATURAL OYSTER BEDS~~**

~~(a) The owner of a vessel which was previously licensed in Delaware to harvest and/or transplant oysters from natural oysters beds or from leased shellfish ground in Delaware Bay may directly apply to the Department for a license for said vessel to harvest and/or transplant oysters from the natural oyster beds or from leased shellfish grounds within the jurisdiction of the State.~~

~~(b) The owner of a vessel which was not previously licensed to harvest oysters in Delaware and is to be used for transplanting oysters from natural oyster beds in Delaware Bay to leased shellfish grounds in Delaware Bay, must submit an application for said vessel license to the Department that will first be reviewed by the Council on Shellfisheries for their determination as to whether or not:~~

~~(1) The legal and equitable owner is a Delaware resident or a corporation whose principal place of business is located within Delaware prior to January 1, 1990 or a Delaware corporation incorporated after January 1, 1990 with its principle place of business in Delaware and whose legal and equitable owners are Delaware residents; and,~~

~~(2) the profits for the operation of said vessel will help to preserve and improve the Delaware shellfish~~

industry; and,

(3) the vessel to be licensed will remain exclusively in Delaware's shellfish industries for a period of at least sixty (60) months.

~~Based upon these criteria, the Council on Shellfisheries shall then recommend approval or disapproval for issuing an oyster harvesting license for said vessel within ten (10) calendar days of receipt of the application provided that there is no regularly scheduled council meeting between the date of the application and the beginning of the oyster transfer season. The Department, upon receiving a recommendation from the Council on Shellfisheries, shall decide whether or not to issue an oyster harvesting license for the vessel for the forthcoming oyster transfer season.~~

~~(e) The owner of a vessel which was not previously licensed to harvest and/or transplant oysters in Delaware and said vessel is only to be used to harvest oysters from leased shellfish grounds may directly apply to the Department and receive a vessel license to harvest oysters from leased shellfish grounds within the jurisdiction of this State.~~

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## DIVISION OF WATER RESOURCES

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

### REGISTER NOTICE

#### Total Maximum Daily Load (TMDL) for the Murderkill River Watershed, Delaware

#### 1. Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and CBOD5 (5-day Carbonaceous Biochemical Oxygen Demand) for the Murderkill River Watershed. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

#### 2. Possible Terms of the Agency Action

Following adoption of the proposed Total Maximum Daily Loads for the Murderkill River Watershed, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with Department's Whole Basin Management Program, Murderkill River Tributary Action

Team, and other affected parties.

#### 3. Statutory Basis or Legal Authority to Act

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 **et. seq.**, as amended.

#### 4. Other Legislation That May be Impacted

None

#### 5. Notice of Public Comment

A public workshop will be held at 3:30 PM on Thursday, September 13, 2001 in the Lake Forest High School Auditorium, 5407 Killen's Pond Road Felton, Delaware. A public hearing will be held at 6:00 PM on the same day and at the same location. The hearing record will remain open until 4:30 PM, September 20, 2001. Please bring written comments to the hearing or send them to Rod Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739- 6242. All written comments must be received by 4:30 PM, September 20, 2001. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Marianne Brady, (302-739-4590; facsimile: 302-739-6140; e-mail: [mbrady@dnrec.state.de.us](mailto:mbrady@dnrec.state.de.us)) by 4:30 PM, September 11, 2001.

Additional information and supporting technical documents may be obtained by contacting Marianne Brady, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, Silver Lake Plaza – Suite 220, 820 Silver Lake Boulevard, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140, e-mail:

[mbrady@dnrec.state.de.us](mailto:mbrady@dnrec.state.de.us).

#### 6. Prepared By:

John Schneider, Watershed Assessment Section,  
739-4590

#### Total Maximum Daily Load (TMDL) for the Murderkill River Watershed, Delaware

#### A. INTRODUCTION and BACKGROUND

Intensive water quality monitoring performed by Delaware Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Murderkill River and several of its tributaries and ponds are impaired as the result of low dissolved oxygen and high nutrients. Low concentrations of dissolved oxygen are harmful to fish, shellfish, and other aquatic life. With regard to nutrients (nitrogen and phosphorus), although they are essential elements for both plants and animals, their presence in excessive amounts causes undesirable conditions. Symptoms of nutrient overenrichment include frequent

phytoplankton blooms, decreased water clarity, dissolved oxygen deficiency, alteration of composition and diversity of economically important native species of plants and animals, and possible human health effects.

A reduction in the amount of nutrients and oxygen consuming pollutants reaching the waters of the Murderkill River and its tributaries and ponds is necessary to reverse these undesirable impacts. These pollutants and nutrients enter the waters of the Murderkill River from point sources and nonpoint sources. Point sources are end-of-pipe discharges from municipal or industrial wastewater treatment plants. Nonpoint sources include runoff from agricultural and urban areas, septic tank effluent, and ground water discharges.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants of concern. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

DNREC listed the Murderkill River and several of its tributaries and ponds on the Delaware's 1996, 1998, and 2000 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Carbonaceous Biochemical Oxygen Demand (CBOD).

#### **B. Total Maximum Daily Loads (TMDLs) Regulation for the Murderkill River Watershed, Delaware**

**Article 1.** The total nitrogen load from the four point source facilities in the watershed (City of Harrington, Kent County Facility, Canterbury Crossing Mobile Home Park, and Southwood Acres Mobile Home Park) shall be limited to 406.3 pounds per day. The load allocation for each facility includes: City of Harrington (25 pounds per day), Kent County Facility (375 pounds per day), Canterbury Crossing Mobile Home Park (4.3 pounds per day), and Southwood Acres Mobile Home Park (2.0 pounds per day).

**Article 2.** The total phosphorous load from the four point source facilities in the watershed shall be limited to 27.3 pounds per day. The load allocation for each facility includes: City of Harrington (2 pounds per day), Kent County Facility (25 pounds per day), Canterbury Crossing Mobile Home Park (0.2 pounds per day), and Southwood Acres Mobile Home Park (0.1 pounds per day).

**Article 3.** The CBOD5 (5-day Carbonaceous Biochemical Oxygen Demand) load from the four point source facilities in the watershed shall be limited to 672.1 pounds per day. The load allocation for each facility

includes: City of Harrington (33 pounds per day), Kent County Facility (625 pounds per day), Canterbury Crossing Mobile Home Park (9.6 pounds per day), and Southwood Acres Mobile Home Park (4.5 pounds per day).

**Article 4.** The nonpoint source nitrogen load in the entire watershed shall be reduced by 30 percent (from the 1997 base-line). This shall result in a yearly-average total nitrogen load of 560 pounds per day.

**Article 5.** The nonpoint source phosphorus load in the entire watershed shall be reduced by 50 percent (from the 1997 base-line). This shall result in a yearly-average total phosphorous load of 96 pounds per day.

**Article 6.** Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 5, DNREC has determined that, with an adequate margin of safety, water quality standards and nutrient targets will be met in the Murderkill River and its tributaries and ponds.

**Article 7.** Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Department's Whole Basin Management Program, Murderkill River Tributary Action Team, and other affected parties.

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## **DEPARTMENT OF STATE DIVISION OF HISTORICAL AND CULTURAL AFFAIRS**

Statutory Authority: 30 Delaware Code,  
Section 1815(b), (30 Del.C. 1815(b))

- Title:**  
Regulations Governing the Historic Preservation Tax Credit.
- Brief Synopsis:**  
Chapter 18 Subchapter II of Title 30 was enacted by the General Assembly in 2001. It contained the Historic Preservation Tax Credit Act. This Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified history property. The proposed regulations will provide requirements that will govern certification of historic rehabilitation projects under application for this tax credit.
- Statutory Basis or Legal Authority to Act:**  
Title 30 Delaware Code Chapter 18 Subchapter II Section 1815(b)

**4. Other Regulations that may be Affected by the Proposal:**

The Office of the State Banking Commissioner and the Division of Revenue will adopt regulations or issue guidelines for tax elements of the Historic Preservation Tax Credit Act.

**5. Notice of Public Comment:**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101, the Division of Historical and Cultural Affairs proposes to adopt rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider input from any person in writing on the proposed Rules and Regulations. Any written comments should be submitted to the Division in care of Daniel R. Griffith, Director, Division of Historical and Cultural Affairs, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5A, Dover, DE 19901. The final date to submit written comments is August 31, 2001. Anyone wishing to obtain a copy of the proposed Rules and Regulations should notify Daniel R. Griffith at the above address or call 302-739-5313. This notice will be published in two newspapers of general circulation.

**6. Prepared by:**

Daniel R. Griffith, Director, 302-739-5313, July 13, 2001

**Proposed Regulations Governing the Historic Preservation Tax Credit Act**

**1.0 Scope**

A person or business entity that owns and rehabilitates a certified historic property may receive a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations.

**2.0 Statutory Authority**

These regulations are created pursuant to Chapter 18, Subchapter II of Title 30 **Delaware Code** which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

**3.0 Definitions**

3.1 "Act" means Chapter 18, Subchapter II of Title 30 **Delaware Code**.

3.2 "Affordable Housing" or "Low income housing"

shall mean a housing development that must either:

3.2.1 set aside a minimum of 20% of the units to be occupied by households with incomes at or below 50% of median gross income (as defined by the U. S. Department of Housing and Urban Development), adjusted for family size, for each county OR

3.2.2 set aside a minimum of 40% of the units to be occupied by households with incomes at or below 60% of median gross income (as defined by the U. S. Department of Housing and Urban Development).

3.3 "Certified historic property" shall mean a property located within the State of Delaware that is:

3.3.1 individually listed in the National Register of Historic Places; or

3.3.2 located in a historic district listed in the National Register of Historic Places, and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or

3.3.3 individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or

3.3.4 located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

3.4 "Certified rehabilitation" shall mean that rehabilitation of a certified historic structure that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with the Standards of the Secretary of the Interior for Rehabilitation (36 CRF, part 67) or such other standards as the Delaware State Historic Preservation Office shall from time to time adopt.

3.5 "Certification of Completion", "Completion Certificate" or "Certificate" shall mean the certificate issued by the Delaware State Historic Preservation Officer attesting that certified rehabilitation has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (whether or not such project would be eligible for such federal tax credit) has been obtained.

3.6 "Delaware State Historic Preservation Officer" shall mean the person designated and appointed in accordance with 16 USC Sec. 470a(b)(1)(a), as amended.

3.7 "Federal tax credit" shall mean the Federal Rehabilitation Tax Credit as defined in the United States Tax Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47.

3.8 "Lending institution" shall mean any bank, trust company, savings and loan association, building and loan



association or licensed lender, which is taxable under Title 5 or taxable under Chapter 19 of Title 30.

3.9 "National Register of Historic Places" shall mean the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

3.10 "Office" or "State Office" shall mean the Delaware State Historic Preservation Office.

3.11 "Owner-occupied historic property" shall mean any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used, or within a reasonable period will be used, by such taxpayer as the taxpayer's principal residence. "Reasonable period" shall mean within six months of the issuance of the Certification of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause. Such property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

3.12 "Person" shall include any individual; any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations), whether or not for profit; any form of partnership which is lawful within the State of Delaware (including limited liability partnerships), whether or not for profit; any trust or estate, and any lawful joint venture. "Person" shall also include any governmental entity, pass-through entity, or person under a lease contract for five years or longer.

3.13 "Property" shall mean real estate, and shall include any building or structure, including multiple-unit structures.

3.14 "Qualified expenditure" shall mean any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

3.14.1 acquisition of real property, or acquiring an interest in real property;

3.14.2 any addition to an existing structure, except where the combined square footage of all additions is twenty percent or less than the total square footage of the historic portion of the property; and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:

3.14.2.1 preserving the character-defining features of the certified historic property,

3.14.2.2 adequately differentiating the new construction from the existing structure, and

3.14.2.3 complying with requirements regarding safety and accessibility in a manner reasonably

designed to minimize any adverse impact on the certified historic property;

3.14.3 paving or landscaping costs which exceed ten percent (10%) of the total qualified expenditures;

3.14.4 sales and marketing costs; and

3.14.5 expenditures not properly charged to a capital account, including, in the case of owner occupied property, expenditures that would not properly be charged to a capital account where the owner using such property is a trade or business.

3.15 "Residential property" shall include cooperatives and condominiums.

3.16 "Substantial rehabilitation" shall mean rehabilitation of a certified historic property for which the qualified expenditures, during the twenty-four month period selected by the taxpayer and ending with or within the taxable year, exceed:

3.16.1 for income-producing property, and non-income producing property other than owner-occupied historic property, the current standard required by Section 47(c)(1)(C) of the Internal Revenue Code; and

3.16.2 for owner-occupied historic property, five thousand dollars (\$5,000).

3.17 "Taxpayer" shall include any 'person' as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either Chapter 11 or Chapter 19 of Title 30.

#### **4.0 Procedures for Certification of Historic Structures**

4.1 A taxpayer may request that a property be certified by the Delaware State Historic Preservation Officer as a significant historic resource by filing an application for certification with the Delaware State Historic Preservation Office. An application shall be filed on standard forms available from the Delaware State Historic Preservation Office. The request for certification as a significant historic resource shall be known as Part 1 of the Delaware Historic Preservation Tax Credit Application. An incomplete application may not be processed until all required application information has been received. The State Historic Preservation Office will notify the taxpayer of the additional information needed to undertake or complete the review.

4.2 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete application is received meets the definition of certified historic property. If the property meets this definition, the Delaware State Historic Preservation Officer shall approve the application. If the property does not meet the definition, the Delaware State Historic Preservation Officer shall disapprove the application.

4.3 The Delaware State Historic Preservation Officer shall send the taxpayer notice that the application has been approved or disapproved.

4.4 The State Office shall certify whether a property located in a historic district or individually designated by local ordinance meets the criteria for inclusion in the National Register.

### **5.0 Procedures for Certification of Rehabilitation**

5.1 A taxpayer may request a determination by the Delaware State Historic Preservation Officer that a proposed substantial rehabilitation plan meets the criteria for certification by filing an application with the Delaware State Historic Preservation Office. An application shall be filed on standard forms available from the Delaware State Historic Preservation Office. The criteria to be used for certification will be the United States Secretary of Interior's Standards for Rehabilitation. The request for certification of rehabilitation shall be known as Part 2 of the Delaware Historic Preservation Tax Credit application.

5.2 Applications submitted to the Delaware State Historic Preservation Office must be delivered by means of a postal delivery service that provides a stamp or receipt with date and time of mailing.

5.3 A taxpayer is encouraged to submit Part 1 of the "Historic Preservation Certification Application" prior to, or with, Part 2. Part 2 of the application will not be processed until an adequately documented and approved Part 1 is on file.

5.4 An incomplete application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Historic Preservation Office will notify the taxpayer of the additional information needed to undertake or complete review.

5.5 The Delaware State Historic Preservation Officer shall determine whether the proposed substantial rehabilitation for which a complete application is received under Section 5.1 of this regulation meets the Standards for Rehabilitation and shall send the applicant notice of the determination and of the credit award. The State Office may require modifications to the plan in conformance with the Secretary of Interior's Standards for Rehabilitation.

5.6 The approval by the State Office of the proposed rehabilitation plan shall be known as a Part 2 approval and the amount of tax credit as defined in Section 9.0 of these regulations applied against the qualified expenditures in accordance with Section 1813 of Title 30 **Delaware Code** shall represent the "credit award." A taxpayer is required to have submitted the Part 2 application and received the Part 2 approval prior to undertaking any rehabilitation work for which a taxpayer is seeking credit.

5.7 In requesting Certification of Rehabilitation (Part 2) for a rehabilitation plan in excess of \$1,000,000 in cost, a taxpayer must provide cost estimates of qualified expenditures for the proposed rehabilitation prepared by an independent qualified estimator. This information will be

used to determine the credit award for approved Part 2 applications. The credit award for projects under \$1,000,000 in rehabilitation cost is based on the applicant's estimate provided in the Part 2 application.

5.8 Credits will be awarded in chronological order based upon the date and time on which each application receives Part 2 approval from the State Office.

5.9 All applicants must begin construction on the approved Part 2 plan within one year of receiving the Part 2 approval. Applicants, having received Part 2 approval, must notify the State Office in writing of the start date of the rehabilitation work. If construction on the rehabilitation plan is not substantially commenced and diligently pursued within this time period, the applicant will forfeit the awarded credits, and the credits awarded to such applicant will become available for award to other applicants. Substantially commenced and diligently pursued means that twenty-five percent (25%) of the estimated rehabilitation costs must have been expended. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.

5.10 The ongoing project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work meets the "Standards for Rehabilitation."

### **6.0 Procedures for certification of Completion**

6.1 Upon completion of a certified rehabilitation, the taxpayer must submit a Part 3 application (Request for Certification of Completed Work), with required documentation, to the Delaware State Historic Preservation Office. The completed project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work meets the "Standards for Rehabilitation."

6.2 Upon approval by the State Office that the completed rehabilitation meets the definition of a certified rehabilitation, the State Office shall submit the documentation to the Director of the Division of Revenue or the Office of the State Banking Commissioner and request a determination of the value of the tax credit.

6.3 Upon receipt of the certification of the value of the tax credit associated with the Certificate of Completion by the Director of the Division of Revenue or the Office of the State Banking Commissioner, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion to the applicant.

6.4 In the alternative to 6.2 and 6.3 of the section, the Delaware State Historic Preservation Officer may certify such rehabilitation and issue a Certificate of Completion to any applicant who has obtained a Part I and Part II certification from the federal government issued pursuant to 36 CFR part 67, where applicable. The taxpayer will still need to file a State of Delaware Part 3 application (Request

for Certification of Completed Work) and submit applicable fees for review.

### **7.0 Fees for Processing Rehabilitation Certification Request**

7.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over \$100,000 is \$250 for each separate application. The fee from a single applicant for multiple projects shall not exceed \$2,500. Final action will not be taken on any application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are under \$100,000.

7.2 The fee must be submitted with the Part 3 application (Request for Certification of Completed Work). All checks shall be made payable to the State of Delaware.

### **8.0 Administrative Review**

8.1 An applicant whose application has been disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.

8.2 The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee determines that the application filed meets the standards set forth in that regulation the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in that regulation, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the applicant of the Secretary's determination.

8.3 An applicant whose application has been disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29 Delaware Code Section 10101 et seq.

8.4 An appellant who has exhausted all administrative remedies shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act.

### **9.0 Claiming a credit**

9.1 Once Parts 1, 2, and 3 have been reviewed and approved by the Delaware State Historic Preservation Office as a certified rehabilitation and all required fees have been received, the Delaware State Historic Preservation Officer will send a "Certificate of Completion" to the taxpayer.

9.2 To claim the State tax credit, a taxpayer, assignee, purchaser, or transferee of the credit shall attach the Certificate of Completion to the Delaware tax return against which the credit is claimed and submit such tax return to the Division of Revenue or to the Office of the State Bank

Commissioner with respect to Title 30 income taxes and Title 5 franchise taxes, respectively. No such claim for State tax credit shall be made prior to the one-year anniversary of receipt of the Part 2 approval from the State Office.

9.3 The historic preservation tax credit is effective for Part 2 approvals granted by the Delaware State Historic Preservation Officer for state fiscal years beginning on or after July 1, 2000 but before June 30, 2010.

9.4 The historic preservation tax credit is effective for first claim applications made pursuant to the Act for state fiscal years beginning on or after July 1, 2002.

9.5 A taxpayer must begin taking the credit for the year such taxpayer receives the Certificate of Completion from the Delaware State Historic Preservation Office.

### **10.0 Amount of credit allowed**

10.1 The historic preservation tax credit for those taxpayers that are allowed to claim the Federal Rehabilitation Investment Tax Credit is twenty percent of qualified expenditures.

10.2 The historic preservation tax credit for those taxpayers that are not eligible for the Federal Rehabilitation Investment Tax Credit is thirty percent of the qualified expenditures.

10.3 The historic preservation tax credit for those taxpayers that are eligible for the Federal Rehabilitation Investment Tax Credit is thirty percent of the qualified expenditures when such property is to be committed to affordable housing.

10.4 The historic preservation tax credit for those taxpayers that are not eligible for the Federal Rehabilitation Investment Tax Credit is forty percent of the qualified expenditures when such property is to be committed to affordable housing.

10.5 No single certified rehabilitation of owner-occupied historic property may receive a tax credit in excess of \$20,000.

10.6 The maximum amount of credit awards under the historic preservation tax credit program shall not exceed \$3,000,000 in any state fiscal year. If a credit award would result in an exceedence of the \$3,000,000 limitation for the state fiscal year in which it is awarded, the amount by which such credit award exceeds \$3,000,000 shall carry over to the succeeding state fiscal year and shall receive priority for that year.

**DEPARTMENT OF  
TRANSPORTATION**

Statutory Authority: 17 Delaware Code,  
Chapter 11 (17 Del.C. Ch. 11)

**Rules and Regulations of Outdoor Advertising**

The Department of Transportation is granted authority to regulate Outdoor Advertising by Chapter 11 of Title 17 of the Delaware Code. Changes to the "Delaware Department of Transportation Rules and Regulations of Outdoor Advertising" as issued in 1975 are being proposed to improve clarity, correct inaccurate citations of statute, correct obvious typographical errors, and to make non-substantive changes in grammar, syntax, spelling, and punctuation. Also, a substantive change is being proposed to include a new section that allows for on-premise electro-mechanical variable-message signs to display on-premise activities at reasonable intervals as defined by the Department. Signs in this category that meet all of the Department's criteria will be issued an outdoor advertising sign permit. This proposed change represents the first time in the history of the Delaware Department of Transportation that electro-mechanical variable advertising messages will be permitted in the State.

Written comments on the changes to these draft regulations will be accepted through October 1, 2001, and should be submitted to:

William F. Smith, III  
Department of Transportation  
Field Services  
P.O. Box 778  
Dover, DE 19903

Copy of original 1975 Outdoor Advertising Rules & Regulations . Signed by Clifford Hall , Secretary Department of Highways and Transportation, February 27, 1975.

**CHAPTER-****SECTION 1.00 ..... OUTDOOR ADVERTISING****PARAGRAPH**~~1.01 - AUTHORITY-~~~~1.02 - APPLICABILITY~~~~1.03 - PURPOSE-~~~~1.04 - DEFINITIONS-~~~~1.05 - STATUTORY REQUIREMENTS-~~~~1.06 - STANDARDS FOR DIRECTIONAL SIGNS-~~~~1.07 - STANDARDS FOR OFFICIAL SIGNS AND NOTICES-~~~~1.08 - STANDARDS FOR PUBLIC UTILITY AND~~~~RAILROAD SIGNS-~~~~1.09 - STANDARDS FOR SERVICE CLUB AND RELIGIOUS NOTICES~~~~1.10 - STANDARDS FOR PUBLIC SERVICE SIGNS~~~~1.11 - STANDARDS FOR ON PREMISE SIGNS-~~~~1.12 - STANDARDS FOR AGRI-PRODUCE SIGNS-~~~~1.13 - STANDARDS FOR OUTDOOR ADVERTISING SIGNS~~~~1.14 - BONDING REQUIREMENTS~~~~1.15 - MAINTENANCE OF SIGNS~~~~1.16 - DESTRUCTION OF TREES~~~~1.17 - PERMITS AND FEES-~~~~1.18 - CERTIFICATION OF POLITICAL SUBDIVISIONS~~~~1.19 - POLITICAL SUBDIVISION REGULATIONS~~~~1.20 - PENALTIES-~~~~1.21 - SEPARABILITY~~~~SECTION I - OUTDOOR ADVERTISING AUTHORITY-~~~~1.01 - AUTHORITY~~

~~A. The following rules and regulations are issued under the authority granted to the Department by Section 1104, Subchapter 1, Chapter 11, Title 17 of the Delaware Code.~~

~~B. The Department of Highways and Transportation shall have overall jurisdiction and control throughout the State subject to the certification process for political subdivisions as defined under paragraph 1.18 following. Within the Department, the responsibility for administration of the program shall rest with the Roadside Control Section in the Division of Highways.~~

~~C. All interpretations will be made by the Secretary of the Department of Highways and Transportation and his decision will be final except in those cases where a point of law is raised.~~

~~1.02 - APPLICABILITY~~

~~A. The following rules and regulations apply to all outdoor advertising or outdoor advertising signs which are erected and maintained within 660 feet of the nearest edge of the right of way of any State maintained highway in this State and which are visible from the main traveled way of such systems.~~

~~B. These rules and regulations shall become effective upon approval by the Secretary of the Department of Transportation.~~

~~1.03 - PURPOSE-~~

~~A. Under Section 1101, Subchapter 1, Chapter 11, Title 17 of the Delaware Code: the General Assembly has declared that it is in the public's interest to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Inter-state and Primary systems in order to protect the public investment in such highways.~~

B. The General Assembly by enactment of Section 1104, Subchapter 1, Chapter 11, Title 17 of the Code directed the Department to enforce the provisions of Chapter 11 and to issue regulations to implement the policy and accomplish the purpose of the Chapter.

C. The following rules and regulations are issued in response to that directive and to clarify and implement the Department's policy regarding the control of outdoor advertising.

#### 1.04 - DEFINITIONS

A. For the purpose of this Section, the following definitions shall apply:

1. "Outdoor Advertising" or "Outdoor Advertising Signs" shall mean and shall include any outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

2. "Interstate System" means that portion of the National System of Interstate and Defense Highways located within the State of Delaware officially designated as such, or as may hereafter be designated as such, by the Department and approved by the Secretary of Transportation of the United States pursuant to the provisions of Title 23, United States Code.

4. "A controlled area" shall mean, and "controlled areas" shall include any area inside the boundaries of the State of Delaware which is adjacent to and within 660 feet of the edge of the right-of-way of a highway of the Interstate System or the Primary System, and after July 1, 1975 beyond 660 feet.

5. "State law" means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a state agency or political subdivision of a State pursuant to a State constitution or statute.

6. "Safety rest areas" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public.

7. "Sign Panels" means one sign facing.

8. "Department" means the Department of Highways and Transportation.

9. "Division" means the Division of Highways under the Department of Highways and Transportation.

10. "Section" means the Roadside Control Section under the Division of Highways.

11. "Nonconforming Sign" is one which was lawfully erected, but which does not comply with the provisions of the Laws of the State of Delaware or State regulations passed at a later date or which later fails to comply with such law or regulations due to changed

conditions.

12. "Illegal Sign" means any sign which was erected and/or maintained in violation of the Delaware Law.

13. "Illuminated Sign" means any sign that is lighted internally or externally and shall be defined as illuminated whether or not the light is attached directly to the sign structure.

14. "Centerline of the highway" means (1) a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or (2) the centerline of the main-traveled way of a nondivided highway, or (3) the centerline of each of the main-traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

15. "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

16. "Scenic area" means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

17. "Parkland" means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

18. "Legible" means capable of being read without visual aid by a person of normal visual acuity.

19. "Maintain" means to allow to exist.

20. "Freeway" means a divided arterial highway for through traffic with full control of access.

21. "Abandoned Sign" means any sign in which the owner has not demonstrated an interest by maintaining it in good condition.

22. "Zoned commercial or industrial areas" means those areas which are zoned for business, industry, commerce or trade pursuant to a State regulation or local zoning ordinance.

23. "Lease (license, contract, or easement)" means an agreement in writing, by which possession or use of land or interests therein is given by the owner to another person for a specified period of time.

24. "Directional and other official signs and notices" shall mean and include only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

25. "Official signs and notices" means sign's and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization

contained in Federal, State or local law for the purposes of carrying out an official duty or responsibility or historical marker, authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

26. "Public utility signs" means warning signs, informational signs, notices, or marker which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

27. "Service club and religious notices" means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services.

28. "Public service signs" means signs located on school bus stop shelters.

29. "Directional signs" means signs containing directional information about public places owned or operated by Federal, State or local governments or their agencies; publicly or privately owned natural phenomena; historic, cultural, scientific, educational, and religious sites; areas of natural scenic beauty, and areas which are naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

30. "On premises signs" shall mean those signs, displays and devices advertising the sale or lease of property upon which they are located and those signs, displays, and devices advertising activities conducted on the property on which they are located.

31. "Double-faced, back to back, or V-type signs" shall mean those configurations of multiple sign structures as those terms are commonly understood, except that in no instance shall these terms include two or more signs which are not in the same ownership, which are not physically contiguous, or which are not connected by the same structure or crossbracing, or in the case of back to back or "V" type signs located less than 15 feet apart at their nearest points.

32. "Agri-produce signs" shall mean those signs located on the property of a farmer indicating the sale of seasonal agricultural products.

33. "Information Center" means an area or site established and maintained at a safety rest area for the purpose of providing information to the public of places of interest within the State and other information the Department deems desirable.

34. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance of a sign or sign structure.

35. "Commercial or industrial activities for purposes of unzoned commercial or industrial areas" means those activities generally recognized as commercial or industrial by zoning authorities within the State of Delaware,

except that none of the following activities shall be considered commercial or industrial:

(a) Outdoor Advertising structures.

(b) Forestry, ranching, grazing, and farming including, but not limited to, wayside fresh produce stands.

(c) Transient or temporary activities.

(d) Activities more than 660 feet from the nearest edge of the right-of-way along the Interstate and Federal Aid Primary Route.

(e) Activities conducted in buildings principally used as a residence.

(f) Railroad tracks and minor sidings.

(g) Activities not visible from the main-traveled way.

36. "Customary maintenance" means the action necessary to keep a sign in good condition by (1) replacement of parts damaged or worn by age and (2) painting of areas exposed to the weather as the major portion of the sign, but shall not include either maintenance which would be necessary for signs over 50% damaged (except Act of God circumstances) or in 50% disrepair or maintenance which would increase the size or monetary value of the sign.

37. "Free standing sign" means any sign not attached or affixed to a building for its principal means of support.

38. "Political subdivision" means any municipal or county government duly established under the provisions of the Delaware Code.

39. "Sign facing" means, a single sign message separated from other sign facings by border or trim.

#### 1.05 STATUTORY REQUIREMENTS

A. Section 1121, Chapter 11, Title 17 of the Delaware Code provides that signs within 660 feet of the nearest edge of the right of way and visible from the main traveled way of the Interstate and Primary system shall be limited to the following types:

1. Directional and other official signs and notices which shall include only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

2. On Premise signs which shall include only:

(a) Those signs, displays and devices advertising the sale or lease of the real property upon which they are located, and

(b) Those signs, displays and devices advertising activities conducted on the real property upon which they are located.

3. Signs, displays, and devices located in the controlled areas adjacent to highways of the Interstate and Primary systems which are zoned industrial and commercial under authority of State Law.

B. For ease of operation, the aforementioned limitations shall be applicable to all other highway systems with the

approval of these rules and regulations.

#### 1.06 STANDARDS FOR DIRECTIONAL SIGNS

A. General: Permits as mentioned in Paragraph 1.17 of these regulations will not be required for directional signs.

1. A sign shall only be erected after first securing approval of the Department. Requests for approval to erect a directional sign shall be in writing directed to the Department for the attention of the Manager of the Roadside Control Section. All requests shall be processed in accord with procedures promulgated by the Department.

2. The following directional signs are prohibited:

(a) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of the activity.

(b) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersection traffic.

(c) Signs which are erected or maintained upon trees or utility poles or painted or drawn upon rocks or other natural features.

(d) obsolete signs.

(e) Signs which are structurally unsafe or in disrepair.

(f) Signs which move or have any animated or moving parts.

(g) signs located in rest areas, parklands or scenic areas.

(h) Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot.

(i) Signs for privately owned facilities unless such facilities are determined to be eligible for signing under the criteria and methods described in subparagraph F of this section.

#### B. Size

1. The following limits shall apply to directional signs:

(a) Maximum area ... 150 square feet

(b) Maximum height ... 20 feet

(c) Maximum length ... 20 feet

2. All dimensions include border and trim, but exclude supports.

#### C. Lighting

1. Signs may be illuminated, subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or Primary

system highway or which are of such intensity or brilliance as to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device or signal.

#### D. Spacing

1. Each location of a directional sign must be approved by the Department.

2. A directional sign must be located beyond 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way), unless erected by the Division.

3. A directional sign shall be located beyond 2,000 feet of a rest area, parkland, or scenic area, unless erected by the Division.

4.

(a) Two directional signs facing the same direction of travel shall be placed more than 1 mile apart;

(b) A maximum of three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;

(c) Signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(d) Signs located adjacent to the Primary system shall be within 50 air miles of the activity.

5. In determining the distance between signs facing in the same direction and those within a seventy-five air mile radius, signs beyond the 660' limit shall not be considered.

6. Signs legally in place within the 660' controlled area shall be considered as though it were a sign erected under these regulations.

#### E. Message Content

1. The message of directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

#### F. Criteria for Eligibility

1. The criteria for determining whether or not a privately owned facility is eligible for directional signing shall be that criteria presently utilized or hereafter adopted by one of the existing State agencies where primary purpose is the control and administration of the type of specific unique phenomena or site for which a directional sign application may be made.

2. A determination by the State agency to which a request is referred as to whether or not a privately owned facility is eligible for directional signing will be binding on

the Department.

#### G. Eligible Activities

1. Privately owned activities or attractions eligible for directional signing shall be limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas any of which must be nationally or regionally known, and of outstanding interest to the traveling public as determined by the appropriate State agency authority.

### 1.07 STANDARDS FOR OFFICIAL SIGNS AND NOTICES

#### A. General

1. Permits as defined in section 1.17 of these Regulations will not be required for official signs and notices. An Official sign or notice shall be erected however, only after first securing approval of the Department. Requests for approval to erect such signs shall be made and processed in the same manner as for directional signs (See paragraph 1.06).

B. Official signs and notices shall be limited to the following:

1. Signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization by Federal, State or local law for the purposes of carrying out an official duty or responsibility and

2. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies.

#### C. The following signs are prohibited:

1. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersection traffic.

2. Signs which are erected or maintained upon trees or utility poles or painted or drawn upon rocks or other natural features.

3. Obsolete signs.

4. Signs which are structurally unsafe or in disrepair.

#### D. Size

1. The following limits are applicable to official signs and notices:

(a) Maximum area ... 15 square feet

(b) Maximum height ... 5 feet

(c) Maximum length ... 5 feet

2. All dimensions shall include border and trim but shall exclude supports.

#### E. Lighting

1. Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited, except those giving public service information.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal are prohibited.

#### F. Spacing

1. Each location of official sign or notice sign must be approved by the Department.

2. An Official sign or notice, except when erected by the Division, shall be located beyond 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

3. An official sign or notice, except when erected by the Division, shall be located beyond 2,000 feet of a rest area, parkland, or scenic area.

### 1.08 STANDARDS FOR PUBLIC UTILITY AND RAILROAD SIGNS

#### A. General

1. The erection of a public utility or railroad sign may be undertaken without Department approval. Such signs will, however, be limited to warning signs, informational signs, and notices or markers which are customarily erected and maintained by publicly or privately owned public utilities or railroads as essential to their operation.

#### B. Size

1. The following limits are applicable to public utility and railroad signs:

(a) maximum area ... 4 square feet

(b) Maximum height ... 4 feet

(c) Maximum length ... 4 feet

2. All dimensions include border and trim but exclude supports.

#### C. Lighting

1. Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at



any portion of the traveled way of an Interstate or Primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(e) Signs so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal are prohibited.

**D. Spacing**

1. The number and spacing of public utility and railroad signs shall be limited to those customarily erected and maintained as essential to the operation of a particular utility or railroad.

**1.09 STANDARDS FOR SERVICE CLUB AND RELIGIOUS NOTICES**

**A. General**

1. service club or religious notices shall be erected or maintained only after first securing approval from the Department. Applications shall be made and processed in accord with procedures promulgated by the Department. Service club and religious signs shall be limited to the following:

(a) Signs and notices relating to meetings of nonprofit service clubs.

(b) Signs and notices of charitable associations.

(c) Signs and notices stating place and time of religious services.

2. The following signs are expressly prohibited:

(a) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

(b) Signs which are erected or maintained upon trees or utility poles or painted or drawn upon rocks or other natural features.

(c) Obsolete signs.

(d) Signs which are structurally unsafe or in disrepair.

(e) Signs which move or have any animated or moving parts.

(f) Signs located in rest areas, parklands or scenic areas.

(g) Signs not in conformance with applicable wind pressure requirements.

**B. Size**

1. The following limits are applicable to service club religious notices:

(a) Maximum area ... 4 square feet

(b) Maximum height ... 2 feet

(c) Maximum length ... 2 feet

**C. Lighting**

1. Illumination of service club and religious notices

is prohibited

**D. Spacing**

1. A sign may be placed on a major route entering the vicinity of the involved activity but must be located within one-half mile of the meeting place.

**E. Number**

1. Total number of service club and religious notices to a particular locale shall not exceed two.

**1.10 STANDARDS FOR PUBLIC SERVICE SIGNS**

**A. General**

1. Public service sign shall be erected or maintained without first securing a permit from the Department as required by these regulations. Applications for permits shall be processed in accord with procedures promulgated by the Department. A certification by the Department of Public instruction that each shelter on which signs are or are to be erected is needed to provide shelter for students at that location shall accompany each application. Applications and approval shall be processed in accord with procedures promulgated by the Department.

**B. Public Service signs shall be limited to the following:**

1. Signs which identify the donor, sponsor, or contributors of the shelter in which the sign is erected, and or

2. Which contain safety slogans or messages which shall occupy not less than 60 percent of the area of the sign and

3. Which contain no other message.

**C. Size**

1. Public service sign shall not exceed 30 square feet in area.

**D. Lighting**

1. Lighting of public service signs is prohibited.

**E. Spacing**

1. Only two public service signs shall be permitted at any one location. Signs will only be approved for a shelter provided it does not in any way obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or which obstructs or interferes with the driver's view of approaching, merging, or intersection traffic, or which interferes with the safe and free flow of traffic in any way.

**1.11 STANDARDS FOR ON PREMISE SIGNS**

**A. General**

1. Section 1114, Subchapter 1, Chapter 11, Title 17 of the Delaware Code exempts on premise signs from all provisions of subchapter 1, except that such signs shall be subject to the Rules and Regulations adopted by the Department as required by Section 1104 of Subchapter 1, Chapter 11 of Title 17. Consistent with the stated policy of Chapter 11 of Title 17 for protecting the public's investment in highways and enhancing the natural scenic beauty, the

following shall apply to all on premise signs within the controlled area—

#### B. Eligibility

1. A sign display, or device shall be considered an on premise sign if:

(a) It is located on the same premises as the activity or property advertised and

(b) It has as its purpose the identification of the activity conducted on the premises or Advertises the sale or lease of the property on which it is located.—

(c) meets the size requirement as specified by law.

#### C. Premise Test

1. As used in these regulations, the premises on which an activity is conducted shall be the land occupied by the building or other physical uses that are necessary or customarily incident to the activity including such open spaces as are arranged and designed to be used in connection with such buildings or uses.

2. The following will not be considered to be a part of the premises on which an activity is conducted and any signs located on such land will be considered "off premise" advertising:

(a) Any lands not used as an integral part of the principal activity, or

(b) Any land used for a separate purpose unrelated to the advertised activity, or

(c) Any land at some distance from the principal activity, and in closer proximity to the highway than the principal activity, and developed or used only in the area of the sign site, or between the sign site and the principal activity, and occupied solely by structures or uses only incidental to the principal, activity, and which serve no reasonable purpose other than to. qualify the land for signing purposes, or—

(d) Any configuration of land which is such that it cannot be put to any reasonable use related to the Principal activity other than for signing purposes, or

(e) Any land which is nonbuildable, such as swamp, marsh or other wetland, or

(f) Any land which is common or private roadway or held by easement or other lesser interest than the premises where the advertised activity is located,—

(g) With the exception of agri-produce signs, any land in excess of 50 feet from the principal activity or accessory uses.

#### D. Purpose Test

1. The following signs, displays, and devices shall be considered as having as their purpose, (1) the identification of the activity located on the premises or its products or services, or (2) the sale or lease of the property on which the sign is located:—

(a) Any sign which consists solely of the name of the establishment.

(b) Any sign which identifies the establishments principal or accessory products or services offered on the premises.

(c) Any sign which has no message content other than for sale or lease.—

2. Signs in the following categories shall be considered as not fulfilling requirements and shall be treated as "off premise" advertising:

(a) A sign which brings rental income to the property owner, or

(b) Which consists principally of brand or trade name advertising, or

(c) Which advertises a product only incidental to the principal activity, or

(d) Which advertises, in addition to the activities conducted on the premises, activities not conducted on the premises, or

(e) One which in addition to the sale or lease aspects of the property advertises any product or service not located upon and unrelated to the business of selling or leasing the land on which the sign is located.—

#### E. Applications

1. A permit shall not be required for an "on premise" sign. Any such sign shall be erected, however, only after first securing written approval of the Department. Application for permission to erect on premise signs shall be made and processed in the same manner as applications for directional signs. (See Section 1.06). Such signs may be either free standing or attached to buildings providing they meet the requirements of this section.—

#### F. The following "on premise" signs are prohibited:

1. Signs advertising activities that are illegal under Federal and State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or utility poles or painted or drawn upon rocks or other natural features.

4. obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts.—

7. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot.—

#### G. Size

1. A sign either attached or free standing erected or maintained upon property to identify a business conducted thereon shall not exceed 30 square feet in area.

2. A sign advertising the sale or lease of property

shall not exceed 6 square feet in area.

3. All measurements shall include border and trim but shall exclude supports.

#### H. Lighting

1. On premise signs may be illuminated subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or Primary system highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) A sign may be so illuminated provided it does not interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

#### I. Spacing

1. Spacing requirements shall not apply to "on premise" signs except that a maximum of 10 business signs shall be allowed at any one location with a combined total of 500 square feet.

2. Free standing signs shall be limited to two per highway and shall be permitted only along the highway or highways to which access has been provided.

3. For sale or lease signs shall be limited to a total of two for any one property.

4. Distance shall be measured from the edge of the right-of-way horizontally along a line perpendicular to the centerline of the highway.

#### J. Subdivision Signs

1. Subdivision signs which basically indicate the name of the individual suburban community are, for the purposes of these rules and regulations, considered a type of on premise signs and are allowable provided

(a) They are erected within the subdivision limits;

(b) The prime intent is identification

(c) They have received prior approval from the Division and

(d) They meet all eligibility tests specified in this paragraph.

### 1.12 STANDARDS FOR AGRI-PRODUCE SIGNS

#### A. General

1. Agri-produce signs shall not be allowed to be erected on the Interstate system unless it meets fully the requirements for "on premise" signs as set out in Section 1.11 of these regulations.

2. On other systems, agri-produce signs shall be considered as "on premise" signs and shall be subject to the same requirements and conditions as described for "on

premise" signs in Section 1.11 of these regulations with the following exceptions:

(a) Free standing agri-produce signs shall be allowed to remain erected only during the seasonal period from May 1 through September 30. During the off season signs of this type shall be removed.

(b) Free standing signs may be located more than 50 feet but no more than 500 feet from the activity and on the same property as the activity being conducted.

#### B. Size

1. The following limits are applicable to agri-produce signs:

(a) Maximum area... 30 square feet

(b) Maximum height ... 8 feet

(c) Maximum length ... 8 feet

(d) Total sign area allowable per site ... 100 square feet (maximum)

#### C. Lighting

1. Signs may be illuminated, subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or Primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle is prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal are prohibited.

#### D. Spacing

1. Each location of an agri-produce sign must be approved by the Department and shall receive written approval prior to erection of any signs.

2. Each sign must be located within 500 feet of the activity, on the same property and same side of highway as the activity.

#### E. Number

1. Each location may have a variable number of agri-produce signs necessary for the individual site provided total site sign area allowable is not exceeded. Each application must be made to the Department and directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

#### F. Safety of traveling public

1. At all times the Division must give prime consideration to the safety of the traveling public and if at any time an unsafe condition should arise, the Department shall advise the location owner of certain positive steps which must be undertaken within a specified duration of

time. Failure to comply with the required improvements will result in suspension of the approval and removal of the sign until such time that corrective measures have been implemented.

1.13 — STANDARDS FOR OUTDOOR ADVERTISING SIGNS, DISPLAYS, AND DEVICES IN AREAS ZONED INDUSTRIAL OR COMMERCIAL WITHIN THE CONTROLLED AREA

A. General

1. Except as otherwise provided in these regulations, no signs, displays, or devices will be permitted to be erected or maintained unless it is within an area zoned as commercial or industrial under authority of State law. Permits shall be required for all such signs. Applications and permits shall be processed in accordance with procedures promulgated by the Department.

2. In zoned commercial and industrial areas where the locality had regulations governing the size, spacing, and lighting of signs, such regulations shall control and govern.

3. Signs, displays, and devices erected and maintained within all other zoned industrial and commercial areas shall be subject to the following conditions and requirements.

B. The following signs shall be prohibited:

1. Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot, whichever is greater.

C. Size

1. The maximum area for any outdoor advertising sign facing shall be 1,200 square feet with a maximum height of 25 feet and a maximum length of 60 feet.

2. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.

3. All dimensions shall include border and trim but shall exclude supports.

4. A sign structure may contain one or two signs per facing and two sign facings may be placed back to back or V-type at one location but in no event shall the total area of any facing exceed 1,200 square feet.

5. A sign which exceeds 600 square feet in area

may not be on the same sign facing with any other sign.

D. Lighting

1. Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of any highway and which are of such intensity or brilliance as to cause glare or to impair the vision of a driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obstructs an official traffic sign, device, or signal is prohibited.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the Department.

E. Spacing

1. For Interstate and controlled access highways, the structure for outdoor advertising sign shall be at least 500 feet from any similar structure.

2. For non-controlled access highways, outside incorporated areas, the structure for any sign shall be at least 300 feet from any similar structure. For non-controlled access highways within incorporated areas, the structure for any sign shall be at least 100 feet from any similar structure.

3. When structures are separated by building or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at one time, variances may upon application be granted by the Department.

4. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and is applicable only to structures located on the same side of the highway.

5. Outside incorporated areas outdoor advertising signs shall be located 500 feet (minimum from any interchange, intersection, at grade, safety rest area or information center (measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit or entrance to the main traveled way)).

6. Except for roof signs, wall signs and free standing signs against the wall of a building, no ground signs shall be placed within 35 feet of either highway right of way at an intersection where they converge, unless the base of such sign is at least 8 feet above ground level or road bed, whichever is higher.

7. Official and "on premise" signs, as defined in

~~these regulations shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.~~

~~F. Non-Conforming Signs~~

~~1. Legally erected signs found not to be in compliance with the spacing requirements of this section shall be determined to be a non-conforming sign and shall be purchased as provided by State law and in accord with Policy and Procedures developed and adopted by the Department.~~

~~2. In any instance where it is found that two or more signs do not meet spacing requirement, the date of the issuance of the original permit shall control with the older being allowed to remain.~~

~~G. Control by Political Subdivisions~~

~~1. At Any time that a political subdivision adopts comprehensive zoning that provides for and enforces regulation of size lighting and spacing of signs in commercial and industrial zones and applies for and is certified by the Department under the provisions of Section 1.18 of these regulations, control shall pass to such political subdivision.~~

1.14 BONDING REQUIREMENTS

A. Any non-resident or foreign corporation engaged in the business of outdoor advertising shall be granted a permit for the posting or display of any advertisement or the erection, use or maintenance of any advertising structure, only after such persons shall have furnished and filed with the Roadside Control Section a bond payable to the State of Delaware with surety approved by the Department, and in the sum of \$5,000.00, conditioned that said individual company or corporation fulfills all the requirements of law and regulations and orders of the Department relating to the display of advertisements or the erection of advertising structures. Such bond shall remain in full force and effect until such obligations of such licensee to the State are satisfied.

1.15 MAINTENANCE OF SIGNS

~~A. General~~

~~1. All signs within the controlled areas shall be maintained in a good state of repair at all times. When any sign is damaged or falls into disrepair to the extent that obvious repairs are needed, the owner shall be notified by Certified Mail to make all necessary and allowable repairs. If the sign is not repaired, rebuilt, or removed within six months of said notification the applicable sign permit shall lapse and become null and void in these cases where permits are not required, such signs will be considered as being abandoned and will be removed by the Department.~~

~~B. Alterations~~

~~1. The size and shape of signs may be altered during repair with the exception of non-conforming signs~~

~~providing that:~~

~~(a) At least ten working days prior to beginning of alterations written notice is furnished the Department fully defining the nature and extent of the proposed alterations.~~

~~(b) Alterations do not exceed permit limits and~~

~~(c) Other requirements of these regulations are met.~~

~~C. Relocation of Signs~~

~~1. With the exception on non-conforming signs, signs may be relocated provided they meet all criteria and requirements of these regulations. Any sign moved to a new location will require a new permit and permit number and will be considered and processed as a new sign.~~

~~D. Maintenance of Non-conforming Signs~~

~~1. General~~

~~(a) Non-conforming signs may be maintained or rebuilt when destroyed by vandalism or by acts of God providing they are rebuilt to substantially be the same as they are in existence on June 30, 1970. Such signs may continue as long as they are not abandoned, destroyed or discontinued.~~

~~2. Discontinued signs~~

~~(a) A non-conforming sign which has displayed obsolete or damaged advertising matter or has not displayed advertising matter for a period of six months subsequent to receipt of written notice from the Department shall be considered as a discontinued sign and shall be required to be removed by the owner without compensation.~~

~~3. Abandoned signs~~

~~(a) Non-conforming signs which are in need of substantial repair either to the face or support structure and are not repaired within a period of six months after receipt of written notice from the Department shall be considered as an abandoned sign and shall be required to be removed by the owner without compensation.~~

~~4. Destroyed signs~~

~~(a) Non-conforming signs which have been damaged, except by vandalism or by Acts of God, to the extent that the cost of reconstructing the sign exceeds 50% of the sign if it were constructed new shall be considered as being destroyed and shall be required to be removed by the owner without compensation.~~

~~5. Owners Liability~~

~~(a) Any signs listed in subparagraph 2, 3 and 4 of this paragraph removed by Division personnel, the sign owners shall be responsible for all costs incurred.~~

1.16 DESTRUCTION OF TREES

~~A. General~~

~~1. In no case will the destruction of trees or shrubs within the right of way of any highway for the purpose of increasing or enhancing the visibility of an outdoor advertising sign be allowed.~~

**B. Penalties-**

1. Persons who undertake such action will be

- and-
- (a) Subject to possible criminal prosecution
- and-
- (b) Have the permit for the involved sign revoked and-
- (c) Responsible for any corrective action relative to the trees and shrubs deemed necessary by the Department.

**1.17 PERMITS AND FEES-****A. General-**

1. Section 1105, Subchapter 1, Chapter 11, Title 17 of the Delaware Code includes provisions for:-

(a) The Department to issue and renew permits for each sign for a period of at least one year for the erection and maintenance of outdoor advertising signs, displays, and devices, and

(b) The Department to establish and collect fees for the issuance of permits and renewals thereof in an amount deemed necessary to defray the costs of this operation.-

**B. Duration of Permits**

1. Each permit shall be valid for the period beginning January 1 and ending December 31 of each calendar year.

2. Permits granted during any month of the year shall expire on December 31 of the same calendar year.-

**C. Fees-**

1. Each calendar year the Department shall review its administrative costs and the number of signs and determine the adequacy of present permit fees to defray the involved costs.-

2. When a change in fee is necessary, the new fee shall become effective for all new permits immediately upon receipt of Department approval and for renewals on January 1 of the next calendar year following approval.

3. The fee for a portion of the calendar year will be the same as determined necessary for the entire calendar year.-

4. The Department shall notify all interested parties of any change in fee.-

**1.18 - CERTIFICATION OF POLITICAL SUBDIVISIONS****A. General-**

1. Subsection (a) of Section 1103, Subchapter 1, Chapter 11, Title 17 of the Delaware Code provides for the Department to certify a political subdivision as having effective control when such political subdivision has established and is enforcing regulations as to the size, spacing, and lighting of outdoor advertising signs, displays and devices in zoned commercial and industrial areas within its zoning jurisdiction.

2. Until such time as a political subdivision has

been certified by the Department, full responsibility for the control of outdoor advertising within the controlled area shall remain with the Department. Upon certification, the authority and responsibility for the control of outdoor advertising shall pass to the political subdivision. A certified political subdivision shall implement control and surveillance procedures and maintain such records as may be necessary to assure compliance with its regulations.-

3. The Department shall have the right to inspect any certified subdivisions procedures and records and if it is found that a subdivision's regulations are not being enforced, shall after 30 days written notice, resume full authority and responsibility for control of outdoor advertising in the controlled area.

4. Applications for certification shall be initiated by political subdivisions and shall be in writing addressed to the Secretary of the Department. Applications shall be processed in accordance with procedures promulgated by the Department.

5. The authority and responsibility for the control and regulation of directional and other official signs and notices as described in these regulations shall remain with the Department.

**1.19 - POLITICAL SUBDIVISION REGULATIONS-**

A. A political subdivision of the State of Delaware may establish and maintain standards which are more restrictive with respect to certain signs than the standards in these rules and regulations.

**1.20 - PENALTIES**

A. Whoever violates the provisions of these regulations shall be fined not less than \$10.00 nor more than \$50.00.

B. Each day that a violation is allowed to continue beyond the legal notice shall be considered a separate offense.

**1.21 - SEPARABILITY**

A. The various paragraphs of these rules and regulations are declared to be separable and should any word, phrase, sentence or portion be declared invalid, the remaining portions shall not be affected, but shall remain in full force and effect.

**OUTDOOR ADVERTISING REGULATIONS****1.01 - AUTHORITY****1.02 - APPLICABILITY****1.03 - PURPOSE****1.04 - DEFINITIONS****1.05 - STATUTORY REQUIREMENTS****1.06 - STANDARDS FOR DIRECTIONAL SIGNS****1.07 - STANDARDS FOR OFFICIAL SIGNS AND****NOTICES**

1.08 - STANDARDS FOR PUBLIC UTILITY AND RAILROAD SIGNS

1.09 - STANDARDS FOR SERVICE CLUB AND RELIGIOUS NOTICES

1.10 - STANDARDS FOR PUBLIC SERVICE SIGNS

1.11 - STANDARDS FOR SIGNS REQUIRING A LETTER OF PERMISSION FROM THE STATE

1.12 - STANDARDS FOR AGRI-PRODUCE SIGNS

1.13 - STANDARDS FOR SIGNS REQUIRING A STATE OUTDOOR ADVERTISING PERMIT

1.14 - BONDING REQUIREMENTS

1.15 - MAINTENANCE OF SIGNS

1.16 - DESTRUCTION OF TREES

1.17 - PERMITS AND FEES

1.18 - CERTIFICATION OF POLITICAL SUBDIVISIONS

1.19 - POLITICAL SUBDIVISION REGULATIONS

1.20 - PENALTIES

1.21 - SEVERABILITY

### **1.01 - AUTHORITY**

A. The following regulations are issued under the authority granted to the Department by Title 17 DE Code, Chapter 11, Subchapter I, Section 1103 (a) (2).

B. The Department of Transportation shall have overall jurisdiction and control throughout the State subject to the zoning process; the certification of political subdivisions; and the boundaries of incorporated municipalities and defined urban areas as provided in Title 17 DE Code, Chapter 11, Subchapter I, Sections 1102 (4) and (14); 1103 (c); and 1110 (b) (2) b. 2. and c. 1. and 2. and (4); and Subchapter II, Section 1121 (4). Within the Department, the responsibility for administration of the program shall rest with the Field Services Section of the Division of Highway Operations.

C. All interpretations will be made by the Secretary of the Department of Transportation of the State of Delaware, and his or her decisions will be final except in those cases where a point of law is raised.

### **1.02 - APPLICABILITY**

A. The following regulations shall apply to all outdoor advertising or outdoor advertising signs which are and shall be erected and maintained within sight of the nearest edge of the right-of-way of any State-maintained roadway in this State (or within 660 feet, if within a defined urban area) and which are visible from the main traveled way of such roadways, as established in Title 17 DE Code, Chapter 11, Subchapter I, Section 1102 (b) (4), and as provided in Title 17 DE Code, Chapter 11, Subchapter II, Section 1121.

B. These regulations shall become effective upon approval by the Secretary of the Department of Transportation of the State of Delaware.

### **1.03 - PURPOSE**

A. In Section 1101, Subchapter I, Chapter 11, Title 17 of the Delaware Code, the General Assembly has established that it is in the public's interest to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate and primary systems in order to protect the public investment in such highways.

B. The General Assembly, by enactment of Section 1103, Subchapter I, Chapter 11, Title 17 of the Delaware Code, has directed the Department to enforce the provisions of Chapter 11 and to issue regulations to implement the policy and accomplish the purposes of the Chapter.

C. The following regulations are issued in response to that directive and to clarify and implement the Department's policy regarding the control of outdoor advertising.

### **1.04 - DEFINITIONS**

A. For the purposes of these regulations, the following definitions shall apply:

1. "Outdoor advertising" or "outdoor advertising signs" or "sign" shall mean and shall include any outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of an Interstate or Federal-aid primary highway, or any other State-maintained roadway.

2. "Interstate system" means that portion of the National System of Interstate and Defense Highways located within the State of Delaware and officially designated as such, or as may hereafter be designated as such by the Department and approved by the Secretary of Transportation of the United States pursuant to the provisions of Title 23, United States Code.

3. "Primary system" means that portion of connected main highways of this State officially designated as such, or as may hereafter be designated as such, by the Department and approved by the Secretary of Transportation of the United States, pursuant to Title 23, United States Code, "Highways."

4. "A controlled area" shall mean, and "controlled areas" shall include, any area inside the boundaries of the State of Delaware which is adjacent to and within 660 feet of the edge of the right-of-way of a highway of the Interstate system or the primary system, and after July 1, 1975, beyond 660 feet, except that it shall remain 660 feet for signs located entirely within defined urban areas, as established in Title 17 DE Code, Chapter 11, Subchapter I, Section 1102 (b) (4).

5. "State law" or "Delaware law" means a State constitutional provision or statute; or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State constitutional provision or statute.

6. "Safety rest area" means an area or site established and maintained within or adjacent to a right-of-way, by or under public supervision or control, for the convenience of the traveling public.

7. "Sign panel" or "panel" means a single advertising message on a rigid medium, physically and / or visually separate from other such messages by edges of materials or visual borders or boundaries; trim; etc.

8. "Department" means the Department of Transportation of the State of Delaware.

9. "Division" means the Division of Highway Operations under the Department of Transportation.

10. "Section" means the Field Services Section under the Division of Highway Operations.

11. "Nonconforming sign" is one which was lawfully erected, but which does not comply with the provisions of the laws of the State of Delaware or State regulations enacted at a later date, or which later fails to comply with such laws or regulations due to changed conditions.

12. "Illegal sign" means any sign which was erected and / or is maintained in violation of Delaware law.

13. "Illuminated sign" means any sign that is lighted internally or externally, and shall be defined as illuminated whether or not the light is attached to the sign structure.

14. "Centerline of the highway" means (1) a line equidistant from the edges of a median separating the main traveled ways of a divided highway; or (2) the centerline of the main traveled way of a nondivided highway; or (3) the centerline of each of the main traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

15. "Main traveled way" means the traveled way of a highway on which through-traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

16. "Scenic area" means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in lands which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

17. "Parkland" means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge, or historic site.

18. "Legible" means capable of being read without visual aid by a person of normal visual acuity.

19. "Maintain" means to allow to exist.

20. "Freeway" means a divided arterial highway for through-traffic, with full control of access.

21. "Abandoned sign" means any sign in which the

owner has not demonstrated an interest by maintaining it in good condition.

22. "Zoned commercial or industrial areas" means those areas which are zoned for business, industry, commerce or trade pursuant to a State regulation or local zoning ordinance.

23. "Lease (license, contract, or easement)" means an agreement in writing by which possession or use of land or interests therein is given by the owner to another person for a specified period of time.

24. "Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction, pursuant to and in accordance with direction or authorization contained in Federal, State or local law, for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

25. "Public utility and railroad signs" means warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly or privately owned public utilities or railroads as essential to their operations.

26. "Service club and religious notices" means signs and notices which relate to meetings of nonprofit service clubs or charitable associations, or religious services.

27. "Public service signs" means signs located on school bus stop shelters.

28. "Directional signs" means signs containing directional information about public places owned or operated by Federal, State or local governments or their agencies; publicly or privately owned natural phenomena; historic, cultural, scientific, educational, or religious sites; areas of natural scenic beauty; and areas which are naturally suited for outdoor recreation; for which such signs are deemed to be in the interest of the traveling public.

29. "On-premises signs" means those signs, displays and devices advertising the sale or lease of property upon which they are located; or those signs, displays, and devices advertising activities conducted on the property on which they are located.

30. "Double-faced; back-to-back; and V-type signs" shall mean those configurations of multiple sign structures as those terms are commonly understood, except that in no instance shall these terms include two or more signs which are not (1) in the same ownership; (2) physically contiguous; (3) connected by the same structure or crossbracing; or (4) in the case of back-to-back or V-type signs, less than 15 feet apart at their nearest points.

31. "Agri-produce signs" means those signs located on the property of a farmer, indicating the sale of seasonal agricultural products.

32. "Information center" means an area or site



established and maintained at a safety rest area for the purpose of providing information to the public about places of interest within the State, and other information the Department deems desirable.

33. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the non-electro-mechanical change of advertising message or customary maintenance of a sign or sign structure.

34. "Commercial or industrial activities for purposes of unzoned commercial or industrial areas" means those activities generally recognized as commercial or industrial by zoning authorities within the State of Delaware, except that none of the following activities shall be considered commercial or industrial:

(a) Outdoor advertising structures.

(b) Forestry, ranching, grazing, and farming including, but not limited to, wayside fresh produce stands.

(c) Transient or temporary activities.

(d) Activities more than 600 feet from the nearest edge of the right-of-way along Interstate and Federal-aid primary routes and all other State-maintained roadways.

(e) Activities conducted in buildings principally used as residences.

(f) Railroad tracks and minor sidings.

(g) Activities not visible from the main traveled way.

35. "Customary maintenance" means the action necessary to keep a sign in good condition by (1) replacement of parts damaged or worn by age, or (2) painting of areas exposed to the weather (as the major portion of the sign); but shall not include either (a) maintenance which would be necessary for signs over 50% damaged (except by vandalism or Act of God circumstances) or in 50% disrepair, or (b) maintenance which would increase the size or monetary value of the sign.

36. "Free-standing sign" means any sign not attached or affixed to a building for its principal means of support.

37. "Political subdivision" means any municipal or county government duly established under the provisions of the Delaware Code.

38. "Sign facing" or "face" means a side (such as "the front" or "the back" or "the north-facing side") of a sign, to or upon which one or more sign panels are or may be affixed or attached.

39. "Electro-mechanical variable-message sign" means a sign that displays different messages, one at a time, within defined time intervals, and that changes messages by mechanical and / or electrical means.

40. "Static-message sign" means a sign that

displays a message that does not change except by replacement, re-painting, or similar means.

41. "Time of message display" means the length the time that a single message is displayed by an electro-mechanical variable-message sign.

42. "Time interval between messages" means the time interval required for one message on an electro-mechanical variable-message sign to finish changing to a different message.

43. "Urban area" or "urban boundaries" is as defined in 23 U.S.C. 101 (a).

44. "Manually-changeable-message sign" means a sign, the message of which can be changed (such as by the replacement of individual letters) by hand (or with the assistance of a hand-operated tool), and only by hand.

45. "Obsolete" means a sign that identifies or advertises a business or other entity that has relocated or no longer exists, or products or services that are no longer available, or events or activities that have transpired.

46. "State" means the State of Delaware.

#### **1.05 - STATUTORY REQUIREMENTS**

A. Section 1121, Subchapter II, Chapter 11, Title 17 of the Delaware Code provides that signs, displays or devices within the controlled area and visible from the main traveled way of the Interstate and primary systems shall be limited to the following types:

1. Official signs and notices; public utility and railroad signs; service club and religious notices; public service signs; and directional signs.

2. Those signs, displays and devices advertising the sale or lease of the real property upon which they are located.

3. Those signs, displays and devices advertising activities conducted on the real property upon which they are located.

4. Signs, displays, and devices located either (1) in controlled areas adjacent to the Interstate system and within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property is subject to municipal regulations and control, which are zoned industrial and commercial; or (2) in other controlled areas adjacent to the Interstate system zoned industrial or commercial which were zoned industrial or commercial as of September 21, 1959.

5. Signs, displays and devices located in controlled areas adjacent to highways of the primary system which are zoned industrial or commercial.

6. Signs, displays and devices located in unzoned commercial and industrial controlled areas adjacent to highways of the primary system and defined by regulations to be promulgated by the Department.

7. Any school bus waiting shelter displaying a sign provided such sign does not exceed 32 square feet in area

and with a limit of 2 signs per shelter at its present location. Should the Department of Education determine that there is no longer a need for a waiting shelter at its present location, the exemption provided by this paragraph shall then terminate.

B. The limitations established by this section (1.05) shall be applicable to signs, displays or devices within the controlled areas of all other State-maintained roadways with the approval of these regulations.

## **1.06 - STANDARDS FOR DIRECTIONAL SIGNS**

A. General: Permits as described in section 1.17 of these regulations shall not be required for directional signs.

1. A directional sign shall be erected only after first securing the written approval of the Department. Requests for approval to erect a directional sign shall be in writing, directed to the Department for the attention of the Manager of the Roadside Control Section. All requests shall be processed in accordance with procedures promulgated by the Department.

2. The following directional signs are prohibited:

(a) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of the activity.

(b) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device; or to obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

(c) Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

(d) Obsolete signs.

(e) Signs which are structurally unsafe or in disrepair.

(f) Signs which move or have any animated or moving parts.

(g) Signs located in rest areas, parklands or scenic areas.

(h) Signs not in conformance with applicable wind pressure requirements as specified by adopted local building code, or 25 pounds per square foot (whichever is greater).

(i) Signs for privately owned facilities unless such facilities are determined to be eligible for signing under the criteria and methods described in part 'F' of this section (1.06).

B. Size

1. The following limits shall apply to directional signs:

(a) Maximum area: 150 square feet

(b) Maximum height: 20 feet

(c) Maximum length: 20 feet

2. All dimensions shall include border and trim but

shall exclude supports.

C. Lighting

1. Directional signs may be illuminated, subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary system highway or any other State-maintained roadway, or which are of such intensity or brilliance as to impair the vision of a driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) No sign may be so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device or signal.

D. Spacing

1. Each location of a directional sign must be approved by the Department.

2. A directional sign must be located beyond 2,000 feet of an interchange or intersection at grade along the Interstate system or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way), unless erected by the Department.

3. A directional sign must be located beyond 2,000 feet of a rest area, parkland, scenic area (measured as for an interchange or intersection at grade, as described above), unless erected by the Department.

4. Number and mileage requirements

(a) Directional signs facing the same direction of travel must be placed more than 1 mile apart.

(b) A maximum of three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.

(c) Signs located adjacent to the Interstate system must be within 75 air miles of the activity.

(d) Signs located adjacent to the primary system must be within 50 air miles of the activity.

5. In determining the distance between signs facing in the same direction, and those within a seventy-five air mile radius, signs beyond the controlled area shall not be considered.

6. Signs legally in place within the controlled area shall be considered as though they were erected under these regulations.

E. Message content

1. The message of directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers.

Descriptive words or phrases, or pictorial or photographic representations of the activity or its environs, are prohibited.

F. Criteria for eligibility

1. The criteria for determining whether or not a privately owned facility is eligible for directional signing shall be that criteria presently utilized or hereafter adopted by one of the existing State agencies where primary purpose is the control and administration of the type of specific unique phenomena or site for which a directional sign application may be made.

2. A determination by the State agency to which a request is referred as to whether or not a privately owned facility is eligible for directional signing shall be binding on the Department.

G. Eligible activities

1. Privately owned activities or attractions eligible for directional signing shall be limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas, any of which must be nationally or regionally known, and of outstanding interest to the traveling public, as determined by the appropriate State agency authority.

**1.07 - STANDARDS FOR OFFICIAL SIGNS AND NOTICES**

A. General: Permits as described in section 1.17 of these regulations shall not be required for official signs and notices.

1. An official sign or notice shall be erected only after first securing written approval of the Department. Requests for approval to erect such signs shall be made and processed in the same manner as for directional signs, as described in section 1.06 of these regulations.

B. Official signs and notices shall be limited to the following:

1. Signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization by Federal, State or local law for the purposes of carrying out an official duty or responsibility.

2. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies.

C. The following signs are prohibited:

1. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device; or to obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

2. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

3. Obsolete signs.

4. Signs which are structurally unsafe or in disrepair.

D. Size

1. The following limits shall apply to official signs and notices:

(a) Maximum area: 15 square feet

(b) Maximum height: 5 feet

(c) Maximum length: 5 feet

2. All dimensions shall include border and trim but shall exclude supports.

E. Lighting

1. Official signs and notices may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited, except those giving only public service information.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

F. Spacing

1. Each location of an official sign or notice must be approved by the Department.

2. An official sign or notice, except when erected by the Department, shall be located beyond 2,000 feet of an interchange or intersection at grade along the Interstate system or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

3. An official sign or notice, except when erected by the Department, shall be located beyond 2,000 feet of a rest area, parkland, or scenic area (measured as for an interchange or intersection at grade, as described above).

**1.08 - STANDARDS FOR PUBLIC UTILITY AND RAILROAD SIGNS**

A. General: The erection of a public utility or railroad sign may be undertaken without Department approval.

1. Such signs will be limited to warning signs, informational signs, and notices or markers which are customarily erected and maintained by publicly or privately owned public utilities or railroads as essential to their operation.

B. Size

1. The following limits shall apply to public utility and railroad signs:

- (a) Maximum area: 4 square feet
- (b) Maximum height: 4 feet
- (c) Maximum length: 4 feet

2. All dimensions shall include border and trim but shall exclude supports.

#### C. Lighting

1. Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited (except railroad crossing signals).

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

#### D. Spacing

1. The number and spacing of public utility and railroad signs shall be limited to those customarily erected and maintained as essential to the operation of a particular utility or railroad.

### **1.09 - STANDARDS FOR SERVICE CLUB AND RELIGIOUS NOTICES**

A. General: Service club or religious notices shall be erected or maintained only after first securing approval from the Department.

1. Requests for permission must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

B. Service club and religious notice signs shall be limited to the following:

1. Signs and notices relating to meetings of nonprofit service clubs.

2. Signs and notices of charitable associations.

3. Signs and notices stating place and time of religious services.

C. The following service club and religious notice signs are prohibited:

1. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or to obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

2. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

3. Obsolete signs.

4. Signs which are structurally unsafe or in disrepair.

5. Signs which move or have any animated or moving parts.

6. Signs located in rest areas, parklands or scenic areas.

#### D. Size

1. The following limits shall apply to service club and religious notices:

(a) Maximum area: 4 square feet

(b) Maximum height: 2 feet

(c) Maximum length: 2 feet

#### E. Lighting

1. Illumination of service club and religious notices is prohibited.

#### F. Spacing

1. A sign may be placed on a major route entering the vicinity of the involved activity, but must be located within one-half mile of the meeting place.

#### G. Number

1. Total number of service club and religious notices about a particular locale shall not exceed two.

### **1.10 - STANDARDS FOR PUBLIC SERVICE SIGNS**

A. General: Public service signs shall not be erected or maintained without first securing a State outdoor advertising permit from the Department as required by these regulations.

1. Applications shall be made and processed in accordance with procedures promulgated by the Department.

2. A certification by the Delaware State Department of Education that each shelter on which signs are or are to be erected is needed to provide shelter for students at that location, shall accompany each application.

B. Public service signs shall be limited to the following:

1. Signs which identify the donor, sponsor, or contributors of the shelter on which the sign is erected; and / or

2. Which contain safety slogans or messages which shall occupy not less than 60 percent of the area of the sign; and

3. Which contain no other message.

#### C. Size

1. Public service signs shall not exceed 32 square feet in area.

#### D. Lighting

1. Illumination of public service signs is prohibited.

#### E. Number and placement

1. Only two public service signs shall be permitted at any one location. A sign will only be approved for a shelter

provided it does not in any way obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device; or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic; or interfere with the safe and free flow of traffic in any way.

### **1.11 - STANDARDS FOR SIGNS REQUIRING A LETTER OF PERMISSION FROM THE STATE**

A. General: Section 1114, Subchapter I, Chapter 11, Title 17 of the Delaware Code exempts certain signs from all provisions of Subchapter I, except that such signs shall be subject to the regulations established by the Department as required by Section 1103 of Subchapter I, Chapter 11 of Title 17.

#### B. Eligibility

1. An outdoor advertising sign, display, or device in a controlled area shall require a letter of permission from the State, but shall not require a State outdoor advertising permit, if:

(a) It is located on the same premises as the activity or property advertised; and

(b) It has as its sole purpose the identification of the activity conducted on the premises, or the advertisement of the sale or lease of the property on which it is located; and

(c) It meets the size requirements as specified in Title 17 DE Code, Chapter 11, Subchapter I, Section 1114 (1) or (2); or

(d) It is a sign of one of the classes of signs specified as excepted in Title 17 DE Code, Chapter 11, Subchapter I, Section 1114 (3) through (7).

#### C. Premise test

1. As used in these regulations, the premises on which an activity is conducted shall be the land occupied by the building or other physical uses that are necessary or customarily incidental to the activity, including such open spaces as are arranged and designed to be used in connection with such buildings or uses.

2. The following will not be considered to be a part of the premises on which an activity is conducted, and any signs located on such land will be considered signs requiring a State outdoor advertising permit:

(a) Any land not used as an integral part of the principal activity; or

(b) Any land used for a separate purpose unrelated to the advertised activity; or

(c) Any land at some distance from the principal activity, and in closer proximity to the roadway than the principal activity, and developed or used only in the area of the sign site, or between the sign site and the principal activity, and occupied solely by structures or uses only incidental to the principal activity, and which serve no reasonable purpose other than to qualify the land for signing purposes; or

(d) Any configuration of land which is such that it cannot be put to any reasonable use related to the principal activity other than for signing purposes; or

(e) Any land which is nonbuildable, such as swamp, marsh or other wetland; or

(f) Any land which is common or private roadway or held by easement or other lesser interest than the premises where the advertised activity is located; or

(g) Any land in excess of 50 feet from the principal activity or accessory uses (except that this restriction shall not apply to agri-produce signs).

#### D. Purpose test

1. The following signs, displays, and devices shall be considered as having as their purpose (1) the identification of the activity located on the premises or its products or services; or (2) the sale or lease of the property on which the sign is located:

(a) Any sign which consists solely of the name of the establishment.

(b) Any sign which identifies the establishment's principal or accessory products or services offered on the premises.

(c) Any sign which has no message content other than "for sale" or "for lease."

2. Signs in the following categories shall be considered as not fulfilling purpose requirements and shall be deemed to be, and regulated as, signs requiring a State outdoor advertising permit:

(a) A sign which brings rental income to the property owner; or

(b) Which consists principally of brand or trade name advertising; or

(c) Which advertises a product only incidental to the principal activity; or

(d) Which advertises, in addition to the activities conducted on the premises, activities not conducted on the premises; or

(e) One which, in addition to the sale or lease aspects of the property, advertises any product or service not located upon, or unrelated to, the business of selling or leasing the land on which the sign is located.

#### E. Applications

1. No sign, unless it is specifically exempted from State regulation by DE Code or the terms of these regulations, shall be erected before written approval is secured from the Department.

2. Each application must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

#### F. The following are prohibited:

1. Signs advertising activities that are illegal under Federal and State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts.

7. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot, whichever is greater.

#### G. Size

1. In order not to require a State outdoor advertising permit, a sign (either attached or free-standing) erected or maintained upon property to identify a business conducted thereon may not exceed 32 square feet in total area (sum of all panels).

2. A sign advertising the sale or lease of property may not exceed 12 square feet for a residential-zoned property and 32 square feet for any other zoning.

3. All measurements shall include border and trim, but shall exclude supports.

4. Signs exceeding these size limits shall be considered as not fulfilling size requirements and shall be deemed to be, and regulated as, signs requiring a State outdoor advertising permit.

#### H. Lighting

1. Signs may be illuminated subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or, owing light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or Primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

#### I. Spacing

1. Spacing requirements shall not apply except that a maximum of 10 signs, with a combined total area of not more than 500 square feet, shall be allowed at any one location.

2. Free-standing signs shall be limited to two per highway and shall be permitted only along the highway or

highways to which access is provided.

3. "For-sale" or "for-lease" signs shall be limited to a total of two for any one property.

#### J. Subdivision signs

1. Subdivision signs which basically indicate the name of the individual suburban community are allowable, provided:

(a) They are erected within the subdivision limits.

(b) The prime intent is identification.

(c) They have received prior approval from the Department

(d) They meet all eligibility tests specified in this section.

### **1.12 - STANDARDS FOR AGRI-PRODUCE SIGNS**

A. General: Agri-produce signs may not be erected on the Interstate system unless they meet fully the requirements for signs requiring a letter of permission from the State, but not a State outdoor advertising permit, as established in section 1.11 of these regulations.

1. Each application must be made in writing to the Department, directed to the attention of the Manager of the Roadside Control Section. Applications will be processed in accordance with procedures promulgated by the Department.

2. On other systems, agri-produce signs shall be considered as signs requiring a letter of permission from the State and shall be subject to the same requirements and conditions as described for signs requiring a letter of permission from the State, but not a State outdoor advertising permit, in section 1.11 of these regulations, with the following exceptions:

(a) Free-standing agri-produce signs shall be allowed to remain erected only during the seasonal period from May 1 through September 30. During the off-season, signs of this type shall be removed.

(b) Free-standing agri-produce signs may be located more than 50 feet, but not more than 500 feet, from the activity, and on the same property as the activity being conducted.

#### B. The following signs are prohibited:

1. Signs advertising activities that are illegal under Federal and State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts.

7. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot, whichever is greater.

**C. Size**

1. The following limits shall apply to agri-produce signs:

- (a) Maximum area: 32 square feet
- (b) Maximum height: 8 feet
- (c) Maximum length: 8 feet
- (d) Total sign area allowable per property: 100 square feet (maximum)

**D. Lighting**

1. Signs may be illuminated, subject to the following:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

**E. Spacing**

1. Each location of an agri-produce sign must be approved by the Department, and written approval must be received prior to erection of any signs.

2. Each sign must be located within 500 feet of the activity, on the same property and on the same side of the roadway as the activity.

**F. Number**

1. Each location may have a variable number of agri-produce signs, provided the total sign area allowable per property is not exceeded.

**G. Safety of the traveling public**

1. At all times the Division must give prime consideration to the safety of the traveling public and if at any time an unsafe condition should arise, the Department shall advise the location owner of certain positive steps which must be undertaken within a specified duration of time. Failure to comply with the required improvements will result in suspension of the approval and removal of the sign or signs until such time that corrective measures have been implemented.

**1.13 - STANDARDS FOR SIGNS REQUIRING A STATE OUTDOOR ADVERTISING PERMIT**

**I. STATIC-MESSAGE SIGNS**

A. General: Except as otherwise provided in DE Code and these regulations, no static-message outdoor advertising signs, displays, or devices shall be permitted to be erected or maintained except within controlled areas zoned as commercial or industrial under authority of State law; or pursuant to Title 17 DE Code, Chapter 11, Subchapter II, Section 1121 (6).

1. Except as otherwise provided in DE Code and these regulations, State outdoor advertising permits shall be required for all such signs. Applications and permits shall be processed in accordance with procedures promulgated by the Department.

2. In zoned commercial and industrial areas where the political subdivision has regulations governing the size, spacing and lighting of outdoor advertising signs, such regulations shall control and govern in political subdivisions certified for the regulation of outdoor advertising by the Secretary of Transportation of the United States. Absent such certification, both local and State regulations shall apply.

3. This category includes manually-changeable-message signs.

**B. Order of consideration of applications**

1. Applications for outdoor advertising permits will be processed in the order that they are received by the Department. Applications will be date-and-time-stamped upon receipt by the Department.

2. If applications for State outdoor advertising permits are received by the Department for two or more signs in such proximity to each other, or to existing permitted signs, or for any other reason such that only one of them may receive a State outdoor advertising permit, they will be considered in the order in which they are received by the Department, and the first to be found to be eligible for a State outdoor advertising permit shall be issued one (or shall be authorized to be constructed and erected).

3. An application rejected for incompleteness, inaccuracy or other valid cause shall not retain its place before other competing applications (if any), but, if resubmitted, will be considered a new application as of the date and time it is received.

**C. The following static-message signs are prohibited:**

1. Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or utility poles, or are attached to or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code, or 25 pounds per square foot, whichever is greater.

7. Signs which move or have any animated or moving parts.

#### D. Size

1. The maximum area for any static-message outdoor advertising sign facing shall be 1,200 square feet, with a maximum height of 25 feet or a maximum length of 60 feet.

2. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.

3. All dimensions shall include border and trim but shall exclude supports.

4. A static-message sign structure may contain one or two static-message sign panels per facing and two sign facings may be placed back-to-back or V-type at one location, but in no event shall the total area of any facing exceed 1,200 square feet.

5. A static-message sign panel which exceeds 600 square feet in area may not be on the same sign facing with any other panel.

#### E. Lighting

1. Static-message signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or any other State-maintained roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Signs so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal, are prohibited.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the Department.

#### F. Spacing

1. For Interstate and controlled-access highways, the structure for any outdoor advertising sign requiring a State outdoor advertising permit shall be at least 500 feet from any other such structure.

2. For non-controlled-access highways outside of incorporated municipalities, the structure for any outdoor

advertising sign requiring a State outdoor advertising permit shall be at least 300 feet from any other such structure. For non-controlled-access highways within incorporated municipalities, the structure for any static-message outdoor advertising sign requiring a State outdoor advertising permit shall be at least 100 feet from any other static-message outdoor advertising sign requiring a State outdoor advertising permit (and at least 200 feet from an electro-mechanical variable message sign).

3. When outdoor advertising signs requiring State outdoor advertising permits are separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the roadway at one time, the above spacing distances shall not apply.

4. The minimum distance between outdoor advertising signs requiring State outdoor advertising permits shall be measured along the nearest edge of the pavement between points directly opposite the signs and shall apply only to outdoor advertising structures located on the same side of the highway.

5. Outside of incorporated municipalities, outdoor advertising signs shall be located 500 feet (minimum distance) from any interchange, intersection at grade, safety rest area or information center on any Interstate or primary roadway (as measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

6. No outdoor advertising sign shall be placed within 35 feet of any highway rights-of-way at an intersection where two or more converge, unless the bottom of such a sign is at least 8 feet above ground level or road bed, whichever is higher.

7. Signs not requiring State outdoor advertising permits, as defined in these regulations, shall not be counted, nor shall measurements be made from them, for purposes of determining compliance with spacing requirements for signs requiring State outdoor advertising permits.

8. Except for signs, displays or devices advertising the sale or lease of, or activities conducted upon, the real property where they are located, or any outdoor advertising signs displayed on any school bus waiting shelter located and approved by the State Department of Education, as provided in 17 DE Code 11, Section 1108 (c), no outdoor advertising sign, display or device requiring a State outdoor advertising permit shall be erected within 25 feet of the right-of-way line of any public highway if visible from any portion of the same, as provided in 17 DE Code 11, section 1108 (a).

#### G. Non-conforming signs

1. A legally erected outdoor advertising sign requiring a State outdoor advertising permit found not to be in compliance with the spacing requirements of this section shall be determined to be a non-conforming sign and shall be



purchased as provided by State law and in accordance with policy and procedures developed and adopted by the Department.

2. In any instance where it is found that two or more outdoor advertising signs requiring State outdoor advertising permits do not meet spacing requirement, the date of the issuance of the original permit shall control, with the older being allowed to remain and the newer being determined to be a non-conforming sign (as above).

#### H. Control by political subdivisions

1. At any time that a political subdivision adopts comprehensive zoning laws that provide for the regulation of size, lighting and spacing of outdoor advertising signs in commercial and industrial zones, and enforces such laws, and applies for and is certified by the Department under the provisions of section 1.18 of these regulations, control of outdoor advertising signs located entirely within such political subdivision shall pass to such political subdivision.

## **II. ELECTRO-MECHANICAL VARIABLE-MESSAGE SIGNS**

A. General: Except as otherwise provided in DE Code and these regulations, no electro-mechanical variable-message outdoor advertising signs, displays, or devices shall be permitted to be erected or maintained except within controlled areas zoned as commercial or industrial under authority of State law; or pursuant to Title 17 DE Code, Chapter 11, Subchapter II, Section 1121 (6).

1. Except as otherwise provided in DE Code and these regulations, State outdoor advertising permits shall be required for all such signs. Applications and permits shall be processed in accordance with procedures promulgated by the Department.

2. In zoned commercial and industrial areas where the political subdivision has regulations governing the size, spacing and lighting of outdoor advertising signs, such regulations shall control and govern in political subdivisions certified for the regulation of outdoor advertising by the Secretary of Transportation of the United States. Absent such certification, both local and State regulations shall apply.

#### B. Eligibility

1. An electro-mechanical variable-message outdoor advertising sign, display or device shall be eligible for a State outdoor advertising permit only if:

- (a) It is located on the same property and premises as the activity or property advertised; and
- (b) It has as its purpose the identification of the activity conducted on the premises, or advertises the sale or lease of the property on which it is located; and
- (c) It meets the size and other requirements as specified in these regulations.

#### C. Premise Test

1. As used in these regulations, the premises on

which an activity is conducted shall be the land occupied by the building or other physical uses that are necessary or customarily incident to the activity, including such open spaces as are arranged and designed to be used in connection with such buildings or uses.

2. The following will not be considered to be a part of the premises on which an activity is conducted:

(a) Any land not used as an integral part of the principal activity; or

(b) Any land used for a separate purpose unrelated to the advertised activity; or

(c) Any land at some distance from the principal activity, and in closer proximity to the highway than the principal activity, and developed or used only in the area of the sign site, or between the sign site and the principal activity, and occupied solely by structures or uses only incidental to the principal activity, and which serve no reasonable purpose other than to qualify the land for signing purposes; or

(d) Any configuration of land which is such that it cannot be put to any reasonable use related to the principal activity other than for signing purposes; or

(e) Any land which is nonbuildable, such as swamp, marsh or other wetland; or

(f) Any land which is common or private roadway or held by easement or other lesser interest than the premises where the advertised activity is located; or

(g) Any land in excess of 50 feet from the principal activity or accessory uses.

#### D. Purpose test

1. The following signs, displays, and devices shall be considered as having as their purpose (1) the identification of the activity located on the premises or its products or services; or (2) the sale or lease of the property on which the sign is located:

(a) Any sign which consists solely of the name of the establishment.

(b) Any sign which identifies the establishment's principal or accessory products or services offered on the premises.

(c) Any sign which has no message content other than "for sale" or "for lease."

2. Signs in the following categories shall be considered as not fulfilling purpose requirements:

(a) A sign which brings rental income to the property owner; or

(b) Which consists principally of brand or trade name advertising; or

(c) Which advertises a product only incidental to the principal activity; or

(d) Which advertises, in addition to the activities conducted on the premises, activities not conducted on the premises; or

(e) One which, in addition to the sale or lease

aspects of the property, advertises any product or service not located upon, or unrelated to, the business of selling or leasing the land on which the sign is located.

**E. Order of consideration of applications**

1. Applications for outdoor advertising permits will be processed in the order that they are received by the Department. Applications will be date-and-time-stamped upon receipt by the Department.

2. If applications for State outdoor advertising permits are received by the Department for two or more signs in such proximity to each other, or to existing permitted signs, or for any other reason such that only one of them may receive a State outdoor advertising permit, they will be considered in the order in which they are received by the Department, and the first to be found to be eligible for a State outdoor advertising permit shall be issued one (or shall be authorized to be constructed and erected).

3. An application rejected for incompleteness, inaccuracy or other valid cause shall not retain its place before other competing applications (if any), but, if resubmitted, will be considered a new application as of the date and time it is received.

**F. The following are prohibited:**

1. Signs advertising activities that are illegal under Federal and State laws or regulations in effect at the location of those signs or at the location of the activity.

2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic.

3. Signs which are erected or maintained upon trees or utility poles or are attached to or painted or drawn upon rocks or other natural features.

4. Obsolete signs.

5. Signs which are structurally unsafe or in disrepair.

6. Signs which move or have any animated or moving parts other than the electro-mechanical variable-message part.

7. Signs not in conformance with applicable wind pressure requirements determined by adopted local building code or 25 pounds per square foot, whichever is greater.

**G. Size**

1. The maximum area for any electro-mechanical variable-message outdoor advertising sign facing shall be 150 square feet with a maximum height or length not to exceed 15 feet.

2. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.

3. All dimensions shall include border and trim, but shall exclude supports.

4. Two electro-mechanical variable-message sign facings may be placed back-to-back or in a V-type

configuration, but in no event shall the total area of any facing exceed 150 square feet.

**H. Lighting**

1. Electro-mechanical variable-message signs may be illuminated, subject to the following restrictions:

(a) Electro-mechanical variable-message signs shall have a time of message display for complete messages of no less than 60 seconds and have a time interval between messages of 2 seconds or less. Message changes must be accomplished by nondistractive means.

(b) Electro-mechanical variable-message signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of any roadway, or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle, are prohibited.

(c) Electro-mechanical variable-message signs so illuminated as to interfere with the effectiveness of, or obstruct, an official traffic sign, device, or signal, are prohibited.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the Department.

**I. Spacing**

1. For Interstate and controlled-access highways, the structure for an electro-mechanical variable-message outdoor advertising sign shall be at least 500 feet from any static-message outdoor advertising sign requiring a State outdoor advertising permit.

2. For non-controlled-access highways outside of incorporated municipalities, the structure for an electro-mechanical variable-message outdoor advertising sign shall be at least 300 feet from any static-message outdoor advertising sign requiring a State outdoor advertising permit. For non-controlled-access highways within incorporated municipalities, the structure for an electro-mechanical variable message sign shall be at least 200 feet from any static-message outdoor advertising sign requiring a State outdoor advertising permit.

3. When electro-mechanical variable-message outdoor advertising sign structures are separated from any static-message outdoor advertising sign requiring a State outdoor advertising permit by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the roadway at one time, the above spacing distances shall not apply. This exception shall not be construed to mean that electro-mechanical variable-message outdoor advertising signs may be erected nearer to each other than specified in paragraphs four and five (following) if only one of them could be seen from the roadway at any one time due to an intervening obstruction (as above).

4. An electro-mechanical variable-message sign that is visible from any State-maintained roadway (or, within an urban area, is within 660 feet of the right-of-way of any State-maintained roadway) shall not be located less than 5,280 feet (one mile) from any other electro-mechanical variable-message sign that is adjacent to the same roadway (whether on the same or the opposite side of the roadway).

5. Where State-maintained roadways intersect, and one of them has an electro-mechanical variable-message sign within a mile of the intersection, no electro-mechanical variable message sign may be erected on the other roadway(s) within a mile of the intersection.

6. Distances between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs.

7. Outside of incorporated municipalities, any outdoor advertising signs shall be located 500 feet (minimum distance) from any interchange, intersection at grade, safety rest area or information center on any Interstate or primary roadway (as measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

8. No outdoor advertising sign shall be placed within 35 feet of any highway rights-of-way at an intersection where two or more converge, unless the bottom of such a sign is at least 8 feet above ground level or road bed, whichever is higher.

9. Signs not requiring State outdoor advertising permits, as defined in these regulations, shall not be counted, nor shall measurements be made from them, for purposes of determining compliance with spacing requirements for signs requiring State outdoor advertising permits.

#### J. Non-conforming signs

1. A legally erected outdoor advertising sign requiring a State outdoor advertising permit found not to be in compliance with the spacing requirements of this section shall be determined to be a non-conforming sign and shall be purchased as provided by State law and in accordance with policy and procedures developed and adopted by the Department.

2. In any instance where it is found that two or more outdoor advertising signs requiring State outdoor advertising permits do not meet spacing requirement, the date of the issuance of the original permit shall control, with the older being allowed to remain and the newer being determined to be a non-conforming sign (as above).

#### K. Control by political subdivisions

1. At any time that a political subdivision adopts comprehensive zoning laws that provide for the regulation of size, lighting and spacing of outdoor advertising signs in commercial and industrial zones, and enforces such laws, and applies for and is certified by the Department under the provisions of section 1.18 of these regulations, control of outdoor advertising signs located entirely within such

political subdivision shall pass to such political subdivision.

#### L. Number of panels

1. An electro-mechanical variable-message sign facing may not contain more than one electro-mechanical variable-message panel. A static message panel may be affixed to the same sign facing as an electro-mechanical variable-message panel, but the total square footage of the facing may not exceed 150 square feet.

### **1.14 - BONDING REQUIREMENTS**

A. Any non-resident or foreign corporation engaged in the business of outdoor advertising shall be granted a permit for the posting or display of any advertisement; or the erection, use or maintenance of any advertising structure; only after such persons shall have furnished and filed with the Roadside Control Section a bond payable to the State of Delaware, with surety approved by the Department, and in the sum of \$5,000.00, conditioned that said individual company or corporation fulfills all the requirements of law and regulations and orders of the Department relating to the display of advertisements or the erection of advertising structures. Such bond shall remain in full force and effect until such obligations of such licensee to the State are satisfied.

### **1.15 - MAINTENANCE OF SIGNS**

#### A. General

1. All signs within the controlled areas shall be maintained in a good state of repair at all times. When any sign is damaged or falls into disrepair to the extent that obvious repairs are needed, the owner shall be notified by Certified Mail to make all necessary and allowable repairs. If the sign is not repaired, rebuilt, or removed within six months of said notification, the applicable sign permit shall lapse and become null and void. In these cases where permits are not required, such signs will be considered as being abandoned and will be removed by the Department.

#### B. Alterations

1. The size and shape of signs may be altered during repair, with the exception of non-conforming signs, providing that:

(a) At least ten working days prior to beginning of alterations, written notice is furnished to the Department fully, defining the nature and extent of the proposed alterations; and

(b) Alterations do not exceed permit limits;  
and

(c) Other requirements of these regulations are met.

#### C. Relocation of signs

1. With the exception of non-conforming signs, signs may be relocated provided they meet all criteria and requirements of these regulations. Any sign moved to a new location will require a new permit and permit number, and

will be considered and processed as a new sign.

**D. Maintenance of non-conforming signs**

**1. General**

(a) Non-conforming signs may be maintained or rebuilt when destroyed by vandalism or by Acts of God providing they are rebuilt to be substantially the same as they were in existence on June 30, 1970. Such signs may continue as long as they are not abandoned, destroyed or discontinued.

**2. Discontinued signs**

(a) A non-conforming sign which has displayed obsolete or damaged advertising matter, or has not displayed advertising matter for a period of six months subsequent to receipt of written notice from the Department, shall be considered as a discontinued sign and shall be required to be removed by the owner without compensation.

**3. Abandoned signs**

(a) Non-conforming signs which are in need of substantial repair either to the face or support structure, and are not repaired within a period of six months after receipt of written notice from the Department, shall be considered as an abandoned sign and shall be required to be removed by the owner without compensation.

**4. Destroyed signs**

(a) Non-conforming signs which have been damaged, except by vandalism or by Acts of God, to the extent that the cost of reconstructing the sign exceeds 50% of the sign if it were constructed new, shall be considered as being destroyed and shall be required to be removed by the owner without compensation.

**5. Owner's liability**

(a) If any signs as described in subparagraphs 2, 3 and 4 of this paragraph are removed by Division personnel, the sign owners shall be responsible for all costs incurred.

**1.16 - DESTRUCTION OF TREES**

**A. General**

1. In no case will the destruction of trees or shrubs within the right of way of any highway for the purpose of increasing or enhancing the visibility of an outdoor advertising sign be allowed.

**B. Penalties**

**1. Persons who undertake such action shall:**

(a) Be subject to possible criminal prosecution; and

(b) Have the permit for the involved sign revoked; and

(c) Be responsible for any corrective action relative to the trees and shrubs deemed necessary by the Department.

**1.17 - PERMITS AND FEES**

**A. General**

1. Section 1104, Subchapter I, Chapter 11, Title 17 of the Delaware Code includes provisions for:

(a) The Department to issue and renew permits for each sign for a period of at least one year for the erection and maintenance of outdoor advertising signs, displays, and devices; and

(b) The Department to establish and collect fees for the issuance of permits and renewals thereof in an amount deemed necessary to defray the costs of this operation.

**B. Duration of permits**

1. Each permit shall be valid for the period beginning January 1 and ending December 31 of each calendar year.

2. Permits granted during any month of the year shall expire on December 31 of the same calendar year.

**C. Fees**

1. Each calendar year the Department shall review its administrative costs and the number of signs and determine the adequacy of present permit fees to defray the involved costs.

2. When a change in fee is necessary, the new fee shall become effective for all new permits immediately upon receipt of Department approval and for renewals on January 1 of the next calendar year following approval.

3. The fee for a portion of the calendar year will be the same as determined necessary for the entire calendar year.

4. The Department shall notify all interested parties of any change in fee.

**1.18 - CERTIFICATION OF POLITICAL SUBDIVISIONS**

**A. General**

1. Subsection (a) of Section 1110, Subchapter I, Chapter 11, Title 17 of the Delaware Code provides for the Department to certify a political subdivision as having effective control when such political subdivision has established and is enforcing regulations as to the size, spacing, and lighting of outdoor advertising signs, displays and devices in zoned commercial and industrial areas within its zoning jurisdiction.

2. Until such time as a political subdivision has been certified by the Department, full responsibility for the control of outdoor advertising within the controlled area shall remain with the Department. Upon certification, the authority and responsibility for the control of outdoor advertising shall pass to the political subdivision. A certified political subdivision shall implement control and surveillance procedures and maintain such records as may be necessary to assure compliance with its regulations.

3. The Department shall have the right to inspect any certified subdivision's procedures and records, and if it is found that a subdivision's regulations are not being enforced,

shall, after 30 days written notice, resume full authority and responsibility for control of outdoor advertising in the controlled area.

4. Applications for certification shall be initiated by political subdivisions and shall be in writing addressed to the Secretary of the Department. Applications shall be processed in accordance with procedures promulgated by the Department.

5. The authority and responsibility for the control and regulation of directional and other official signs and notices as described in these regulations shall remain with the Department.

1.19 - POLITICAL SUBDIVISION REGULATIONS

A. A political subdivision of the State of Delaware may establish and maintain standards which are more restrictive with respect to certain signs than the standards in these rules and regulations.

1.20 - PENALTIES

A. Whoever violates the provisions of these regulations shall be fined not less than \$10.00 nor more than \$50.00.

B. Each day that a violation is allowed to continue beyond the legal notice shall be considered a separate offense.

1.21 - SEVERABILITY

A. The various paragraphs of these rules and regulations are declared to be severable and should any word, phrase, sentence or portion be declared invalid, the remaining portions shall not be affected, but shall remain in full force and effect.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

IN THE MATTER OF THE SALE, RESALE, AND OTHER PROVISIONS OF INTRASTATE TELECOMMUNICATIONS SERVICES (OPENED MAY 1, 1984; REOPENED) NOVEMBER 17, 1998; REOPENED ) JULY 24, 2001 ) PSC REGULATION DOCKET NO. 10

IN THE MATTER OF THE DEVELOPMENT OF REGULATIONS FOR THE FACILITATION OF COMPETITIVE ENTRY INTO THE PSC REGULATION DOCKET NO. 45

TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE ) MARKET (OPENED NOVEMBER 21, 1995; ) REOPENED NOVEMBER 17, 1998; ) REOPENED JULY 24, 2001) )

ORDER NO. 5767

AND NOW, to-wit, this 24th day of July, 2001;

WHEREAS, in PSC Order No. 3283 (June 18, 1991) entered In The Matter of the Sale, Resale and Other Provisions of Interstate Telecommunications Services, PSC Regulation Docket No. 10, the Commission issued its Rules For The Provision of Competitive Intrastate Telecommunications Services to govern telecommunications carriers offering intrastate telecommunications services for public use within the State; and

WHEREAS, by PSC Order No. 4468 (April 8, 1997) entered In The Matter of the Development of Regulations for the Facilitation of Competitive Entry Into the Telecommunications Local Exchange Service Market, PSC Regulation Docket No. 45, the Commission issued Interim Rules Governing Competition In The Market For Local Telecommunications Services to govern competitive local exchange telecommunications services within the State; and

WHEREAS, by PSC Order No. 4949 (Nov. 17, 1998) entered In the Matter of the Sale, Resale, and Other Provisions of Intrastate Telecommunications Services (Opened May 1, 1984; Reopened November 17, 1998), PSC Regulation Docket No. 10 and In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Service Market (Opened November 21, 1995; Reopened November 17, 1998), PSC Regulation Docket No. 45, the Commission reopened the proceedings on the Dockets 10 and 45 Rules to consider amendments to lessen the regulatory burdens on telecommunications carriers, as well as on the Commission; to reflect the changing regulatory environment; to harmonize, where appropriate, the provisions of the Dockets 10 and 45 Rules; and to conform, where practicable, the requirements of these Rules with other regulatory provisions; and

WHEREAS, by PSC Order No. 5521 (Aug. 15, 2000), the Commission repealed the Rules for the Provision of Competitive Intrastate Telecommunications Services adopted by PSC Order No. 3283 (June 18, 1991) entered In the Matter of the Sale, Resale and Other Provisions of Intrastate Telecommunications Services, and adopted by PSC Order No. 4468 (April 8, 1997) issued In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Market, PSC Regulation Docket No. 45; and the

Commission, at the same time, adopted new *Rules for the Provision of Telecommunications Services*; and

**WHEREAS**, the Commission Staff has recently reviewed the *Rules for the Provision of Telecommunication Services* and has proposed amendments to those Rules to address concerns raised by Staff which impact the certification of competitive local exchange carriers and intrastate carriers, including application and bonding requirements; to reflect changes that have occurred in federal and state telecommunications laws which impact the existing *Rules for the Provision of Telecommunications Services*; to ensure that carriers comply with federal and state law; and to conform, where practicable, the requirements of these Rules with other regulatory provisions; and

**WHEREAS**, the Commission is authorized by 26 Del. C. § 209 to fix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed, and followed thereafter by any public utility; and

**WHEREAS**, the Commission deems it appropriate to consider amendment of the *Rules for the Provision of Telecommunication Services* as proposed by its Staff, pursuant to the procedures for amendment of agency regulations set forth in 29 Del. C. §§ 10113-10119.

Now, therefore, **IT IS HEREBY ORDERED THAT:**

1. The Commission proceedings captioned *In The Matter of the Sale, Resale and Other Provisions of Interstate Telecommunications Services*, PSC Regulation Docket No. 10 and *In The Matter of the Development of Regulations for the Facilitation of Competitive Entry Into the Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45, are hereby reopened to consider amendment of the *Rules for the Provision of Telecommunications Services* as promulgated in Order No. 5521. These proceedings shall be consolidated and conducted as a single proceeding for this purpose.

2. William F. O'Brien is designated as the Hearing Examiner for this proceeding pursuant to the terms of 26 Del. C. § 502 and 29 Del. C. § 10116, to organize, classify, and summarize all materials and other testimony filed in this proceeding, and to make findings and recommendations to the Commission concerning the proposed amendments on the basis of the materials and information submitted. Hearing Examiner O'Brien is specifically authorized to solicit additional comments and to conduct, upon due notice, such public hearings as may be required to develop further materials and evidence. Francis J. Murphy, Esquire, is designated as Staff Counsel for this matter.

3. The Commission seeks public comment and input concerning the content of the proposed amendments to the *Rules for the Provision of Telecommunications Services*, and to comply with the requirements of 29 Del. C. §§ 10113 and 10115, the Commission hereby issues the Notice of Proposed Rules Amendment attached hereto as Exhibit "A"

for publication in the Register of Regulations and in two (2) newspapers of general circulation in the State.

4. Pursuant to 26 Del. C. § 209 and 29 Del. C. § 10111 et seq., the Commission promulgates the proposed revised *Rules for the Provision of Telecommunications Services* in the form attached hereto as Exhibit "B". Exhibit "B" reflects the existing *Rules for the Provision of Telecommunications Services* and the proposed amendments. Proposed additions to the text of the existing *Rules for the Provision of Telecommunications Services* are identified by underlining (except for headings) and proposed deletions by striking.

5. The Commission Secretary shall file the Notice of Proposed Rules Amendment, together with copies of the existing text of the *Rules for the Provision of Telecommunications Services* and the proposed amendments thereto, with the Registrar of Regulations for publication in the Register of Regulations, as required by 29 Del. C. § 10115, on August 1, 2001. In addition, the Commission Secretary shall, contemporaneous with such filing, cause a copy of the Notice attached as Exhibit "A" and the proposed revised *Rules for the Provision of Telecommunications Services* attached as Exhibit "B" to be sent by United States Mail to: (1) all prior participants in PSC Regulation Dockets 10 and 45; (2) all persons who have made timely requests for advance notice of such proceedings; and (3) the Division of the Public Advocate.

6. The Commission Secretary shall cause the publication of the attached Notice of Proposed Rules Amendment attached hereto as Exhibit "A" to be made in The News Journal and the Delaware State News newspapers on the following dates, in two column format, outlined in black:

August 1, 2001 (The News Journal)

August 2, 2001 (Delaware State News)

7. The telecommunications service providers regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del. C. § 114.

8. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair  
Joshua M. Twilley, Vice Chair  
Donald J. Puglisi, Commissioner  
Jaymes B. Lester, Commissioner  
Joann T. Conaway, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

**EXHIBIT "A"****BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE SALE, |  
RESALE, AND OTHER PROVISIONS |  
OF INTRASTATE ) PSC  
TELECOMMUNICATIONS | REGULATION  
SERVICES ) DOCKET NO. 10  
(OPENED MAY 1, 1984; REOPENED)|  
NOVEMBER 17, 1998; REOPENED ) |  
JULY 24, 2001) ) |

IN THE MATTER OF THE )  
DEVELOPMENT OF ) PSC  
REGULATIONS FOR THE ) REGULATION  
FACILITATION OF ) DOCKET NO. 45  
COMPETITIVE ENTRY INTO THE )  
TELECOMMUNICATIONS LOCAL )  
EXCHANGE SERVICE ) |  
MARKET (OPENED ) |  
NOVEMBER 21, 1995; ) |  
REOPENED NOVEMBER 17, 1998; ) |  
REOPENED JULY 24, 2001) ) |

**NOTICE OF PUBLIC COMMENT PERIOD AND  
PROPOSED AMENDMENTS TO THE DELAWARE  
PUBLIC SERVICE COMMISSION'S RULES FOR  
THE PROVISION OF TELECOMMUNICATIONS  
SERVICES**

On July 24, 2001, the Delaware Public Service Commission ("the Commission") entered an Order promulgating proposed revisions to the Commission's *Rules for the Provision of Telecommunications Services*. The proposed amendments to the *Rules* are intended: 1) to address concerns raised by Staff which impact the certification of competitive local exchange carriers and intrastate carriers, including application and bonding requirements; 2) to reflect other changes that have occurred in federal and state telecommunications laws which impact the existing *Rules*; 3) to ensure that carriers comply with federal and state law; and 4) to conform, where practicable, the requirements of the *Rules* with other regulatory provisions.

The Commission has authority to promulgate the regulations pursuant to 26 Del. C. § 209(a) and 29 Del. C. § 10111 et seq.

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Twelve (12) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon

Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before August 31, 2001.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before August 31, 2001.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations will be available for review on the Commission's website: [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the Commission's secretary, Karen J. Nickerson, by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by Internet e-mail at [knickerson@state.de.us](mailto:knickerson@state.de.us).

**EXHIBIT "B"****PUBLIC SERVICE COMMISSION OF DELAWARE  
PROPOSED REVISED RULES  
FOR THE PROVISION OF  
TELECOMMUNICATIONS SERVICES**

Effective:

**PART A  
CERTIFICATION AND REGULATION OF  
CARRIERS****Rule 1. Definitions.**

(a) **Rules** shall mean these Rules, including PARTS A and B, governing the provision of telecommunications services in Delaware.

(b) **Carrier** shall mean any person or entity offering to the public Telecommunications service that originates or terminates within the State of Delaware. The term "Carrier" does **not** include:

(i) any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation;

(ii) a company that provides telecommunications services solely to itself and its affiliates or members or

between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public;

(iii) providers of domestic public land mobile radio service provided by cellular technology excluded from the Commission's jurisdiction under 26 *Del. C.* § 202(c); and

(iv) Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12.

(c) **CPCN** shall mean a Certificate of Public Convenience and Necessity issued by the Commission.

(d) **Commission** shall mean the Public Service Commission of Delaware.

(e) **Competitive Local Exchange Carrier ("CLEC")** shall mean a Carrier, other than the Incumbent Local Exchange Carrier, offering and/or providing local telecommunications exchange services within the State of Delaware.

(f) **Incumbent Local Exchange Carrier ("ILEC")** shall mean in Delaware Bell Atlantic-Delaware, Inc., and any successor thereto.

(g) **Facilities-based Carrier** shall mean a Local Exchange Carrier that directly owns, controls, operates, or manages plant and equipment through which it provides local exchange services to consumers within the local exchange portion of the public switched network.

(h) **Local Exchange Carrier ("LEC")** shall mean a Carrier offering and/or providing local telecommunications exchange services (i.e., CLECs and ILECs); including both facilities-based and non-facilities-based Carriers.

(i) **Local Telecommunications Exchange Service** shall mean non-toll, intrastate Telecommunications Services provided over a Local Exchange Carrier's network, including, but not limited to, exchange access services and basic local services.

(j) **Resale** shall mean the sale to an end user of any telecommunications service purchased from another Carrier.

(k) **Telecommunications** shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form and content of the information as sent and received.

(l) **Telecommunications Service** shall mean the offering of telecommunications for a fee directly to the public within the State of Delaware (originating or terminating within the State, without regard to how the Carrier decides to route the traffic), or to such classes of users as to be effectively available to the public, regardless of the facilities used.

"Telecommunications Service" does **not** include:

(i) the rent, sale, lease, or exchange for other value received, of customer premises equipment, except for specialized terminal equipment as defined in 48 U.S.C. § 610(g);

(ii) telephone or telecommunications answering services, paging services, and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission;

(iii) The one-way distribution of entertainment services or informational services with no more than incidental customer interaction required for selection of such entertainment or information services; and

(iv) Telecommunications service provided by either primary cellular technology or by domestic public land mobile radio service, even in the event that such transmission originates or terminates in a wireline telephone.

## **Rule 2. Applicability.**

These Rules shall apply to all Carriers, as defined by these Rules, and shall be construed consistently with Rule 3 of these Rules.

## **Rule 3. Application of and Conflict With Other Rules, Regulations, Tariffs and/or Price Lists.**

(a) The ILEC.

(i) The ILEC will remain subject to the Telecommunications Technology [Investment] Act (TTIA), 26 *Del. C.* sub. Ch. VII-A, and any implementing regulations promulgated by the Commission during the term of its election thereunder. During such term, the ILEC shall not be subject to the requirements of these Part A. Rules; and

(ii) The ILEC has Carrier of last resort obligations in its service territory.

(b) Telephone Service Quality Regulations (Docket No. 20).

All Carriers shall provide telephone service in accordance with the Telephone Service Quality Regulations the Commission adopted in PSC Regulation Docket No. 20, by Order No. 3232 (January 15, 1991) as such may from time to time be amended, except to the extent these Rules impose obligations or grant privileges inconsistent therewith.

(c) Negotiation and Mediation Guidelines.

All Carriers must abide by the Commission's Guidelines for Negotiations, Mediation, Arbitration and Approval of Agreements between Local Exchange Telecommunications Carriers (Order No. 4245).

(d) Rules of Practice and Procedure

The practice and procedure governing any proceedings required or authorized by these Rules shall be as set forth by the Commission's Rules of Practice and Procedure adopted in PSC Docket No. 99-9, by Order No. 5057 (April 6, 1999) as the same may be hereafter from time to time amended.

(e) Other Rules and Statutes.

These Rules shall prevail over any inconsistent requirements imposed by prior Order or regulation of the



Commission, except for Rule 3(a) preceding and where expressly authorized by a Commission Order granting a waiver. All Carriers remain subject to any and all applicable provisions of state and federal law.

(f) Tariffs or Price Lists.

To the extent that a tariff or price list of any Carrier is inconsistent with these Rules, then, and in that event, these Rules shall control, subject to Rule 3(a) preceding, unless where expressly authorized by a Commission Order granting a waiver.

**Rule 4. Certification.**

(a) Certification Requirement.

No person or entity shall offer public intrastate or local exchange telecommunications service within the State of Delaware without first obtaining from the Commission a Certificate of Public Convenience and Necessity authorizing such service. A Carrier offering telecommunications service within the State of Delaware without a CPCN duly issued by this Commission is acting unlawfully and shall immediately cease offering such service until a CPCN is granted.

(b) Application.

An applicant for a CPCN shall file with the Commission an original and ten (10) copies of an Application for Certificate of Public Convenience and Necessity, together with the statutory filing fee set forth in 26 *Del. C.* § 114, as the same may from time to time be amended. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately serve the public and that the public convenience and necessity requires or will require the operation of such business. If the applicant fails to provide the required information and exhibits within six months of the application, the Commission may take action to close this docket and the applicant will forfeit its application fee.

(c) Notice.

The applicant shall serve a notice of the filing of such an application upon the Public Advocate, and to such other entities as may be required by the Commission. The applicant shall provide public notice of the filing of the application in two (2) newspapers having general circulation throughout the county or counties where service is to be offered in a form to be prescribed by the Commission.

(d) Business License and Registered Agent.

An applicant shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including that it has received authorization to do business issued by the Secretary of State. An applicant shall provide the name, address, and telephone number of its Delaware Resident Agent. Following certification, all Carriers shall promptly notify the Commission in writing of

changes of Resident Agent or the name, address, or telephone number thereof.

(e) Identification and Billing of Intrastate and Interstate Traffic.

An applicant shall be required to set forth an effective plan for identifying and billing intrastate versus interstate traffic, and shall pay the appropriate LEC for access at the LEC's prevailing access charge rates. If adequate means of categorizing traffic as interstate versus intrastate are not or cannot be developed, then, for purposes of determining the access charge to be paid to the LEC for such undetermined traffic, the traffic shall be deemed to be of the jurisdiction having the higher access charges and billed at the higher access charges.

(f) Bonds.

(i) ~~Applicants with assets under \$250,000~~ Performance Bonds. All applicants with total assets less than \$250,000 must post a \$10,000 performance bond with Delaware surety and renew such bond annually until the Carrier's assets exceed \$250,000.

(ii) Carriers requiring deposits, or any form of payment in advance for service.

No Carrier shall require its customers in Delaware to pay a deposit or pay or otherwise provide any security or advance as a condition of service unless that Carrier first has filed with the Commission a bond, issued by a corporate surety licensed to do business in Delaware, guaranteeing the repayment of all customer deposits and advances upon the termination of service. The bond need not be filed with the application, but no CPCN will be issued until such bond is filed with the Commission. The amount of the bond shall be the greater of: (A) 150% of the projected balance of deposits and advances at the end of three years of operation; or (B) \$50,000. If at any time the actual amount of deposits and advances held by a Carrier exceeds the bond, then the Carrier promptly shall file with the Commission a bond with surety to comply with the requirement of the preceding sentence. A Carrier may petition for waiver of the bond requirement three years from the date the certificate was issued and such waiver will be granted upon a demonstration of an adequate operating history and financial resources to insure the repayment to customers of any advance payments or deposits held.

(g) Minimum Financial Requirements for LECs.

(i) Any applicant for certification as a facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available;

(ii) Any applicant for certification to do business as a non-facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available;

(iii) Any applicant that has profitable interstate operations or operations in other states may meet the

minimum financial requirements of subparagraphs (i) and (ii) above by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirements; and

(iv) An applicant may demonstrate cash or cash equivalent by the following:

(A) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

(B) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

(C) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(D) Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least (12) months beyond certification of the applicant by the Commission;

(E) Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(F) Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding a controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

(G) Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(H) Guarantee, issued by a qualified subsidiary, affiliate of the applicant, or a qualified corporation holding controlling interests in the applicant irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

(h) Initial Tariffs or Price Lists.

An applicant shall file proposed initial rates, prices, rules, regulations, terms and conditions of service specifically adopted for the State of Delaware. Upon an investigation into unjust and unreasonable pricing practices, the Commission Staff may require the applicant to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service. Copies of the applicant's rates and terms and condition of service in other jurisdictions must be provided to the Commission upon request. Any applicant's tariff or price lists must include at a minimum specific policies regarding:

(i) customer deposits and advances;

(ii) prompt reconciliation of customer billing problems and complaints; and

(iii) timely correction of service problems.

(i) Demonstration of Fitness.

An applicant shall be required to demonstrate to the Commission its financial, operational, and technical ability to render service within the State of Delaware. Such demonstration shall include, but is not limited to, the following:

(i) The applicant's certified financial statements current within twelve (12) months of the filing, and, where applicable, the most recent annual report to shareholders and SEC Form 10-K;

(ii) A brief narrative description of the applicant's proposed operations in Delaware, any present operations in all other states, and states for which service applications are pending;

(iii) A description of the relevant operations experience of applicant's personnel principally responsible for the proposed Delaware operations;

(iv) A specific description of the applicant's engineering and technical expertise showing its qualifications to provide the intended service, including the names, addresses, and qualifications of the officers, directors, and technical or engineering personnel or contractors who will be operating and/or maintaining the equipment to be used to provide such service; and

(v) A description, including location, of the applicant's facilities that the applicant will use to provide the proposed service in the next three years. Upon written request of the Commission Staff, the applicant shall provide a one year construction, maintenance, engineering, and financial plan for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such service.

### **Rule 5. New Options or Offerings; Changes to Existing Rates, Prices or Terms and Conditions.**

(a) Notice Required for New Service Options and Offerings.

No Carrier shall offer new telecommunication service options or offerings except ten (10) days after filing with the Commission the proposed tariff or price list.

(b) Notice Required to Revise Existing Tariff or Price List.

No Carrier shall revise an existing tariff or price list except three (3) days after filing with the Commission the proposed tariff or price list.

(c) Service of Notice.

A Carrier filing a new service or changes to an existing service pursuant to this Rule shall serve the filing on:

(i) the Public Advocate; and

(ii) all interested persons that submit a written request to the Commission to receive such notice.

A Carrier shall file with the Commission a

certificate of service as part of its notice requirement. To the extent that any such documents contain information claimed to be proprietary and interested persons have submitted a written request for notice, but have not executed an appropriate proprietary agreement, the Carrier shall provide an expurgated version of the notice to such parties.

(d) Investigation of Filings.

A filing made pursuant to this rule shall not preclude the Commission or its Staff from an informal or formal investigation into the filing in order to protect fair competition, including requiring the Carrier to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service.

(e) Special Contracts

A Carrier shall file under this rule all contracts with a customer to the extent the contract changes the terms or conditions generally offered to the public in the carrier's tariff or price list on file with the Commission.

**Rule 6. Discrimination Prohibited.**

No Carrier shall unreasonably discriminate among persons requesting a service within the State of Delaware. Any finding of unreasonable discrimination shall be grounds for suspension or revocation of the Certificate of Public Convenience and Necessity granted by the Commission, as well as the imposition of monetary and other penalties pursuant to 26 Del. C. §§ 217 and 218.

**Rule 7. Abandonment or Discontinuation of Service.**

A Carrier may abandon or discontinue service, in whole or in part, in accordance with the terms of 26 Del. C. § 203A(c). The Carrier shall provide notice of its application to discontinue or abandon service to its customers subscribing to such service and to the Division of Public Advocate. Such notice shall describe the options available to the customers. The Carrier's application to abandon or discontinue a service shall contain proposed provision for payment of all relevant outstanding liabilities (deposits and advance payments), if any, to customers within the State of Delaware.

**Rule 8. Services to be Provided By CLECs Providing Voice Telephone Service.**

Any CLEC providing voice telephone service shall offer, at a minimum, the following telecommunication services to its customers:

- (a) access to the public switched network;
- (b) dial tone line services;
- (c) local usage services;
- (d) access to all available long distance Carriers;
- (e) TouchTone services;
- (f) White page listing;
- (g) Access to 911 enhanced emergency system;
- (h) Local directory assistance service;

- (i) Access to telecommunications relay service.

**Rule 9. Resale Prohibitions.**

(a) Cross-Class Selling.

A Carrier that by tariff or price list makes a service available only to residential customers or a limited class of residential customers may prohibit the purchaser from offering such services to classes of customers that are not eligible for such services from the providing Carrier.

(b) Other.

With respect to any restrictions on resale other than cross-class selling as described in paragraph (a) above, a Carrier may impose a restriction only if the Commission determines that the restriction is reasonable and nondiscriminatory.

**Rule 10. Reports to the Commission.**

(a) Annual and Periodic Reports.

All Carriers shall file with the Commission an Annual Report as described below and such other reports or information as the Commission may from time to time require to fulfill its statutory obligations. The Annual Report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include:

(i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware;

(ii) the information used to determine Delaware income tax liability;

(iii) financial and operating information for the smallest management unit that includes Delaware;

(iv) intrastate revenues (net of uncollectible) by service category;

(v) intrastate access and billing and collection cost by service category;

(vi) total number of customers by service category;

(vii) total intrastate minutes of use by service category;

(viii) total intrastate number of calls by service category;

(ix) a description of service offered;

(x) a description of each complaint received by service category (in the form of a single Complaints Log); and

(xi) verification of deposits, customer advances, the bond requirement and the bond with surety, where applicable.

(b) Accounting System.

All Carriers shall use an accounting system in accordance with Generally Accepted Accounting Principles or such other uniform system of accounts previously approved in writing by the Chief of Technical Services of the Commission.

## (c) Attestation.

All Carriers shall file all reports required by these Rules with a sworn statement by the person under whose direction the report was prepared, that the information provided in the report is true and correct to the best of the person's knowledge and belief.

## (d) Time for Filing.

All periodic reports to be filed with this Commission must be received on or before the following due dates, unless otherwise specified herein, or unless good cause is demonstrated by the Carrier:

- i. Annual Report: one hundred twenty (120) days after the end of the reported period; and
- ii. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

**Rule 11. Enforcement.**

## (a) Commission Oversight.

The Commission shall have the authority and the discretion to take such action, upon complaint, motion, or formal or informal investigation, to remedy any alleged violations of these Rules. The Commission shall have available to it all remedies and enforcement powers bestowed by statute and consistent with due process.

## (b) Violation and Penalties.

Failure of a Carrier to comply with any provision of these Rules may result in the suspension or revocation of its CPCN, and/or of the imposition of monetary or other penalties as authorized by *26 Del. C. §§ 217 and 218*.

## (c) Proceedings.

Upon application by any person affected, including the Division of the Public Advocate or another Carrier, or upon its own motion, the Commission may conduct a proceeding to determine whether a Carrier has violated any provision of these Rules. Such proceedings shall be conducted according to the Commission's Rules of Practice and Procedure.

## (d) Investigations.

For the purpose of determining whether it is necessary or advisable to commence a proceeding, the Commission or its Staff may, at any time, investigate whether a Carrier is in compliance with these Rules. Upon request, the Carrier shall provide to the Commission or its Staff sufficient information to demonstrate its compliance or noncompliance with the Rules, including such data as shall demonstrate that the Carriers' services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

(e) Customer Complaints as Ground for Proceeding or Investigation.

The Commission may hold a proceeding to determine whether to suspend or revoke the certificate of, or otherwise penalize any Carrier for reason of customer

complaints. The Commission may investigate any customer complaints received.

**Rule 12. Waiver of Rules Upon Petition.**

A Carrier may petition the Commission for waiver of a Rule or Rules on a temporary or permanent basis by demonstrating to the satisfaction of the Commission that a waiver is in the public interest or for other good cause, including unreasonable hardship or burden. The Carrier shall comply with all Rules until the petition for waiver has been granted.

## PART B

**CUSTOMER ELECTION OF PREFERRED CARRIER****Rule 13. Additional Definitions.**

For purposes of this PART B, in addition to the Definitions set forth by PART A, the following definitions shall apply:

~~(a) Submitting Carrier shall mean a Carrier that: (i) requests on the behalf of a customer that the customer's telecommunications Carrier be changed; and (ii) seeks to provide retail services to an end user customer. A Carrier may be treated as a Submitting Carrier, however, if it is responsible for any unreasonable delays in the submission of Carrier change requests or for the submission of unauthorized Carrier change requests, including fraudulent authorizations.~~

~~(b) Executing Carrier shall mean a Carrier that effects a request that a customer's telecommunications Carrier be changed. A Carrier may be treated as an executing Carrier, however, if it is responsible for any unreasonable delays in the execution of unauthorized Carrier changes, including fraudulent authorizations.~~

(e) Preferred Carrier shall mean the Carrier providing service to the customer at the time of the adoption of these Rules, or such Carrier as the customer thereafter designates as the customer's Preferred Carrier.

~~(d) Preferred Carrier Change Order shall mean generally any order changing a customer's designated Carrier for local exchange service, intraLATA intrastate toll service or both.~~

**Rule 14. Applicability.**

Any Carrier offering intrastate and/or local exchange service for public use within the State of Delaware, including the ILEC, Bell Atlantic-Delaware, Inc., shall be subject to the provisions of these Part B Rules.

**Rule 15. Verification of Orders for Telecommunications Service.**

No Carrier shall submit a Preferred Carrier Change Order unless and until the Order has been first confirmed in accordance with one of the ~~following~~ procedures set forth in 47 C.F.R. § 64-1120.

(a) The Carrier has obtained the customer's written authorization in a form that meets the requirements of Rule 16; or

(b) The Carrier has obtained the customer's electronic authorization to submit the Preferred Carrier Change Order. Such authorization must be placed from the telephone number(s) on which the Preferred Carrier is to be changed and must confirm the information required in Rule 16(e). Carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the Preferred Carrier change, including automatically recording the originating automatic numbering identification; or

(c) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the Preferred Carrier Change Order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number). The independent third party must: (1) not be owned, managed, controlled, or directed by the Carrier or the Carrier's marketing agent; (2) must not have any financial incentive to confirm Preferred Carrier Change Orders for the Carrier or the Carrier's marketing agent; and (3) must operate in a location physically separate from the Carrier or the Carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a Preferred Carrier change.

**Rule 16. Letter of Agency Form and Content.**

(a) A Carrier may use a letter of agency to obtain written authorization and/or verification of a customer's request to change his or her Preferred Carrier selection. A letter of agency that does not conform with this Rule the requirements set forth in 47 C.F.R. § 64.1130 is invalid.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (c) of this Rule having the sole purpose of authorizing a Carrier to initiate a Preferred Carrier change. The letter of agency must be signed and dated by the customer to the telephone line(s) requesting the Preferred Carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c), a letter of agency authorizing a preferred Carrier selection affecting the customer's intrastate service provider only, may be combined with checks that contain only the required letter of agency as prescribed above together with the necessary information to make the check a negotiable instrument. Such a letter of agency check shall not contain any promotional language or material. Such a letter of agency

check shall contain in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a Preferred Carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The customer's billing name and address and each telephone number to be covered by the Preferred Carrier change order;

(ii) The decision to change the Preferred Carrier from the current Carrier to the soliciting Carrier;

(iii) That the customer designates the Submitting Carrier to act as the customer's agent for the Preferred Carrier change;

(iv) That the customer understands that only one Carrier may be designated as the customer's local exchange or intrastate Carrier for any one telephone number; and

(v) That the customer understands that any Preferred Carrier selection the customer chooses may involve a charge to the customer for changing the customer's Preferred Carrier.

(f) Any Carrier designated in a letter of agency as a Preferred Carrier must be the Carrier directly setting the rates for the customer.

(g) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current telecommunications Carrier.

(h) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency.

**Rule 17. Submission and Execution of Changes in Customer Carrier Selections.**

(a) Submission and execution of changes in customer carrier selection shall comply with 47 C.F.R. § 64.1120. A Submitting Carrier shall maintain and preserve records of verification of customer authorization for a minimum period of two years after obtaining such verification.

(b) An Executing Carrier shall not verify the submission of a change in customer's selection of a provider of telecommunications service received from a Submitting Carrier. An Executing Carrier shall promptly execute, without an unreasonable delay, any changes that have been verified and submitted by a Submitting Carrier.

(c) Where a Carrier provides more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll), that Carrier must obtain separate

authorization from the customer for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorization obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in these Rules.

#### Rule 18. Preferred Carrier Freezes.

(a) A Preferred Carrier freeze prevents a change in a customer's Preferred Carrier selection unless the customer has given the Carrier from which the freeze was requested his or her express consent. All Carriers who offer Preferred Carrier freezes must comply with the provisions of this Rule 47 C.F.R. § 64.1190.

(b) All Local Exchange Carriers that offer Preferred Carrier freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's Carrier selections.

(c) Preferred Carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a Preferred Carrier freeze. The Carrier offering the freeze must obtain separate authorization for each service for which a Preferred Carrier freeze is requested.

(d) All Carrier provided solicitation and other materials regarding Preferred Carrier freezes must include:

(i) An explanation, in clear and neutral language, of what a Preferred Carrier freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a Preferred Carrier freeze; and explanation that these steps are in addition to the Commission's verification rules for changing a customer's Preferred Carrier selections; and an explanation that the customer will be unable to make a change in Carrier selection unless he or she lifts the freeze; and

(iii) An explanation of any charges associated with the Preferred Carrier freeze.

(e) No Carrier shall implement a Preferred Carrier freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The Local Exchange Carrier has obtained the customer's written and signed authorization in a form that meets the requirements of these Rules; or

(ii) The Local Exchange Carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the Preferred Carrier freeze is to be imposed, to impose a Preferred Carrier freeze. The electronic authorization should confirm appropriate verification data (e.g. the customer's date of birth or social

security number) and the information required in these Rules. Carriers electing to confirm Preferred Carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the Preferred Carrier freeze request, including automatically recording the originating automatic number identification; or

(iii) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the Preferred Carrier freeze and confirmed that appropriate verification data (e.g. the customer's date of birth or social security number) and the information required in these Rules. The independent third party must: (A) not be owned, managed, or directly controlled by the Carrier or the Carrier's marketing agent; (B) must not have any financial incentive to confirm Preferred Carrier freeze requests for the Carrier or the Carrier's marketing agent; and (C) must operate in a location physically separate from the Carrier or the Carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a Preferred Carrier freeze.

(f) A Carrier may accept a customer's written and signed authorization to impose a freeze on his or her Preferred Carrier selection. A written authorization that does not conform to this Rule is invalid and may not be used to impose a Preferred Carrier freeze.

(i) The written authorization shall comply with these Rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The customer's billing name and address and the telephone number(s) to be covered by the Preferred Carrier freeze;

(B) The decision to place a Preferred Carrier freeze on the telephone number(s) and particular service(s). The authorization must contain a separate statement for each service to be frozen;

(C) That the customer understands that she or he will be unable to make a change in Carrier selection unless she or he lifts the Preferred Carrier freeze; and

(D) That the customer understands that any Preferred Carrier freeze may involve a charge to the customer.

(g) All Carriers who offer Preferred Carrier freezes must, at a minimum, offer customers the following procedures for lifting a Preferred Carrier freeze:

(i) A Local Exchange Carrier administering a Preferred Carrier freeze must accept a customer's written

~~and signed authorization stating her or his intent to lift a Preferred Carrier freeze; and~~

~~(ii) A Local Exchange Carrier administering a Preferred Carrier freeze must accept a customer's oral authorization stating her or his intent to lift a Preferred Carrier freeze and must offer a mechanism that allows a submitting Carrier to conduct a three-way conference with the Carrier administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a Preferred Carrier freeze, the Carrier administering the freeze shall confirm appropriate verification data (e.g., the customer's date of birth or social security number) and the customer's intent to lift the particular freeze.~~

**Rule 19. Customer Protection.**

(a) Procedures To Be Followed By The Customer.

A customer who believes his or her Carrier or Carriers have been changed, without the customer's authorization, and/or that the customer has been billed for charges not authorized by the customer, should first attempt to resolve the matter with the Carrier or Carriers responsible for the unauthorized changes and/or charges. If the customer is not satisfied with the resolution offered by the Carrier, the customer may file a complaint with the Commission.

(b) Procedures To Be Followed By Carriers.

A Carrier who is informed by a customer that the customer believes the Carrier has caused or allowed a change in the customer's Carrier without the customer's authorization, or that the Carrier has caused or allowed the customer to be billed for charges not authorized by the customer shall attempt to resolve the complaint promptly and in good faith. If the customer and Carrier are not able to resolve the complaint, then the Carrier shall inform the customer orally or in writing of the right to file a complaint with the Commission and shall provide the customer with the Commission's address and telephone number.

(c) Carriers to Maintain Record of Complaints.

Each Carrier shall maintain a record of the complaints received by it alleging that the Carrier has caused or allowed a customer's Carrier to be changed without the customer's authorization or has caused or allowed the customer to be billed for charges not authorized by the customer. The Carrier shall maintain the record of each complaint for a period of two years following initial notification of the complaint. Upon request by the Commission or its staff, a Carrier shall furnish a copy of its complaint records and such other information as the Commission Staff may require. A Carrier's complaint records shall include at least the following information:

(i) name, address, and telephone number of complainant and the date and manner received by the Carrier; and

(ii) a chronological summary of the dispute and its current status, including any resolution and date of

resolution.

(d) Refund and Penalties.

In the event the Commission determines that a Carrier has caused a customer's Carrier for a service to be changed without the customer's authorization obtained in exact compliance with these Rules, or has caused the customer to be billed for charges imposed without exact compliance with these Rules, then the Commission ~~may~~shall require the Carrier to promptly refund or void to the customer any charges the Carrier has caused to be billed as a result of the unauthorized change or charge, and/or any other remedies available for violation of these Rules as allowed by law. 26 Del. C. § 924(c). The Commission's remedies are in addition to those required under 47 C.F.R. § 64.1170 to the extent the FCC's remedies have not provided a refund or credit to the subscriber in the amount of 100% of all charges the Carrier caused to be billed as a result of the unauthorized change or charge.

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Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF LANDSCAPE ARCHITECTURE  
24 DE Admin. Code 200  
Statutory Authority: 24 Delaware Code,  
Section 205 (24 Del.C. §205)**

**Order Adopting Rules and Regulations**

AND NOW, this 26th day of June, 2001, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Board of Landscape Architects of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

**I. Nature of the Proceedings**

Pursuant to the Board's authority under 24 *Del. C.* § 205(a)(1) and 205(a)(12), the Board proposed to revise its existing Rules and Regulations to revise the reporting requirements and the timing of the submission of documentation showing compliance with the continuing education requirements. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated April 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29

*Del. C.* § 10115. The public hearing was held on May 2, 2001 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

**II. Evidence and Information Submitted**

The Board received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. At the May 2, 2001 hearing, the Board received no comment from the public regarding the proposed revisions.

**III. Findings of Fact and Conclusions**

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.
2. The proposed amendments to the Rules and Regulations are necessary to clarify the continuing education reporting requirements and the timing of submissions of the documentation to demonstrate compliance. The proposed amendments will assist licensees in understanding the process for demonstrating compliance with the continuing education requirements for renewal of licenses.
3. The Board concludes that it has statutory authority to



promulgate rules and regulations pursuant to 24 *Del. C.* §§ 205(a)(1) and 205(a)(12).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* § 200.

#### **IV. Decision and Order to Adopt Amendments**

**NOW, THEREFORE**, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

#### **By Order of the Board of Landscape Architects (As authenticated by a quorum of the Board)**

Paul DeVilbiss, RLA, President, Professional Member  
Lorene Athey, RLA, Secretary Professional Member  
Marlene A. Bradley, Treasurer, Public Member  
Abby L. Betts, Public Member  
Denise Husband, RLA, Professional Member

- 1.0 Filing of Applications for Written Examination
- 2.0 Filing of Applications for Reciprocity
- 3.0 Filing of Applications for Certificate of Authorization
- 4.0 Licenses
- 5.0 Seal
- 6.0 Renewal of Licenses
- 7.0 Continuing Education as a Condition of Biennial Renewal
- 8.0 Inactive Status
- 9.0 Disciplinary Proceedings and Hearings
- 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

#### **1.0 Filing of Applications for Written Examination**

1.1 Persons seeking licensure pursuant to 24 *Del.C.* § 206 shall submit an application for written examination on a form prescribed by the Board to the Board's office at the Division of Professional Regulation (the "Division") along with the application fee established by the Division. Applicants for written examination shall be filed in such office of the Board no later than twelve (12) weeks prior to the opening date of the examination.

1.2 Each applicant must submit documentary evidence, as more fully described on the application form, to show the Board that the applicant is clearly eligible to sit for the examination under 24 *Del.C.* § 206.

1.3 The Board shall not consider an application for written examination until all items described in paragraphs

1.1 and 1.2 of this Rule have been submitted to the Board's office.

1.4 The Board reserves the right to retain as a permanent part of the application any or all documents submitted.

1.5 The examination shall be the Council of Landscape Architectural Registration Board's ("CLARB") current uniform national examination. CLARB establishes a passing score for each uniform national examination.

Statutory Authority: 24 *Del.C.* §§206, 207

#### **2.0 Filing of Applications for Reciprocity**

2.1 Persons seeking licensure pursuant to 24 *Del.C.* § 208, shall submit payment of the fee established by the Division and an application on a form prescribed by the Board which shall include proof of licensure and good standing in each state or territory of current licensure, and on what basis the license was obtained therein, including the date licensure was granted. Letters of good standing must also be provided for each state or jurisdiction in which the applicant was ever previously licensed.

2.2 The Board shall not consider an application for licensure by reciprocity until all items described in 24 *Del.C.* § 208 and paragraph 2.1 of this Rule have been submitted to the Board's office.

2.3 A passing exam score for purposes of reciprocity shall be the passing score set by CLARB, or the passing score accepted by the Delaware Board, for the year in which the exam was taken.

Statutory Authority: 24 *Del.C.* §208.

#### **3.0 Filing of Applications for Certificate of Authorization**

Corporations or partnerships seeking a certificate of authorization pursuant to 24 *Del. C.* § 212 shall submit an application on a form prescribed by the Board. Such application shall include the (a) names and addresses of all officers and members of the corporation, or officers and partners of the partnership, and (b) the name of a corporate officer in the case of a corporation, or the name of a partner in the case of a partnership, who is licensed to practice landscape architecture in this State and who shall be responsible for services in the practice of landscape architecture on behalf of the corporation or partnership.

Statutory Authority: 24 *Del.C.* §212.

#### **4.0 Licenses**

Only one license shall be issued to a licensed landscape architect, except for a duplicate issued to replace a lost or destroyed license.

#### **5.0 Seal**

5.1 Technical Requirements

5.1.1 For the purpose of signing and sealing

drawings, specifications, contract documents, plans, reports and other documents (hereinafter collectively referred to as "drawings"), each landscape architect shall provide him or herself with an individual seal of design and size as approved by the Board to be used as hereinafter directed on documents prepared by him or her or under his/her direct supervision for use in the State of Delaware.

5.1.2 The application of the seal impression or rubber stamp to the first sheet of the bound sheets of the drawings (with index of drawings included), title page of specifications, and other drawings and contract documents shall constitute the licensed landscape architect's stamp.

5.1.3 The seal to be used by a licensee of the Board shall be of the embossing type or a rubber stamp, and have two (2) concentric circles. The outside circle measures across the center 1 13/16 inches. The inner circle shall contain only the words "NO." and "State of Delaware." At the bottom the words "Registered Landscape Architect" reading counterclockwise, and at the top the name of the licensee.

5.1.4 An impression of the seal is to be submitted to the Board to be included in the licensee's records.

#### 5.2 Use of the Seal

5.2.1 A landscape architect shall not sign or seal drawings unless they were prepared by him/her or under his/her direct supervision.

5.2.2 "Supervision" for purposes of signing and/or sealing drawings shall mean direct supervision, involving responsible control over and detailed professional knowledge of the contents of the drawings throughout their preparation. Reviewing, or reviewing and correcting, drawings after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over, nor detailed professional knowledge of, the content of such drawings throughout their preparation.

5.2.3 The seal appearing on any drawings shall be prima facie evidence that said drawings were prepared by or under the direct supervision of the individual who signed and/or sealed the drawings. Signing or sealing of drawings prepared by another shall be a representation by the registered landscape architect that he/she has detailed professional knowledge of and vouches for the contents of the drawings.

Statutory Authority: 24 Del.C. §205(a)(1); 212(a).

### 6.0 Renewal of Licenses

6.1 Each application for license renewal or request for inactive status shall be submitted on or before the expiration date of the current licensing period. However, a practitioner may still renew his or her license within 60 days following the license renewal date upon payment of a late fee set by the Division. Upon the expiration of 60 days following the license renewal date an unrenewed license shall be deemed

lapsed and the practitioner must reapply pursuant to the terms of 24 Del.C. §210(b).

6.2 It shall be the responsibility of all licensees to keep the Board and the Division informed of any change in name, home or business address.

Statutory Authority: 24 Del.C. §210.

### 7.0 Continuing Education as a Condition of Biennial Renewal

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship as defined in Rule 7.5. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs, or self-directed activities approved by the Board in accordance with Rule 7.6.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 To be acceptable for credit toward this requirement, all courses, seminars, sessions, programs or self-directed activities shall be submitted to the Board for approval as provided in Rules 7.3 and 7.4. The Board shall recommend any course, seminar, session or program for continuing education credit that meets the criteria in subparagraph 7.1.2.1 below.

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the Delaware Code and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

~~7.1.2.2 The Board shall meet at least once during each calendar quarter of the year and act on each course, seminar, session or program properly submitted for its review. Each program, or portion thereof, shall be either recommended for approval, recommended for disapproval or deferred for lack of information. If deferred or disapproved, the licensee will be notified and may be granted a period of time in which to correct deficiencies. The Board may also seek verification of information submitted by the licensee.~~

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education

credit:

7.1.3.1 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.2 Council of Landscape Architectural Registration

7.1.4 Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.

7.2 Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).

7.3 For licensing periods beginning February 1, 2001 ~~1999~~ and thereafter, documentation as required by Rule 7.4 of all continuing education hours must ~~requests for approval of continuing education activity, along with the required supporting documentation,~~ shall be submitted to the Board for approval on or before November 1 of the year preceding the biennial renewal date of the licenses. A license shall not be renewed until the Board has approved twenty (20) hours of continuing education classes as provided in Rule 7.1 or has granted an extension of time for reasons of hardship.

7.4 Reporting: The licensee shall submit ~~the following documentation~~ a completed Verification of Continuing Education Form provided by the Division of Professional Regulation to the Board, ~~for each continuing education activity completed:~~

- ~~A completed Continuing Education Reporting Form~~
- ~~A syllabus, agenda, itinerary or brochure published by the sponsor of the activity~~
- ~~A document showing proof of attendance (i.e. certificate, a signed letter from the sponsor attesting to attendance, report of passing test score).~~

7.4.1 Each licensee must retain copies of ~~Board approved continuing education reporting forms and~~ all supporting materials documenting proof of continuing education compliance for submission to the Board upon request. Supporting materials include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). ~~Licensees will be required to complete a continuing education log form prior to license renewal and to submit supporting materials upon request. The Board reserves its right to request additional information and/or documentation to verify continuing education compliance.~~

7.5 Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in

individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

7.6 Self-directed Activities: For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

7.6.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.

Statutory Authority: 24 **Del.C.** §205(12).

**8.0 Inactive Status**

8.1 A licensee may, upon written request to the Board, place his/her license on inactive status.

8.2 A licensee who has been granted inactive status and who wishes to re-enter the practice of landscape architecture, shall submit a written request to the Board along with a prorated renewal fee and proof of completion of twenty (20) hours of continuing education during the period of inactive status.

8.3 Licensees on inactive status shall renew their inactive status by notification to the Division of Professional Regulation at the time of biennial license renewal.

Statutory Authority: 24 Del.C. §210(c).

## 9.0 Disciplinary Proceedings and Hearings

9.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 Del.C. §8807(h)(1)-(3).

9.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

9.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

9.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

9.1.4 If a hearing before the Board has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 Del.C. Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

9.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 Del.C. §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 Del.C. §§213 and 215; 29 Del.C. §§10111, 10122 and 10131

## 9.2 Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 Del.C. §213.

Statutory authority: 24 Del.C. §§205(7)(8); 213, 214, 215.

## 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and

continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

10.6.4 Agreement by the regulated professional to

be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

10.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such

reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

10.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF PROFESSIONAL COUNSELORS OF**  
**MENTAL HEALTH**

24 DE Admin. Code 3000

Statutory Authority: 24 Delaware Code,  
Section 3006(a)(1)(5), (24 **Del.C.** §3006(a)(1)(5))

**Order Adopting Rules and Regulations**

AND NOW, this 15th day of June, 2001, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Board of Professional Counselors of Mental Health of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

**I. Nature of the Proceedings**

Pursuant to the Board's authority under 24 *Del. C.* § 3006(a)(1) and 3006(a)(5), the Board proposed to revise its existing Rules and Regulations to establish a hardship exception to the continuing education requirements. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the *Delaware Register of Regulations* dated March 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on April 6, 2001 at 3:30 p.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

**II. Evidence and Information Submitted**

The Board received written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. Ms. Rita Mariani, Chairperson, State Council for Persons with Disabilities wrote a March 29, 2001 memorandum in support of the proposed revisions.

Ms. Mariani stated that the State Council for Persons with Disabilities endorsed the proposed changes and noted that the proposed hardship exception was consistent with federal and state law that state agencies make reasonable modifications in policies when necessary to accommodate persons with covered disabilities. The Board also received a letter dated April 2, 2001 from Ms. Patricia Maichle informing the Board that the Governor's Advisory Council for Exceptional Citizens reviewed the proposed regulations and endorsed them because the intended changes were compatible with federal and state law.

At the April 6, 2001 hearing, the Board received no public comment.

**III. Findings of Fact and Conclusions**

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments. The Board received favorable written comments regarding the proposed revisions.

2. The proposed amendments to the Rules and Regulations are necessary to establish a hardship exception to the continuing education requirements applicable for renewal of licenses.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del. C.* § 3006(a)(1). The Board further concludes that it has statutory authority to establish by rule and regulation continuing education standards required for license renewal under 24 *Del. C.* § 3006(a)(5).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* Chapter 30.

**IV. Decision and Order to Adopt Amendments**

**NOW, THEREFORE**, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

**By Order of the Board of Professional Counselors of**  
**Mental Health**

**(As authenticated by a quorum of the Board)**

James D. Wilson, Jr., President, Professional Member  
Arnold J. Swygert, Vice President Public Member  
Joan T. McDonough, Secretary, Public Member  
Michael D. Betts, Professional Member  
Jean B. Gunnells, Professional Member

**Board of Professional Counselors of Mental Health**

- 1.0 Meetings and Elections
- 2.0 Licensure by Certification
- 3.0 Licensure by Reciprocity
- 4.0 Licensure of Associate Counselors of Mental Health
- 5.0 Application and Fee, Affidavit and Time Limit
- 6.0 Renewal of Licensure
- 7.0 Ethics
- 8.0 Return to Active Status
- 9.0 Disciplinary Proceedings and Hearings
- 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Meetings and Elections**

1.1 Meetings - Regular meetings of the Board shall be held on a monthly basis as needed, at least in June and December, at a time and place designated by the Board.

1.2 Election of Officers - The Board shall elect officers annually at the regular December meeting.

Statutory authority: 24 *Del.C.* §3004

**2.0 Licensure by Certification**

Applicants for LPCMH licensure by certification shall fulfill the following requirements:

2.1 Certification - The applicant shall be certified by NBCC as a National Certified Counselor (NCC), by ACMHC as a Certified Clinical Mental Health Counselor (CCMHC), or by a certifying organization acceptable to the Board.

2.2 Certifying Organization - Certifying organizations acceptable to the Board shall include the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), formerly the National Academy for Certified Clinical Mental Health Counselors (NACCMHC), International Christian Institute Certification Board, Commission on Rehabilitation Counselor Certification Board, and other certifying organizations that meet all of the following criteria:

2.2.1 The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

2.2.2 The organization shall require the applicant to take a standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

2.2.3 The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

2.2.4 The organization shall require the minimum of a master's degree in the counseling or behavioral science field. This certification shall be verified by the "NBCC

Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

2.3 Graduate Transcript - The applicant's master's degree in a counseling or behavioral science field, required by his/her certifying organization for certification, shall be documented by an official transcript submitted directly to the Board by the accredited educational institution granting the degree.

2.4 Professional Counseling Experience - Professional Counseling experience shall be defined as the accumulation of hours spent providing mental health counseling services in a professional mental health clinical counseling setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients.

2.4.1 Designated Objective Agent - For purposes of professional counseling experience obtained through self-employment, a designated objective agent shall be a professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse, parent, step-parent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be acceptable as a designated objective agent.

2.4.2 Thirty (30) graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

2.4.3 Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" and/or the "Verification of Self Employment" form.

2.5 Supervised Professional Counseling Experience - Supervised professional counseling experience shall be the accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised professional counseling experience acceptable to the Board shall be defined as follows:

2.5.1 Supervised professional counseling experience shall consist of 1,600 hours of clinical experience, directly supervised by a LPCMH. Where direct supervision by a LPCMH is not available, a licensed clinical social worker, licensed psychologist or licensed physician specializing in psychiatry may supervise the applicant.

2.5.2 Direct Supervision - 1600 hours of direct supervision acceptable to the Board, for purposes of §3008(a)(2) shall mean supervision overseeing the supervisee's application of clinical counseling principles,

methods or procedures to assist individuals in achieving more effective personal and social adjustment. At least 100 of the 1600 hours of supervision shall consist of face to face consultation between the supervisor and the supervisee. Direct supervision may take place in individual and/or group settings, defined as follows:

2.5.2.1 Individual Supervision - Individual supervision shall consist of one-to-one, face-to-face meetings between supervisor and supervisee.

2.5.2.2 Group Supervision - Group supervision shall consist of face-to-face meetings between supervisor and no more than six (6) supervisees.

2.5.2.3 Supervisory Setting - No more than forty (40) hours of group supervision shall be acceptable toward the 100-hour requirement. The entire 100-hour requirement may be fulfilled by individual supervision.

2.5.3 Supervision shall be verified by the "Direct Supervision Reference Form," submitted directly to the Board by the approved clinical supervisor.

Statutory authority: 24 *Del.C.* §3008.

**See 4 DE Reg. 970 (12/1/00)**

### 3.0 Licensure by Reciprocity

Applicants for LPCMH licensure by reciprocity (i.e., those requesting licensure based upon active licensure status in another state) shall meet the following requirements:

3.1 Proof of Licensure Status - The applicant shall hold an active professional counseling license in good standing from another state. Verification of licensure status shall be submitted directly to the Board by that state on the "Verification of Licensure or Certification from Another State" form.

3.2 Notarized Statement of Prior Licensing Jurisdictions - The applicant shall submit a notarized statement listing all licensing jurisdictions in which he/she formerly practiced and a signed "Release of Information" granting the Board permission to contact said jurisdictions for verification of disciplinary history and current status.

3.3 Determination of Substantial Similarity of Licensing Standards- The applicant shall submit a copy of the statute and rules of licensure from the state issuing his/her license. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state are at least equivalent to the educational, experience and supervision requirements set forth in Title 24, *Delaware Code*, Chapter 30. Based upon the information presented, the Board shall make a determination regarding whether the licensing requirements of the applicant's licensing state are substantially similar to those of Delaware.

3.4 LACMH Option - If the Board determines that the requirements of the applicant's licensing state are not equivalent with regard only to the experience requirements of §3008(a)(2), the applicant shall be eligible for licensure as

a LACMH, in which case he/she shall have four (4) years to complete the supervision requirements of §3008(a)(2). The applicant shall be given full credit for such properly documented experience and/or supervised experience as was required for licensure in his/her licensing state.

Statutory authority: 24 *Del.C.* §§3010.

**See 4 DE Reg. 970 (12/1/00)**

### 4.0 Licensure of Associate Counselors of Mental Health

4.1 Written Plan - The applicant shall submit a written plan for supervised professional experience, on the "Written Plan for Professional Counseling Experience and Supervision" form, supplied by the Board, and signed by the approved professional supervisor.

Statutory authority: 24 *Del.C.* §3009.

**See 4 DE Reg. 970 (12/1/00)**

### 5.0 Application and Fee, Affidavit and Time Limit

When applying for licensure, the applicant shall complete the following:

5.1 Application and Fee - The applicant shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee.

5.2 Affidavit - The applicant shall submit a signed, notarized "Affidavit," affirming the following:

5.2.1 that he/she has not violated any rule or regulation set forth by the Delaware Board of Professional Counselors of Mental Health;

5.2.2 that he/she has not been the recipient of any administrative penalties from any jurisdiction in connection with licensure, registration or certification as a mental health provider,

5.2.3 that he/she does not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to safely act as a LPCMH or LACMH,

5.2.4 that he/she has not been convicted of any felony and that he/she does not have any criminal conviction or pending criminal charge, whether felony or misdemeanor, which is substantially related to fitness to practice as a mental health provider; and

5.2.5 that the applicant has not been penalized for any willful violation of any code of ethics or professional mental health counseling standard.

5.3 Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

Statutory authority: 24 *Del.C.* §§3008, 3009, 3010.

**See 4 DE Reg. 970 (12/1/00)**

### 6.0 Renewal of Licensure

6.1 Renewal Date - The LPCMH license shall be renewable biennially on September 30 of even-numbered



years, beginning with September 30, 1994.

6.2 Requirements for Renewal - Requirements for licensure renewal are as follows:

6.2.1 Certification - The candidate for renewal shall hold current certification in good standing as of the date of licensure renewal in NBCC, ACMHC or other certifying organization acceptable to the Board. This certification shall be verified by the appropriate "Verification of Certification Form," submitted directly to the Board by the certifying organization.

6.2.2 Continuing Education

6.2.2.1 Requirement - The candidate for renewal shall have completed no less than forty (40) clock hours of acceptable continuing education per two (2) year licensure renewal period. Continuing education requirements for initial licensure periods of less than two (2) years shall be prorated.

6.2.2.2 Acceptable Continuing Education - Acceptable continuing education shall include the following:

6.2.2.2.1 Continuing education hours approved by a national mental health organization, such as NBCC, ACMHC, APA, shall be acceptable. Other training programs may apply for continuing education oriented towards enhancement, knowledge and practice of counseling. Hours are to be documented by a certificate signed by the presenter, or by designated official of the sponsoring organization.

6.2.2.2.2 Academic course work, and presentation of original papers providing training and clinical supervision may be applied for up to twenty (20) clock hours of the continuing education requirement. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented.

Under no circumstances, may there be less than twenty (20) hours of face-to-face participation in continuing education as outlined above.

6.2.2.3 Make-Up of Disallowed Hours - In the event that the Board disallows certain continuing education clock hours, the candidate for renewal shall have three (3) months after the licensure renewal date to complete the balance of acceptable continuing education hours required.

6.2.3 Hardship. The Board shall have the authority to make exceptions to the continuing education requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not necessarily limited to, disability, illness, military service, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the Board.

~~6.2.3~~ 6.2.4 Verification - Verification of continuing education hours shall be by the "Continuing Education Form for Licensed Professional Mental Health Counselors," with appropriate documentation for each item listed attached to the form.

~~6.2.4~~ 6.2.5 Fees - The candidate for renewal shall make payment of a renewal fee in an amount prescribed by the Division of Professional Regulation for that licensure renewal period. A fifty percent (50%) late charge shall be imposed upon any fee paid after the renewal date.

~~6.2.5~~ 6.2.6 It shall be the responsibility of all licensees to keep the Division informed of any change of address. Renewal applications will be sent to the last address on file with the Division.

Statutory authority: 24 *Del.C.* §§3006(a)(5), 3012.

**See 4 DE Reg. 970 (12/1/00)**

**7.0 Ethics**

7.1 The Board hereby adopts the current version of National Board for Certified Counselors Code of Ethics ("Code").

7.2 The practice of all persons licensed as an LPCMH or LAMCH shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

Statutory authority: 24 *Del.C.* §§3006(b), 3013.

**See 4 DE Reg. 970 (12/1/00)**

**8.0 Return to Active Status**

8.1 Return to Active Status - Return to active status from inactive status shall be granted upon fulfillment of the following requirements:

8.1.1 Written Request - Written request to the Board requesting return to active status.

8.1.2 Certification - Current certification in good standing, as of the date of the request for return to active status, in NBCC, ACMHC or other certifying organization.

8.1.3 Continuing Education - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.

8.1.4 Fee - Payment of the current fee for licensure renewal. No late fee shall be assessed for return to active status.

Statutory authority: 24 *Del.C.* §30012(d).

**9.0 Disciplinary Proceedings and Hearings**

9.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 *Del. C.* §8807(h)(1)-(3).

9.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person

for the Board shall be appointed and a copy of the written complaint given to that person.

9.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

9.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

9.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 *Del. C.* Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

9.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 *Del.C.* §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 *Del.C.* §§3013 and 3016; 29 *Del.C.* §§10111, 10122 and 10131

## 9.2. Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if at least four members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 *Del.C.* §515.

9.2.6 Any decision by the Board to suspend or revoke a license shall be made public by publishing notice of the suspension or revocation in at least two (2) Delaware newspapers of general circulation. Such publication shall take place following the Board's execution of the final order.

Statutory authority: 24 *Del.C.* §§3004, 3013, 3015, 3016; 29 *Del.C.* §§10111

**See 4 DE Reg. 970 (12/1/00)**

## 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health,

welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed

under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

10.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

10.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In

such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

## DEPARTMENT OF AGRICULTURE PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code,  
Section 1607 (3 Del.C. §1607)

**Date of Issuance: March 23, 2001**

**Effective Date of The Rules & Regulation**

**August 10, 2001**

### I. Background

On Monday April 23, 2001, a Public Hearing was held in the Conference Center at the Delaware Department of Agriculture, 2320 S Dupont Hwy. Dover, DE., 19901. The purpose of the hearing was to receive comments on the proposed **Grain Inspection and Certification Regulations**. This regulation will govern the certification of granaries and the licensing of the grain inspectors in Delaware. After the hearing the Department performed an evaluation of the evidence entered into the record in this matter.

### II. Findings and Conclusions

All of the findings and conclusions contained in the evaluation of the evidence received at the public hearing and Department's evaluation, are expressly incorporated here within and explicitly adopted as the findings and conclusions of the Secretary.

### III. Order

In view of the above, I hereby order the proposed Grain Inspection and Certification Regulations be promulgated and implemented in the manner and form provided for by law.

### IV. Reasons

This Act replaces existing Chapter 16 of Title 3 of the Delaware Code with a new chapter governing the registrations and approval of grain moisture testing devices; the installation and operation of such devices; the licensure of grain inspectors; the certification of commercial grain elevators, grain warehouses, and other grain storage facilities; and the negotiation of grain contracts for sale, discount rate, and other weight rates. This Act also provides for civil penalties for violations of the provisions of new Chapter 16 and for the enforcement of the Chapter by the

Department of Agriculture

Michael T. Scuse  
Secretary

### 1.0 General

#### 1.1 Scope

To insure all grain inspected within the State of Delaware is uniformly inspected for quality.

To provide standards and guidelines to all granaries and their employees insuring that grain is inspected uniformly.

To provide training annually, and as needed, to all granaries and their grain inspectors.

#### 1.2 Authority

These regulations are issued under the authority of 3 Del. C., Chapter 16 of the Annotated Code of Delaware.

#### 1.3 Effective Date

These regulations were adopted on Month xx, 2001, in accordance with 29 Del.C., Chapter 101 of the Annotated Code of Delaware.

### 2.0 Declaration of Policy

3 Del. C. §§ 1601-1611, places the enforcement of the Delaware Grain Inspection, Certification, and Grain Contracts Law with the Department of Agriculture and empowers the Department to establish regulations.

By virtue of the authority vested in me as Secretary of Agriculture by 3 Del. C., Chapter 16, I, ~~John F. Tarburton~~ **Michael T. Scuse**, Secretary of Agriculture, do hereby promulgate the following rules and regulations governing inspection and certification of grain in Delaware.

### 3.0 Definitions

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise. All terms defined by the Delaware Grain Inspection, Certification, and Grain Contracts Law (3 Del. C., Chapter 16) are hereby incorporated by reference in this regulation.

'Department' means the State of Delaware Department of Agriculture and includes, but is not limited to: its officers, inspectors, employees, agents, or representatives.

'Devices' means any grain moisture testing devices.

'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 for which standards have been established in the United States Grain Standards Act, U.S.C.A. Section 7 et. seq., A-D are incorporated here by reference.

'Granary' means any grain elevator facility that buys and/or sells grain.

'Standards' means the United States Grain Standards Act, U.S.C.A. Section 7 et. seq., A-D, and the USDA Grain

Handling Procedures, Book I and Book II as amended and are incorporated here by reference.

'Grain Inspector' means anyone, who operates grain moisture testing devices, follows standard grain inspection procedures and uses other grain inspection equipment.

'Grain Law' means the Delaware Grain Inspection, Certification and Grain Contracts Law, 3 Del.C., Chapter 16.

#### **4.0 Certification of Granaries**

4.1 No business shall act as a grain facility without first having obtained a certification as herein provided.

4.2 Every grain facility proposing to transact business within the State of Delaware shall make annual application. The application shall be on a form furnished by the Department, and shall contain the following information and such other relevant information as the Department shall require:

4.2.1 The name and address of the applicant;

4.2.2 The name and address of all applicable local agent or agents, if any;

4.2.3 The location of the applicant's principle place of business;

4.2.4 The kind of grain the applicant proposes to handle;

4.2.5 The type of grain business the applicant proposes to conduct;

4.2.6 Registration of all grain testing equipment;

4.2.7 Registration of all employees who are proposed to conduct testing of grain.

4.3 No granary shall be certified, or shall remain certified, unless such granary:

4.3.1 Has applied for certification to the Department;

4.3.2 Employs licensed grain inspectors;

4.3.3 Has registered all grain testing equipment owned and operated by the granary;

4.3.4 Maintained a grain sample preservation protocol as approved by the Department;

4.3.5 Maintained good record keeping procedures, and keeps records for at least one year;

4.3.6 Has disclosed their grain discount schedules and posted them in a conspicuous location at the grain inspection station.

4.4 The Department, after due notice and opportunity for a hearing, may, in its sole and absolute discretion, deny, suspend, or revoke any certification where the Department finds the granary has committed any violation of the grain law or regulation of the Department.

4.5 The Department, after due notice and opportunity for a hearing, may deny an application for granary registration if the applicant has committed any violation under the grain law or regulation. Such decisions shall be final, binding and not subject to appeal.

#### **5.0 Licensure of Employees**

5.1 Granaries shall utilize only licensed grain inspectors for all grain sampling and testing.

5.2 Every granary shall register with the Department all employees that will be inspecting grain.

5.3 It shall be the responsibility of the granary to insure that all applicants have successfully completed an approved training program. All training shall be completed within 30 days of employment.

5.4 To obtain a Grain Inspector's license, applicants are required to file a written application with the Department and pass an examination conducted by the Department. Thereafter, grain inspectors shall renew their grain inspector's license biannually on or before January 1 by filing an application for license with the Department and shall contain the following information and such other relevant information as the Department shall require:

5.4.1 The name and address of the applicant;

5.4.2 The location of employment;

5.4.3 Types of grain the applicant proposes to inspect;

5.4.4 The types of grain testing equipment in operation and expected to be used;

5.4.5 Satisfactory evidence of good character.

5.5 Written notification of employment termination of a licensed grain inspector shall be made to the Department within 30 days of termination.

5.6 The Department, after due notice and opportunity for a hearing, may deny, suspend, or revoke any grain inspector's license, if the Department finds that he or she has committed any violation of the grain law or regulation of the Department.

5.7 The Department, after due notice and opportunity for a hearing, may deny an application for a grain inspector's license, if the applicant has committed any violation under the grain law or regulation. Such decision shall be final, binding and not subject to appeal.

#### **6.0 Fees and Renewal**

##### **6.1 Fees**

6.1.1 Granaries shall pay to the State of Delaware a bi-annual license fee of \$10.00 per inspector, which should be sent to the Department. All licenses shall continue in full force and effect until December 31 of the year of expiration, whereupon, they shall become invalid unless renewed.

6.1.2 Federal, State or Local government employees who are licensed under this law are exempt from this fee.

##### **6.2 License Renewal**

6.2.1 A license, or renewal application, submitted to the Department shall remain in full force and effect until such time as the Department gives notice to the applicant of renewal or denial.

6.2.2 Grain inspectors shall be required to be re-

examined and pass a written test prior to their bi-annual license renewal.

6.2.3 The re-examination requirement may be waived without taking a test, if the applicant provides the Department with evidence that he or she has attended a minimum of three (3) hours of education courses, seminars or programs approved by the Department during the two (2) calendar years preceding license renewal.

### 6.3 Expiration

6.3.1 The license held by a licensee, where no renewal application is received, shall lapse on the thirtieth day following its expiration. After such lapse the licensee shall be without authority to inspect grain for approval pursuant to this regulation.

6.3.2 The person holding a lapsed license must be examined as described by §6.2.2, in order to receive a new license.

## 7.0 Exemptions

The above standards do not apply to farmers, or groups of farmers, for storage or consumption on their farms.

## 8.0 Inspection Standards

Grain inspection will be performed under the guidelines of the United States Grain Standards Act, U.S.C.A. Section 7 et. seq., A-D, and the USDA Grain Handling Procedures, Book I and Book II as amended.

## 9.0 Grading Equipment

9.1 The equipment, equipment procedures, and sampling procedures used to determine factors pertaining to the value of grain shall be those contained in the USDA Grain Handling Procedures Book I and Book II.

9.2 The Department shall have the power to inspect and test as often as deemed necessary in its sole discretion, and to determine the accuracy of all equipment and procedures used to sample and grade grain purchased by the granaries.

9.3 The Department shall approve and mark, or seal for use, equipment found to be in proper and accurate operation and function. Any equipment deemed to be inaccurate or improperly functioning shall be marked and labeled "condemned for repairs" or "not for grain inspection."

9.4 Unapproved equipment shall be marked "not for grain inspection".

## 10.0 Grain Sample Preservation Program

10.1 The grain inspector who determines grade factors for the purpose of establishing the value of grain shall identify and preserve the sample of each lot used to determine these factors for a period of twenty-four hours (24).

10.2 The sample size shall be a minimum of one and one-half (1.5) quarts and shall be preserved in a moisture-proof container maintained in adequate environmental

conditions in order to preserve the integrity of the samples.

10.3 The samples shall be available at the granaries' place of business, and shall be accessible for inspection by the Department or at the Department's Inspection Laboratory.

10.4 To facilitate the use of file samples, each granary shall establish and maintain a uniform file system approved by the Department.

## 11.0 Record Keeping

11.1 Each granary shall make a written record as provided in Section 11.2 for each lot of grain weighed and graded. Unless otherwise agreed to at the time of transaction, the granary, or his agent, shall deliver a copy of the record to the person whom:

11.1.1 Is delivering the grain to the granary;

11.1.2 Is selling the grain to the granary;

11.1.3 Is buying the grain from the granary.

11.2 The record shall include:

11.2.1 Name and address of the person for whom the grain was weighed or graded;

11.2.2 The date the grain was weighed and graded (if separate dates, each shall be stated);

11.2.3 Type of grain;

11.2.4 Grade factors determined (see USDA Grain Handling Procedures Book I and II as amended);

11.2.5 Net weight from weigh ticket;

11.2.6 Specification of all discounts and deductions and how applied, and if no discount or deduction is given that fact shall be so stated;

11.2.7 The conversion from net weight to pricing unit;

11.2.8 Gross price per pricing unit;

11.2.9 Net price per pricing unit;

11.2.10 Total amount of sale.

11.3 The weigh ticket shall be attached to and made part of the record as provided in Section 11.2. The record shall be kept by the granary for one year, and upon request shall be made available to the Department.

## 12.0 Violations

12.1 The following acts shall be considered to be violations of the 3 Del. C. §1601 et. seq., and shall be punishable as provided in Section 1606.

12.1.1 Failure to apply for granary certification.

12.1.2 Failure to use licensed grain inspectors.

12.1.3 Failure to use approved grain testing equipment and procedures.

12.1.4 Failure to save, or have in place a sample preservation program.

12.1.5 Failure to keep adequate records.

12.1.6 Failure to post current discount where they can readily be viewed.

12.1.7 Granary has engaged in fraudulent or

deceptive practices in the inspection of grain.

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## **DEPARTMENT OF EDUCATION**

Title 14, DE Admin. Code  
Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))

### **Regulatory Implementing Order**

#### **260 General Appeal Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA**

##### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks approval of a new regulation, General Appeal Procedures for the Child and the Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA. The regulation addresses the appeal procedures that must be followed for the Child and Adult Care Food Programs. The Federal Regulations require the Delaware Department of Education to establish these regulations.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 17, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

##### **II. Findings of Facts**

The Secretary finds that it is necessary to approve this regulation because it is required by federal regulation that the program has an appeal process.

##### **III. Decision to Approve the Regulation**

For the foregoing reasons, the Secretary concludes that it is necessary to approve the regulation. Therefore, pursuant to 14 Del. C. Section. 122, the regulation attached hereto as Exhibit "B" is hereby approved. Pursuant to the provisions of 14 Del. C. Section. 122(e), the regulation hereby approved shall be in effect for a period of five years from the effective date of this order as set fourth in SectionV. below.

##### **IV. Text and Citation**

The text of the regulation approved hereby shall be in

the form attached hereto as Exhibit "B," and said regulations shall be cited in the Regulations of the Department of Education.

##### **IV. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C. Section. 122, on July 11, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

**IT IS SO ORDERED** this 11<sup>th</sup> day of July, 2001.

##### **Department of Education**

Valerie A Woodruff, Secretary of Education

#### **260 General Appeal Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA**

1.0 When a participating institution or agency seeks to appeal actions taken by the Delaware Department of Education pursuant to findings based on monitoring or administrative reviews the following shall apply:

1.1 The institution or agency shall be advised in writing of the grounds on which the Delaware Department of Education has based its action. The notice of action, which shall be sent by certified mail, return receipt requested shall also include a statement indicating that the institution has the right to appeal the action.

1.2 To initiate an appeal procedure, a written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action, and the Delaware Department of Education shall acknowledge the receipt of the request for appeal within 10 calendar days. Then, the following procedures shall pertain:

1.2.1 Within five (5) days of receipt of an appeal for review, the Delaware Secretary of Education, or his/her designee, shall appoint a review official who shall be selected from the approved list of hearing officers. The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section.

1.2.2 The appellant may refute the charges contained in the notice of action in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action. The appellant may retain legal counsel, or may be represented by another

person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the Delaware Department of Education shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.

1.2.2.1 If the appellant does not specifically request a hearing in the letter of request for review, and the review official determines that a review of documentation is sufficient for resolution, the appellant and the Delaware Department of Education shall be advised of the official's determination.

1.2.2.2 If the appellant has requested a hearing, the appellant and the Delaware Department of Education shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

1.2.3 Any information on which the Delaware Department of Education's action was based shall be available to the appellant for inspection from the date of receipt of the request for review.

1.2.4 The review official shall make a determination based on information provided by the Delaware Department of Education and the appellant, and on Program regulations.

1.2.5 Within 60 calendar days of the Delaware Department of Education's receipt of the request for review, the review official shall inform the State agency and the appellant of the determination of the review.

1.2.6 The Delaware Department of Education's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent dangers to the health or welfare of participants.

1.2.7 The determination by the Delaware Department of Education's review official is the final administrative determination to be afforded to the appellant.

1.2.8 Appeals shall not be allowed on decisions made by the Food and Consumer Services, U.S. Department of Agriculture, on requests for exceptions to the claims submission deadlines stated in 7CFR Sec. 226.10(e) or requests for upward adjustments to claims.

1.2.9 In cases where an appeal results in the dismissal of a claim against an institution, which was asserted by the Delaware Department of Education, based upon Federal audit findings of the Food and Consumer Services, U.S. Department of Agriculture, may assert a claim

against the Delaware Department of Education in accordance with the procedures outlined in 7CFR Sec. 226.14(c).

Authority: 7 CFR Sec. 226.6 State Agency Administrative Responsibilities, (k) Institution appeal procedures.

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

Statutory Authority: 7 Delaware Code,  
Section 903, (7 Del.C. §903)

### In Re: Final 2001 Summer Flounder Recreational Fishing Regulations; Tidal Finfish Regulation No. 4

#### Order No. 2001 – F - 0026 Summary of Evidence and Information

Pursuant to due notice 4 DE REG 2001 (6/1/01), the Department of Natural Resources and Environmental Control proposed to continue Tidal Finfish Regulation No.4, enacted May 4, 2001 under EMERGENCY ORDER NO. 2001-F-0017, beyond 120 days from the date of enactment. It does not close the recreational fishing season for summer flounder. It has a 17.5 inch minimum size limit and a creel limit of four fish per day. These are consistent with the Summer Flounder Fishery Management Plan. They were approved for the calendar year 2001 by the Atlantic States Marine Fisheries Commission (ASMFC).

The Atlantic Coastal Fisheries Cooperative Management Act (1993) requires Atlantic coastal states to comply with interstate fishery management plans adopted by the ASMFC.

A public hearing was held on June 28, 2001 to hear testimony and evidence on continuing the emergency summer flounder recreational fishing regulations as final regulations.

#### Finding of Fact

- §903 (e)(2)(a) 7 Del. C. authorizes the Department of Natural Resources and Environmental Control to promulgate regulations concerning a species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries man-



agement plan developed for the protection and conservation of said species of finfish.

- There is an interstate fisheries management plan for summer flounder. (FMP). It has been approved by the Atlantic States Marine Fisheries Commission (ASMFC).
- The Department enacted recreational fishing regulations for summer flounder, consistent with the FMP, by Emergency Order No. 2001-F-0017 on May 4, 2001. These regulations will sunset on September 2, 2001 unless they are enacted as final regulations according to the Department's Regulatory Procedure.
- The summer flounder recreational fishery will continue at least through October. Regulations, consistent and in compliance with the FMP are required for the entire fishing season.
- Any closure of the recreational fishery for summer flounder has to be no less than seven consecutive days to meet the criteria of the FMP.
- Recreational anglers, head and charter boat captains and bait and tackle owners who testified at the June 28, 2001 public hearing were not in favor of the current 17.5 inch minimum size limit.
- A majority of the anglers, head and charter boat captains and bait and tackle shop owners who testified at a May 1, 2001 public hearing were in favor of a 17.5 inch minimum size limit provided the season would remain open.

**Conclusion**

- Delaware should approve final recreational fishing regulations for summer flounder for the remainder of the calendar year after the current emergency regulations sunset on September 2, 2001.
- Regulations must be in compliance with the FMP for Summer Flounder as approved by the ASMFC.
- In May, there was overwhelming support for the current summer flounder regulations that do not close the recreational fishing season at any time. A minimum size limit less than 17.5 inches would require some seasonal closure.
- Summer flounder, less than 17.5 inches will dominate the catch until September, when larger summer flounder will enter Delaware while moving south.
- It is not expected that the ASMFC would entertain any change to recreational fishing regulations without a preponderance of evidence that the current regulations are in error.

**Order**

It is hereby ordered this 5th day of July in the year 2001

that Tidal Finfish Regulation No. 4, enacted under Emergency order no. 2001-F-0017 and a copy of which is attached hereto, is adopted as a final regulation pursuant to 7 Del.C. , §1902 and is supported by the Department findings of evidence and testimony received. This Order shall become effective on August 10, 2001.

Nicholas A. DiPasquale, Secretary, DNREC

**Tidal Finfish Regulation 4. Summer Flounder Size Limits; Possession Limits; Possession Limits; Seasons.**

a) It shall be ~~un~~lawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land ~~any~~ summer flounder at any time ~~during the period beginning at 12:01 AM on January 1 and continuing through midnight on May 25 and during the period beginning at 12:01 AM on September 5 and continuing through midnight on December 31. effective 12:01AM on May 5, 2001.~~

b) It shall be unlawful for any recreational fisherman to have in possession more than ~~five (5)~~ four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than ~~seventeen (17)~~ seventeen and one-half (17.5) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~seventeen (17)~~ seventeen and one-half (17.5) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) Is omitted intentionally.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Is omitted intentionally.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell,

trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~five (5)~~ four (4) summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council on Natural Areas	Mr. Raymond Burris Mr. Terrance L. Higgins	6/21/05 6/30/05
Alcoholic Beverage Control Appeals Commission	Mr. Michael Finnigan Mrs. Jeanne O'Connor	Pleasure of the Governor Pleasure of the Governor
Board of Medical Practice	Mr. Michael G. Green	6/27/04
Board of Parole	Mr. Dwight Holden Mrs. Marlene Lichtenstadter	6/16/05 Pleasure of the Governor
Cash Management Policy Board	Mr. John D. Hazleton Ms. Margaret A. Iorii	6/16/04 6/16/04
Commission on Adult Entertainment Establishments	Ms. Mary Boudart Mr. James C. Brannon, Jr. Ms. Deborah Carter  Mr. Herbert A. Russell	6/30/04 6/30/04 Three Years From Senate Confirmation 6/14/04
Council on Shell Fisheries	Mr. Alan Davis, Chair	Pleasure of the Governor
Deferred Compensation Council	Mr. John F. Askin	6/05/04
Delaware Economic and Financial Advisory Council	Mr. Lawrence Koeing	Pleasure of the Governor
Delaware Technical and Community College Board of Trustees	Mr. James Soles	Pleasure of the Governor
Department of Education Review Committee	Dr. Robert Andrzejewski Dr. Pam Bailey Dr. Pat Carlson Mrs. Cindy DiPinto Dr. George Frunzi Dr. Vickie Gehrt Mr. Frank Hagen	Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor

# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Department of Education Review Committee	Ms. Claudia Hughes	Pleasure of the Governor
	Mr. Mike Jackson	Pleasure of the Governor
	Mr. Tom Jarrett	Pleasure of the Governor
	Dr. Dennis L. Loftus	Pleasure of the Governor
	Mrs. Suzanne Moore	Pleasure of the Governor
	Dr. Joseph A. Pika	Pleasure of the Governor
	Mr. Robert Rescigno	Pleasure of the Governor
	Dr. David Robinson	Pleasure of the Governor
	Mr. David Sechler	Pleasure of the Governor
	Mrs. Susan Shupard	Pleasure of the Governor
	Mrs. Dorcell Spence	Pleasure of the Governor
	Dr. Jackie Wilson	Pleasure of the Governor
Diamond State Port Corporation	Mr. Michael A. Begatto	7/03/03
	Mr. Douglas Catts	6/16/04
	The Honorable Nathan Hayward, II	Pleasure of the Governor
Delaware State Veteran's Affairs Commission	Mr. David Timberman	10/30/01
Dover Civic Center Board of Directors	The Honorable David W. Singleton	Pleasure of the Governor
Environmental Appeals Board	Mr. Donald Dean	Pleasure of the Governor
	Mrs. Joan Donoho	3/07/03
	Mr. Peter McLaughlin	6/30/04
	Mr. Gordon Wood	6/21/04
Family Court Commissioner for Kent County	Mr. David W. Jones	Four Years From Swearing In
Family Court Commissioner for Sussex County	Ms. Sonja Wilson	Four Years From Swearing In

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**GOVERNOR'S APPOINTMENTS**

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Industrial Accident Board	Mr. Anthony Murowany, Jr.	6/28/07
Industrial Accident Board	Mr. Garrett Wilson	6/14/07
	Mrs. Karen Wright	6/30/07
Justice of the Peace for New Castle County	Mr. Sidney Clark, Jr.	Four Years From Swearing In
Merit Employee Relations Board	Mr. John Pitts	6/14/04
New Castle County Board of Elections	Mr. William Baker	6/21/05
	Mr. Orval L. Foraker	6/21/05
	Ms. Marilyn Parks	6/21/05
New Castle Vocational Technical Board of Education	Mr. Terrance M. Shannon	7/01/08
Public Service Commission	Mrs. Joann Conaway	5/01/06
	Ms. Arnetta McRae, Chair	Pleasure of the Governor
Commissioner of the Superior Court	Mr. Mark S. Vavala	Four Years From Swearing In
	Mr. David A. White	Four Years From Swearing In
Sussex County Board of Elections	Mr. Charles Short	6/21/05
	Mrs. Verdie West	6/21/05
University of Delaware Board of Trustees	Ms. Cynthia Primo Martin	6/21/07
Violent Crimes Compensation Board	Mrs. V. Lynn Gregory	6/16/04
Wastewater Facilities Advisory Council	Mr. Manubhai Karia	6/30/04

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



**REGISTER NOTICE**

**1. TITLE OF THE REGULATIONS:**

Measures for Meeting the EPA-Identified Shortfalls for the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Severe Ozone Non-Attainment Area (non-regulatory plan)

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

On December 16, 1999 the U.S. Environmental Protection Agency (EPA) proposed a rule in the Federal Register (FR, Vol 64, No. 241) proposing conditional approval of the *Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area*, May, 1998. One of the conditions for approval is for the non-attainment area to achieve additional emission reductions to close EPA-identified shortfalls in Volatile Organic Compounds (VOC) and Nitrogen Oxide (NOx) emission reductions.

The proposed revision to the State Implementation Plan (SIP), informally titled "The Shortfall SIP", describes how the EPA-identified shortfalls will be eliminated through regional application of six new regulations.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

Title 29, Chapter 101 of the Delaware Code  
Section 182 of the federal Clean Air Act Amendments of 1990

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

The Delaware Shortfall SIP is non-regulatory, and is dependent upon the following Delaware Air Quality

Regulations for implementation of the necessary emission reductions in Delaware:

Regulation 42, Section 1 – Control of NOx Emissions from Industrial Boilers

Regulation 41, Section 2 – Consumer Products

Regulation 41, Section 3 – Portable Fuel Containers

Regulation 41, Section 1 – Architectural & Industrial Maintenance Coatings

Regulation 24, Section 11 (amended) – Mobile Equipment Repair & Refinishing

Regulation 24, Section 33 (amended) – Solvent Cleaning & Drying

**6. NOTICE OF PUBLIC COMMENT:**

Public Hearing scheduled for August 23, 6:00 PM in the Priscilla Building Conference Room (Air Quality Management Section office), 156 South State Street, Dover, Delaware 19901

**7. PREPARED BY:**

Alfred R. Deramo, Project Leader/(302)739-4791, July 19, 2000

**Final Draft**

**MEASURES TO MEET THE EPA-IDENTIFIED  
SHORTFALLS IN THE DELAWARE PHASE II  
ATTAINMENT DEMONSTRATION FOR THE  
PHILADELPHIA-WILMINGTON-TRENTON  
OZONE NON-ATTAINMENT AREA**

**Prepared For:**

**The U.S. Environmental Protection Agency**

**July, 2000**

**Delaware Department of Natural Resources &  
Environmental Control  
Division of Air and Waste Management**

**Air Quality Management Section**

**A. List of Attachments to SIP Submission**

1. **Attachment 1** -- Marine Engine and Locomotive Engine Standards: Emission Reduction Calculations for Sussex County

2. **Attachment 2** -- On-Road Heavy Duty Diesel Standards: Emission Reduction Break-Out and MOBILE 5b Outputs for Kent, New Castle, and Sussex Counties

3. **Attachment 3** -- Ozone Transport Commission Document: *OTC States' Approach to Achieving Emission Reductions in the Ozone Transport Region from Implementing Model Rules, Ozone Transport Commission*

4. **Attachment 4** -- E. H. Pechan Document: *Control Measure Development Support Analysis of Ozone Transport Commission Model Rules*

**I. Preface**

This revision to Delaware’s State Implementation Plan (SIP) is based on work that was performed regionally to identify emission control strategies and develop model regulations that will close shortfalls in the attainment demonstrations for several ozone non-attainment areas in the Northeast. The Ozone Transport Commission (OTC) coordinated the regional work. Several Delaware employees participated in the regional work. In addition, the OTC hired a contractor, E.H. Pechan, to analyze the benefits of the model rules. This approach guaranteed that the methods used to calculate emission reductions from the model rules were consistent in all parts of the Ozone Transport Region.

Information specific to the areas within and surrounding the Philadelphia-Wilmington-Trenton ozone non-attainment area, including Delaware, are contained herein. Details of the OTC regional work, and the resulting regional data, are contained in 2 documents attached to the SIP submission for reference. These documents are:

- *OTC States’ Approach to Achieving Additional Emission Reductions in the Ozone Transport Region from Implementing Model Rules*, the Ozone Transport Commission, May 18, 2001.
- *Control Measure Development Support Analysis of Ozone Transport Commission Model Rules*, E.H. Pechan, March 31, 2001.

These documents are available on the OTC web site at <http://www.sso.org/otc/> under “Publications”.

**1.1 Organizational and Staff Responsibilities**

This SIP revision was developed by the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section under the direction of the following officials and managers:

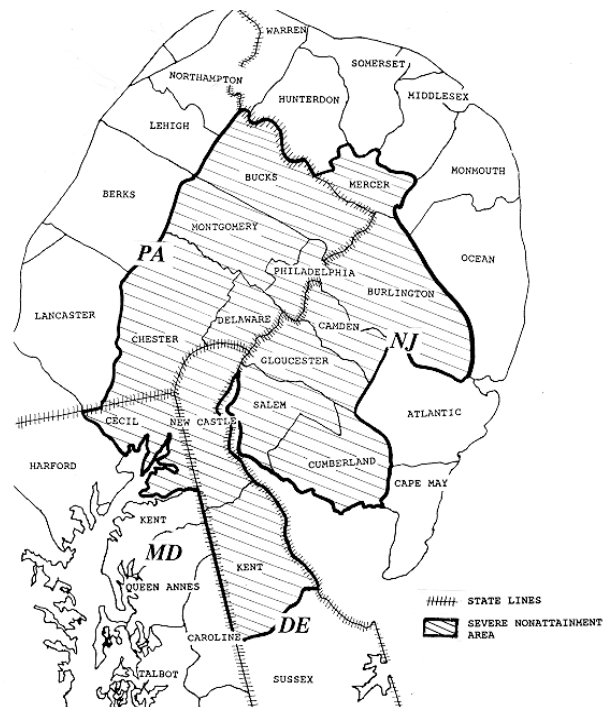
- Nicholas A. Di Pasquale - Secretary, DNREC
- William Hill - Acting Director, Division of Air and Waste Management
- Ali Mirzakhali - Program Administrator, Air Quality Management Section
- Raymond H. Malenfant - Program Manager, Planning and Community Protection Branch
- S. Michael Thompson - Planning Supervisor, Airshed Assessment and Improvement Program

**Responsible Staff**

Employee	Title	Assignment	Phone
Alfred R. Deramo	Planner	Author of SIP Submission	739-4791
Mohammed A. Majeed	Environ. Engineer	SIP Technical Reviewer	739-4791
Frank Gao	Environ. Engineer	Federal Rule Benefits	739-4791
Ronald A. Amirikian	Program Manager	Model Rule Development	323-4542

**II. Introduction**

Delaware has two counties, Kent and New Castle, that are part of the Philadelphia-Wilmington-Trenton non-attainment area with respect to the 1 hour ozone national ambient air quality standard. The Philadelphia-Wilmington-Trenton ozone non-attainment area also contains parts of Maryland, Pennsylvania and New Jersey, and has a total of 14 counties (see Figure 1).



**Figure 1 - Philadelphia-Wilmington-Trenton Severe Ozone Non-Attainment Area**

The Philadelphia-Wilmington-Trenton non-attainment area is classified as a “severe” non-attainment area with respect to the degree of 1-hour ozone non-attainment. Under the Clean Air Act Amendments of 1990, this severe non-attainment area is required to reach attainment by 2005. In order to demonstrate that the non-attainment area is on track for reaching attainment by 2005, states in the non-attainment

area were required to submit attainment demonstrations to the United States Environmental Protection Agency (EPA). These attainment demonstrations were required to show, through atmospheric photochemical computer modeling, that the current and planned pollution reduction measures will bring the non-attainment area into attainment by the end of the 2005 ozone season.

### 2.1 Attainment Demonstrations

In spite of many attempts, the states in the Philadelphia-Wilmington-Trenton non-attainment area have had great difficulty in demonstrating attainment through modeling. In May, 1998, Delaware submitted to EPA a document entitled *The Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area*. This document contained the results of extensive atmospheric photochemical modeling for the non-attainment area. Although one modeled episode in that attainment demonstration predicted attainment for Delaware's portion of the non-attainment area, it did not predict attainment for the entire area, as mandated by the Clean Air Act. The modeling contained current and planned reductions within the non-attainment area, plus reductions in transported nitrogen oxide (NOx) emissions as a result of the regional NOx SIP Call.<sup>1</sup> Even with the reductions in regional NOx transport, the non-attainment area could not fully demonstrate attainment. Because of this problem, EPA cannot approve the attainment demonstrations for the non-attainment area without the inclusion of additional reductions.

In order to facilitate the production of acceptable attainment demonstrations, and at the same time further reduce the problem of pollution transport, EPA agreed to extend the deadline for submission of acceptable attainment demonstrations if the states would do two things. First, the states in the Ozone Transport Region, comprising most of the Northeastern and Mid-Atlantic U.S., must work together

1. The NOx SIP Call was a requirement issued by EPA as a final rule through Federal Register Notice 63 FR 57397, entitled, *Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone*, September 24, 1998. Nineteen states plus the District of Columbia were required to comply with an EPA-derived NOx emissions budget in order to reduce transport of NOx to downwind ozone non-attainment areas. For details, see the SIP submission entitled, *Delaware Plan for Meeting the Nitrogen Oxide (NOx) Budget Requirements Contained in the EPA NOx SIP Call*, Delaware Department of Natural Resources and Environmental Control (DNREC), November 2000.

to develop a set of common pollution reductions measures. Second, the states in the non-attainment area must revise their attainment demonstrations by including the reductions from the regional measures plus any state-specific measures needed to close an emission reduction shortfall as defined by EPA.

### 2.2 Attainment Shortfalls

In a series of Federal Register notices on December 16, 1999, EPA issued proposed rules to accomplish the above goals. The notices include the quantification of the attainment shortfalls for the applicable non-attainment areas. The Federal Register Notice pertaining to Delaware is 64 FR 70443. In this notice, EPA identifies the emission reduction shortfall for the Philadelphia-Wilmington-Trenton non-attainment area, and instructs Delaware to work with the other states to eliminate this shortfall. In 64 FR 70443, EPA determined that the Philadelphia-Wilmington-Trenton non-attainment area is short of its attainment emission level target by amounts equal to 4.5 percent of the 1990 baseline emission inventory for volatile organic compounds (VOC) and 0.3 percent of the 1990 baseline emission inventory for nitrogen oxides (NOx). The EPA-derived additional reductions that equate to these percentages are contained in Table 1.

**Table 1**  
**Additional Reductions of VOC and NOx For**  
**Philadelphia-Wilmington-Trenton**  
**Non-Attainment Area**

VOC Reductions (tons/day)	NOx Reductions (tons/day)
62	3

### III. Ozone Transport Region Model Rules

In order to produce new pollution control measures to close the attainment shortfall, the states in the Philadelphia-Wilmington-Trenton non-attainment area cooperated with other states in the Ozone Transport Region to develop six model rules. The Ozone Transport Commission coordinated model rule development. The model rules will be adopted and implemented by each state in the non-attainment area.

#### 3.1 Reductions in the Non-Attainment Area

The six model rules and the expected reductions for the Philadelphia-Wilmington-Trenton non-attainment area are listed in Table 2.



**Table 2 Reductions from Model Rules for the Philadelphia-Wilmington-Trenton Non-Attainment Area**

Model Rule	Reduction Benefit by 2005 (tons/day)	
	VOC	NOx
NOx Model Rule	N/A	6
Consumer Products	9	N/A
Portable Fuel Containers	5	N/A
Architect. & Indust. Maintenance (AIM) Coatings	19	N/A
Mobile Equipment Refinishing	6	N/A
Solvent Cleaning Operations	20	N/A
<b>Total</b>	<b>59</b>	<b>6</b>

The Delaware-specific versions of the model rules will be submitted to EPA as separate SIP revisions, and will be incorporated into the Regulations Governing the Control of Air Pollution. Table 3 contains the regulation numbers and titles, and the expected reductions for Kent and New Castle Counties. Table 4 contains the expected reductions from the model rules for the counties of the other states in the Philadelphia-Wilmington-Trenton non-attainment area.

**Table 3 Delaware Regulations and Their Expected Reductions for Kent & New Castle Counties**

Regulation Number and Title	Expected Benefit by 2005 (tons/day)			
	Kent		New Castle	
	VOC	NOx	VOC	NOx
Reg. 42, Sect. 1 – Control of NOx Emiss. From Indust. Boilers	N/A	0.00	N/A	0.36
Reg. 41, Sect. 2 – Consumer Products	0.17	N/A	0.68	N/A
Reg. 41, Sect. 3 – Portable Fuel Containers	0.09	N/A	0.43	N/A
Reg. 41, Sect. 1 – Architectural & Industrial Maintenance Coatings	0.38	N/A	1.46	N/A
Reg. 24, Sect. 11 (amended) – Mobile Equip. Repair & Refinish.	0.07	N/A	0.29	N/A
Reg. 24, Sect. 33 (amended) – Solvent Cleaning & Drying	0.48	N/A	0.91	N/A
<b>County Totals</b>	<b>1.19</b>	<b>0.00</b>	<b>3.77</b>	<b>0.36</b>

**Table 4 Model Rule Benefits for Counties of Other States in the Philadelphia-Wilmington-Trenton Non-Attainment Area**

		Model Rule Benefits for 2005 (tons/day)						
State	County	Total NOx (NOx Model Rule)	Consumer Products (VOC)	Portable Fuel Containers (VOC)	AIM Coatings (VOC)	Mobile Equipment Refinishing (VOC)	Solvent Cleaning Operations (VOC)	Total VOC
MD	Cecil	0.00	0.11	0.06	0.24	0.00	0.00	0.42
NJ	Burlington	0.29	0.60	0.33	1.29	0.46	0.20	2.88
	Camden	0.07	0.72	0.38	1.56	0.56	0.24	3.47
	Cumberland	0.80	0.20	0.09	0.44	0.16	0.07	0.95
	Gloucester	0.01	0.35	0.19	0.75	0.27	0.12	1.68
	Mercer	1.05	0.47	0.27	1.02	0.36	0.16	2.29
	Salem	1.02	0.09	0.05	0.20	0.07	0.03	0.45
PA	Bucks	0.00	0.83	0.56	1.79	0.64	2.78	6.60
	Chester	0.46	0.59	0.39	1.26	0.45	1.97	4.66
	Delaware	0.89	0.78	0.45	1.69	0.60	2.63	6.16
	Montgomery	0.30	1.02	0.78	2.19	0.78	3.42	8.19
	Philadelphia	0.59	2.11	0.93	4.54	1.62	7.07	16.28

Note: Totals may not equal the sum of the individual benefits due to rounding

**3.2 Reductions in Counties Outside of Non-Attainment Area**

In order to produce further benefit for the Philadelphia-Wilmington-Trenton non-attainment area, the states decided to also apply the six new regulations to 19 counties outside the non-attainment area. The outside counties being credited to the non-attainment area fall within 100 kilometers of the non-attainment area. The creditable range of 100 kilometers is in accordance with EPA guidelines. The outside counties and their VOC reduction are listed in Table 5.

**Table 5 VOC Reductions (Tons/Day) From Counties Within 100 KM of Non-Attainment Area**

Delaware		Maryland		New Jersey		Pennsylvania	
County	VOC	County	VOC	County	VOC	County	VOC
Sussex	1.6	Caroline	0.3	Atlantic	1.7	Adams	0.9
		Dorchester	0.4	Cape May	0.7	Berks	3.9
		Kent	0.2			Cumberland	2.3

		Queen Annes	0.4			Dauphin	2.8
		Talbot	0.4			Lancaster	5.1
		Wicomico	0.9			Lebanon	1.3
						Lehigh	3.3
						Northampton	2.9
						Schuykill	1.7
						York	4.1
<b>Total</b>	<b>1.6</b>	<b>Total</b>	<b>2.6</b>	<b>Total</b>	<b>2.4</b>	<b>Total</b>	<b>28.3</b>

Extending the VOC rules to the counties outside the non-attainment area but within 100 kilometers of the non-attainment area adds about 35 tons/day of VOC reductions to the 59 tons/day of VOC reductions from within the non-attainment area. This gives a total of 94 tons/day of VOC reductions that can be applied to the attainment shortfall for the Philadelphia-Wilmington-Trenton non-attainment area. An additional benefit of 1 ton/day of NOx reduction is picked up by applying the NOx Model Rule to sources outside of the non-attainment area but within 100 kilometers. The total VOC and NOx benefits from the non-attainment area plus the counties within 100 kilometers are compared to the EPA-derived shortfalls in Table 6.

**Table 6**  
**Total Model Rule Benefits Versus EPA-Derived Shortfalls for Philadelphia-Wilmington-Trenton Non-Attainment Area (Tons/Day)**

Pollutants	EPA-Derived Shortfalls	Benefits: Non-Attainment Area Plus 100 Kilometers
VOC	62	94
NOx	3	7

As can be seen from Table 6, the model rules achieve more VOC and NOx reductions than necessary to close the attainment shortfall.

#### IV. Delaware-Specific Reductions

In addition to the benefits from the regional model rules, Delaware is identifying emission reduction benefits from the implementation of three federal rules that were not available when the original modeling for the attainment demonstration was conducted. As indicated in EPA's Federal Register Notice 64 FR 70443, the benefits from these measures were not included in the May 1998 submission of the *Delaware Phase II Attainment Demonstration for the Philadelphia-*

*Wilmington-Trenton Ozone Non-Attainment Area.* The three federal rules and their benefits are listed in Table 7.

**Table 7**  
**Delaware Emission Reduction Benefits from Implementation of Three Federal Rules (Tons/Day)**

Federal Rule	Kent		New Castle		Sussex	
	VOC	NOx	VOC	NOx	VOC	NOx
<b>Marine Engine Standards</b>	<b>0.02</b>	<b>0.00</b>	<b>2.02</b>	<b>-0.11</b>	<b>0.18</b>	<b>-0.01</b>
<b>Locomotive Engine Standards</b>	<b>0.00</b>	<b>0.14</b>	<b>0.00</b>	<b>0.63</b>	<b>0.00</b>	<b>0.15</b>
<b>On-Road Heavy Duty Diesel Standards</b>	<b>0.00</b>	<b>0.02</b>	<b>0.00</b>	<b>0.05</b>	<b>0.00</b>	<b>0.02</b>
<b>Total</b>	<b>0.02</b>	<b>0.16</b>	<b>2.02</b>	<b>0.57</b>	<b>0.18</b>	<b>0.16</b>

Note: Negative numbers in Table 7 indicate NOx increases.

The reductions in Kent and New Castle Counties from these three federal measures were included in Delaware's 2005 Rate-of-Progress Plan but not in Delaware's Attainment Demonstration. Therefore, they are being applied to the attainment shortfall. The emission reduction calculations for marine engines and locomotives in Kent and New Castle Counties are contained in Section IV of the *Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, December 2000. Because that rate-of-progress plan does not cover Sussex County, the emission reduction calculations for marine engines and locomotives in Sussex County are being submitted as *Attachment 1* to this SIP submission. Emission Reductions for on-road heavy-duty diesel engines in Kent and New Castle Counties were included in the total calculation for on-road mobile emission controls in the *Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, but were not broken out as a line item. Therefore, MOBILE 5a model runs and emission reduction break-outs for on-road heavy-duty diesel standards in Kent and New Castle Counties, as well as those for Sussex County, are being submitted as *Attachment 2* to this SIP submission.

#### V. Summary of Reductions

Table 8 shows the new total benefits for the non-attainment area when the Delaware-specific reductions from the three federal rules are added to the reductions from the OTC model rules.

**Table 8  
Total Reductions Applied to Non-Attainment Area  
Shortfall**

Pollutant		Reductions (tons/day)		
	OTC Model Rules in NAA + 100 KM	3 Federal Rules in Delaware	Total Reductions in NAA + 100 KM	
VOC	94	2	96	
NOx	7	1	8	

The analysis contained in this document has shown that the implementation of the OTC model rules in the Philadelphia-Wilmington-Trenton non-attainment area and 19 counties within 100 kilometers of the non-attainment area will result in ample emission reductions to close the EPA-identified attainment shortfall. The inclusion of additional emission reductions in Kent, New Castle and Sussex Counties from the implementation of three federal rules not previously counted toward attainment further increases the total amount of benefits that can be counted towards attainment for the Philadelphia-Wilmington-Trenton non-attainment area. The emission reduction efforts described in this document are significant, and are intended to enhance the chances of attaining the 1-hour ozone standard by 2005.

**VI. Mid-Course Review**

In order to check our progress toward attaining the 1-hour ozone standard by 2005, Delaware plans to conduct an analysis prior to that date. This analysis, termed the mid-course review, will follow EPA guidelines and will show that either 1) the adopted control measures are sufficient to reach attainment by 2005, or 2) additional control measures will be needed for attainment. Delaware previously committed to the mid-course review in its January 2000 SIP submission, *Addendum to the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area*. Delaware is herein reiterating its previous commitment, and is also committing to submit the mid-course review to EPA no later than December 31, 2004.

**ATTACHMENT 1**

Marine Engine and Locomotive Engine Standards:  
Emission Reduction Calculations for Sussex County  
(Available by Request)

**ATTACHMENT 2**

On-Road Heavy Duty Diesel Standards:  
Emission Reduction Break-Out and MOBILE 5b Outputs for

Kent, New Castle, and Sussex Counties  
(Available by Request)

**ATTACHMENT 3**

Ozone Transport Commission Document:  
OTC States' Approach to Achieving Emission Reductions in the Ozone Transport Region from Implementing Model Rules  
(Available by Request)

**ATTACHMENT 4**

E. H. Pechan Document:  
Control Measure Development Support Analysis of Ozone Transport Commission Model Rules  
(Available by Request)

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

**REGISTER NOTICE**

**1. TITLE OF THE PROPOSAL:**

State Implementation Plan Development: Evaluation of Applicability of Reasonably Available Control Measures to Assist in Attaining the Ozone Air Quality Standard.

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

To provide the public with an addendum to the adopted State Implementation Plan (SIP) Revision that demonstrates Delaware's strategy for attaining the one-hour national ambient air quality standards (NAAQS) for ground-level ozone by the year 2005. The addendum will include the following:

An analysis of the air quality benefits of implementing transportation control measures (TCM) whose purpose is to reduce air emissions by reducing automobile usage and increasing other transportation choices, such as providing more transit service to the motoring public.

An explanation for why Delaware did not incorporate each listed TCM in the Clean Air Act (CAA) as an enforceable strategy for attaining the standard before the year 2005. These TCM strategies would have been required if it was determined to be a reasonable available control measure (RACM) as defined by the Clean Air Act.

To review the reasonably available control technology (RACT) that Delaware has required on stationary sources as a strategy to attain the ozone NAAQS.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

N/A

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

Clean Air Act Amendments of 1990

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

None

**6. NOTICE OF PUBLIC COMMENT:**

Public Hearing is on August 23, 2001, 6 P.M. Priscilla Building Conference Room, 156 South State Street, Dover

**7. PREPARED BY:**

Philip A. Wheeler 739-4791, 7/27/01

**ANALYSIS OF THE EFFECTIVENESS OF  
REASONABLE AVAILABLE CONTROL MEASURES  
TO ATTAIN THE  
1-HOUR OZONE STANDARD  
Proposal**

**To Submit this Document to EPA  
As a State Implementation Plan Revision Concerning  
The Delaware Ozone Attainment Demonstration**

**Prepared by  
State Of Delaware  
Department Of Natural Resources And Environmental  
Control  
Division Of Air and Waste Management  
Air Quality Management Section**

**July 12, 2001**

**Preface**

The purpose of this document is to respond to a request for additional information from the U.S. Environmental Protection Agency (EPA), as an addendum to the Delaware State Implementation Plan (SIP) for the severe ozone non-attainment area including New Castle and Kent counties. The document examines the value of adding reasonably available control measures (RACM) as part of the State Implementation Plan to significantly increase Delaware's likelihood of attaining the one-hour ozone standard prior to the year 2005. Section 172(c)(1) of the Clean Air Act requires that the State consider adopting these measures as a means to achieve the air quality standards by the specified attainment date.

This analysis focuses on transportation control measures (TCM) that would be applicable to the RACM requirement in Section 172(c)(1). Section 108 (f) of the Clean Air Act describes some of the programs that can be considered as TCM. The analysis will also compare the emission

reductions of TCM with area and point source controls, also known as reasonably available control technology (RACT). To date, no TCM have been adopted in the Delaware's SIP, however, there have been several RACT measures adopted which satisfies the requirements in Section 172(c)(1) of the Clean Air Act. This report will discuss why the TCM were not adopted as part of any SIP revisions to attain the one-hour ozone standard.

EPA guidance (57 FR AT 13560, April 16, 1992) provides the definition of RACM. The guidance states that measures which can be implemented and produce sufficient benefits to advance the attainment date can be considered to be RACM. The guidance states that cost can be a factor in determining whether a measure is reasonable. EPA guidance notes that measures that are not enforceable are not RACM. TCM only provide a marginal benefit in reducing ozone precursor emissions, while other TCM are so costly that they would put a serious financial constraint on the state's transportation budget. In addition, the TCM that the State of Delaware will implement as part of transportation plans have budgetary constraints and are not enforceable under Delaware law. Therefore the measures may be discontinued or delayed without being in noncompliance with any Delaware statute.

**History**

As required by the Clean Air Act, Delaware must submit to EPA an enforceable plan to attain the one-hour ozone standard by the year 2005. The attainment plan, Phase I and II, was submitted to EPA in 1997 and 1998, respectively. Phase II was later revised and submitted to EPA in January of 2000. As part of the Philadelphia-Wilmington-Trenton Non-attainment Area, Delaware will be part of regional effort to reduce volatile organic compound (VOC) emissions and oxides of nitrogen (NO<sub>x</sub>), and propose a plan to EPA in the fall of 2001. In addition, Delaware must show a rate of progress towards attaining the standard by each milestone year. Delaware has submitted to EPA the 1996, 1999, 2002, and 2005 rate of progress plans. The first rate of progress plan submitted to EPA showed a 15% reduction of VOC (a precursor pollutant to ozone) from 1990 levels. Subsequent rate of progress plans demonstrated an additional 3% reduction per year in both VOC and NO<sub>x</sub> out to the year 2005. To achieve rate of progress and to demonstrate attainment, RACT controls were adopted as enforceable measures to achieve the stated planned reductions. The RACT measures adopted and the related emission reductions of VOC and NO<sub>x</sub> are provided later in this report.

**Delaware Ozone Attainment Strategy Workgroup**

On April 17, 1998, the Ozone Attainment Strategy Workgroup met to ascertain what emission reduction strategies needed to be analyzed for feasibility and effectiveness. Members of the workgroup included State of Delaware agencies (Department of Transportation, Division of Motor Vehicles, the Economic Development Office and Department of Agriculture), environmental groups (Delaware Nature Society and Green Delaware), industry representatives (Delmarva Power and Light, Delaware Petroleum Council, Star Enterprise, SPI Polyols Inc., DuPont Corp, Saftey Kleen Corp., Delaware Automobile Dealers Association, Kent County Motor Sales, Delaware State Chamber of Commerce), transportation planning organizations (Wilmington Area Planning Council and the Dover Metropolitan Planning Organization) and officials from the governor's office as well as representatives of Delaware's state and U.S legislators. The group discussed the "home grown" ozone reductions as well as the regional ozone transport issues. The group was presented with possible strategies to reduce VOC and NO<sub>x</sub>. The group discussed the promotion of statewide, multi-modal transportation choice programs, acknowledging them as beneficial in reducing the amount of vehicle miles traveled in the state and thereby reducing mobile source emissions. The multi-modal programs and enhancements mirrored the kinds of measures the Clean Air Act described in Section 108(f). However, the Air Quality Management Section of the Department of Natural Resources and Environmental Control, hereafter, the Department (the SIP agency) did not have the regulatory power to enforce their implementation. The group decided to continue regulating air emissions from area and point sources and to consider a high-enhanced motor vehicle inspection program. To date, the high enhanced inspection program has not been implemented. The following table indicates the RACT measures that were adopted in the SIP and complied with Section of 172 (c)(1) requirements.

**VOC EMISSION CONTROL MEASURES (Using RACT) AND EXPECTED REDUCTIONS FOR THE 2002 RATE PROGRESS PLAN (Delaware RPP SIP—December, 2000)**

Control Measures and Regulations	Expected VOC Emission Reduction Tons Per Day		
	Kent	New Castle	Total NAA
<b>Point Source Controls</b>			

<i>RACT "Catch Up: in Kent City</i> Solvent Metal Cleaning Surface Coating of Metal Furniture Leaks from Synthetic Organic Chemical, Polymer and Resin Manufacture Equipment.			
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	0.537	N/A	0.537
	0.037	N/A	0.037
	0.004	N/A	0.004

Stationary Area Source Controls	Expected VOC Emission Reduction Tons Per Day		
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<i>RACT "Catch Up: in Kent City</i> Solvent Metal Cleaning Cutback Asphalt	Kent	New Castle	Total NAA
	0.136	N/A	0.136
	0.026	N/A	0.026

<i>New and Revised RACT Regulations</i> Stage I Vapor Recovery-Gas Disp. Facilities Emulsified Asphalt Motor Vehicle Refinishing Offset Lithography Aerospace Coatings Stage II Vapor Recovery			
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	0.493	0.159	0.652
	0.026	0.027	0.053
	0.266	1.058	1.324
	0.080	0.001	0.081
	N/A	0.033	0.033
	0.447	1.435	1.882
Total	2.052	2.713	4.765

The above table shows the reductions of VOC that would be achieved by 2002 and prior to the attainment date. These reductions are enforceable by the adoption of Air Regulation 12. Air Regulation 24 provides RACT requirements on certain NO<sub>x</sub> sources in Delaware that reduces 2.32 tons of NO<sub>x</sub> by 2002, three years prior to the attainment date.

**Expected Emission Reductions from Transportation Control Measures**

Although there are no enforceable measures in the Delaware SIP to reduce emissions from transportation

sources, measures are included in the long range transportation plans of WILMAPCO (Wilmington Area Planning Council) and the Dover/Kent County Metropolitan Planning Organization. Some of the measures have already been put in respective transportation improvement programs and will be implemented prior to the attainment date. An analysis was performed by the Delaware Department of Transportation (DelDOT) concerning emission reductions from TCM needed to overcome a conformity shortfall that existed with the 2005 SIP budget. These programs, because of monetary budget constraints and enforcement issues, would disqualify some of the programs listed below as RACM. The measures were not adopted in the SIP for two reasons: first, the Department does not have the authority to regulate other agencies such as the Department of Transportation that would implement most of the measures considered and second, the emission reductions achieved by the measures would be appreciably small and have little effect, if any, in advancing the goal of attaining the air quality standards prior to 2005.

**PRESENTATION TO THE DELAWARE  
AIR QUALITY MOBILE SOURCE COMMITTEE  
EMISSION REDUCTION STRATEGIES,  
PROGRAMS, CONTROLS  
In Place by the Year 2005  
(Prepared by the Delaware Department of  
Transportation – 2/23/01)**

Transportation Control Measure	County	NO <sub>x</sub> Reductions Ton/Day	VOC Reductions Tons/Day
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Improved Transit (increased routes)	New Castle	0.1143	0.0645
	Kent	0.0159	0.0112

Replacing Older Public Transit Buses with New Buses	New Castle	0.0038	0.0009
	Kent	0.0009	0.0006

HOV Restrictions	New Castle County	0.1889	0.1066
	Kent County	0.0340	0.0241

Employer Based Transportation Plans and Programs (Ride Share, Shuttles)	New Castle	0.1637	0.0924
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	Kent	0.0464	0.0329
Trip Reduction Ordinances	New Castle	0.0201	0.00
	Kent	N/A	N/A
Traffic Flow Improvements	New Castle	0.2666	0.9776
	Kent	0.0066	0.0242
<b>Transportation Control Measure</b>	<b>County</b>	<b>NO<sub>x</sub> Reductio ns Tons/ Day</b>	<b>VOC Reductio ns Tons/Day</b>

Pedestrian and Bikeways	New Castle	0.0175	0.0172
	Kent	0.0058	0.0057
Programs to Control Extended Idling of Vehicles	New Castle	0.0026	0.0005
	Kent	0.0007	0.0001
Programs to Encourage Removal of Pre 1980 Model Year Vehicles (Scrap- page)  Removal of 25% of pre-80 light duty registered	New Castle	0.1249	0.0720
	Kent	0.0618	0.0327
Alternative Fuel Vehicles	New Castle	0.0139	0.0078
	Kent	0.0118	0.0083
	<b>Totals for New Castle and Kent Counties</b>	1.1	1.48

As stated above some of the measures listed have been adopted by the two Metropolitan Planning Organizations. The TCM total reductions are 1.1 tons per day for NO<sub>x</sub> and 1.48 tons per day for VOC which are not significant additional reductions that the Department would need to demonstrate attainment of the one-hour standard nor would they help attain the standard sooner than 2005. Nevertheless, by the year 2005 programs such as improved transit service, ride share, trip reduction ordinances, traffic flow improvements, pedestrian and bikeway facilities construction will all be funded and included in the transportation improvement programs in New Castle and Kent counties.

Some of the above transportation control measures that were considered by transportation planners as effective ways

to reduce emissions were not financially feasible and cannot be considered reasonable available control measures. High occupancy vehicle restrictions or constructing HOV lanes are not cost effective in either New Castle or Kent counties. One mile of new construction of an additional lane on Interstate 95, 295 or 495 in the Wilmington area with HOV restrictions is estimated to cost \$3.6 million. The cost/benefit or cost per ton of NO<sub>x</sub> reduction is \$16.1 million per ton per mile and \$27.6 million per ton per mile for VOC. The benefit to the motorists regarding trip time savings would only be approximately 5 minutes and not a sufficient incentive to carpool and use the HOV lane. Therefore, in Delaware the HOV lane restrictions would be extremely expensive investment with very little air quality or time savings benefits. Another program, the vehicle scrappage initiative would use transportation funding to encourage a vehicle owner to take his pre-1981 vehicle owner off the road by providing a rebate towards a newer vehicle. To be fair and because there are only three counties in the State of Delaware, the program should cover the entire state fleet of pre-1980 passenger vehicles. There are only about 15,000 pre-1980 vehicles in the state. However, if the target goal of 25% of applicable vehicles were taken off the road and the program was fully funded at even at the meager sum of \$500 per vehicle the cost would be approximately \$1.6 million. However the cost/benefit or cost per ton of reductions of NO<sub>x</sub> and VOC would be \$6.8 million and \$10.9 million respectively. When compare to the average cost per ton for NO<sub>x</sub> and VOC reductions for the RACT measures listed above at \$2,000, the comparison is significantly unfavorable to the TCM.

### **Summary**

Delaware has complied with the requirements of Clean Air Act Section 172 (c)(1). As noted above, EPA guidance states that only control measures that produce sufficient benefits to advance the attainment date can be considered to be RACM. The guidance states that cost can be a factor in determining whether a measure is reasonable. EPA guidance notes that measures that are not enforceable are not RACM. As has been shown in the table above, TCM only provide small reductions in ozone precursor emissions (VOC and NO<sub>x</sub>), and have very high costs. Moreover, the Department did not adopt any TCM in the State Implementation Plan because of the inability to enforce these measures.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
REAL ESTATE COMMISSION**

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Section 2905(a)(1), the Delaware Real Estate Commission proposes to revise its Rules and Regulations. The proposed amendments revise and clarify the rules and regulations regarding escrow accounts. Substantive changes include the addition of a new rule addressing the requirements for transfer of fees or specified amounts when the real estate transaction is a non-recurring residential rental agreement of less than one hundred twenty (120) days.

A public hearing will be held on the proposed Rules and Regulations on Thursday, September 13, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
REAL ESTATE COMMISSION  
24 DE Admin. Code 2925**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Education Guidelines. The proposed amendments revise and clarify the education guidelines regarding program criteria to reflect the approval of courses that have been certified through the Association of Real Estate License Law Officials Distance Education Certification Program.

A public hearing will be held on the proposed Education Guidelines on Thursday, September 13, 2001 at 9:30 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Education Guidelines. Any written comments should be submitted to

the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF COSMETOLOGY AND BARBERING**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 5106(1), the Delaware Board of Cosmetology and Barbering proposes to revise its Rules and Regulations. The proposed revisions insert a new rule regarding health and sanitation. The proposed revisions clarify that the United States Food and Drug Administration ("the FDA") has not approved the use of any color additive for use in dyeing or tinting of the eyelash or eyebrow. In addition, the proposed revisions make clear that no product is to be used in a manner that is disapproved of by the Board of Cosmetology and Barbering, the Division of Health and Social Services, the FDA, or that violates any applicable federal or State statute.

A public hearing will be held on the proposed Rules and Regulations on Monday, September 24, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Melvin at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Melvin at the above address by calling (302) 744-4518.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

The Delaware Harness Racing Commission proposes to amend several rules. The Commission proposes these amendments pursuant to 3 **Del.C.** §10029 and 29 **Del.C.** §10115.

The proposed amendment to Rule 1.0 would add a



definition for the phrase "Required Days Off." The proposed amendment to Rule 3.2.4 would delete the requirement that the State Steward/judges investigate and keep a record of every objection and complaint, and would add a time limit for the filing of a protest. The proposed deletion of Rule 5.3.3 would delete the requirement that a trainer is responsible for all horses owned wholly or in part that are participating in a race meet. The proposed amendment to Rule 7.1.6.1.3 would clarify the procedure for determination of preference dates. The proposed amendment to Rule 8.3.3 would clarify the definition of a foreign substance that interferes with testing procedures. The proposed amendment to Rule 4.1.1 would provide that associations comply, with rather than enforce, Commission rules. The proposed amendment to Rule 4.4.5 would delete the requirement that an association notify the Commission of any exclusion. The proposed amendment to Rule 5.2.1.3 would permit the licensing of an owner younger than fourteen years old provided that such an owner may not access to the paddock.

The Commission will accept written comments on the proposed rule amendment from August 1, 2001 until September 5, 2001. Written comments should be sent to the Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rule can be obtained by contacting the Commission office at 302-698-4600. The Commission will conduct a public hearing on these proposed rules on September 6, 2001 at Harrington Raceway at 1:30 p.m.

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## **STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, September 20, 2001 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

These regulations, "The State of Delaware Regulations Governing Cosmetology and Barbering Establishments," are new sanitation standards. They are to be adopted in accordance with Chapter 1, Section 122 (3)(v), Title 16, **Delaware Code**.

This comprehensive code establishes minimum standards for public health assurance in the practice of cosmetology and barbering and in the operation of beauty

salons, schools of cosmetology, schools of electrology, schools of nail technology and schools of barbering, and for the investigation of complaints involving unsanitary or unsafe practices or conditions in such professions or facilities.

The Health Systems Protection Section, Division of Public Health, Delaware Health & Social Services, will hold a public hearing to discuss the proposed adoption of new "State of Delaware Regulations Governing Cosmetology and Barbering Establishments." The new code establishes sanitation standards for aestheticians, barbers, cosmetologists, electrologists, and nail technicians. Additionally, the regulation applies to the operation of body salons, nail salons, barber shops as well as, schools of cosmetology, electrology, nail technology and barbering.

The public hearing will be held on August 23, 2001, at 1:30 p.m., in the DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover, Delaware.

Information concerning the proposed code is available at the following locations:

Environmental Health Field Services  
Williams State Service Center, 3<sup>rd</sup> floor  
805 River Road  
Dover, Delaware 19901  
Phone: 302-739-5305

and

Environmental Health Field Services  
2055 Limestone Road, Suite 100  
Wilmington, DE 19808  
Phone: 302-995-8650

and

Environmental Health Field Services  
Georgetown State Service Center, Rm. 1000  
546 S. Bedford Street  
Georgetown, Delaware 19947  
Phone: 302-856-5496

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by August 21, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by September 4, 2001, to:

Dave Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

**DIVISION OF PUBLIC HEALTH**

These regulations, "The State of Delaware Regulations Governing Body Art Establishments," are new sanitation standards. They are to be adopted in accordance with Chapter 1, Section 122 (3)(w), Title 16, **Delaware Code**.

This comprehensive code establishes minimum standards for sanitary operation of tattoo parlors and body piercing establishments. Delaware Health and Social Services shall issue annual permits and assess a \$100 permit fee. The Secretary is authorized to issue restricted, provisional or other types of permits, and to suspend or revoke any permit in accordance with the regulations.

The Health Systems Protection Section, Division of Public Health, Delaware Health & Social Services, will hold a public hearing to discuss the proposed adoption of new "State of Delaware Regulations Governing Body Art Establishments." The new code establishes sanitation standards for body art establishments that engage in practices that include, but are not limited to, tattooing and body piercing.

The public hearing will be held on August 23, 2001, at 9:30 a.m., in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware.

Information concerning the proposed code is available at the following locations:

Environmental Health Field Services  
Williams State Service Center, 3<sup>rd</sup> floor  
805 River Road  
Dover, Delaware 19901  
Phone: 302-739-5305

and

Environmental Health Field Services  
2055 Limestone Road, Suite 100  
Wilmington, DE 19808  
Phone: 302-995-8650

and

Environmental Health Field Services  
Georgetown State Service Center, Rm. 1000  
546 S. Bedford Street  
Georgetown, Delaware 19947  
Phone: 302-856-5496

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by August 21, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by September 4, 2001, to:

Dave Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

**DIVISION OF SOCIAL SERVICES  
PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services is proposing to add new policy to the Division of Social Services Manual, Sections DSSM 2002.1.1: regarding case closures for the Cash Assistance, Food Stamps and Medical Assistance programs and in DSSM 2002.1.2: re-numbered change of address case processing instructions to appear after the policy on case closures; this is a housekeeping change.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2001.

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

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**DIVISION OF SOCIAL SERVICES  
PUBLIC NOTICE  
Food Stamps Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamps Program is proposing to implement several policy changes to the following sections of the Division of Social Services Manual (DSSM): DSSM 6002, 9007.1, 9013.2, 9016, 9016.1, 9016.2, 9016.3, 9016.4, 9018.2, 9027 through 9031, 9032.2, 9032.16, 9033, 9034.2, 9034.3, 9035.1, 9038, 9039.3, 9040, 9042.2, 9057, 9059, 9060, 9061.1, 9061.2, 9068, 9068.1, 9068.2, 9074, 9074.1, 9074.2, 9076, 9076.1, 9076.2, 9076.3, 9076.4, 9078.2, 9081.1, 9081.2, 9082, 9085, and 9091 through 9091.9. These changes are being made as a result of the following rule: Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of PL 104-193, as amended by PL 104-208, 105-33 and 105-185, Final Rule. This rule implements several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by the

Omnibus Consolidated Appropriations Act of 1997 (OCA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA).

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**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement a policy change to the Division of Social Services Manual, Section 7004.3. This change sets criteria for determining when a claim of \$125 or less is not established and is as a result of comments received from Roger Waters, State Hearing Officer, regarding policy changes that appeared in the May, 2001 Delaware Register.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2001.

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

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**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Medicaid/Medical Assistance Programs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Programs is proposing to implement new policy and amend policies to implement changes to the Division of Social Services Manual, Sections 14100.6, 14105, 14120, 14900, 15500 through 15511 and 30405. New policy at DSSM 14120 addresses eligibility of inmates and new policy at DSSM 15500 provides Medicaid eligibility to a new group, titled, The Breast and Cervical Cancer Group. DSSM 14900 is being amended to add this

new eligibility group. Remaining policy changes relate to what constitutes a redetermination of eligibility (DSSM 14100.6); unverified social security number (DSSM 14105); and, redetermination requirements for the Delaware Prescription Assistance Program (DSSM 30405).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2001.

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

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR & WASTE MANAGEMENT****TITLE OF THE REGULATION:**

Regulation No. 24, Section 11, "Mobile Equipment Repair and Refinishing"

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE  
AND ISSUES:**

Delaware is not in compliance with the EPA ground-level ozone standard, and must make reductions in volatile organic compound (VOC) emissions which are a factor in the formation of ground-level ozone. The Department is proposing to revise Regulation No. 24, Section 11 to establish 1) requirements for using improved transfer efficiency coating application equipment; 2) requirements for enclosed spray gun cleaning techniques; and 3) minimum training standards in the proper use of equipment and materials. In addition, the Department is proposing to remove all paint volatile organic compound (VOC) content limits, since existing limits are now redundant with the federal requirements at 40 CFR Part 59, Subpart B, National VOC Emission Standards for Automobile Refinish Coatings.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through August 31, 2001. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Wednesday, August 29, 2001 beginning at 6pm in the Department's Priscilla Building

Conference Room, Dover Delaware.

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**DIVISION OF AIR & WASTE MANAGEMENT**

**REGISTER NOTICE**

**SAN # 2000-21**

**TITLE OF THE REGULATIONS:**

REGULATION 24 - "CONTROL OF VOLATILE ORGANIC COMPOUNDS EMISSIONS"

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

The Department is proposing to amend Regulation 24 by replacing existing Section 33 "Solvent Metal Cleaning" with language patterned after an Ozone Transport Commission (OTC) model rule for solvent cleaning and drying machines. This model rule is one of several OTC model rules being developed. This regulatory action will allow Delaware to obtain additional volatile organic compound reductions needed for EPA's approval of Delaware's one-hour ozone attainment demonstration State Implementation Plan. This action establishes emission limitations, required control technologies, work practice standards, and defines the compliance, notification, monitoring, recordkeeping and reporting requirements.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed amendment will extend through August 31, 2001. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, August 28, 2001 beginning at 7:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

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**DIVISION OF AIR & WASTE MANAGEMENT**

**REGISTER NOTICE**

**SAN # 2000-23**

**TITLE OF THE REGULATIONS:**

REGULATION 24 - "CONTROL OF VOLATILE ORGANIC COMPOUNDS EMISSIONS"

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

Regulation 24 establishes emission standards, as well as, the compliance demonstration, recordkeeping and reporting requirements for sources emitting volatile organic compounds (VOCs). This amendment proposes to add a new

section, Section 46, to control the emissions of VOCs from lightering operations that occur in the waters of the State. Lightering is the bulk transfer of cargo (usually crude oil) from ocean going vessels to smaller vessels, thereby allowing the ocean going vessels to proceed upriver. In 1996, more than 1,687 tons of VOCs were emitted during lightering operations. Lightering operations represented the single, largest VOC emission source listed amongst the 105 stationary point sources in Delaware's 1996 Emissions Inventory.

Some of the VOCs being emitted during lightering operations are also classified as hazardous air pollutants (HAPs). It was estimated that in 1996 approximately 138 tons of HAPs were emitted during lightering operations. These HAPs include benzene, toluene, xylenes and polycyclic aromatic hydrocarbons (PAHs). The EPA has classified benzene as a known human carcinogen and benzo(a)pyrene, a PAH, as a probable human carcinogen of medium carcinogenic hazard. The emissions of these HAPs will also be reduced under this amendment.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed amendment will extend through August 31, 2001. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 30, 2001 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

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**DIVISION OF AIR & WASTE MANAGEMENT**

**REGISTER NOTICE**

**SAN # 2000-22**

**TITLE OF THE REGULATIONS:**

REGULATION 38 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES"

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

The Department is proposing to amend Regulation 38 by adopting by reference the National Emission Standards for Hazardous Air Pollutants for Source Categories found at 40 CFR Part 63 Subpart T.

Subpart T addresses the emissions of halogenated solvents; establishes required control technologies and work practice standards; and defines the compliance, notification, monitoring, recordkeeping and reporting requirements. Owners or operators of solvent cleaning machines that use

any of the following halogenated solvents will be affected: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed amendment will extend through August 31, 2001. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, August 28, 2001 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

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**DIVISION OF AIR & WASTE MANAGEMENT**  
**REGISTER NOTICE**  
**SAN # 01-03**

**TITLE OF THE REGULATION:**

REGULATION No. 41, "LIMITING EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS", SECTION 1, "ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS"

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

Delaware is not in compliance with the EPA ground-level ozone standard and must make reductions in volatile organic compound (VOC) emissions which are a factor in the formation of ground-level ozone. Section 1 of Regulation 41 will limit the VOC content (hence emissions) of certain consumer and industrial coatings. Limits will be reduced below those now listed in the federal rule (40CFR59 Subpart D) to obtain an emission reduction of one t/d over the federal rule. This regulation is patterned after a similar California rule due to go into effect in 2004. The VOC limits may present a serious challenge to manufacturers and may drive some solvent-based coatings off the market in favor of water-based coatings. The implementation date of 2005 is meant to give manufacturers sufficient time to reformulate products.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through August 31, 2001. Interested parties may submit comments in writing during this period to: Gene Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Wednesday, August 22, 2001

beginning at 6pm in the DNREC auditorium at the Richardson & Robbins Building, 89 Kings Highway, Dover Delaware.

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**DIVISION OF AIR & WASTE MANAGEMENT**  
**REGISTER NOTICE**  
**SAN # 2001-08**

**TITLE OF THE REGULATION:**

Regulation No. 41, Section 3, "Portable Fuel Containers"

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

Delaware is not in compliance with the EPA ground-level ozone standard, and must make reductions in volatile organic compound (VOC) emissions which are a factor in the formation of ground-level ozone. The Department is proposing to adopt a new regulation that will require each portable fuel container and/or spot that is sold in Delaware to 1) have an automatic shut-off and closure device, 2) contain one opening for filling, pouring, and venting, 3) meet minimum fuel flow and fill requirements based on capacity, and 4) meet a permeation standard. The proposed regulation will reduce refueling emissions associated with small off-road engines.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through August 31, 2001. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Wednesday, August 29, 2001 beginning at 6pm in the Department's Priscilla Building Conference Room, Dover Delaware.

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**DIVISION OF AIR & WASTE MANAGEMENT**  
**REGISTER NOTICE**  
**SAN # 2001-12**

**TITLE OF THE REGULATION:**

Regulation No. 42, Section 1, "Control of NO<sub>x</sub> Emissions from Industrial Boilers"

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

Delaware is not in compliance with the EPA ground-level ozone standard, and must make reductions in Nitrogen Oxide (NO<sub>x</sub>) emissions which are a factor in the formation of ground-level ozone. The Department is proposing to

adopt a new regulation that will reduce NO<sub>x</sub> emissions from certain large industrial boilers. Affected units include all combustion units with a maximum heat input capacity of equal to or greater than 100 mmbtu/hr except for certain low emitting units, units equipped with NO<sub>x</sub> controls, and units subject to Delaware Regulation No. 39, NO<sub>x</sub> Budget Trading Program.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through August 31, 2001. Interested parties may submit comments in writing during this period to: Ronald A. Amirikian, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Wednesday, August 29, 2001 beginning at 6pm in the Department's Priscilla Building Conference Room, Dover Delaware.

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**DIVISION OF FISH & WILDLIFE**  
**REGISTER NOTICE**  
**SAN# 2001-18**

**TITLE OF THE REGULATIONS:**  
OYSTER REGULATIONS

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

SB 185 established the direct sale of oysters harvested from the State's natural oyster beds. New shellfish regulations are required to govern the seasons, locations for landing oysters, the type and amount of harvesting gear, the minimum size of oysters and an annual quota of oysters allowed to be harvested.

**NOTICE OF PUBLIC COMMENT:**

A public hearing on proposed shellfish regulations is scheduled for August 23, 2001 at 7:30 PM in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comment until 4:30 PM on August 30, 2001. Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441.

**DIVISION OF WATER RESOURCES**

**REGISTER NOTICE**

**Total Maximum Daily Load (TMDL) for the Murderkill River Watershed, Delaware**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and CBOD5 (5-day Carbonaceous Biochemical Oxygen Demand) for the Murderkill River Watershed. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

**Possible Terms of the Agency Action**

Following adoption of the proposed Total Maximum Daily Loads for the Murderkill River Watershed, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with Department's Whole Basin Management Program, Murderkill River Tributary Action Team, and other affected parties.

**Notice of Public Comment**

A public workshop will be held at 3:30 PM on Thursday, September 13, 2001 in the Lake Forest High School Auditorium, 5407 Killen's Pond Road Felton, Delaware. A public hearing will be held at 6:00 PM on the same day and at the same location. The hearing record will remain open until 4:30 PM, September 20, 2001. Please bring written comments to the hearing or send them to Rod Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739- 6242. All written comments must be received by 4:30 PM, September 20, 2001. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Marianne Brady, (302-739-4590; facsimile: 302-739-6140; e-mail: mbrady@dnrec.state.de.us) by 4:30 PM, September 11, 2001.

Additional information and supporting technical documents may be obtained by contacting Marianne Brady, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, Silver Lake Plaza – Suite 220, 820 Silver Lake Boulevard, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140, e-mail:

[mbrady@dnrec.state.de.us](mailto:mbrady@dnrec.state.de.us).

**DIVISION OF WATER RESOURCES**  
**Surface Water Discharges Section**  
**Notice of Public Hearing**

The Surface Water Discharges Section, Division of Water Resources of the Department of Natural Resources and Environmental Control, will hold a public hearing to discuss proposed revisions to its Regulations for Licensing Operators of Wastewater Facilities. The proposed revisions withdraw the current regulations and replace the current regulations with the proposed regulations. The changes to the regulations include updated definitions, consistent use of terms, clearer language, and recognition of new technology.

This public hearing will be held on Wednesday August 29, 2001 beginning at 1:30 PM in the Delaware Tech, Terry Campus Room 400A, Dover, DE.

Copies of the proposed regulation are available for review by calling:

Deborah Virdin-Hastings  
Division of Water Resources,  
Surface Water Discharges Section  
89 Kings Hwy  
Dover, Delaware. 19901  
(302) 739-5731

The procedures for public hearings are established in 7 Del.C. 6006 and 29 Del.C. 10117. Inquiries regarding the public hearing should be directed to R. Robert Thompson at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail with the Hearing Officer. The deadline for inclusion of written comments in the hearing record is the conclusion of the hearing. Written statements may be presented prior to the hearing and should be addressed to R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

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

**TITLE OF THE REGULATIONS:**

Measures for Meeting the EPA-Identified Shortfalls for the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Severe Ozone Non-Attainment Area (non-regulatory plan)

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

On December 16, 1999 the U.S. Environmental Protection Agency (EPA) proposed a rule in the Federal Register (FR, Vol 64, No. 241) proposing conditional

approval of the *Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area*, May, 1998. One of the conditions for approval is for the non-attainment area to achieve additional emission reductions to close EPA-identified shortfalls in Volatile Organic Compounds (VOC) and Nitrogen Oxide (NOx) emission reductions.

The proposed revision to the State Implementation Plan (SIP), informally titled "The Shortfall SIP", describes how the EPA-identified shortfalls will be eliminated through regional application of six new regulations.

**NOTICE OF PUBLIC COMMENT:**

Public Hearing scheduled for August 23, 6:00 PM in the Priscilla Building Conference Room (Air Quality Management Section office), 156 South State Street, Dover, Delaware 19901

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

**REGISTER NOTICE**

**TITLE OF THE PROPOSAL:**

State Implementation Plan Development: Evaluation of Applicability of Reasonably Available Control Measures to Assist in Attaining the Ozone Air Quality Standard.

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

To provide the public with an addendum to the adopted State Implementation Plan (SIP) Revision that demonstrates Delaware's strategy for attaining the one-hour national ambient air quality standards (NAAQS) for ground-level ozone by the year 2005. The addendum will include the following:

An analysis of the air quality benefits of implementing transportation control measures (TCM) whose purpose is to reduce air emissions by reducing automobile usage and increasing other transportation choices, such as providing more transit service to the motoring public.

An explanation for why Delaware did not incorporate each listed TCM in the Clean Air Act (CAA) as an enforceable strategy for attaining the standard before the year 2005. These TCM strategies would have been required if it was determined to be a reasonable available control measure (RACM) as defined by the Clean Air Act.

To review the reasonably available control technology (RACT) that Delaware has required on stationary sources as a strategy to attain the ozone NAAQS.

**NOTICE OF PUBLIC COMMENT:**

Public Hearing is on August 23, 2001, 6 P.M. Priscilla Building Conference Room, 156 South State Street, Dover

**DEPARTMENT OF STATE**  
**DIVISION OF HISTORICAL AND**  
**CULTURAL AFFAIRS**

**Title:**

Regulations Governing the Historic Preservation Tax Credit.

**Brief Synopsis:**

Chapter 18 Subchapter II of Title 30 was enacted by the General Assembly in 2001. It contained the Historic Preservation Tax Credit Act. This Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified history property. The proposed regulations will provide requirements that will govern certification of historic rehabilitation projects under application for this tax credit.

**Notice of Public Comment:**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101, the Division of Historical and Cultural Affairs proposes to adopt rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider input from any person in writing on the proposed Rules and Regulations. Any written comments should be submitted to the Division in care of Daniel R. Griffith, Director, Division of Historical and Cultural Affairs, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5A, Dover, DE 19901. The final date to submit written comments is August 31, 2001. Anyone wishing to obtain a copy of the proposed Rules and Regulations should notify Daniel R. Griffith at the above address or call 302-739-5313. This notice will be published in two newspapers of general circulation.

**DEPARTMENT OF**  
**TRANSPORTATION**

**Rules and Regulations of Outdoor Advertising**

The Department of Transportation is granted authority to regulate Outdoor Advertising by Chapter 11 of Title 17 of the Delaware Code. Changes to the "Delaware Department of Transportation Rules and Regulations of Outdoor Advertising" as issued in 1975 are being proposed to

improve clarity, correct inaccurate citations of statute, correct obvious typographical errors, and to make non-substantive changes in grammar, syntax, spelling, and punctuation. Also, a substantive change is being proposed to include a new section that allows for on-premise electro-mechanical variable-message signs to display on-premise activities at reasonable intervals as defined by the Department. Signs in this category that meet all of the Department's criteria will be issued an outdoor advertising sign permit. This proposed change represents the first time in the history of the Delaware Department of Transportation that electro-mechanical variable advertising messages will be permitted in the State.

Written comments on the changes to these draft regulations will be accepted through October 1, 2001, and should be submitted to:

William F. Smith, III  
 Department of Transportation  
 Field Services  
 P.O. Box 778  
 Dover, DE 19903

Copy of original 1975 Outdoor Advertising Rules & Regulations . Signed by Clifford Hall , Secretary Department of Highways and Transportation, February 27, 1975.

**PUBLIC SERVICE COMMISSION**

**NOTICE OF PUBLIC COMMENT PERIOD AND  
 PROPOSED AMENDMENTS TO THE DELAWARE  
 PUBLIC SERVICE COMMISSION'S RULES FOR  
 THE PROVISION OF TELECOMMUNICATIONS  
 SERVICES**

On July 24, 2001, the Delaware Public Service Commission ("the Commission") entered an Order promulgating proposed revisions to the Commission's *Rules for the Provision of Telecommunications Services*. The proposed amendments to the *Rules* are intended: 1) to address concerns raised by Staff which impact the certification of competitive local exchange carriers and intrastate carriers, including application and bonding requirements; 2) to reflect other changes that have occurred in federal and state telecommunications laws which impact the existing *Rules*; 3) to ensure that carriers comply with federal and state law; and 4) to conform, where practicable, the requirements of the *Rules* with other regulatory provisions.

The Commission has authority to promulgate the regulations pursuant to 26 Del. C. § 209(a) and 29 Del. C. §



10111 et seq.

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Twelve (12) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before August 31, 2001.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before August 31, 2001.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations will be available for review on the Commission's website: [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the Commission's secretary, Karen J. Nickerson, by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by Internet e-mail at [knickerson@state.de.us](mailto:knickerson@state.de.us).

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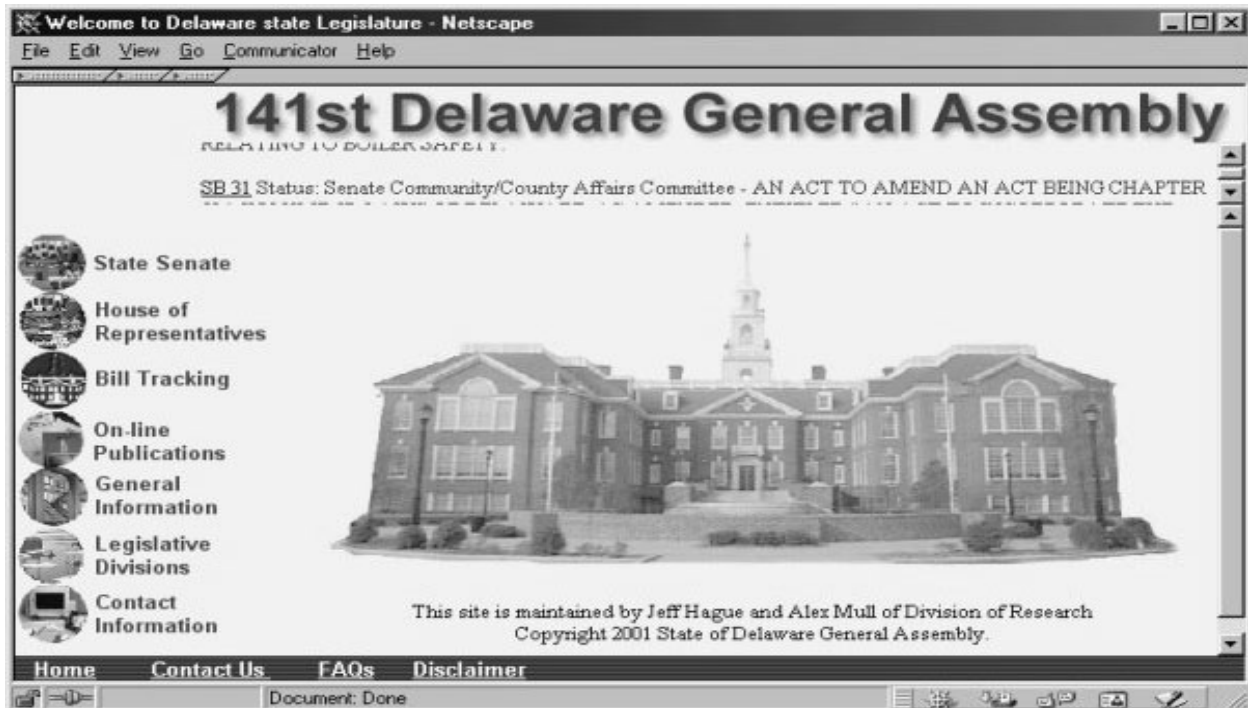
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