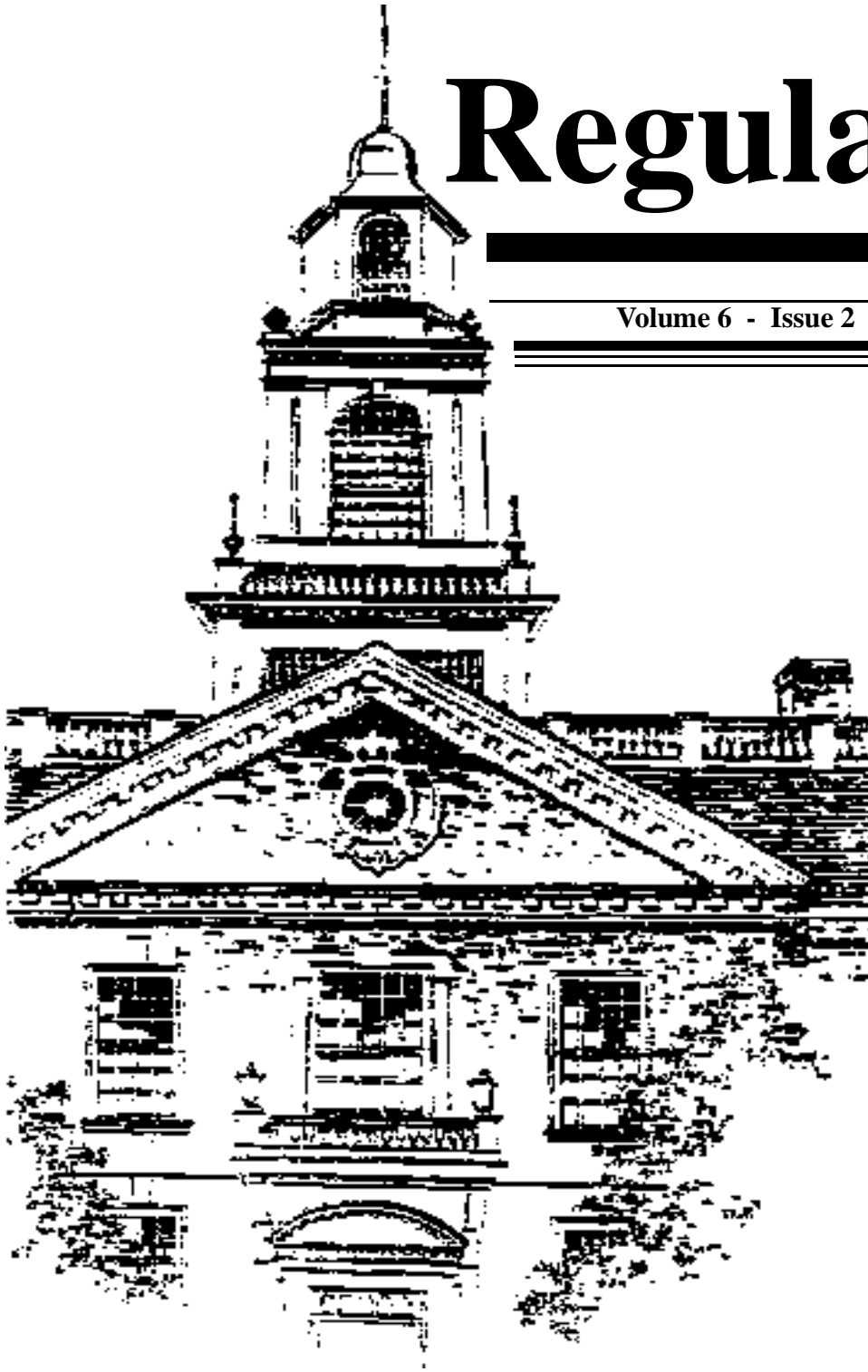

Delaware Register of Regulations



Issue Date: August 1, 2002

Volume 6 - Issue 2

Pages 118 - 223

IN THIS ISSUE:

Regulations:

Proposed

Final

Governor

Appointments

General Notices

Calendar of Events &

Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before July 15, 2002.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

119

DELAWARE REGISTER OF REGULATIONS

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

5 DE Reg. 1337 - 1339 (01/1/02)

Refers to Volume 5, pages 1337 - 1339 of the Delaware Register issued on January 1, 2002.

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.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section, no judicial review of a regulation is available

unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
AUGUST 1	JULY 15	4:30 P.M.
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.

DIVISION OF RESEARCH STAFF:

Walter G. Feindt, Deputy Director; **Judi Abbott**, Secretary; **Sandra F. Clark**, Administrative Assistant; **Jeffrey W. Hague**, Registrar of Regulations; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Sandra Montemarano**, Public Information Clerk; **Alex W. Mull**, Assistant Registrar; **Deborah A. Porter**, Interim Supervisor; **Victoria Schultes**, Administrative Assistant; **Ted Segletes**, Paralegal; **Don Sellers**, Printer; **Thom Shiels**, Legislative Attorney; **Alice W. Stark**, Legislative Attorney; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

TABLE OF CONTENTS

121

Cumulative Tables..... 123

WR-15. Collection or Sale of Nongame Wildlife 164
WR-16. Endangered Species..... 165
WR-17. Species of Special Concern..... 165

PROPOSED

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Examiners of Private Investigators &
Private Security Agencies 124

DEPARTMENT OF AGRICULTURE

Forest Service Regulations..... 127

DEPARTMENT OF EDUCATION

540 Driver Education..... 133

PROFESSIONAL STANDARDS BOARD

1511 Issuance & Renewal Of Continuing License 135
1517 Certification Career & Technical Specialist 140

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Regulations for Assisted Living Facilities..... 141

DIVISION OF SOCIAL SERVICES

DSSM:

3002 Time Limit, Temporary Welfare Program... 155
9007.1 - Citizenship and Alien Status..... 156
9045 - Maximum Allowable Resources..... 158
14600 Third-Party Liability..... 158

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL Division of Fish & Wildlife

Wildlife and Non-Tidal Fishing Regulations:

WR-2. Method of Take..... 162
WR-3. Federal Laws & Regulations Adopted 162
WR-4. Seasons..... 163
WR-7. Deer..... 163
WR-14. Falconry..... 164

Division of Water Resources

Regulations for Licensing Water Well Contractors,
Pump Installer Contractors, Well Drillers,
Well Drivers, and Pump Installers..... 165

EXECUTIVE DEPARTMENT Delaware Economic Development Office

Co-Op Adverting Program..... 174
Direct Grants Program..... 176
Matching Grants Program..... 178

STATE EMPLOYEE BENEFITS COMMITTEE

Group Health Care Insurance, Proposed Revisions
to Eligibility and Coverage Rules..... 180

FINAL

DELAWARE FIRE PREVENTION COMMISSION

Sec. XVII, Ambulance Company's Intent to
Discontinue Service & Sec. XVIII, Basic
Life Support Data Assessment Committee.... 187

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Physical Therapists, Rule 11.0..... 189

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL Division of Air & Waste Management

Reg. No. 24, Section 10, Aerospace Coatings..... 190

DEPARTMENT OF PUBLIC SAFETY DIVISION OF STATE POLICE

Nonconsensual Towing Regulations..... 206

TABLE OF CONTENTS

EXECUTIVE DEPARTMENT Delaware Economic Development Office

Co-Op Advertising Program..... 212

State Employee Benefits Committee, Notice of
Public Hearing..... 223
Delaware River Basin Commission, Notice of
Meeting..... 223

GOVERNOR

Appointments..... 214

GENERAL NOTICES

DEPARTMENT OF PUBLIC SAFETY

Board of Examiners of Constables, 217

CALENDAR OF EVENTS/HEARING NOTICES

Board of Examiners of Private Investigators &
Private Security Agencies, Notice of
Public Hearing..... 219
Dept. of Agriculture, Forest Service Regulations,
Notice of Public Hearing..... 219
State Board of Education, Notice of
Monthly Meeting..... 219
Health and Social Services, Div. of Long Term Care
Residents Protection, Assisted Living Facilities,
Notice of Public Hearing..... 219
Div. of Social Services, Time Limit, Temporary
Welfare Program, Notice of Public Comment
Period..... 220
Food Stamp Program, Notice of Public
Comment Period..... 220
DSSM 14600, Third-Party Liability,
Notice of Public Comment Period..... 220
DNREC, Div. of Fish & Wildlife, Wildlife and
Non-Tidal Fishing Regulations, Notice of Public
Hearing..... 220

Div. of Water Resources, Notice of Public
Hearing..... 221
DEDO, Co-Op Advertising Program, Notice of Public
Hearing..... 221
Direct Grants Program, Notice of
Public Hearing..... 222
Matching Grants Program, Notice of Public
Hearing..... 222

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the Delaware Register of Regulations.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the Register in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Professional Regulation (TITLE 24 DELAWARE ADMINISTRATIVE CODE)

2900 Real Estate Commission..... 6 **DE Reg.** 8 (Prop.)

Public Service Commission

Regulations Governing Payphone Service Providers &
Providers of Operator Services for Payphones..... 6 **DE Reg.** 65 (Final)

DEPARTMENT OF EDUCATION (TITLE 14 DELAWARE ADMINISTRATIVE CODE)

275 Charter Schools.. 6 **DE Reg.** 13 (Prop.)
701 Unit Count..... 6 **DE Reg.** 74 (Final)
1001 Participation in Extra-Curricular Activities . 6 **DE Reg.** 18 (Prop.)
1051 DSSAA Senior High School Interscholastic Athletics..... 6 **DE Reg.** 6 (Errata)
1512 Issuance & Renewal of Advanced License..... 6 **DE Reg.** 77 (Final)
1540 Certification Science Teacher..... 6 **DE Reg.** 19 (Prop.)
1541 Limited Standard Certificate for Middle Level Mathematics and Science and
Secondary Science Certificate for Middle Level Science..... 6 **DE Reg.** 21 (Prop.)
1594 Delaware Administrator Standards..... 6 **DE Reg.** 22 (Prop.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Long Term Care Residents Protection

Nursing Homes Admitting Pediatric Residents, Regulations for..... 6 **DE Reg.** 79 (Final)

Division of Public Health

Regulations for Adult Day Care Facilities..... 6 **DE Reg.** 83 (Final)
Delaware Radiation Control Regulations..... 6 **DE Reg.** 98 (Final)
Regulation for the Certification of Radiation Technologists/Technicians..... 6 **DE Reg.** 99 (Final)

Division of Social Services

DSSM

15200 Transitional Medicaid..... 6 **DE Reg.** 29 (Prop.)
25000 Children’s Community Alternative Disability Program (CCADP)..... 6 **DE Reg.** 31 (Prop.)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air & Waste Management

Waste Management Section

2002 Amendments to Delaware Regulations Governing Hazardous Waste..... 6 **DE Reg.** 106 (Final)

Division of Fish & Wildlife

Tidal Finfish Reg. No. 23, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas.. 6 **DE Reg.** 35 (Prop.)
Tidal Finfish Reg. No.24, Fish Pot Requirements..... 6 **DE Reg.** 35 (Prop.)
Shellfish Sanitation Regulations..... 6 **DE Reg.** 36 (Prop.)

DEPARTMENT OF STATE

Division of Historical & Cultural Affairs

Historic Preservation Tax Credit Program..... 6 **DE Reg.** 108 (Final)

DEPARTMENT OF TRANSPORTATION

Statewide Long Range Transportation Plan..... 6 **DE Reg.** 38 (Prop.)

Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

DIVISION OF PROFESSIONAL REGULATION

BOARD OF EXAMINERS OF PRIVATE

INVESTIGATORS & PRIVATE

SECURITY AGENCIES

24 DE Admin. Code 1300

Statutory Authority: 24 Delaware Code, Section
1304(b)(3) (24 Del.C. §1304(b)(3))

Public Notice

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 10.0 - Licensing Fees. This amendment will clarify the fees for Class D License - Armored Car Agency License. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by August 31, 2002, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, October 10, 2002, 10:00am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

**Board Of Examiners Of Private Investigators & Private
Security Agencies Rules and Regulations**

1.0 Firearm's Policy

1.1 No person licensed under 24 Del.C. 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three, there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

1.2 Firearms - approved type of weapons

1.2.1 9mm

1.2.2 .357

1.2.3 .38

1.2.4 .40

1.3 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.

1.4 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

1.5 All individuals must qualify with the same type of weapon that he/she will carry.

1.6 All ammunition will be factory fresh (no re-loads).

1.7 The minimum passing score is 75%. All licenses are valid for a period of one (1) year.

Adopted 11/04/1994

See 3 DE Reg 960 (1/1/00)

2.0 Nightstick, Pr24, Mace, Peppergas and Handcuffs

To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Proof of these certifications must be provided to the Director of the Board of Examiners. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Board of Examiners.

Adopted 11/04/1994

3.0 Personnel Rosters and Job Assignments

3.1 Anyone licensed under 24 Del.C. Ch. 13 shall submit an alphabetical personnel roster and a job site list to the director of the Detective Licensing Section by the tenth of every month. Alphabetical personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

Mark A. Smith 01/25/60 WM 01/25/99 SG
Helen E. White 03/17/71 BF 03/17/00 FA
John F. Henry 05/23/43 M 05/23/00 PI
James D. Williams 12/03/40 WM 06/30/99 MG
Frank G. Montgomery 07/24/55 BM 06/30/99 LH
Anne L. Murray 10/20/40 WF 06/30/99 CO
SG Security Guard
FA Firearm's
PI Private Investigator
MG Delaware Manager
LH License Holder
CO Corporate Officer

3.2 Job site lists shall include the name, address, location, and hours of coverage. For example:

The DuPont Industry
Barley Mill Road
2200 - 0600 Hours, Monday, Wednesday, and

Friday

Adopted 11/04/1994

See 3 DE Reg 960 (1/1/00)

4.0 Record Book; Right of Inspection

All persons licensed under 24 Del.C. Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified to carry, the certification dates, scores and the serial number of the weapon/item, if applicable.

Adopted 11/04/1994

See 3 DE Reg 960 (1/1/00)

5.0 Uniforms, Patches, Badges, Seals, Vehicular

Markings Amended 04/17/97

5.1 No person licensed under 24 Del.C. Ch. 13 shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be proceeded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

5.2 Advertisement and other forms of publications:

5.2.1 No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.

5.2.2 All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.

5.2.3 Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

Adopted 11/04/1994

See 3 DE Reg 960 (1/1/00)

6.0 Qualified Manager

A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.

Adopted 11/04/1994

7.0 Employment Notification

7.1 It shall be the responsibility of each person licensed as a security guard under 24 Del.C. Ch. 13 to notify the Director of the Board of Examiners, in writing within 24 hours, if such person is terminated or leaves one agency for employment with another or works for more than one security guard agency. Under no circumstances will a security guard be permitted to be employed by more than two agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers must be made aware of this fact as well as the Director of the Board of Examiners.)

7.2 Employers Responsibility

7.2.1 A licensed private security agency, after

investigation, shall notify the Detective Licensing Office, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.

7.2.2 A licensed private security agency shall report to the Detective Licensing Office, in writing, the following:

7.2.2.1 The name of any employee arrested;

7.2.2.2 The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

7.2.2.3 The name of any employee disabled from carrying, owning, or possession a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

Adopted 11/04/1994

See 4 DE Reg. 361 (8/1/00)

8.0 Criminal Offenses

In addition to those qualifications set forth in 24 Del.C. §1314, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III or Offensive Touching misdemeanor within the last three (3) years.

Adopted 11/04/1994

9.0 Private Investigators

9.1 A Private Investigator must not be a member or employee of any Law Enforcement Organization, as defined by the Council on Police Training.

9.2 At the time of processing, a Private Investigator must provide proof of employment by a licensed Private Investigative Agency with the Private Investigator application signed by the employer. The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.

9.3 A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

Adopted 11/04/1994

10.0 Licensing Fees

10.1 Class A License - Private Investigative Agency

10.1.1 In-State License Holder

10.1.1.1 Individual - No Employees - Not Corporation

10.1.1.1.1 \$230 for 2 years to expire
June 30th of odd years

10.1.1.1.2 \$5,000 Bond

10.1.1.1.3 \$1,000,000 Liability

Insurance per occurrence

10.1.1.2 Corporation - Has Employees

10.1.1.2.1 \$345 for 2 years to expire
June 30th of odd years

10.1.1.2.2 \$10,000 Bond

10.1.1.2.3 \$1,000,000 Liability

Insurance per occurrence

10.1.2 Out-of-State

10.1.2.1 License Holder - Individual and Corporation

10.1.2.1.1 \$345 for 2 years to expire
June 30th of odd years

10.1.2.1.2 \$10,000 Bond

10.1.2.1.3 \$1,000,000 Liability

Insurance per occurrence

10.1.2.2 Delaware Manager

10.1.2.2.1 \$230 for 2 years to expire
June 30th of odd years

10.1.2.2.2 \$5,000 Bond

10.2 Class B License - Private Security Agency

10.2.1 In-State License Holder

10.2.1.1 Individual - No Employees - Not Corporation

10.2.1.1.1 \$230 for 2 years to expire
June 30th of odd years

10.2.1.1.2 \$5,000 Bond

10.2.1.1.3 \$1,000,000 Liability

Insurance per occurrence

10.2.1.2 Corporation - Has Employees

10.2.1.2.1 \$345 for 2 years to expire
June 30th of odd years

10.2.1.2.2 \$10,000 Bond

10.2.1.2.3 \$1,000,000 Liability

Insurance per occurrence

10.2.2 Out-of-State

10.2.2.1 License Holder - Individual and Corporation

10.2.2.1.1 \$345 for 2 years to expire
June 30th of odd years

10.2.2.1.2 \$10,000 Bond

10.2.2.1.3 \$1,000,000 Liability

Insurance per occurrence

10.2.2.2 Delaware Manager

10.2.2.2.1 \$230 for 2 years to expire
June 30th of odd years

10.2.2.2.2 \$5000 Bond

10.3 Class C License - Private Investigative & Private Security Agency

10.3.1 In-State License Holder

10.3.1.1 Individual - No Employees - Not Corporation

10.3.1.1.1 \$345 for 2 years to expire
June 30th of odd years

10.3.1.1.2	\$10,000 Bond	
10.3.1.1.3	\$1,000,000	Liability
Insurance per occurrence		
10.3.1.2 Corporation - Has Employees		
10.3.1.2.1	\$520 for 2 years to expire	
June 30th of odd years		
10.3.1.2.2	\$15,000 Bond	
10.3.1.2.3	\$1,000,000	Liability
Insurance per occurrence		
10.3.2 Out-of-State		
10.3.2.1 Individual and Corporation		
10.3.2.1.1 License Holder		
10.3.2.1.1.1	\$520 for 2 years to expire	
June 30th of odd years		
10.3.2.1.1.2	\$15,000 Bond	
10.3.2.1.1.3	\$1,000,000	Liability
Insurance per occurrence		
10.3.2.1.2 Delaware Manager		
10.3.2.1.2.1	\$345 for 2 years to expire	
June 30th of odd years		
10.3.2.1.2.2	\$10,000 Bond	
10.4 Class D License - Armored Car Agency License		
10.4.1 License Holder		
10.4.1.1 Corporation - Has Employees		
10.4.1.1.1	\$345 for 2 years to expire	
June 30th of odd years		
10.4.1.1.2 Banking - Commissioner License as required by 5 Del.C. 3203		
10.4.1 License Holder		
10.4.1.1 \$345 for 2 years to expire June 30th of odd years		
10.4.1.2 Banking Commissioner License as required by Title 5 Chapter 32 Section 3203		
10.4.1.3 \$10,000 Bond		
10.4.1.4 \$1,000,000 Liability Insurance per occurrence		
10.4.2 Delaware Manager		
10.4.2.1 \$230 for 2 years to expire on June 30th of odd years		
10.4.2.2 \$5,000 Bond		

11.0 Use Of Animals

11.1 The use of animals is prohibited in the performance of private security activities.

Adopted 04/23/1998

See 3 DE Reg 960 (1/1/00)

DEPARTMENT OF AGRICULTURE

Statutory Authority: 3 Delaware Code,
Section 1101 (3 Del.C. § 1011)

Forest Service Regulations

The Department proposes these amendments to the Forest Service's Regulations pursuant to 3 Del. C. § 1011. Its purpose in proposing these amendments is to streamline the procedures for responding to potential or existing water quality problems arising from silvicultural activities and to establish an enforcement and penalty scheme for those who fail to obtain and file the necessary permits before commencing timber harvesting activities.

The proposed amendments to the regulations will be considered at a public hearing scheduled for September 6th, 2002 at 1:00 PM at the Delaware Department of Agriculture Building, conference Room No. 1. Copies of the proposed amendments to the regulations may be obtained from the State Forester's Office. Public comments may be submitted in writing to E. Austin Short, III on or before 1:00 PM on July 12, 2002 and/or in person at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware and the telephone number is (302) 698-4503.

~~Delaware's Forestry Practices Erosion and Sediment Law Rules and Regulations~~**~~I. Effective Date:~~**

~~Rules and Regulations Effective Date: July 1, 1996~~

~~II. Overview of Statutory Authority:~~

~~On July 11, 1994, Governor Thomas Carper signed into law Delaware Code Title 7, Chapter 29, Title 3, Chapter 10, Subchapter VI, titled "Water Quality as relates to Silvicultural Systems and Sedimentation and Erosion Control." For ease of discussion and as reference, the Delaware Department of Agriculture Forest Service (DDAFS DFS) will commonly call Subchapter VI the Forestry Practices Erosion & Sediment (E&S) law. This terminology will also distinguish this law from those relating to sedimentation under the regulatory authority of the Department of Natural Resources and Environmental Control (DNREC) called the Sediment and Stormwater Management Law.~~

~~The law The Forest Practices E & S law charges the Delaware Department of Agriculture's Forestry Administrator (commonly known as the State Forester) with "protection of the waters of the State by pollution from sediment deposits resulting from silvicultural activities. . . . Through the adoption of this subchapter the State of Delaware recognizes that water quality protection techniques~~

for silvicultural practices are an integral component of properly managed forests.”

Further, the law describes components of the State Program that may be administered by the Forestry Administrator. The components which are important to these proposed rules and regulations are:

1) Develop and publish water quality protection techniques and guidelines for landowners and operators;

2) Provide technical and other assistance to landowners and operators in the proper use of the techniques and guidelines; and

3) Conduct educational programs on the use of the techniques and guidelines for landowners and operators.

Through the cooperative efforts of landowners and operators groups, State and Federal agencies, environmental interest groups, and others, the Forestry Administrator adopted and published Delaware's Forestry Best Management Practices (BMP) Manual. This manual enumerates water quality protection techniques appropriate to silvicultural practices in Delaware and provides guidelines for their use.

The completion and availability of the BMP Manual has enabled the Forestry Administrator to continue the program set forth in the law through technical assistance and education. Furthermore, the manual provides quantitative measures by which landowners and operators can protect the waters of the State while conducting silvicultural operations.

Through distribution of the BMP Manual, technical assistance, education, rules, and regulations, the Forestry Administrator will seek to meet the charge of protection of the waters of the State and ensure properly managed forests for their multiple benefits.

1.0 Authority

These regulations are promulgated under the authority of Section 1011 of Title 3 of the Delaware Code.

2.0 Purpose

The purpose of these proposed amendments to the Forest Service's Erosion and Sedimentation Control regulations is to streamline the process for responding to potential or existing water quality problems and to establish an enforcement scheme for dealing with operators who do not file the proper permits prior to commencing a timber harvest. These rules and regulations apply to silvicultural operations, as defined, being conducted on private, state, and federal lands within the State of Delaware, unless otherwise stated in the regulations.

The intent of these rules and regulations is to ensure that silvicultural activities do not cause erosion and sedimentation to Delaware's waters. The Delaware Forest Service has determined that timber harvests and shearing & piling are the two silvicultural activities that pose the

greatest potential for producing erosion and sedimentation. Therefore a notification system is required for these two activities. Other silvicultural activities, such as but not limited to, root raking, chemical application, installation and maintenance of firebreaks, do not require prior notification but operators are to follow best management practices (BMPs) as outlined in Delaware's Forestry BMP Manual (DE Dept. of Ag. Document #65-01-04/95/09/01)

3.0 Definitions:

3.1 **Acceptable sediment control and stormwater management techniques** are equivalent/synonymous to/with both erosion and sediment control measures and forestry Best Management Practices (BMP).

3.2 **Working days- Business days** are defined as any day Monday through Friday.

3.3 **Buyer** is defined as “any individual or firm that regularly purchases standing trees for harvest by himself or herself or a subcontractor.”

3.4 **Department** is the Delaware Department of Agriculture.

3.5 **DFS** is the Delaware Forest Service

3.6 **DNREC** is the Delaware Department of Natural Resources and Environmental Control.

3.7 **Forest management activities** are herein defined as practices, techniques or activities which are designed for purpose of conserving, protecting and enhancing the land as forest land over the long-term. Forest management includes but is not limited to perpetuation of tree species; improvement of trees' and forest growth, health and vigor; protection from fire, and insects and diseases.

3.8 **Forester** is defined as a Forester, Senior Forester, Regional Forester, Assistant Forestry Administrator, or Forestry Administrator currently employed by the Delaware Forest Service.

3.9 **Intermittent Stream with a well-defined channel** is a defined as a water body which is naturally occurring, and maintains a seasonal flow of water under typical climatic conditions. ~~This does not include man-made water channels such as ditches.~~

3.10 **Normal rainfall** is an inch of liquid precipitation in a 24 hour period.

3.11 **Open water body** is a bay, lake, or pond where water is present throughout the year. This does not include man-made water channels such as ditches.

3.12 **Operator** is defined as “any person that operates or exercises control over any silvicultural activity.”

3.13 **Perennial stream** is defined as a water body with a well-defined channel which maintains a continuous flow of water throughout the year under typical climatic conditions. This does not include man-made water channels such as ditches.

3.14 **Permittee** is defined as “any individual or firm that has a Delaware Erosion and Sediment Law Notification

Form and Permit that has been approved by the DFS.”

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

3.16 **Secretary** is the Delaware Secretary of Agriculture

3.17 **Shearing and Piling** is defined as preparing a site for reforestation by using a crawler tractor with a shear blade, commonly known as a "K-G blade" to cut off at ground level any trees or shrubs that remain after a timber harvest. This brush and debris is then piled in rows by a crawler tractor with a root raking blade. The spacing between the rows of debris is determined on site, and tree seedlings are planted between the rows.

3.18 **Silvicultural activity** is defined as "any forest management activity, including but not limited to harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation."

4.0 Rules and Regulations Intent and Goals

The intent of the Rules and Regulations is to establish a system of notification and referral that quickly and easily provides the Forestry Administrator with the information needed to administer Delaware's Forestry Practices E&S Law without causing undue hardship on operators and landowners. The goals of these Rules and Regulations are:

4.1 to protect the waters of the State from erosion and sedimentation resulting from silvicultural activities; and

4.2 to provide the Forestry Administrator the authority to:

4.2.1 track the use and effectiveness of Forestry BMPs,

4.2.2 develop close working relationships with forest operators and landowners through site visits,

4.2.3 permit the Delaware ~~Department of Agriculture~~ Forest Service to rapidly address inquiries from citizens, agencies, and other organizations concerning ongoing silvicultural operations, and

4.2.4 document the positive benefits of properly managed forests.

5.0 Regulatory Procedures

5.1 ~~The operator~~ Operators and buyers will provide written notification to ~~Delaware Department of Agriculture Forest Service (DDAFS)~~ Delaware Forest Service (DFS) at least ~~ten (10) working~~ five (5) business days prior to the

initiation of covered silvicultural operations greater than or equal to 43,560 square feet of area (1 acre).

~~2) Operators will notify the Department by completing and signing the forms (BMP-02) provided by the Delaware Department of Agriculture Forest Service (DDAFS).~~

5.2 Operators and buyers will notify the Department by completing and signing Delaware's Forestry Practices Erosion and Sediment Law Notification Form and Permit, as provided by the Delaware Forest Service (DFS). No covered silvicultural activity will start prior to the date that an approved Erosion & Sediment Control Permit is approved.

5.3 This notification form will include, but is not limited to:

5.3.1 the forest land acreage and type of covered silvicultural activity planned,

5.3.2 statement that land will remain under forest management,

5.3.4 signed statements stating the operators' intent to use forestry BMPs to prevent pollution,

5.3.5 specific Forestry BMPs to be used on the site,

5.3.6 maps of the site, including location of any water bodies, streams, ponds, Streamside Management Zones, roads, stream crossings, landings, and other pertinent site specific information as appropriate, and

5.3.7 estimated start and completion dates

5.3.8 county tax parcel identification number

5.3.9 If the property is covered by the Delaware Seed Tree Law and, if so, how the owner intends to reforest the property.

5.4 Notification forms will be sent to the local Delaware ~~Department of Agriculture~~ Forest Service office for the county in which the activity is to occur. Technical assistance, forms, topographic maps, and other assistance are available at these offices as well.

5.4.1 Kent County:

Forestry Administrator

Delaware Department of Agriculture

Forest Service

2320 South Dupont Highway

Dover, DE 19901

(302) 698-4500 In-state 1-800-282-8685

FAX (302) 697-6245

Kent County Forester

Taber State Forest

1953 Burrsville Road

Harrington, DE 19952

(302) 349-0938

FAX (302) 349-0937

5.4.2 Sussex County:

Southern Regional Forester

Redden State Forest
RD 4, Box 354 Sussex County Route 565
18074 Redden Forest Drive
Georgetown, DE 19947
(302) 856-2893
FAX (302) 856-5039

5.4.3 New Castle County:
Northern Regional Forester
Blackbird State Forest
502 Blackbird Forest Road
Smyrna, DE 19977
(302) 653-6505
FAX (302) 653-2869

5.5 The Delaware ~~Department of Agriculture~~ Forest Service will approve, approve with modifications, or deny all applications within five (5) working days of their receipt. In cases where denial of the application is issued, the Delaware ~~Department of Agriculture~~ Forest Service will provide technical assistance to the landowner, buyer and/or operator to develop modification(s) necessary to bring the application into compliance.

5.6 The operator on the site is responsible for following BMPs as indicated on the Erosion and Sediment Law Notification Form and Permit until a forester has made a final inspection of the site and issued a final inspection report on form BMP-02.

5.7 A copy of the approved Erosion and Sediment Law Notification Form and Permit shall be kept on the site at all times during the harvest operation, and shown on demand to any forester or DNREC Environmental Protection Officer.

5.8 The permittee/operator shall provide the DFS with the following notifications of intent:

5.8.1 starting a permitted harvest operation — not less than two (2) days prior to desired start date.

5.8.2 completion of the harvest operation — not less than one (1) day prior to completion.

5.8.3 returning to a site if the operator has vacated the site for weather-related or similar reasons — not less than one (1) day prior to return.

5.9 Special Consideration - Streamside Management Zones:

5.9.1 All open water bodies, perennial streams, intermittent streams with a well-defined channel, and streams that have been hydrologically modified by dredging or straightening, and have no established maintenance right-of-way, shall have a Streamside Management Zone (SMZ), unless the property or a portion of the property is covered by an approved Delaware Seed Tree Law application (Title 7, Chapter 29, Title 3, Chapter 10, Subchapter V) and is located on slopes of less than five (5) three (3) percent.

5.9.2 A Streamside Management Zone shall not be required on any water bodies not specified in Section 5.9.1 as long as Best Management Practices are followed to

prevent the movement of sediment and debris into the ditch. The alteration of any berm or bank, structure, or control inlet culvert in or adjacent to tax ditches, as defined by Delaware Code Title 7, Chapter 41, is prohibited unless written approval from both the appropriate tax ditch managers and the Department of Natural Resources and Environmental Control (DNREC), Division of Soil and Water Conservation, Drainage Section is obtained. The use of a tax ditch right-of-way, as defined by Delaware Code Title 7, Chapter 41, as a skid trail is prohibited.

5.9.3 The minimum width for an SMZ is 50 feet, measured in lineal feet perpendicular from the edge (top of the bank or channel) on either side of a qualifying water body as defined in 5.9.1. Listed below are the minimum SMZ widths based on slope. Slope shall be defined as average slope of 100 contiguous feet measured on a horizontal plane perpendicular to the water body. All slope measurements shall begin at the crest of the water body, thus measurements adjacent to channelized streams will begin at top of the channel. SMZ width is measured in linear feet perpendicular from the perimeter of the water body. For tidal waters, the high water line should be used as the perimeter. The SMZ must be plainly designated with surveyors ribbon or durable paint *before* submitting the permit application.

Minimum Streamside Management Zone Width

Percent Slope	0-10%	11-20%	21-45%
Horizontal distance	50 feet	75 feet	100 feet

5.9.4 Within a Streamside Management Zone, at least sixty (60) square feet of basal area per acre of trees well distributed throughout the area shall be retained, or at least sixty (60) percent of the overstory. These trees should be equally divided among diameter classes. The landowner may desire to leave up to eighty (80) percent of the crown cover to provide shading for streams.

5.9.5 Felling trees across a ~~waterway~~ perennial or intermittent stream, or hydrologically modified channel, and dragging any part of the tree over or through the ~~waterway~~ stream channel is not permitted. Any occurrence shall result in the operator making immediate repairs to the waterway bank. All trees will be felled away from the SMZ to avoid depositing logging debris in the SMZ.

5.9.6 The remainder of the specifications for Streamside Management Zones is found in **Delaware's Forestry Best Management Practices Manual, September 1995, Document Control No. 65-01-04/95/09/01. Copies of this manual and current topographic maps are available at all Delaware Forest Service offices.**

5.10 Special Consideration - Multiple Silvicultural Practices:

5.10.1 If more than one silvicultural activity is covered by an approved Forestry Practices E&S permit, the landowner will notify the local Delaware ~~Department of~~

~~Agriculture~~ Forest Service office at least five (5) working days prior to the initiation of the subsequent operation. For example, if an E& S permit is approved for the harvesting operation and ~~site preparation shearing and piling~~, the local DFS office must be notified five (5) days before starting the ~~site preparation shearing and piling~~ operation.

5.11 Special Consideration - Adverse Weather Conditions:

5.11.1 The notification form, which becomes the E&S permit once approved, requires projected start and completion dates. Should environmental conditions create circumstances which either delay or accelerate the projected start or completion of operations, the operator or landowner will verbally notify the local DDAFS office. One example of such a circumstance is excessive rain causing saturated soils during forest harvest operations; as a result to comply with BMPs, operations are terminated with plans to resume the operations in the drier summer months.

6.0 Land Use

6.1 Timber harvesting is the primary silvicultural activity which enables landowners to initiate change in the land use from forest land to another land use, such as agricultural cropland, residential development, and industrial or commercial development. Delaware's Forestry Practices E&S rules and regulations are designed for silvicultural activities where the land is to remain under forested land use.

6.2 However, should the landowner choose to change the land use, the new land treatment activity would no longer fall within the jurisdiction of the Delaware ~~Department of Agriculture~~ Forest Service. Land clearing activities are regulated under the Department of Natural Resources and Environmental Control's (DNREC) Sediment and Stormwater Management law. For conversion to agricultural cropland use, the designated agencies are the local Conservation Districts in each county. For conversion to other non-forest uses, the DNREC Division of Soil and Water Conservation, Sediment and Stormwater Section has regulatory authority. Thus, the owner or operator will be required to receive approval from the appropriate agency prior to initiating any activity on the site.

6.3 Therefore, as enumerated above, a land use intent declaration is required to receive approval under this law. However, in cases where the land use is to change, the ~~DDA~~ Delaware Forest Service, in accordance with a Memorandum of Understanding with DNREC Division of Soil and Water Conservation, will notify in writing the appropriate agency(ies) of the landowner's intention and provide a copy of this correspondence to the landowner.

6.4 These rules and regulations as well as those of the Stormwater and Sediment law relate to erosion and sedimentation control. Any local, county, state, or federal laws which regulate land use changes, such as wetlands conversion, should be investigated thoroughly prior to

initiating conversion of forest land to other uses.

7.0 Procedures and Penalties

7.1 To establish an inspection procedure which reinforces and compliments the regulatory authorities contained within Subchapter VI, the Delaware ~~Department of Agriculture~~ Forest Service (DDAFS) has established the following framework.

7.1.1 Informal field visits

2) ~~Informal conference~~

7.1.2 Formal hearing

7.1.3 Superior Court.

7.2 If at any time during the enforcement process any water quality problem is corrected, all proceedings will be terminated, and a letter will be provided to the landowner and operator reflecting compliance with the law.

7.3 Informal Field Visits

7.3.1 ~~The DDAFS field person~~ Forester will visit a tract, perform a BMP inspection, and complete a BMP inspection form, a copy of which will be provided to the operator and landowner. During the course of this inspection, the field person will determine the status of the effectiveness of BMPs in protecting water quality and record this determination on the inspection form.

7.3.2 If, during a routine inspection of a harvest operation, it is discovered that the operator on the site does not have an approved harvest permit for the operation, the Forester will, at his or her discretion, issue a verbal or written warning to the operator. The Forester will immediately assist the operator in completing a permit form to bring the operation into compliance with the E & S rules and regulations. If failure to have an approved permit is a second offense, the Forester can, at his or her discretion, halt all harvesting operations until a permit has been completed and approved. If more than two offenses of this nature within a 12 month period, are on record for the operator/buyer, a fine, not to exceed \$2,000.00 may be levied as specified in Title 3, Chapter 10, Subchapter VI, Paragraph 1077.

7.3.3 On the BMP inspection form, three categories of water quality classifications will be used: 1) *no Water Quality (WQ) problem*; 2) *potential WQ problem*; and 3) *severe WQ problem*. A potential WQ problem is defined as a typical problem that would cause excessive sedimentation and erosion during a normal rainfall. Examples may include undersized culverts and improper log road or deck stabilization on highly erodible soils. A severe WQ problem is defined as any silvicultural activity which is causing sediment deposition or will immediately create serious sediment deposition in a rainfall event.

7.3.4 If no WQ problem exists, the landowner and operator are notified on site, if possible, and in writing within five (5) ~~working~~ business days following the inspection.

(d) If a potential WQ problem exists on an initial field visit, the field person will note the problem on the BMP inspection form, give a verbal recommendation to the operator and landowner, and a time frame of up to five (5) working days to correct the problem. The field person will notify his/her immediate supervisor of the existence of a potential WQ problem.

(e) When the time frame specified in the recommendation for a potential WQ problem has elapsed, the field person will return for a second visit and if the problem remains with no extenuating circumstances such as bad weather, a Notice of Required Action (NORA) will be issued to both the operator and the landowner. The NORA will provide written recommendations and a time frame of no more than three (3) working days to correct the problem. If an agent is involved, he/she will be notified of the problem, along with the operator and landowner. Photographs will be taken at the disturbance site.

(f) Where a severe WQ problem exists, the initial field visit becomes the equivalent of a second visit as described above in (e), and a NORA is issued to the operator and landowner. The field person will photograph the disturbance site. The field person will return at the end of the designated time frame listed on the NORA, and, if the problem remains, an informal conference, as described below, will be scheduled.

7.3.5 If a potential WQ problem exists on an initial field visit, the Forester will note the problem on the BMP inspection form, including written directions to alleviate the potential problem, to the operator and landowner, and a time limitation of up to five (5) business days to correct the problem. The Forester will notify his/her immediate supervisor of the existence of a potential WQ problem. When the time limitation specified in the recommendation for a potential WQ problem has elapsed, the Forester will return for a second visit. If the problem persists with no extenuating circumstances such as bad weather, all operations will be halted until specified corrective actions have been made to the satisfaction of the Forester.

7.3.6 If a severe WQ problem exists, such as skidding logs across a stream or ditch with no bridge, the Forester will cause all operations to cease immediately, issue a written warning containing instructions how to immediately correct the problem.

7.3.7 In the event that an operator vacates a harvest site and WQ problems have not been corrected or resolved, the following actions may be taken at the discretion of the Forestry Administrator. 1) No further E & S permits will be issued for that permittee (operator), nor may that operator legally operate under any existing DFS E & S permits, until all corrections have been made to the satisfaction of the DFS. 2) A fine, not to exceed \$2,000.00 may be levied as specified in Title 3, Chapter 10, Subchapter

VI, Paragraph 1077.

2. Informal Conference

(a) At the conclusion of the three days specified in the NORA, a field person will again inspect the tract. If the problem remains, an informal fact-finding conference will be scheduled in a DDAFS office convenient to both parties within seven (7) working days of the last field visit. The conversation will be recorded to ensure accurate reporting. Following the informal conference, DDAFS and the parties will agree on a recommended course of action and time frame for remedying the site. This agreement will be formalized in a **Special Order by Consent** signed by the landowner and operator.

7.4 Formal Hearing

7.4.1 If the parties cannot agree or the Special Order by Consent is not complied with as determined by DDAFS, a formal public hearing If the parties cannot agree to corrective actions as determined by DFS, a formal hearing will be convened and conducted in accordance with Title 29 Chapter 101 of the Delaware Code, the Administrative Procedures Act (APA). All silvicultural operations on the site will cease until the results of the hearing are known.

7.4.2 Twenty (20) days prior to the hearing, formal notice will be given to the parties and such notice will contain the following information:

7.4.2.1 A description of the subject matter of the proceedings;

7.4.2.2 Notice of the opportunity to proceed with informal fact-finding procedures (a second informal conference) and of the date by which this election must be made;

7.4.2.3 The date, time, and place the formal hearing will be held if informal fact-finding is not elected;

7.4.2.4 Citation to the law or regulation giving the ~~DDAFS~~ DFS the authority to act;

7.4.2.5 Notice to parties of their right to present evidence, to be represented by counsel, and to appear personally or by other representative, and

7.4.2.6 Notice to the parties of the agency's obligation to reach its decision based upon the evidence received.

7.4.3 The hearing may be conducted by the ~~Forestry Administrator~~ the Secretary of Agriculture or his or her designee.

7.4.4 Any party may request a pre-hearing conference, to discuss, among other things, issues in dispute, documents to be relied upon, witnesses to be called, and any procedural matters.

7.4.5 The proceedings shall be recorded to ensure accuracy. A recorded transcript will be taken by a court stenographer upon request and this procedure will be paid for by the requesting party. All testimony shall be taken under oath as administered by the hearing officer. The

names and addresses of all interested parties present shall be noted on the official record of the hearing.

7.4.6 Any party may present any competent evidence in its behalf and request subpoenas for testimony or production of documents and other tangible evidence. Non-parties shall not present evidence.

7.4.7 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by a reasonably prudent person in the conduct of his or her affairs shall be admitted. Objections to the admission or the exclusion of evidence shall be brief and shall state the ground for objection. Evidence which is plainly irrelevant, immaterial, insubstantial, cumulative, or unduly repetitive may be excluded.

7.4.8 The parties may be represented by counsel. The hearing shall open with a brief statement from each party of what such party intends to establish at the hearing.

7.4.9 Following opening statements, each party shall have an opportunity to produce evidence in support of such party's position. The owner/operator shall produce evidence first followed by DFS. After initial testimony and cross-examination by the parties, any witness may be examined by the hearing officer. Following the presentation of the main case, the owner/operator shall have an opportunity to produce rebuttal evidence, subject to cross-examination. Following the presentation of the rebuttal evidence, DFS shall have an opportunity to present surrebuttal evidence, subject to cross-examination.

7.4.10 If no procedure is specifically prescribed by these Rules, the hearing officer may proceed in a manner not inconsistent with these Rules.

7.4.11 At the conclusion of the hearing, the ~~Forestry Administrator~~ the Secretary of Agriculture or designee may issue a **Special Order** within twenty (20) days from the date of the hearing. The Special Order shall describe evidence on which the Order was based. ~~Upon issuance of a Special Order, the landowner and operator may be required to cease immediately all or part of the silvicultural activities on the site and to implement specified corrective measures within a stated period of time. The Special Order will be issued not less than five (5) days after service on the parties. Upon issuance of a Special Order, the landowner and operator will implement specified corrective measures within a specified period of time.~~

7.5 Penalties

7.5.1 Any owner or operator who violates, fails, or refuses to obey any Special Order may be assessed a civil penalty by the Forestry Administrator. Such penalty shall not be less than \$200 or more than \$2,000 for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of assessing penalties.

7.6 Superior Court

7.6.1 If the Special Order has not been complied

with, the Forestry Administrator may file a complaint in the Superior Court which has jurisdiction over all offenses under this statute. However, within three (3) working days of the inspection and prior to the filing of a complaint with the Superior Court, the Forestry Administrator may, ~~in his~~ at his or her discretion, agree to engage in an informal conference process with the landowner and operator to discuss and resolve violations of the Special Order.

7.6.2 Any person who intentionally, knowingly, and after written notice to comply violates or refuses to comply with any notice issued by the ~~DDAFS~~ DFS shall be fined not less than \$500 or more than \$10,000 for each offense. Such penalty may only be assessed after owner or operator has had the opportunity for a hearing as specified herein. Each day the violation continues shall constitute a separate offense.

6. Emergency Special Orders

~~(a) If at the time of the initial visit, an Emergency Special Order is warranted, the field person will notify their immediate supervisor or the Regional Forester of the issuance of an Emergency Special Order. Pursuant to the Emergency Special Order, landowner/operator may be required to stop all work on all or part of the tract and to take specific corrective action within a set time. An example of a practice which warrants an Emergency Special Order would be skidding across a perennial stream without a stream crossing.~~

~~(b) The commencement of proceedings by the DDAFS for the issuance of a Special Order does not affect the Forestry Administrator's authority to issue an Emergency Special Order.~~

~~(c) The Forestry Administrator shall provide opportunity for a hearing, upon written request of any owner or operator affected by the Emergency Special Order, to affirm, modify, amend, or cancel such order. Such hearing shall proceed as described above. Violations of an Emergency Special Order shall be treated as a violation of a Special Order as described above.~~

DEPARTMENT OF EDUCATION

14 DE Admin. Code 540

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

**Educational Impact Analysis Pursuant To
14 Del. C. Section 122(D)
540 Driver Education**

A. Type Of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of The Regulation

The Secretary seeks the approval of the State Board of Education to amend regulation 504 Driver Education. The amendments are necessary to provide clarity in sections 1.0, 2.0, and 7.0 and to add section 9.0 which clarifies that a high school with twenty-five or more students must provide instruction in driver education.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation only addresses instruction in driver education.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps insure that all students receive driver education instruction.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses health and safety issues as part of the driver education instruction.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses students' legal rights as part of the driver education instruction.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

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

be amended in the process proscribed.

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

540 Driver Education

1.0 ~~Delaware residents~~ Sophomore students under the age of eighteen are entitled to free driver education one time only. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.

2.0 The Individualized Education Program Team, in consultation with the Driver Education teacher, may make accommodations to the Driver Education program for special education students through the students' Individual Education Program (I.E.P.). Special education students, upon recommendation of the driver education teacher, may be enrolled in driver education a second time at no cost during the summer following the sophomore year.

3.0 Delaware residents attending school out of state as sophomores, students in excess of the September 30th unit allotment, students attending private and parochial academies in state with sophomore enrollments of less than twenty-five, home schooled students and any student approved by the Secretary as an exceptional case are entitled to attend summer driver education without charge. Districts shall notify all nonpublic and public high schools in their district by ~~April~~ May 1st annually as to the location of the nearest summer driver education program. Summer Driver Education shall be offered between June 1 - August 31 and each request for free tuition must be approved by the Secretary of Education through the Office of the Education Associate for Driver Education, Safety and Physical Education.

4.0 Adult Driver Education programs, when offered, shall follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. The costs per student for adult driver education will be determined by the Department of Education.

5.0 The driver education course shall include a minimum of forty-four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in-the-car behind-the-wheel laboratory instruction and seven (7) hours of actual observation in-the-car. The class hours must not be less than forty-five (45) minutes each. For those schools with varying class schedules the

minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind-the-wheel laboratory instruction no less than three hundred fifteen (315) minutes.

5.1 Driving simulators may be substituted for the required hours of behind-the-wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind-the-wheel laboratory instruction.

5.2 Off-the-street driving ranges or multiple driving ranges that are off the street may be substituted for actual behind-the-wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind-the-wheel laboratory instruction time.

5.3 Driving simulation and off-the-street driving range time shall not be taken from or cause a reduction of classroom instruction time.

5.4 Driving simulation and off-the-street driving range time shall not be substituted for more than one-half (1/2) of the total required seven (7) hours of actual behind-the-wheel laboratory instruction and only at the ratios defined in the above items. This includes individually or in any combination.

6.0 The Driver Education teachers shall use the “*Teachers’ Guide for Driver Education*” developed by the Department of Education for classroom instruction and behind-the-wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

7.0 ~~Beginning with the 1998-99 school year, grades for the Driver Education Program~~ Final grades for the forty-four hour driver education course shall be either pass or fail. Districts may grant one-fourth (1/4) credit for successful completion of the minimum hours in both the classroom and the behind-the-wheel laboratory experience. The one fourth credit for driver education may be included as part of the credits counted toward graduation.

7.1 Pass/Fail grades for publication in the Department of Education “Report of Educational Statistics” must be received by the Department of Education no later than June 30th for Regular Driver Education Programs and August 31st for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven-year period.

8.0 During the school day, automobiles purchased by a district or leased from Fleet Services or leased directly from a dealership using state funds allocated for Driver Education shall be used solely for the instruction of students enrolled in Driver Education.

9.0 All public, non-public and charter high schools with enrollments of twenty-five or more sophomore students shall offer driver education as an integral part of the curriculum.

See 1 DE Reg. 964 (1/1/98)

PROFESSIONAL STANDARDS BOARD
Educational Impact Analysis Pursuant To 14 Del. C.
Section 122 (D)

1511 Issuance And Renewal Of Continuing License

A. Type Of Regulatory Action Requested

New Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seems the approval of the State Board of Education to establish regulations concerning the requirements for the issuance and renewal of a continuing license. This regulation shall apply to the issuance and renewal of a continuing license as established by 14 Del. C. § 1211 and § 1213. This regulation is necessary to comply with changes in statute regarding the licensure and certification of educators.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses student achievement and requires that educators be fully qualified to teach a subject area and that they engage in professional development to maintain and improve their skills and knowledge as a condition of renewal of the license.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation helps ensure that all educators demonstrate high standards for the issuance of a continuing license and that they engage in professional development to maintain and improve their skills and knowledge as a condition of renewal of the license.

3. Will the new regulation help to ensure that all students’ health and safety are adequately protected? The new regulation addresses educator licensure, not health and safety issues.

4. Will the new regulation help to ensure that all students’ legal rights are respected? The new regulation addresses educator licensure, 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? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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? 14 Del. C. requires that we promulgate this regulation.

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

1511 Issuance And Renewal Of Continuing License

1.0 Content: This regulation shall apply to the issuance and renewal of a continuing license for educators, pursuant to 14 Del. C. § 1211 and § 1213.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“College credit” means graduate or undergraduate level coursework and continuing education units (CEUs) completed at, or through, a regionally accredited college or university.

“Clock-hour” means actual time spent in professional development, not credit hours.

“Cooperating teacher or intern supervisor” means an individual working with student teachers or graduate or undergraduate interns as part of a state-approved educator preparation program.

“Clusters” means focused groups of approved professional development activities that lead to measurable and observable knowledge and skills. Clusters must be approved by the Standards Board and the State Board.

“Curriculum or assessment development” means work with a local, state, national, or international education agency or organization designing curriculum or assessments for improved educational practice in an area related to an individual’s professional responsibilities.

“Delaware Administrator Standards” means standards for education administrators approved by the Secretary of Education and the State Board of Education, as per 14 Del. Admin Code 394, Delaware Administrator Standards.

“Delaware Professional Teaching Standards” means standards of teaching approved by the Secretary of Education and the State Board of Education, as per 14 Del. Admin Code 393, Delaware Professional Teaching Standards.

“Department” means the Delaware Department of Education.

“Educational project” means an individual professional growth project of 15 or more clock hours, including a research project not related to a course for which credit is claimed, completed to enhance the individual’s professional practice, with the development of a final product or report.

“Educational travel” means a travel experience including 15 or more clock hours of work time directly related to the individual’s professional responsibilities, including a final project to be used to enhance the individual’s work.

“Educator” means an employee paid under 14 Del. C. §1305.

“Exigent circumstances” means unanticipated circumstances or circumstances beyond the educator’s control, including, but not limited to, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

“Formal study group” means documented participation in a study group, related to an individual’s professional responsibilities, such as reviewing, discussing, and implementing strategies from a book or creating a group product as part of an action research project, as a form of professional development.

“Initial License” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

“Knowledge and skills” means understandings and abilities that, when acquired by educators, lead to more effective instruction.

“Mentoring” means training and service in providing mentoring support or assistance through a formally organized and approved state or district mentoring program to educators during the initial licensure period.

“NBPTS or similar national certification” means a certificate from the National Board for Professional Teaching Standards, or similar body as approved by the Standards Board, verifying completion of all requirements in an individual’s job-related area of the profession or, in the

case of an individual seeking, but not earning, the national certificate, verification of the clock hours devoted to completing the requirements for the national certificate.

“Peer coaching” means training and service as a peer coach or peer assistant in a formally organized and approved state or school district peer-coaching or peer assistance program.

“Presentation” means preparation and presentation as a workshop or conference presenter or course instructor on a topic related to the individual’s professional responsibilities.

“Professional conference, workshop, institute, or academy” means a program offered either within, or outside, the state that contributes to the participant’s professional knowledge or skills in effectively conducting his/her work in education.

“Professional development” means classes, seminars, workshops, collaborative work groups, learning communities, cohort school or district teams which result in the acquisition of knowledge and skills which lead to more effective instruction.

“Professional development activities” means activities designed to enhance knowledge and skill to promote continuous professional growth and to improve educator performance.

“Professional development cluster” or “cluster” means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

“Professional portfolio” means a formal collection of artifacts and exhibits that include required examples of an individual’s professional work based upon specific performance tasks or standards.

“Professional programs or committees” means job related service, designed to enhance the profession.

“Publication” means the preparation of a formally published book, article, report, study, or grant that contributes to the education profession or adds to the body of knowledge in an individual’s specific field, but does not include such items prepared as part of a course for which an individual is also claiming credit.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C., § 104.

“State” means State of Delaware.

“State Board” means the State Board of Education of the State of Delaware established in response to 14 Del. C. § 104.

3.0 Issuance of Initial Continuing License: In accordance with 14 Del. C. § 1211, the Department shall issue, upon application, a continuing license to an educator who has successfully completed the requirements under the initial licensure as set forth in 14 Del. C. § 1210 and § 1211. A continuing license is valid for 5 years unless extended pursuant to 14 Del. C. §1216 or revoked for cause, as defined in 14 Del. C. §1218.

3.1 An applicant for a continuing license shall submit the approved application form to the Department. Copies of DPAS II annual summative evaluations for the period of initial licensure shall be submitted with an initial application for a Continuing License. An applicant with more than one (1) unsatisfactory DPAS II annual summative evaluation during the period of initial licensure is ineligible to be issued a continuing license. Incomplete applications will not be processed.

4.0 The Department may issue a continuing license to an educator who previously held a valid Delaware certificate that has expired.

4.1 An educator returning to employment and holding a current standard or professional status certificate will be issued a continuing license upon employment.

4.2 An educator who previously held a valid Delaware standard or professional status certificate which has expired and who has been out of the profession for less than three (3) years may be issued a continuing license, valid for 5 years, upon employment and application on the approved form and evidence of previous Delaware certification.

4.3 An educator who holds a continuing license which has expired who has been out of the profession for more than three (3) years may be issued a continuing license, but must, within the first year of employment, engage in a district-sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

4.4 An educator holding a limited standard or temporary certificate and currently employed as an educator in a Delaware public school will be issued a continuing license upon completing all requirements for the current standard certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate.

4.5 An educator holding a current or expired professional status or standard certificate assigned to work outside the area covered by the professional status or standard certificate will be issued a continuing license, with an emergency certificate for the new area issued one year at a time for a maximum of three years to enable the educator to fulfill the requirements for the standard certificate in the area of the new assignment. Professional status or standard certificates held by an educator at the time of reassignment will be added to the continuing license as standard certificates.

5.0 Renewal of a Continuing License: In accordance with 14 Del. C. §1212, the Department shall renew a continuing license, valid for an additional 5 years, to an educator who has fulfilled the 90-clock hour requirement for professional

PROPOSED REGULATIONS

development. Satisfactory evidence of such completion, as set forth in Section 3.1, shall be submitted to the Department with the application for renewal. The 90-clock hours of professional development must have taken place during the term of the continuing license.

Re-licensure Options – Specifications – Teachers/ Specialists/Administrators

5.1 Options for Relicensure

<u>OPTION</u>	<u>MAX. HOURS</u>	<u>HOUR VALUE</u>	<u>VERIFICATION</u>	<u>CRITERIA</u>
<u>College Credit</u>	<u>No limit</u>	<u>1 semester hour = 15 clock hours.</u> <u>1 quarter hr./CEU = 10 clock hours.</u>	<u>Official Transcripts.</u> <u>Original Grade Slips.</u> <u>Original Certificate of Completion for CEUs.</u>	<u>Must be completed at a regionally accredited college.</u> <u>Must be taken for credit with grade of "C" or better or a "P" in pass/fail course.</u>
<u>"Clusters" of skills & knowledge.</u> <u>Planned school Prof. Dev. Day if activities Part of Approved Cluster</u>	<u>No limit</u>	<u>Verified clock hours in completion of cluster activities.</u>	<u>Approval Slip or Form Verifying Completion.</u>	<u>Cluster must be prior-approved by Professional Development & Associated Compensation Committee, the Professional Standards Board and the State Board of Education.</u>
<u>Professional Conference/ Workshop/ Institute or Academy</u>	<u>30 clock hours per year</u> <u>45 clock hours per cycle</u>	<u>Verified clock hours actively involved in workshop or conference sessions</u>	<u>Original Certificate of Attendance or Completion OR Letter from Supervisor/Conference Staff.</u> <u>Copies/ Exhibits of products developed by Applicant.</u> <u>Course Attendance Slip</u>	<u>Must include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education.</u>
<u>Mentoring</u>	<u>30 per year</u> <u>45 per cycle</u>	<u>Verified clock hours involved in mentoring activities.</u>	<u>Activity Documentation Form.</u> <u>(No prior approval required)</u>	<u>Must be mentoring of teacher, administrator, or specialist.</u> <u>Must be part of a formal state/local program.</u>
<u>Cooperating Teacher/ Intern Supervisor</u>	<u>30 per year</u> <u>45 per cycle</u>	<u>Verified clock hours involved in support of student teacher or intern</u>	<u>Activity Documentation Form completed by higher education director of field-based clinical studies.</u> <u>(No prior approval required)</u>	<u>Must be supervision of graduate or undergraduate intern or student teacher in a state-approved educator preparation program.</u>
<u>Presentation</u>	<u>10 per 3 clock hour course;</u> <u>30 per longer course;</u> <u>45 per cycle</u>	<u>Verified clock hours preparing and presenting</u>	<u>Activity Documentation Form*</u> <u>(Prior approval required)</u>	<u>Must include only actual time preparing and presenting a course, workshop, or presentation. (Clock hours limited to first preparation and presentation of individual course, workshop, or presentation.)</u>
<u>Educational Project</u>	<u>30 per year</u> <u>45 per cycle</u>	<u>Verified clock hours completing project.</u> <u>Minimum of 15 clock hours</u>	<u>Activity Documentation Form*</u> <u>(Prior approval required)</u>	<u>Project must have been prior approved by the Professional Development & Associated Compensation Committee.</u> <u>Must have obtained final approval after completion and verification by PDAC</u>
<u>Curriculum/ Assessment Development</u>	<u>30 per year</u> <u>45 per cycle</u>	<u>Verified clock hours of service;</u> <u>Minimum of 3 clock hours</u>	<u>Original documentation from committee chair verifying actual clock hours of participation</u>	<u>Must be service on formal committee organized by local, state, national, or international education agency or organization.</u>

<u>Educational Travel</u>	<u>3 per day 30 per cycle</u>	<u>Verified clock hours of experience. Minimum of 15 clock hours per travel activity. Final Project.</u>	<u>Activity Documentation Form* (Prior approval required)</u>	<u>Must be prior approved by Professional Development & Associated Compensation Committee. Must have obtained final approval after completion and verification by PCAC.</u>
<u>Professional Programs/ Committees</u>	<u>30 per year 45 per cycle</u>	<u>Verified clock hours of service or experience.</u>	<u>Original documentation from committee chair or activity leader verifying actual clock hours of participation.</u>	<u>Must be a formal activity provided through a recognized local, state, national, or international education agency or organization</u>
<u>Peer Coaching</u>	<u>30 per year 45 per cycle</u>	<u>Verified clock hours of service or experience.</u>	<u>Activity Documentation Form. (No prior approval required)</u>	<u>Must be part of a formal program.</u>
<u>Publication</u>	<u>30 per year 45 per cycle</u>	<u>30 clock hours for book. Up to 15 clock hours per other publication.</u>	<u>Copy of Publication or Document.</u>	<u>Must contribute to the education profession or add to the body of knowledge in the individual's specific field. Must be commercially published or a formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, must be approved for funding.</u>
<u>Professional Portfolio (to be developed by Standards Board).</u>	<u>30 per year 45 per cycle</u>	<u>45 clock hours for completed and approved portfolio.</u>	<u>The Completed/Approved Portfolio.</u>	<u>Must satisfy the standards established for teaching portfolios. Must be submitted to DOE by December 31 of the final year of the certificate for assessment and approval.</u>
<u>NBPTS Certification or similar National Certification</u>	<u>30 per year 45 per cycle</u>	<u>45 clock hours for attaining national certification Not complete – verified clock hours completing portfolio activities.</u>	<u>A Valid Copy of the National Certificate. For candidate not completing certificate - Activity Documentation Form. (No prior approval required)</u>	<u>Holds a certificate indicated by NBPTS as related to an individual's work or assignment. Certificate or participation as a candidate must be completed and verified by the expiration date of the Delaware certificate.</u>
<u>Formal Study Groups</u>	<u>30 per year 45 per cycle</u>	<u>Verified clock hours working as a member of a study group.</u>	<u>Activity Documentation Form and The Product of the Study.* (Prior approval required)</u>	<u>Must relate to the individual's work or assignment. Must include a product.</u>

5.2 Documentation of Clock Hours for Relicensure

5.2.1 For renewal of the continuing license, educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies will be used: 1 semester hour = 15 clock hours, 1 quarter hour = 10 clock hours, 1 CEU = 10 clock hours. To be documented for clock hours, activities must meet the criteria set forth in the regulations and must be appropriately verified and applied for. Activities requiring prior approval must be approved by the educator's immediate supervisor. Professional development activities that are part of a DPAS II assistance plan may be used to satisfy this requirement.

5.2.2 Criteria for determining if activities are acceptable for clock hour credit include the following:

5.2.2.1 The activity enhances the knowledge and skills in the educator's job or contributes to his/her

school or profession.

5.2.2.2 The activity meets one of the relicensure options.

5.2.2.3 The activity addresses one of the standards for the educator's area of the profession.

5.2.2.4 The activity is completed during the term of the educator's current continuing license.

5.2.2.5 The activity addresses specific Professional Teaching or Administrator Standards.

5.2.2.6 Participation in, or completion of, the activity can be documented.

5.3 The Re-Licensure Application, Activity Documentation Form, and, where required, original or official documents will be used to verify activities for renewal of a continuing license. Official transcripts or original grade slips are required documentation for successful completion of college courses.

5.4 For applicants who change positions (grade levels,

content areas, areas of supervisory responsibility, etc.) during the five-year term of a continuing license, clock hours documented must have been appropriate to the educator's position at the time the clock hours were completed.

6.0 To obtain renewal of a continuing license, educators are required to participate in professional development activities totaling 90 clock hour every five years. The 90 clock hours must be completed during the five-year term of the license. At least one-half of the required hours (45 hours every 5 years) for educators must be in activities that relate to the educator's work with students or staff. All activities must relate to the 14 Del Admin. Code 393, Delaware Professional Teaching or 14 Del. Admin Code 394, Delaware Administrator Standards.

7.0 Candidates for renewal of a continuing license may select from a variety of professional development options, as set forth in the relicensure options approved by the Professional Standards Board, set forth in Section 5.1 and contained in the Guidelines for Issuance and Renewal of a Continuing License. The activities selected must be beyond the normal or specified requirements of the position. Professional development activities which fulfill the criteria for relicensure for which educators receive compensation may be submitted in fulfillment of the 90-clock hour requirement for relicensure. Graduate credits used to satisfy the 90 clock hour requirement for license renewal may, if part of a matriculated program, also be used for a salary increment on the state salary schedule. The activities or options used to satisfy the 90 clock hour requirement for license renewal may be part of an approved professional development cluster eligible for a salary supplement.

8.0 The Department may extend a continuing license for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

9.0 An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the continuing license.

10.0 An applicant shall disclose his or her criminal conviction history upon application for a continuing license. Failure to disclose a criminal conviction history is grounds for denial or revocation of a continuing license as specified in 14 Del. Code, § 1219.

11.0 This regulation shall apply to all requests for continuing license, issuance and renewal, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate expiring on June 30, 2001 shall have until June 30, 2007 to meet the new continuing license renewal standards. All

administrators in instructional areas issued a continuing license as of July 1, 2001, shall have until June 30, 2007 to meet the new continuing license renewal standards. Educators holding a Professional Status Certificate or a Standard Certificate expiring July 1, 2001 or thereafter shall be required to satisfy the new continuing license renewal standards as set forth herein.

PROFESSIONAL STANDARDS BOARD Educational Impact Analysis Pursuant To 14 Del. C. Section 122(D)

1517 Certification Career And Technical Specialist

A. Type Of Regulatory Action Required

New Regulation

B. Synopsis Of Subject Matter Of The Regulation

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 approval of the State Board of Education or regulation 1517 Certification Career and Technical Specialist concerning the certification of teachers in specific career and technical specialty areas. This regulation shall apply to the issuance of a standard certificate for a career and technical specialist in a specialized career and technical education program to an individual who holds a bachelor's degree from an accredited college and Delaware licensure/certification in a secondary content area pursuant to 14 Del. C. § 1220.

C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The new regulation addresses student achievement and requires that educators be fully qualified to teach a subject area.
2. Will the regulation help ensure that all students receive an equitable education? The new regulation helps ensure that all educators demonstrate high standards for the issuance of a certificate for a career and technical specialty area.
3. Will the regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator certification, not health and safety.
4. Will the regulation help to ensure that all students' legal rights are respected? The new regulation addresses educator certification, not students' legal rights.
5. Will the regulation preserve the necessary authority and flexibility of decision making 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 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 the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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 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 regulation? 14 Del.C. Requires that we promulgate this regulation.

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

1517 Career And Technical Specialist In
(Insert CIP & Course Title)

1.0 Content: This regulation shall apply to the issuance of a standard certificate for a career and technical specialist in a specialized career and technical education program, pursuant to 14 Del. C. § 1220.

2.0 The following shall be required for the Standard Certificate for a career and technical specialist.

2.1 Bachelor's degree from an accredited college; and

2.2 Licensure/Certification in a secondary content area.; and

2.3 Professional Education, which consists of 15 credit hours, as set forth herein, which may be satisfied by providing evidence of having fulfilled the requirement through alternative coursework.

2.3.1 Six (6) credit hours consisting of Methods of Teaching Career and Technical Education or Methods of Materials and Approaches to Career and Technical Education and History and Philosophy/Foundation and

Organization of Career/Technical Education; and

2.3.2 Nine (9) credit hours in professional education may be fulfilled by selecting from among the following: Leadership for Career and Technical Educators; Career/ Technical Lab Safety, Organization, and Management; Student Testing and Assessment in Career/ Technical Education; Assessment of Career/Technical Education Program, Issues in Career/Technical Education; Practices and Problems in Integrating Academic and Career/ Technical Education; Career/Technical Occupation Analysis/ Needs Assessment; Career/Technical Student Organizations and Activities; Modern Technology in Career/ Technical Education; Career/Technical Education, Community and Industry Relations; Guidance, Placement and Follow-up in Career/Technical Education Career/ Technical Education for Special Education Students, and

2.4 Two years of successful, full-time employment, within the last five (5) years, in an occupation directly related to the specialty area for which the applicant is being employed, or

2.5 Two years of full-time, post-secondary teaching experience within the last five (5) years, in the specific area in which the applicant is to be employed, or

2.6 A minimum of 15 credit hours, at least 6 of which must have been completed within the last three (3) years, of relevant course work in the specialty area for which approval is sought.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

**DIVISION OF LONG TERM CARE RESIDENTS
PROTECTION**

Statutory Authority: 16 Delaware Code,
Section 1101 (16 **Del. C.** §1101)

**Regulations for Assisted Living Facilities
PUBLIC NOTICE**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared revised draft regulations pertaining to assisted living facilities. These proposed regulations, revised following public hearings in June, are intended to replace in their entirety assisted living regulations adopted in December, 1997. The proposed regulations specify required services in assisted living facilities including licensing requirements, specialized care for memory impairment, medication management, resident assessments, resident contracts and service agreements, staffing and physical plant requirements as well as provisions for resident waivers and

conditions requiring skilled nursing care which preclude admission.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Wednesday, September 4, 2002, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 North DuPont Highway
New Castle

Thursday, September 5, 2002, 10:00 AM
Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

Katie McMillan
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

The last time to submit written comments will be at the conclusion of the public hearing on September 5, 2002.

*** PLEASE NOTE: THE EXISTING REGULATIONS FOR ASSISTED LIVING FACILITIES ARE NOT BEING PUBLISHED HERE THEY CAN BE FOUND AT 1 DE REG. 951 (1/1/98).**

63 Delaware Regulations For Assisted Living Facilities

These regulations are promulgated in accordance with 16 Del. C., Chapter 11.

June 17, 2002

When finalized, these regulations will replace the December 15, 1997 regulations.

SECTION 63.0 PURPOSE

The Department of Health and Social Services is issuing these regulations to promote and ensure the health, safety, and well-being of all residents of assisted living facilities. These regulations are also meant to ensure that service providers will be accountable to their residents and the Department, and to differentiate assisted living care from skilled nursing care. The essential nature of assisted living is

to offer living arrangements to medically stable persons who do not require skilled nursing services and supervision. The regulations establish the minimal acceptable level of services for residents of assisted living facilities.

SECTION 63.1 AUTHORITY AND APPLICABILITY

These regulations are promulgated in accordance with 16 Del.C. Chapter 11 and shall apply to any facility providing assisted living to elderly individuals or adults with disabilities. The term "assisted living" shall not be used as part of the official name of any facility in this State unless the facility has been so licensed by the Department of Health and Social Services.

SECTION 63.2 GLOSSARY OF TERMS

63.201 Activities of Daily Living ("ADLs") - Normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating, and toileting.

63.202 Administration of Medication - The process whereby a single dose of a prescribed drug is given to a resident by an authorized licensed person, as described in 24 Del.C., Section 1902.

63.203 Assisted Living - A special combination of housing, supportive services, supervision, personalized assistance and health care designed to respond to the individual needs of those who need help with activities of daily living and/or instrumental activities of daily living.

63.204 Assisted Living Facility - A licensed entity that provides the services described in 63.203.

63.205 Assistive technology - Any item, piece of equipment or product system whether acquired commercially off the shelf, modified, or customized that is used to increase or improve functional capabilities of adults with disabilities.

63.206 Assistance With Self-Administration of Medication ("AWSAM") - Help with medication provided by facility personnel who are not nurses or nurse practitioners but who have successfully completed a Board of Nursing-approved medication training program in accordance with the Delaware Nurse Practice Act, 24 Del.C. Chapter 19, and applicable rules and regulations. Help with medication includes holding the container, opening the container, and assisting the resident in taking the medication, other than by injection, following the directions of the original container, and documenting in the medication log that each medication has been taken by the residents.

63.207 Communicable Disease - An illness caused by a microorganism or its toxin characterized by spread from host to victim by air, contact, blood, or bodily fluids.

63.208 Contract - A legally binding written agreement between the facility and the resident which enumerates all charges for services, materials, and equipment, as well as non-financial obligations of both parties, as specified in

these regulations.

63.209 Cuing - The act of guiding residents, verbally or by gestures, to facilitate memory and/or organize verbal and/or behavioral responses.

63.210 Department - Department of Health and Social Services.

63.211 Division - Division of Long Term Care Residents Protection.

63.212 Durable Medical Equipment - Equipment capable of withstanding repeated use, primarily and customarily used to serve a medical purpose, generally not useful to a person in the absence of an illness or injury, and needed to maintain the resident in the facility, e.g., wheelchairs, hospital beds, oxygen tanks.

63.213 Homelike - Having the qualities of a home, including privacy, comfortable surroundings supported by the use of residential building materials and furnishings, and the opportunity to modify one's living area to suit one's individual preferences, in accordance with the facility's policies. A homelike environment provides residents with an opportunity for self-expression and encourages interaction with community, family, and friends.

63.214 Hospice - An agency licensed by the State of Delaware that provides palliative and supportive medical and other health services to terminally ill residents and their families.

63.215 Incident - An occurrence or event, a record of which must be maintained in facility files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors or omissions in medication/treatment. (Also see Reportable Incident, 63.222.)

63.216 Individual Living Unit - A separate dwelling area within an assisted living facility which has living and sleeping space for one or more residents, as prescribed in these regulations.

63.217 Instrumental Activities of Daily Living ("IADLs") - Home management skills, such as shopping for food and personal items, preparing meals, or handling money.

63.218 Managed/Negotiated Risk Agreement - A signed document between the resident and the facility, and any other involved party, which describes mutually agreeable action balancing resident choice and independence with the health and safety of the resident or others.

63.219 Medication Log - A written document in which licensed personnel and unlicensed personnel who have completed AWSAM training record administration/assistance with the resident's medications. The log shall list the resident's name; date of birth; allergies; reason the medication is given; prescribing practitioner and phone number; special instructions; and the dosage, route(s), and

time(s), for all medications received/taken with staff administration or staff assistance. The log is signed/initialed by a staff member after each resident has received/taken the appropriate medication, or when the medication was not taken/given as prescribed.

63.220 Medication Management by an Adult Family Member/Support Person - Any help with prescription or non-prescription medication provided by an adult family member/support person, as identified in the resident's contract and service agreement.

63.221 Personal Care Supplies - Those supplies, often disposable, used by a resident, such as incontinence products and hygiene supplies.

63.222 Reportable Incident - An occurrence or event which must be reported at once to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety. (Also see Incident, 63.215.)

63.223 Representative - A person acting on behalf of the resident pursuant to Delaware law.

63.224 Resident - An individual 18 years old or older who lives in an assisted living facility. Where appropriate in the context of these regulations, "resident" as used herein includes an authorized representative as defined in 63.223.

63.225 Resident Assessment - Evaluation of a resident's physical, medical, and psychosocial status as documented in a Uniform Assessment Instrument (UAI), by a registered nurse.

63.226 Resident Assistant - Any unlicensed direct caregiver who, under the supervision of the assisted living director or director of health services, assists the resident with personal needs and monitors the activities of the resident while on the premises to ensure his/her health, safety, and well-being.

63.227 Secretary - Secretary of the Department of Health and Social Services.

63.228 Service Agreement - A written document developed with each resident which describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, and, if applicable, the expected outcome.

63.229 Shared Responsibility - The concept that residents and assisted living facilities share responsibility for planning and decision-making affecting the resident.

63.230 Significant Change - A major deterioration or improvement in a resident's health status or ability to perform ADLs; a major alteration in behavior or mood resulting in ongoing problematic behavior or the elimination of that behavior on a sustained basis. Significant change

does not include ordinary, day-to-day fluctuations in health status, functioning, and behavior, or a short-term illness such as a cold, unless these fluctuations continue to recur, nor does it include deterioration that will normally resolve without further intervention.

63.231 Social Services - Services provided to assist residents in maintaining or improving their ability to manage their everyday physical, mental and psychosocial needs.

63.232 Third-Party Provider - Any party, including a family member, other than the assisted living facility which furnishes services/supplies to a resident.

63.233 Uniform Assessment Instrument ("UAI") - A document setting forth standardized criteria developed by the Division to assess each resident's functional, cognitive, physical, medical, and psychosocial needs and status. The assisted living facility shall be required to use the UAI to evaluate each resident on both an initial and ongoing basis in accordance with these regulations.

SECTION 63.3 LICENSING REQUIREMENTS AND PROCEDURES

63.301 No entity shall hold itself out as being an assisted living facility unless such entity has been duly licensed under these regulations and in accordance with state law. The Secretary or his/her designee shall issue a provisional or annual license for a specified number of beds.

63.302 Procedures for assisted living facility applications and for issuance, posting, and renewal of licenses shall be in accordance with 16 Del.C., Chapter 11, Subchapter I., Licensing By The State.

63.303 Inspections and monitoring shall be conducted in accordance with 16 Del.C., Chapter 11, Subchapter I., Licensing By The State.

63.304 Upon receipt of written notice of a violation of these regulations, the assisted living facility shall submit a written plan of action to correct deficiencies cited within 10 working days or such other time period as may be required by the Department. The plan of action shall address corrective actions to be taken and include all measures and completion dates to prevent their recurrence: 1) how the corrective action will be accomplished for those residents found to have been affected by the deficient practice; 2) how the facility will identify other residents having the potential to be affected by the same deficient practice; 3) what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur; and 4) how the facility will monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur, i.e., what program will be put into place to monitor the continued effectiveness of the systemic changes.

63.305 The Department may impose civil money penalties and/or other enforcement remedies in accordance with the procedures outlined in 16 Del.C., Chapter 11, Subchapter I., Licensing By The State.

63.306 The Department may suspend or revoke a license, or refuse to renew it, in accordance with 16 Del.C., Chapter 11, Subchapter I., Licensing By The State.

63.307 Separate licenses are required for agencies maintained in separate locations, even though operated under the same management. A separate license is not required for separate buildings maintained by the same management on the same grounds. Under conditions of assignment or transfer of ownership, a new license shall be required.

63.308 If a facility or part of a facility plans to close:

A. The assisted living facility shall notify representatives of the appropriate state agencies of the plan of closure at least 90 days before the planned closure.

B. The facility staff must notify each resident advising him/her of the action in progress at least 90 days before the planned closure.

C. The resident must be given the opportunity to designate a preference for a specific facility or for other arrangements.

D. The assisted living facility must arrange for the relocation to other facilities in the area in accordance with the residents' preference, if possible.

E. Any applicant for admission to the assisted living facility shall be advised of the planned closure date.

F. All residents' records and any medications must accompany the residents to their new residences.

63.309 The Department may adopt, amend or repeal regulations governing the operation of the agencies defined in 16 Del.C., Chapter 11, Subchapter I., Licensing By The State.

SECTION 63.4 GENERAL REQUIREMENTS

63.401 All written information provided by the assisted living facility shall be accurate, precise, easily understood and readable by a resident, and in compliance with all applicable laws.

63.402 All records maintained by the assisted living facility shall at all times be open to inspection and copying by the authorized representatives of the Department, as well as other agencies as required by state and federal laws and regulations. Such records shall be made available in accordance with 16 Del.C., Chapter 11, Subchapter I., Licensing By The State.

63.403 The assisted living facility shall adopt internal written policies and procedures pursuant to these regulations. No policies shall be adopted by the assisted living facility which are in conflict with these regulations.

63.404 The assisted living facility shall establish and adhere to written policies and procedures regarding the rights and responsibilities of residents, and these policies and procedures shall be made available to authorized representatives of the Department, facility staff, and residents.

63.405 The assisted living facility shall develop and adhere to policies and procedures to prevent residents with diagnosed memory impairment from wandering away from safe areas. However, residents may be permitted to wander safely within the perimeter of a secured unit.

63.406 The assisted living facility shall arrange for emergency transportation and care.

63.407 Inspection summaries and compliance history information shall be posted by the facility in accordance with 16 **Del.C.**, Chapter 11, Subchapter I., Licensing By The State.

63.408 An assisted living facility shall recognize the authority of a representative acting on the resident's behalf pursuant to Delaware law, as long as such representative does not exceed his/her authority. The facility shall request and keep on file any documents such as an advance directive, living will, do not resuscitate, and power(s) of attorney.

63.409 An assisted living facility shall not admit, provide services to, or permit the provision of services to individuals who, as established by the resident assessment:

A. Require care by a nurse that is more than intermittent or for more than a limited period of time;

B. Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is an RN to provide appropriate care;

C. Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;

D. Are bedridden for more than 14 days;

E. Have developed stage three or four skin ulcers;

F. Require a ventilator;

G. Require treatment for a disease or condition which requires more than contact isolation;

H. Have an unstable tracheostomy or have a stable tracheostomy of less than 6 months' duration;

I. Have an unstable peg tube;

J. Require an IV or central line;

K. Wander such that the assisted living facility would be unable to provide adequate supervision and/or security arrangements;

L. Exhibit behaviors that present a threat to the health or safety of themselves or others, such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable documented progress within 45 days; and

M. Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented, reasonable efforts such as clinical assessments and counseling for a period of no more than 60 days.

63.410 The provisions of Section 63.409 above do not

apply to residents under the care of a Hospice program licensed by the Department as long as the Hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.

SECTION 63.5 RESIDENT WAIVERS

63.501 An assisted living facility may request a resident-specific waiver so that it may serve a current resident who temporarily requires care otherwise excluded in section 63.409. A waiver request shall contain documentation by a physician stating that the resident's condition is expected to improve within 90 days.

63.502 The facility shall provide interim needed services by appropriate health care professionals while any waiver request is pending.

63.503 The assisted living facility shall submit in writing a request for a waiver, which shall include the following information:

A. An explanation of why the assisted living facility is seeking the waiver, to include physician documentation and a service agreement which details how staff will provide care;

B. An explanation of why denial of the waiver will impose a substantial hardship for the resident;

C. An explanation of why the waiver will not adversely affect the resident for whom the waiver is sought or other residents; and

D. The duration of the waiver, not to exceed 90 days for each incident or condition.

63.504 In evaluating a waiver request submitted under this regulation, the Department shall review the statements in the application and may:

A. Inspect the assisted living facility;

B. Confer with the Assisted Living Director or his/her designee;

C. Discuss the request with the resident to determine whether he/she believes a waiver is in his/her best interest; and/or

D. Review other waivers currently in place at the assisted living facility.

63.505 The Department shall issue a written decision on a waiver request submitted pursuant to these regulations within 5 business days of receipt of the request. If the Department grants the waiver, the written decision shall include the waiver's duration. If the Department denies the waiver, the written decision shall explain the reason(s) for the denial. The assisted living facility may submit a revised waiver request no later than five days after the receipt of the denial. While the second waiver request is pending, the facility shall provide needed services by health care professionals as outlined in the second waiver request.

63.506 If an assisted living facility violates any condition of a waiver, or if it appears to the Department that

the health or safety of residents will be adversely affected by the continuation of a waiver, the Department may revoke it. The revocation may be appealed; however, discharge procedures in accordance with Regulation 906E, shall be commenced immediately.

SECTION 63.6 SPECIALIZED CARE FOR MEMORY IMPAIRMENT

63.601 Any assisted living facility which offers to provide specialized care for residents with memory impairment shall be required to disclose its policies and procedures which describe the form of care or treatment provided, in addition to that care and treatment required by the rules and regulations herein.

63.602 Said disclosure shall be made to the Department and to any person seeking specialized care for memory impairment in an assisted living facility.

63.603 The information disclosed shall explain the additional care that is provided in each of the following areas:

A. Philosophy: a written statement of the agency's overall philosophy and mission which reflects the needs of residents affected by memory impairment;

B. Resident Population: a description of the resident population to be served;

C. Pre-Admission, Admission & Discharge: the process and criteria for placement, transfer or discharge from this specialized care;

D. Assessment, Care Planning & Implementation: the process used for assessment and establishing and updating the service agreement and its implementation;

E. Staffing Plan & Training Policies: staffing plan, orientation, and regular in-service education for specialized care;

F. Physical Environment: the physical environment and design features, including security systems, appropriate to support the functioning of adults with memory impairment;

G. Resident Activities: the frequency and types of resident activities;

H. Family Role in Care: the family involvement and family support programs;

I. Psychosocial Services: the process for addressing the mental health, behavior management, and social functioning needs of the resident;

J. Nutrition/Hydration: the frequency and types of nutrition and hydration services provided; and

K. Program Costs: the cost of care and any additional fees.

63.604 Any significant changes in the information provided by the assisted living facility shall be reported to the Department at the time the changes are made.

SECTION 63.7 MEDICATION MANAGEMENT

63.701 An assisted living facility shall establish and adhere to written medication policies and procedures which shall address:

A. Obtaining and refilling medication;

B. Storing and controlling medication;

C. Disposing of medication; and

D. Administration of medication, self-administration of medication, assistance with self-administration of medication, and medication management by an adult family member/support person.

E. Provision for a quarterly pharmacy review which shall include:

1. Assisting the facility with the development and implementation of medication-related policies and procedures;

2. Physical inspection of the medication storage areas;

3. Review of each resident's medication regimen with written reports noting any identified irregularities or areas of concern.

63.702 Each assisted living facility shall have a drug reference guide, with a copyright date no older than 2 years, available and accessible for use by employees.

63.703 Medication stored by the assisted living facility shall be stored and controlled as follows:

A. Medication shall be stored in a locked container, cabinet, or area that is only accessible to authorized personnel;

B. Medication that is not in locked storage shall not be left unattended and shall not be accessible to unauthorized personnel;

C. Medication shall be stored in the original labeled container;

D. A bathroom or laundry room shall not be used for medication storage; and

E. All expired or discontinued medication, including those of deceased residents, shall be disposed of according to the assisted living facility's medication policies and procedures.

63.704 Residents who self-administer medication shall be provided with a locked container.

63.705 A separate medication log must be maintained for each resident documenting administration of medication by staff and staff assistance with self-administration.

63.706 Within 30 days after a resident's admission and concurrent with all UAI-based assessments, the assisted living facility shall arrange for an on-site review by an RN of the resident's medication regime if he or she self-administers medication. The purpose of the on-site review is to assess the resident's cognitive and physical ability to self-administer medication or the need for assistance with or staff administration of medication.

63.707 The assisted living facility shall ensure that the

review required by section 63.706 is documented in the resident's records, including any recommendations given by the reviewer.

63.708 Concurrently with all UAI-based assessments, the assisted living facility shall arrange for an on-site medication review by a registered nurse, for residents who need assistance with self-administration or staff administration of medication, to ensure that:

A. Medications are properly labeled, stored and maintained;

B. Each resident receives the medications that have been specifically prescribed in the manner that has been ordered;

C. The desired effect of each medication is achieved, and if not, that the appropriate authorized prescriber is so informed;

D. Any undesired side effects, adverse drug reactions, and medication errors are identified and reported to the appropriate authorized prescriber; and

E. Any unresolved discrepancy of controlled substances shall be reported to the Delaware Office of Narcotics and Dangerous Drugs.

63.709 Records shall be kept on file at the facility for those who have completed the AWSAM course which is required by 24 Del. C., Chapter 19 for those who assist the residents with self-administration of medication.

63.710 Each assisted living facility shall complete an annual AWSAM report on the form provided by the Board of Nursing. The report must be submitted pursuant to the Delaware Nurse Practice Act, 24 Del. C., Chapter 19.

SECTION 63.8 INFECTION CONTROL

63.801 The assisted living facility shall establish written procedures to be followed in the event that a resident with a communicable disease is admitted or an episode of communicable disease occurs. It is the responsibility of the assisted living facility to see that:

A. The necessary precautions stated in the written procedures are followed; and

B. All rules of the Delaware Division of Public Health are followed so there is minimal danger of transmission to staff and residents.

63.802 Any resident found to have active tuberculosis in an infectious stage may not continue to reside in an assisted living facility.

63.803 A resident, when suspected or diagnosed as having a communicable disease, shall be placed on the appropriate isolation or precaution as recommended for that disease by the Centers for Disease Control. Those with a communicable disease which has been determined by the Director of the Division of Public Health to be a health hazard to visitors, staff, and other residents shall be placed on isolation care until they can be moved to an appropriate room or transferred.

63.804 The admission or occurrence of a resident with a notifiable disease within an assisted living facility shall be reported to the County Public Health Administrator. See Appendix A.

63.805 The assisted living facility shall have on file results of tuberculin tests:

1) performed annually for all employees and

2) performed on all newly admitted residents.

The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment, or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.

63.806 The assisted living facility shall have on file evidence of annual vaccination against influenza for all residents, as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against influenza must be fully informed by the facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.

63.807 The assisted living facility shall have on file evidence of vaccination against pneumococcal pneumonia for all residents older than 65 years and as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against pneumococcal pneumonia must be fully informed by the facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.

63.808 The assisted living facility shall have policies and procedures for infection control as it pertains to staff, residents, and visitors.

63.809 All assisted living facility staff shall be required to use Standard Precautions.

SECTION 63.9 RESIDENT APPLICATIONS AND CONTRACTS

63.901 The assisted living facility shall have a written application process and provide clear reasons in writing if an applicant is rejected.

63.902 The assisted living facility shall recommend review of the contract by an attorney or other representative chosen by the resident.

63.903 Prior to executing the contract, each assisted living facility shall provide to the prospective resident a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to

the resident during the period of occupancy.

63.904 The resident shall sign a contract within 3 business days after admission that:

A. Is a clear and complete reflection of commitments agreed to by the parties and the actual practices that will occur in the assisted living program;

B. Is accurate, precise, legible, and written in plain language; and

C. Conforms to all relevant state and local laws and regulations.

63.905 The assisted living facility shall retain the contract on-site and make it available for review by the Department or its designee. The facility shall also provide a copy to the resident.

63.906 The contract or service agreement shall include, at a minimum, the following non-financial provisions:

A. A listing of basic and optional services provided by the assisted living facility including the availability of licensed nursing staff;

B. A listing of optional services that may be provided by third parties;

C. A statement of the resident's rights, as set forth in 16 Del. C., Chapter 11, Subchapter II and an explanation of the assisted living facility's grievance procedures;

D. Occupancy provisions, including:

1. Policies regarding bed and room assignment, including the specific room and bed assigned to the resident at the time of admission;

2. Policies regarding residents modifying their living area;

3. Procedures to be followed when the assisted living facility temporarily or permanently changes the resident's accommodation by:

a. Relocating the resident within the facility;

b. Making a change in roommate assignment; and

c. Increasing or decreasing the number of individuals occupying a room.

4. Procedures to be followed in transferring the resident to another facility;

5. Security procedures which the licensee shall implement to protect the resident and the resident's property;

6. The staff's right to enter a resident's room;

7. The resident's rights and obligations concerning use of the facility, including common areas;

8. The assisted living facility's policy in case of unavoidable or optional absences such as hospitalizations, recuperative stays in other settings, or vacation, and payment terms;

9. Provisions for interim service in the event of an emergency; and

10. An acknowledgment that the resident has reviewed all assisted living facility rules, requirements, restrictions, or special conditions that the facility will impose on the resident.

E. Discharge/temporary absence policies and procedures, including:

1. Those actions, circumstances, or conditions that temporarily disqualify individuals from continued residence in the assisted living facility or may result in the resident's discharge from the facility;

2. The procedures which the assisted living facility shall follow if it intends to discharge a resident and thereby terminate the contract, including a provision under which the assisted living facility shall give at least 30 days notice to the resident before the effective date of the discharge and termination of the contract, except in the case of a health emergency or substantial risk to the health and safety of the other residents or facility staff;

3. The procedures which the resident shall follow if the resident wishes to terminate the contract, including a provision that the resident, or appropriate representative, shall give at least 30 days notice to the assisted living facility before the effective date of the termination, except in the case of a health emergency;

4. The procedures which the assisted living facility shall follow in helping the resident find an appropriate placement;

5. In a living unit in which more than one resident is the contracting party, the terms under which the contract may be modified in the event of one of the resident's discharge or death, including the provisions for termination of the contract and appropriate refunds.

F. Obligations of the facility and the resident as to:

1. Arranging for or overseeing medical care;

and

2. Monitoring of the status of the resident.

G. The assisted living facility's formal internal grievance process which shall protect residents from reprisal by the facility or its employees.

H. An inventory of the resident's personal belongings, if the resident so desires.

63.907 The contract shall include, at a minimum, the following financial provisions:

A. Party responsible for:

1. Handling the finances of the resident;

2. Purchasing or renting essential or desired equipment and supplies;

3. Arranging and contracting for services not covered by the contract;

4. Ascertaining the cost of and purchasing durable medical equipment; and

5. Disposing of the resident's property upon discharge or death of the resident.

B. Rate structure and payment provisions including:

1. All rates to be charged to the resident, including, but not limited to:

- a. Service packages;
- b. Fee for service rates; and
- c. Other ancillary charges.

2. Notification of the rate structure and the criteria to be used for imposing additional charges for the provision of additional services, if the resident's service and care needs change;

3. Identification of the persons responsible for payment of all fees and charges and a clear indication of whether the person's responsibility is or is not limited to the extent of the resident's funds;

4. A provision which provides at least 60 days notice of any rate increase, except if necessitated by a change in the resident's medical condition;

5. Billing, payment, and credit policies, including the procedures that the assisted living facility will follow in the event the resident can no longer pay for services provided or for services or care needed by the resident; and

6. A description of any prepaid fees or charges and the terms governing refund of those fees or charges in the event of a resident's discharge from the assisted living facility or termination of the contract.

63.908 The contract shall be amended by the parties to reflect any applicable increase or decrease in charges.

63.909 All notices to be provided pursuant to an assisted living contract shall be in writing and mailed or hand-delivered to the resident.

63.910 No contract shall be signed before a full assessment of the resident has been completed and a service agreement has been executed. If a deposit is required prior to move-in, the deposit shall be fully refundable if the parties cannot agree on the services and fees upon completion of the assessment.

SECTION 63.10 RESIDENT ASSESSMENT

63.1001 Each assisted living facility shall use a Uniform Assessment Instrument (UAI) developed by the Division. The UAI shall be used in conducting all resident assessments.

63.1002 A resident seeking entrance shall have an initial UAI-based resident assessment completed by a registered nurse (RN) acting on behalf of the assisted living facility no more than 30 days prior to admission. In all cases, the assessment shall be completed prior to admission. Such assessment shall be reviewed by an RN within 30 days after admission and, if appropriate, revised. If the resident requires specialized medical, therapeutic, nursing services, or assistive technology, that component of the assessment must be performed by personnel qualified in that specialty

area.

63.1003 Within 30 days prior to admission, a prospective resident shall have a medical evaluation completed by a physician.

63.1004 The resident assessment shall be completed in conjunction with the resident.

63.1005 The UAI, developed by the Department, shall be used to update the resident assessment. At a minimum, regular updates must occur 30 days after admission, annually and when there is a significant change in the resident's condition.

63.1006 If the needs of a resident exceed the care which the assisted living facility can provide and a waiver has not been requested, the facility shall assist the resident in making arrangements for an appropriate transfer within 30 days. While a transfer is pending, the assisted living facility shall coordinate the provision of services needed by the resident.

63.1007 The assisted living facility shall provide an instrument to assess interests, strengths, talents, skills and preferences of each resident within 30 days of admission to be used in activity planning.

SECTION 63.11 SERVICES

63.1101 The assisted living facility shall ensure that:

A. Three meals, snacks and prescribed food supplements are available during each 24-hour period, 7 days per week;

B. Meals and snacks are varied, palatable, and of sufficient quality and quantity to meet the daily nutritional needs of each resident with specific attention given to the special dietary needs of each resident;

C. Food service complies with the Delaware Food Code; and

D. A resident who chooses not to follow prescribed dietary recommendations shall be provided documented counseling on potential adverse outcomes.

63.1102 As part of the licensure approval and renewal process, an assisted living applicant or licensee shall submit at least a 4-week menu cycle with documentation by a dietician or nutritionist that the menus are nutritionally adequate. Thereafter, menus are to be written at least one week in advance and maintained on file, as served, for two months.

63.1103 The assisted living facility shall ensure that the resident's service agreement is being properly implemented.

63.1104 In accordance with the service agreement, the assisted living facility shall provide or ensure the provision of all necessary personal services, including all activities of daily living, and shall ensure that personal care supplies are available.

63.1105 The assisted living facility shall ensure

that laundry and housekeeping services are offered and that all areas of the facility are maintained in a clean and orderly condition.

63.1106 In accordance with the service agreement, the assisted living facility shall be responsible for facilitating access to appropriate health care and social services for the resident.

63.1107 The assisted living facility shall assess each resident and provide or arrange appropriate opportunities for social interaction and leisure activities which promote the physical and mental well-being of each resident, including facilitating access to spiritual activities consistent with the preferences and background of the resident.

SECTION 63.12 SERVICE AGREEMENTS

63.1201 A service agreement based on the needs identified in the UAI shall be completed prior to or no later than the day of admission. The resident shall participate in the development of the agreement. The resident and the facility shall sign the agreement and each shall receive a copy of the signed agreement. All persons who sign the agreement must be able to comprehend and perform their obligations under the agreement.

63.1202 The service agreement or contract shall address the physical, medical, and psychosocial services that the resident requires as follows:

A. Assistance with activities of daily living and instrumental activities of daily living;

B. Services provided by licensed nurses;

C. Food, nutrition, and hydration services;

D. Environmental services including housekeeping, laundry, safety, trash removal;

E. Psychosocial/emotional services including those related to memory impairment and other cognitive deficits;

F. Banking, record keeping, and personal spending services;

G. Transportation services;

H. Individual living unit furnishings;

I. Notification procedures when an incident occurs or there is a change in the health status of the resident;

J. Assistive technology and durable medical equipment;

K. Rehabilitation services;

L. Qualified interpreters for people who have a hearing impairment or do not speak English; and

M. Reasonable accommodations for persons with disabilities as defined by applicable state and federal law.

63.1203 The resident's personal attending physician(s) shall be identified in the service agreement by name, address, and telephone number.

63.1204 The facility shall be responsible for appropriate documentation in the service agreement for

services provided or arranged by the facility.

63.1205 The service agreement shall be developed and followed for each resident consistent with that person's unique physical and psychosocial needs with recognition of his/her capabilities and preferences.

63.1206 The service agreement shall be reviewed when the needs of the resident have changed and, minimally, in conjunction with each UAI. Within 10 days of such assessment, the resident and the assisted living facility shall execute a revised service agreement, if indicated.

63.1207 The service agreement shall be based on the concepts of shared responsibility and resident choice. To participate fully in shared responsibility, residents shall be provided with clear and understandable information about the possible consequences of their decision-making. If a resident's preference or decision places the resident or others at risk or is likely to lead to adverse consequences, a managed/negotiated risk agreement section may be included in the service agreement.

63.1208 The following are criteria for a managed/negotiated risk agreement:

A. The risks are tolerable to all parties participating in the development of the managed/negotiated risk agreement;

B. Mutually agreeable action is negotiated to provide the greatest amount of resident autonomy with the least amount of risk; and

C. The resident living in the facility is capable of making choices and decisions and understanding consequences.

63.1209 If a managed/negotiated risk agreement is made a part of the service agreement, it shall:

A. Clearly describe the problem, issue or service that is the subject of the managed/negotiated risk agreement;

B. Describe the choices available to the resident as well as the risks and benefits associated with each choice, the assisted living facility's recommendations or desired outcome, and the resident's desired preference;

C. Indicate the agreed-upon option;

D. Describe the agreed upon responsibilities of the assisted living facility, the resident, and any third parties;

E. Become a part of the service agreement, be signed separately by the resident, the assisted living facility, and any third party with obligations under the managed/negotiated risk agreement that the third party is able to fully comprehend and perform; and

F. Include a time frame for review.

63.1210 The assisted living facility shall have sufficient staff to meet its responsibilities under the managed/negotiated risk agreement.

63.1211 The assisted living facility shall not use managed/negotiated risk agreements to provide care to residents with needs beyond the capability of the facility. A managed/negotiated risk agreement shall not be used to

supersede any requirements of these regulations.

63.1212 The assisted living facility shall make no attempt to use the managed/negotiated risk portion of the service agreement to abridge a resident's rights or to avoid liability for harm caused to a resident by the negligence of the assisted living facility and any such abridgement or disclaimer shall be void.

SECTION 63.13 RESIDENT RIGHTS

63.1301 Assisted living facilities are required by 16 Del. C., Chapter 11, Subchapter II, to comply with the provisions of the Rights of Patients covered therein.

63.1302 Each resident has the right of privacy in his/her room, including a door that locks, consistent with the safety needs of the resident.

SECTION 63.14 QUALITY ASSURANCE

63.1401 The assisted living facility shall develop, implement, and adhere to a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction.

63.1402 On at least a semi-annual basis, the assisted living facility shall survey each resident regarding his/her satisfaction with services provided.

A. The assisted living facility shall retain all surveys for at least two years which shall be reviewed during inspection.

B. The assisted living facility shall maintain documentation for at least one year which addresses what actions were taken as a result of the surveys.

SECTION 63.15 STAFFING

63.1501 As used herein "staff" includes permanent employees of the assisted living facility and independent contractors, including "temps."

63.1502 A staff of persons sufficient in number and adequately trained, certified or licensed to meet the requirements of the residents shall be employed and shall comply with applicable state laws and regulations.

63.1503 All direct care staff shall be familiar with the service agreement for each resident for whom they provide care.

63.1504 Every assisted living facility shall have a Director. Facilities licensed for 25 beds or more shall have a full-time Nursing Home Administrator. Facilities licensed for 5 through 24 beds shall have a part-time Nursing Home Administrator on-site and on-duty at least 20 hours a week. If the assisted living facility is part of a continuing care retirement community (CCRC) or part of a campus under the same ownership, the CCRC or campus may operate under one licensed Nursing Home Administrator.

63.1505 The Nursing Home Administrator shall comply with the provisions of 24 Del. C., Chapter 52, and

the Board's Rules and Regulations.

63.1506 The Director/Nursing Home Administrator shall have overall responsibility for managing the assisted living facility such that all requirements of state law and regulations are met.

63.1507 The Director of a facility for 4 beds or fewer shall meet one of the following criteria:

A. A baccalaureate degree in a health or social services field or business administration; or

B. An associates degree in a health or social services field or business administration and at least 2 years of full-time equivalent work experience in these disciplines; or

C. An RN with a combined total of 4 years full-time equivalent education and related work experience; or

D. At least 4 years full-time equivalent work experience as an LPN, or 5 years full-time equivalent work experience in a health or social services field or business administration.

63.1508 The Director of a Facility for 4 beds or fewer shall be on-site at least 8 hours a week.

63.1509 Each facility for 4 beds or fewer shall have a full-time, on-site house manager who shall at a minimum:

A. Possess a high school diploma or its equivalent;

B. Be certified as a CNA with at least three years experience providing care in a health care setting;

C. Complete an orientation program in accordance with the CNA regulations; and

D. Receive, at a minimum, 12 hours of regular in-service education annually, which may include but not be limited to the topics listed below:

1. The health and psychosocial needs of the population being served;

2. The resident assessment process;

3. Use of service agreements;

4. Cuing, coaching, and monitoring residents who self-administer medications, with or without assistance;

5. Providing assistance with ambulation, personal hygiene, dressing, toileting, and feeding;

6. 16 Del. C., Chapter 11, pertaining to resident's rights; reporting of abuse, neglect, mistreatment, and financial exploitation; and the Ombudsman Program;

7. Fire and life safety, and emergency disaster plans;

8. Infection control, including Standard Precautions;

9. Basic food safety;

10. Basic first aid, CPR, and the Heimlich Maneuver; and

11. Hospice services.

63.1510 Assisted living facilities administering therapies and/or treatments shall have staff adequate in number and appropriately qualified and/or licensed.

63.1511 Every assisted living facility shall have a Director of Nursing who is a registered nurse. Facilities licensed for 25 assisted living beds or more shall have a full-time Director of Nursing. Facilities licensed for 5 through 24 assisted living beds shall have a part-time Director of Nursing on-site and on-duty at least 20 hours a week. The nursing director of a facility for 4 assisted living beds or fewer shall be on-site at least 8 hours a week.

63.1512 The Director of Nursing shall comply with the provisions of 24 Del. C., Chapter 19 and the rules and regulations of the Board of Nursing.

63.1513 The Director of Nursing shall have overall responsibility for the coordination, supervision and provision of the nursing department /services.

63.1514 Assisted living facility resident assistants shall, at a minimum:

- A. Be at least 18 years old;
- B. Participate in a facility-specific orientation program that covers the following topics:
 - 1. Fire and life safety, and emergency disaster plans;
 - 2. Infection control, including Standard Precautions;
 - 3. Basic food safety;
 - 4. Basic first aid and the Heimlich Maneuver;
 - 5. Job responsibilities;
 - 6. The health and psychosocial needs of the population being served;
 - 7. The resident assessment process; and
 - 8. The use of service agreements;
 - 9. 16 Del. C., Chapter 11, pertaining to residents' rights; reporting of abuse, neglect, mistreatment, and financial exploitation; and the Ombudsman Program;
 - 10. Hospice services.
- C. Receive, at a minimum, 12 hours of regular in-service education annually which may include but not be limited to the topics listed in 63.1514 B;
- D. Receive training to competently assist in activities of daily living or provide documentation of such training, and
- E. Complete a Delaware Board of Nursing-approved AWSAM training course if assisting with self-administration of medications.

63.1515 The assisted living facility shall have a staffing plan which shall specify supervisory responsibilities, including the person responsible in the Assisted Living Director's absence.

63.1516 The assisted living facility shall maintain staffing records which document what personnel were on duty as well as specific hours worked for each day.

63.1517 The assisted living facility shall maintain a copy of each employee's signature and handwritten initials.

63.1518 The assisted living facility shall maintain

records of each employee's regular in-service education hours.

63.1519 The assisted living facility shall provide orientation training to all new staff.

63.1520 Temporary agency staff placed in a facility in which they have not worked within the past 6 months shall undergo an orientation prior to beginning their first shift. The orientation shall cover the following topics:

- A. Tour of the facility;
- B. Fire and disaster plans;
- C. Emergency equipment and supplies;
- D. Communication and documentation requirements of the facility;
- E. Process for reporting emergencies and change of condition; and
- F. Review of current assigned resident issues/needs.

63.1521 All personnel records for permanent employees, including employment applications, shall be maintained for a minimum of five years consistent with the assisted living facility policies and applicable state laws.

63.1522 At a minimum, every assisted living facility shall have an awake staff person on-site 24 hours per day who is qualified to administer or assist with self-administration of medication ("AWSAM") and who has knowledge of emergency procedures, basic first aid, CPR, and the Heimlich Maneuver.

63.1523 Written policies and procedures shall be required and adhered to for any assisted living facility utilizing volunteers.

SECTION 63.16 ENVIRONMENT AND PHYSICAL PLANT

63.1601 Each assisted living facility shall comply with applicable federal, state and local laws including:

- A. Rehabilitation Act, Section 504;
- B. Fair Housing Act as amended; and
- C. Americans with Disabilities Act.

63.1602 Assisted living facilities shall:

- A. Be in good repair;
- B. Be clean;
- C. Have a hazard-free environment; and
- D. Have an effective pest control program.

63.1603 Heating and cooling systems in common areas shall be maintained at a temperature between 71° F and 81° F. A resident with an individual temperature-controlled residential room or unit may heat and cool to provide individual comfort.

63.1604 Common areas shall be lighted to assure resident safety.

63.1605 For all new construction and conversions of assisted living facilities with more than 10 beds, there shall be at least 100 square feet of floor space, excluding alcoves, closets, and bathroom, for each resident in a private

bedroom and at least 80 square feet of floor space for each resident sharing a bedroom.

A. Sharing of a bedroom shall be limited to 2 residents;

B. Each facility shall have locked storage available for the resident's valuables, in accordance with the facility's policies;

C. Bedrooms and all bathrooms used by residents in assisted living facilities, except in specialized care units for memory impairment, shall be equipped with an intercom or other mechanical means of communication for resident emergencies. For specialized care units for memory impairment, staff must be equipped to communicate resident emergencies immediately.

63.1606 Resident kitchens shall be available to residents either in their individual living unit or in an area readily accessible to each resident. Residents shall have access to a microwave or stove/conventional oven, refrigerator, and sink. The assisted living facility shall establish and adhere to policies and procedures to ensure that common kitchens are used and maintained in such a way as to provide:

A. A clean and sanitary environment;

B. Safe storage of food; and

C. A means to enable hand washing and sanitizing of dishes, utensils and food preparation equipment.

63.1607 Bathroom facilities shall be available to residents either in their individual living units or in an area readily accessible to each resident. There shall be at least 1 working toilet, sink, and tub/shower for every 4 residents.

63.1608 Hot water at resident bathing and hand-washing facilities shall not exceed 120 degrees Fahrenheit.

SECTION 63.17 FIRE SAFETY AND OTHER EMERGENCY PLANS

63.1701 The assisted living facility shall comply with all applicable state and local fire and building codes. All applications for license or renewal of license shall include a letter certifying compliance by the Fire Marshal having jurisdiction. Notification by the Fire Marshal of non-compliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for enforcement remedies in 16 Del. C., Chapter 11, Subchapter I, Licensing By The State.

63.1702 The assisted living facility shall:

A. Develop and implement through staff training and drills a plan for use in fire and other emergencies, which clearly outlines the procedures to be followed and the responsibilities designated to staff.

63.1703 Develop a plan for relocation and/or evacuation and continuous provision of services to residents in the event of permanent or temporary closure of the assisted living facility. The evacuation plan shall be approved by the Fire Marshal having jurisdiction and shall

include the evacuation route, which shall be conspicuously posted on each floor and in each unit.

63.1704 The assisted living facility shall promote staff knowledge of fire and other emergency safety by:

A. Orienting staff to the emergency plan and to individual responsibilities within 24 hours of the commencement of job duties;

B. Documenting completion of orientation in staff member's personnel file with employee's signature;

C. Conducting facility fire drills in accordance with State of Delaware Fire Prevention Regulations;

D. Conducting other facility emergency drills or training sessions on all shifts at least annually; and

E. Maintaining records for two years of facility fire and other emergency drills/training sessions.

63.1705 The assisted living facility shall promote resident fire and other emergency safety by:

A. Orienting residents to the emergency plan within 24 hours of their admission into the assisted living facility;

B. Documenting the orientation such that it is signed and dated by the resident; and

C. Maintaining records identifying residents needing assistance for evacuation.

SECTION 63.18 RECORDS AND REPORTS

63.1801 The assisted living facility shall be responsible for maintaining appropriate records for each resident. These records shall document the implementation of the service agreement for each resident.

63.1802 Records shall be available, along with the equipment to read them if electronically maintained, at all times to legally authorized persons; otherwise such records shall be held confidential.

63.1803 The assisted living facility resident clinical records shall be retained for a minimum of 5 years following discharge before being destroyed.

63.1804 In cases in which facilities have created the option for an individual's record to be maintained by computer, rather than hard copy, electronic signatures shall be acceptable. In cases when such attestation is done on computer records, safeguards to prevent unauthorized access and reconstruction of information must be in place. The following is an example of how such a system may be set up:

A. There is a written policy, at the assisted living facility, describing the attestation policy(ies) in force at the facility;

B. The computer has built-in safeguards to minimize the possibility of fraud;

C. Each person responsible for an attestation has an individualized identifier;

D. The date and time is recorded from the computer's internal clock at the time of entry;

E. An entry is not to be changed after it has been

recorded; and

F. The computer program controls what sections/ areas any individual can access/enter data based on the individual's personal identifier.

63.1805 Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate.

Incident reports shall be kept on file in the facility. Reportable incidents shall be communicated immediately to the Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806; phone number: 1-877-453-0012; fax number: 1-877-264-8516.

SECTION 63.19 WAIVERS AND SEVERABILITY

63.1901 Waivers may be granted by the Division for good cause.

63.1902 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

APPENDIX A **Notifiable Diseases**

Acquired Immune Deficiency Syndrome (S)

Anthrax (T)

Botulism (T)

Brucellosis

Campylobacteriosis

Chancroid (S)

Chlamydia trachomatis infections (S) g

Cholera

Cryptosporidiosis

Cyclosporidiosis

Diphtheria (T)

E. Coli 0157:H7 infection (T)

Encephalitis

Ehrlichiosis

Foodborne Disease Outbreaks (T)

Giardiasis

Gonococcal infections (S)

Granuloma Inguinale (S)

Hansen's Disease (Leprosy)

Hantavirus infection (T)

Hemolytic uremic syndrome (HUS)

Hepatitis A (T)

Hepatitis B (S)

Hepatitis C & unspecified

Herpes (congenital) (S)

Herpes (genital) (N)

Histoplasmosis

Human Immunodeficiency Virus (HIV) (N)

Human papillomavirus (genital warts) (N)

Influenza (N)

Lead Poisoning

Legionnaires Disease

Leptospirosis

Lyme Disease

Lymphogranuloma Venereum (S)

Malaria

Measles (T)

Meningitis (all types other than meningococcal)

Meningococcal infections (all types) (T)

Mumps (T)

Pelvic Inflammatory Disease (resulting from onococcal and/or chlamydial infections) (S)

Pertussis (T)

Plague (T)

Poliomyelitis (T)

Psittacosis

Rabies (man, animal) (T)

Reye's Syndrome

Rocky Mountain Spotted Fever

Rubella (T)

Rubella (congenital)(T)

Salmonellosis

Shigellosis

Smallpox (T)

Streptococcal disease (invasive group A)

Streptococcal toxic shock syndrome (STSS)

Syphilis (S)

Syphilis (congenital) (T)

Tetanus

Toxic Shock Syndrome

Trichinosis

Tuberculosis

Tularemia

Typhoid Fever (T)

Vaccine Adverse Reactions

Varicella

Waterborne Disease Outbreaks (T)

Yellow Fever (T)

Also, any unusual disease and adverse reaction to vaccine

County Health Offices:

New Castle County 995-8632

Kent County 739-5305

Sussex County 856-5355

(T) report by rapid means

(N) report in number only when so requested

For all diseases not marked by (T) or (N):
(S) – sexually transmitted disease, report required in 1 day
Others – report required in 2 days

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

PUBLIC NOTICE

Division of Social Services

Temporary Assistance for Needy Families

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 107, the Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend TANF policy as it relates to time limits for the receipt of benefits.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2002.

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

Summary of Proposed Change: DSSM 3002 - Time Limit, Temporary Welfare Program

Under the current waiver by which Delaware's operates its TANF program, time limits for receipt of benefits for heads of households begin at age 19. As of September 30, 2002, Delaware's waiver for operating its TANF program will expire. At that time, the State of Delaware will need to comply with existing TANF regulations.

TANF regulations require that time limits for receipt of benefits for heads of households begin at age 18. In order to comply with this regulation, the Division of Social Services proposes to change existing policy at Sections 3002, 3002.1, 3002.2, 3002.3 and 3002.8, indicating that time limits for receipt of benefits begin for heads of households at age 18.

Revisions:

3002 Time Limit, Temporary Welfare Program

Cash benefits will be time-limited for households headed by two employable adults age ~~19~~ 18 or older who are included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive these benefits only through participation in a pay-after-performance work experience position or if the adults are working and the family's countable income is below the need standard.

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

Time limits apply when ~~four~~ three conditions are met:

- the caretaker is included in the grant,
- the caretaker is age ~~19~~ 18 or older,
- the caretaker is employable, and
- ~~the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.~~

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

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

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

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

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

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

A.) Delaware's A Better Chance (DABC) Welfare Reform, cash benefits are time-limited for households headed by two employable adults age ~~19~~ 18 or older who are included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive these benefits only through participation in a pay-after-performance work experience position or if the adults are working at least 20 hours per week and the family has countable income is

below the need standard.

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

Time limits apply when ~~four~~ three conditions are met:

- the caretaker is included in the grant,
- the caretaker is age ~~19~~ 18 or older,
- the caretaker is employable, and
- ~~the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.~~

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

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

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

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

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

3002.2 Single Parent / Non-Parent Caretaker Families

Delaware's A BETTER CHANCE WELFARE REFORM PROGRAM (DABC), cash benefits are time-limited for households headed by an employable adult age ~~19~~ 18 or older who is included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive benefits for an additional twenty-four (24) cumulative months only through participation in a pay-after-performance work experience position or if the adult is working at least 20 hours per week and the family has countable income is below the need standard.

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

Time limits apply when ~~four~~ three conditions are met:

- the caretaker is included in the grant;
- the caretaker is age ~~19~~ 18 or older;

- the caretaker is employable; and
- ~~the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.~~

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

3002.3 Time Limits For Those On Assistance Prior To 01/01/2000

If a family was headed by an employable adult age ~~19~~ 18 or older who was included in the grant and received Delaware's A Better Chance (ABC) Welfare Reform cash benefits prior to 01/01/2000 they had a forty-eight (48) cumulative month time limit. This lifetime limit will still apply for those families. After twenty-four (24) cumulative months these families can only receive benefits if the adult is working at twenty hours per week or through participation in a pay-after-performance work experience position. The family must still have countable income that is below the need standard. Families with a forty-eight (48) month time limit who reapply for assistance on or after 01/01/2000 can only receive benefits if the adult is working at least twenty hours per week or if through participation in a pay-after-performance work experience position.

3002.8 Re-Application after the Time Limit

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

Benefits will be provided to these families only in the pay-after-performance component, up to the federal maximum of sixty (60) cumulative months in the time-limited program (See 3002.9 Exceptions To The Time Limit Counter.) DSS will conduct an assessment and notice the family prior to termination of benefits (See 3002.5 Assessment Prior to Termination of Benefits).

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

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

PUBLIC NOTICE

Division of Social Services
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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to amend its policy as it relates to the provisions of the Farm Bill, Title IV of the Farm Security and Rural Investment Act of 2002, enacted on May 13, 2002. These mandatory provisions must be implemented on October 1, 2002.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2002.

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

Summary Of Proposed Changes

DSSM 9007.1 - Citizenship and Alien Status: restores food stamp eligibility to qualified aliens who are otherwise eligible and who are receiving disability benefits regardless of date of entry. Current law requires them to have been in the country on August 22, 1996.

DSSM 9045 - Maximum Allowable Resources: increases the resource limit for households with a disabled member from \$2,000 to \$3,000, which is the same for households with an elderly member.

Revisions:

9007.1 Citizenship and Alien Status

(273.4)

Household members meeting citizenship or alien status requirements.

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 parents is a citizen;

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 18th birthday.

4. Individuals who 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 40th 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 or blind (payments listed under DSSM

9013.1);

9045 Maximum Allowable Resources

[273.8]

Resource standards of eligibility apply to all applicant households, including Public Assistance, General Assistance, and SSI households. The maximum allowed resources, including both liquid and non-liquid assets of all members of all applicant households may not exceed \$2,000, except that, for households including a member(s) age 60 or over or disabled per DSSM 9013.1, such resources will not exceed \$3,000. Households ~~which that~~ are categorically eligible as defined in DSSM 9042 Categorically Eligible Households do not have to meet the resource limits or definitions in this section.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

PUBLIC NOTICE

Division of Social Services

Delaware 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 107, the Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend policy as it relates to the CHAMPUS, Diamond State Partners and the Breast and Cervical Cancer Group.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2002.

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

Summary of Proposed Change: DSSM 14600, 16110, 16210, 16220.4, 16310.3, 18200.2 - Third Party Liability

Change the name from CHAMPUS to Military Health Insurance for Active Duty, Retired Military and their Dependents. Add this to the list of comprehensive health

insurance under Delaware Healthy Children Program.

Summary of Proposed Change: DSSM 14810, 14900, 15160, 15505, 16210, 16220.4, 16220.5, 16500.2 - Diamond State Partners (DSP)

Add information about Diamond State Partners being a Medicaid only managed care organization.

Summary of Proposed Change: DSSM 15503 - Breast and Cervical Cancer Group

Clarify that there are only two screening categories for the Breast and Cervical Cancer Group.

Revisions:

14600 Third-Party Liability

Some Medicaid recipients are covered by other medical insurance plans. Examples of other resources are Medicare, employment related health insurance, Union Health & Welfare Funds, national Blue Cross and Blue Shield plans, CHAMPUS, Military Health Insurance for Active Duty, Retired Military, and their dependents, workmen's compensation, and no-fault automobile coverage. When a recipient receives payment from an insurance carrier, court settlement, etc. for any medical services paid by Medicaid, the recipient is obligated to reimburse the program for those related services. All such cases must be referred to the Third Party Liability Unit at the Medicaid State Office.

14680 Third Party Liability Guide

To aid in turning up other possible sources of coverage, the following guide has been prepared.

If You Find:	Then A Case Member May Be Eligible For:
A case member, spouse of a case member, absent parent or step-parent is ACTIVE DUTY MILITARY or a VETERAN	<u>CHAMPUS, Military Health Insurance for Active Duty, Retired Military, and their dependents, VA Health coverage</u>

14810 Continuously Eligible Newborns

An infant born to a woman eligible for and receiving Delaware Medicaid (including emergency services and labor and delivery only coverage) on the date of the child's birth is deemed to have filed an application and been found eligible on the date of birth and to remain eligible for 1 year provided:

- the child resides continuously in the mother's household, and
- for children born on or after January 1, 1991, the mother remains eligible for Medicaid or would

have remained eligible if she were still pregnant.

For purposes of deemed eligibility, the newborn will be considered to be a member of the mother's household even if the baby is continuously hospitalized after birth, unless the mother has legally relinquished control of the child.

A mother (who is not required to enroll in the Diamond State Health Plan or Diamond State Partners) can apply after a child is born and we will determine three month retroactive coverage. If the mother is determined retroactively eligible in a month prior to the birth (still pregnant), or in the month of birth, the baby will be deemed eligible for one year.

EXCEPTION: If the mother is eligible for enrollment in the Diamond State Health Plan or Diamond State Partners she cannot apply for retroactive coverage. She must apply for and be found eligible for Medicaid in the month of birth or in a month prior to the month of birth (while still pregnant) in order for the newborn to be deemed eligible. If the newborn is not deemed eligible, a separate eligibility determination must be made.

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.

Effective July 1, 2002, a Medicaid only managed care organization, Diamond State Partners, is implemented. Individuals may enroll in either the Diamond State Health Plan or Diamond State Partners.

The majority of the Medicaid population receiving non institutional services will be enrolled into the Diamond State Health Plan or Diamond State Partners. 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 or Diamond State Partners:

- 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—Military Health Insurance for Active Duty, Retired Military, and their dependents

14920.1 Retroactive Coverage Limitations

Effective January 1, 1996, Retroactive Medicaid coverage is NOT available to any individual who, in the month of application, is eligible for enrollment under the Diamond State Health Plan or Diamond State Partners. Individuals who are excluded from the Diamond State Health Plan or Diamond State Partners may be found eligible for retroactive Medicaid coverage. These individuals include:

- those entitled to or eligible to enroll in Medicare,
- those receiving long term care services (nursing facility and the home and community based waivers),
- those living out of state but considered Delaware residents, such as a child placed out of state by DSCYF, and
- individuals who have coverage under CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents.

14920.2 Retroactive Coverage Of Unpaid Bills

Individuals or families who apply for MAO (Medical Assistance Only), TANF/AFDC, GA, or SSI and who are excluded from the Diamond State Health Plan or Diamond State Partners may be eligible for retroactive Medicaid coverage of any unpaid medical bills incurred in any of the three months prior to the month in which they applied. However, certain requirements must be met in order for these bills to be paid under Medicaid.

14920.3 Retroactive Coverage Time Limits

There is no time limitation on requests for retroactive coverage. They may be processed at any time. Individuals who are eligible to enroll in Diamond State Health Plan or Diamond State Partners in the month of application, will never be eligible for the 3 month retroactive time period prior to that application.

14920.5 Retroactive Eligibility Determination

If the client is potentially eligible for or enrolled in the Diamond State Health Plan or Diamond State Partners, the worker will not do an eligibility determination.

14920.6 Retroactive Eligibility For Newborns

A baby born to a woman eligible for and receiving Medicaid on the date of the child's birth is deemed to have filed an application. Also, a mother (who is excluded from

Diamond State Health Plan or Diamond State Partners) can apply after a child is born and we will determine three month retroactive coverage. If the mother is determined retroactively eligible in a month prior to the birth (still pregnant), or in the month of birth, the infant is deemed eligible at birth and remains eligible for 1 year provided:

- the child lives continuously in the mother's household; and
- if the child was born on or after January 1, 1991, the mother remains eligible for Medicaid or would have remained eligible if she were still pregnant.

NOTE: Remember that retroactive coverage is only available to individuals excluded from managed care. A woman who is eligible for enrollment in the Diamond State Health Plan or Diamond State Partners cannot apply after the month of birth and be determined retroactively eligible. In this case, there is no deemed newborn eligibility and a separate determination of eligibility must be made for the baby.

15160.1 Eligibility Determination

Eligibility will be determined using Medicaid under Section 1931 technical and financial criteria. There is no medical eligibility criterion. (See DSSM 15120)

If the applicant is eligible, the Medicaid may be opened retroactive to the date of admission to the hospital. In no case can coverage be effective more than 3 months prior to the application date.

EXCEPTION: There is no 3 month retroactive coverage from the application filing date, if in the month of application, the individual is eligible for enrollment in the Diamond State Health Plan or Diamond State Partners.

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~~ Military Health Insurance for Active Duty, Retired Military, and their dependents

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 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 the 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.~~

16110 Adult Expansion Population

Section 1902(a)(10)(A)(i) of the Social Security Act requires states to provide medical assistance to certain mandatory categories of individuals and allows states to cover optional categories. On May 17, 1995, HCFA approved a Section 1115 Demonstration Project, entitled Diamond State Health Plan. This demonstration waiver extends Medicaid coverage to uninsured individuals age 19 or over with income at or below 100% of the FPL who are not categorically eligible. Individuals who receive long term care services (nursing facility and home and community based waivers), who have comprehensive health insurance as defined in this section, who are entitled to or eligible to enroll in Medicare, or who have coverage through CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents are excluded from this category of assistance created under the demonstration waiver. Medicaid coverage for this new group is effective March 1, 1996. Adults are not eligible for Medicaid benefits until ~~the first of the month in which~~ they are enrolled in a Managed Care Organization (MCO). (See DSSM 16220.5) Enrollment in a MCO is a technical eligibility requirement for these adults under the demonstration waiver. Adults will not receive Medicaid services until they are enrolled in a MCO.

16210 Limitations on Retroactive Coverage

Retroactive Medicaid eligibility is discussed in the common eligibility section of the Medical Assistance Manual. The demonstration waiver eliminates prior quarter eligibility. Retroactive Medicaid coverage is NOT available to any individual who, in the month of application, is eligible for enrollment under the Diamond State Health Plan or Diamond State Partners.

Certain individuals, who are excluded from the

Diamond State Health Plan or Diamond State Partners, may be found eligible for retroactive Medicaid. Individuals who may be found eligible for retroactive Medicaid are:

- those who are entitled to or eligible to enroll in Medicare,
- those receiving long term care services (nursing facility and the home and community based waivers),
- those living out-of-state but considered Delaware residents, such as a child placed out-of-state by DSCYF, and
- individuals who have coverage under CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents.

16220.4 Uninsured Requirement for Adult Expansion Population

This is a separate technical eligibility requirement for the noncategorically related adults age 19 or over, including those who receive General Assistance. The individual must be uninsured. An uninsured individual is defined as an individual who does not have Medicare, CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents, or other comprehensive health insurance. (See DSSM 16220.4.1) An adult who is entitled to or eligible to enroll in Medicare or who has CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents or who has any comprehensive health insurance, cannot be eligible for Medicaid as a non categorical adult under the demonstration waiver. The Third Party Liability Unit will determine if an individual has comprehensive health insurance.

16220.5 Enrollment in Managed Care - Special Requirement for Adult Expansion Population

Enrollment in a Diamond State Health Plan or Diamond State Partners MCO is a separate technical eligibility requirement for the non categorically related adults including adults who are receiving General Assistance. The adult must join a MCO ~~before the 20th day of the approval month~~ in order for Medicaid coverage to begin. ~~the first day of the next month. If the adult joins a MCO after the 20th day of the approval month, Medicaid coverage will start the second month following the approval month. The approval month is the month in which the notice to approve Medicaid is sent to the applicant.~~ The adult, if otherwise eligible, cannot receive Medicaid coverage until he or she is enrolled in a Diamond State Health Plan or Diamond State Partners MCO.

16310.3 Adults

Non categorically related adults will remain eligible as long as the family income is at or below 100% FPL. These adults may lose Medicaid eligibility due to disenrollment

from a managed care organization because of:

- non-compliance,
- threatening or abusive behavior, or
- falsification of application or enrollment material determined after a fair hearing on the issue.

If the adult becomes entitled to or eligible to enroll in Medicare or acquires CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents or comprehensive health insurance, redetermine eligibility promptly. If the adult is not eligible for Medicaid under another eligibility group or if benefits are reduced (e.g. to QMB), terminate or reduce benefits after giving at least 10 days advance notice.

16500.2 Procedures for Determining Eligibility

This program is an extension of benefits like the Transitional Medicaid program. A separate application is not required. When a female of childbearing age loses Medicaid eligibility, DSS staff will contact the woman to see if she wants to receive Family Planning services. The woman's response will be documented. The woman may request Family Planning services anytime during the 24 months after the Medicaid case is closed. These recipients will receive a Medicaid card that indicates they are eligible for Family Planning Package including Family Planning and Related Services.

Women eligible under this program are excluded from enrollment into the Diamond State Health Plan or Diamond State Partners. When the Medicaid case is closed, system processing will automatically disenroll women from managed care using the Medicaid closing effective date. Family planning and related services will be paid on a fee-for-service basis.

18200.2 Uninsured Requirement

The DHCP is limited to uninsured, low-income children. The following children are not eligible for DHCP:

- a. Children who are eligible for Medicaid.
- b. Children who have Medicare
- c. Children who, at the time of application, have insurance coverage that meets the definition of comprehensive health insurance.
- d. Children who have had comprehensive health insurance (other than Medicaid) within the six months preceding the month of application unless good cause exists for the loss of health insurance. The month of application is the month in which a signed application is received by DSS.
- e. Children who are eligible for or who have access to coverage under a state health benefits plan on the basis of a family member's employment with a public agency in the state.
- f. Children who have Military Health Insurance for Active Duty, Retired Military, and their dependents.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH & WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 103(a)(1) and (b), (7 Del.C. 103(a)(1) and
(b))

SAN # 2002-12

1. Title Of The Regulations:

Amendments to the Wildlife and Non-Tidal Fishing Regulations of Delaware.

2. Brief Synopsis Of The Subject, Substance And Issues:

W-R 2, Section 1 will be amended by adding a new (6) to permit the use of antique or reproduction black powder Sharps rifles during the shotgun deer seasons using paper patched bullets. W-R 3, a new Section 5 will be added to designate mute swans as an unprotected, exotic, invasive species that is not subject to state protection. W-R 4, Section 4 will be amended to eliminate the limit of nuisance beaver that may be taken and eliminate the reporting requirement for trappers. W-R 7, Section 1 (a) and Section 2 will be amended to change the limit on taking deer permit hunters to check deer by phone or the internet. Hunters will be given two free antlerless tags with their hunting license. In order to hunt an antlered deer, a hunter will be required to purchase a "hunter's choice" tag and will also be given a free Quality Buck Tag for deer with an antler spread of fifteen inches or more. Hunters that are not required to purchase a license will be permitted to take two antlerless deer and one hunter's choice deer, but must purchase a quality buck tag in order to take a second buck. W-R 14, Section 2 will be amended to eliminate the requirement for a special non-resident falconry permit. A standard non-resident hunting license and a federally approved falconry permit from any state will become the only requirements for hunting by falconry. W-R 15 will be amended by adding a new Section 5 to limit the methods of take for turtles. W-R 16 will be amended to review the state list of endangered species. A new regulations, WR-17, Species of Special Concern, will be added to establish priorities for spending new federal funds for wildlife restoration.

3. Possible Terms Of The Agency Action:

These regulations will remain in effect until amended or deleted. There is no sunset date for the proposed regulations.

4. Statutory Basis Or Legal Authority To Act:

7 Del. C. 103 (a) (1) & (b),

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

Workshops on these proposals were held on Jan. 29, Feb. 26, Mar. 26 and Apr. 30, 2002 in conjunction with the Advisory Council on Fish and Wildlife.

A public hearing is scheduled on August 27, 7:30 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, DE. Written comments will be received through August 28 at 4:30 p.m. to the Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901.

WR-2. Method Of Take

Section 1. General.

Unless otherwise provided by law or regulation of the Department, it shall be unlawful to hunt any protected wildlife with any weapon or firearm other than a longbow or shotgun (10 gauge or smaller), except that:

(1) A crossbow may be used in lieu of a shotgun to hunt deer during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January;

(2) A muzzle-loading rifle with a barrel length of at least twenty inches may be used to hunt deer during the primitive firearms season;

(3) A .22 caliber rimfire pistol may be used to hunt raccoons and opossums and to take wildlife lawfully confined in a trap;

(4) A hook, spear or gig may be used to take frogs; and

(5) A spear, gig, trap or fyke net may be used to take snapping turtles.

(6) An antique or authentic reproduction black powder Sharps rifle shall be lawful for use during shotgun deer seasons using paper patched bullets.

WR-3. Federal Laws And Regulations Adopted

Section 1. Federal Laws.

It shall be unlawful for any person to hunt, buy, sell or possess any protected wildlife or part thereof, except in such manner and numbers as may be prescribed by the following federal laws and regulations promulgated thereunder: Airborne Hunting Act (16 USC § 742j-1 et seq.), Eagle Act (16 USC § 668 et seq.), Endangered Species Act (16 USC 1531 et seq.), Lacey Act (16 USC § 3371 et seq.), Marine Mammal Protection Act (16 USC § 1361 et seq.), and the Migratory Bird Treaty Act (16 USC § 703 et seq.). Notwithstanding the foregoing, the federal laws and regulations shall be superseded by more stringent restrictions

prescribed by State law or regulation of the Department.

Section 2. Sea Ducks.

Scoters, eiders and old squaw ducks may be taken during their special season not less than 800 yards seaward from the Delaware Bay shore beginning at an east/west line between Port Mahon and the Elbow Cross Navigation Light south to the Atlantic Ocean or in the Atlantic Ocean.

Section 3. Non-toxic Shot.

(a) *Required Usage.* – Non-toxic shot, as defined by federal regulations, shall be required for waterfowl hunting in Delaware. It shall be unlawful for any person to possess shells loaded with lead shot while waterfowl hunting.

(b) *Maximum Shot Size.* – It shall be unlawful for any person to hunt, except for deer, in Delaware with any size non-toxic shot (as defined by federal regulations) pellet(s) larger than size T (.20 inches in diameter).

Section 4. Special Mallard Release Areas.

The Division may issue permits to allow the taking of captive-reared mallards during the established waterfowl season under applicable federal regulations. Permits shall only be issued to persons who: control at least 100 acres of land on which there is suitable waterfowl habitat; agree to follow a management plan and federal regulations; and maintain a log of guests and birds harvested. Failure to follow the management plan or a violation of State or federal laws may result in the revocation of a Special Mallard Release Area Permit. Waterfowl may only be hunted on Special Mallard Release Areas from one-half hour after sunrise to one hour before sunset.

Section 5. Mute Swans

Mute swans shall be considered an exotic, invasive species that is not subject to state protection.

WR-4. Seasons

Section 4. Beaver.

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided:

(1) ~~Beavers are damaging crops or other property;~~

(2) ~~The property damage is certified by the landowner; and~~

(3) ~~The number of beavers taken is reported to the Division by April 1.~~

beavers from their property without a permit, provided the beavers are causing crop or property damage.

(b) Beaver hides and the meat of lawfully taken beaver

harvested anywhere within or outside of Delaware may be sold.

WR-7. Deer

Section 1. Limit.

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

(1) Kill or take or attempt to kill or take more than two antlerless deer in any license year;

(2) Kill or take two deer in any license year without at least one of the two deer being an antlerless deer; or

(3) Possess or transport any deer that was unlawfully killed.

(4) Kill any antlered deer without first purchasing a Hunter's Choice tag for \$10, except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

(b) For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

(c) It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold when tagged with a non-transferable tag issued by the Division. Said tag must remain attached to the hide until it leaves the State or is commercially processed into leather. This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

(d) Notwithstanding subsection (a) of this section, a person may purchase an Antlerless Deer Tag for \$10 to kill or take an additional antlerless deer during the open season, provided:

(1) The tag is valid for the season in which it is used; and

(2) The tag is valid in the deer management zone from which the deer is taken.

(e) ~~Notwithstanding subsection (a) of this section, a person may purchase one Quality Buck Tag for \$10 to take a second antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used. use one Quality Buck tag to take an antlered deer with a minimum antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.~~

Section 2. Tagging and Designated Checking Stations.

(a) *Attaching Tags.* – Each licensed person who hunts

and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer. An approved tag shall mean an Antlerless Deer Tag, a Quality Buck Tag, a Hunter's Choice Tag, a Deer Damage Tag, a Sportsmen Against Hunger Tag or a tag detached from a Delaware hunting license. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, address and reason for not having a valid Delaware hunting license.

(b) *Retention of Tag.* – The tag required by subsection (a) of this section shall remain attached to the deer until the deer is presented to an official checking station for examination and tagging or registered by phone, as prescribed by subsection (c) of this section.

(c) *Checking Stations.* – Each person who hunts and kills a deer shall, within 24 hours of killing said deer, present the deer to a checking station designated by the Division or to an authorized employee of the Division or register the deer by phone. Hunters may also check deer by phone or over the internet through systems authorized by the Division.

(d) *Dressing.* – It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been examined by an authorized employee of the Division or a checking station, as prescribed by subsection (c) of this section.

WR-14. Falconry

Section 1. Federal Regulations Adopted.

It shall be unlawful for any person to practice the sport of falconry, except in such a manner as prescribed by regulations promulgated under provisions of 50 CFR (Code of Federal Regulations) §§ 21.28, 21.29 and 21.30. Such regulations are hereby made part of the regulations of the Department as prescribed in § 725 of Title 7. Notwithstanding the foregoing, the federal regulations governing falconry shall be superseded by more stringent restrictions prescribed by law or regulation of the Department.

Section 2. Permits.

(a) Residents wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person shall successfully pass a written test and have their facilities and equipment inspected as prescribed by the federal regulations.

(b) ~~Nonresidents wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person~~ must purchase a nonresident hunting license and be properly permitted to practice falconry in the state in which he or she resides.

(c) Falconry permits shall be effective, unless revoked,

for a period of up to three years and coincide with the license period for the hunting license. The Division shall participate in any joint state/federal permit system available.

(d) The issuance of Apprentice Class permits shall be limited to persons 15 years of age or older.

WR-15. Collection Or Sale Of Nongame Wildlife

Section 1. Commercial Collection.

It shall be unlawful for any person to collect or possess any North American nongame wildlife species or any part thereof for commercial purposes without a permit from the Director. The permit shall limit the terms and conditions for collecting or possessing said wildlife within the State. Endangered species or a species classified as a threatened species in accordance with the Endangered Species Act of 1973, as amended may not be collected, possessed or sold without appropriate federal/state permits. Species that are exotic to Delaware and regulated by the Delaware Department of Agriculture shall be exempt from the provisions of this section.

Section 2. Collection and Possession of Reptiles and Amphibians.

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to remove from the wild or possess any reptile or amphibian, their eggs or parts without a permit from the Director.

(b) For noncommercial purposes, one individual of any single species of reptile or amphibian, other than State Heritage Program ranked S1, S2, S3, SX or SH, may be collected and possessed without a permit.

(c) Federally listed threatened and endangered species may not be collected or possessed without federal permits.

(d) It shall be unlawful to remove reptiles or amphibians from the wild and later release said animals back to the wild if they have been held in captivity for 30 days more.

Section 3. Captive Breeding.

(a) It shall be unlawful for any person to breed in captivity any North American nongame wildlife species without a nongame breeders permit from the Director, except for species that are regulated by the Delaware Department of Agriculture. Said permit shall limit the terms and conditions for captive breeding of said wildlife.

(b) It shall be unlawful for any person to release captive-bred species into the wild. A signed bill of sale shall accompany any captive-bred species that are sold. Federally listed threatened and endangered species may not be collected or possessed without the appropriate federal permits.

(c) This section shall not apply to accredited zoos or to raptors regulated by federal and State falconry or raptor

propagation regulations.

Section 4. Sale or Possession of CITES Listed Species.

It shall be unlawful for any person to sell or possess bear gall bladder, or other viscera from any species of bear, or any part of other species listed as prohibited by the Convention on International Trade in Endangered Species (CITES). The possession of any part of a bear must be in conformance with CITES.

Section 5. Take of Turtles

Turtles can only be taken by hand, turtle trap or dowl-and-line. Turtle traps can have only one throat or funneling device. Turtle traps must have an escape hole provided below the water surface and the hole must measure a minimum of seven and one-half inches in all directions. Hoop-type turtle traps must have the area from the last hoop to the tail-line covered by nylon web having a mesh size of three and one half inches square measure or greater. All turtle traps must be lifted and emptied of catch at least once every 48 hours.

WR-16. Endangered Species

Section 2. Designation of Species by Division

(a) Pursuant to § 601 of Title 7, the Division may designate species of fish and wildlife that are seriously threatened with extinction as endangered species. The Division will review the state list of endangered species and add species suggested by the public that have sufficient documentation for listing.

WR-17. Species Of Special Concern

Section 1. List of Species

The following species or groups of species shall be considered Species of Special Concern for the purpose of qualifying for federal funds for wildlife restoration: Endangered species as designated by state or federal regulations; species designated by WR-16, Section 2, colonial nesting birds; shorebirds; wading birds; neotropical migrant birds; beach nesting birds; bald and golden eagles; peregrine falcons; overly abundant species including deer, beavers, southern nesting Canada geese, and red fox, bobwhite quail, wild turkey; freshwater mussels and bats.

**DIVISION OF WATER RESOURCES
WATER SUPPLY SECTION**

Statutory Authority: 7 Delaware Code,
Sections 6010 and 6023 (7 Del.C. §§6010,6023)

SAN #2002-05

1. Title Of The Regulations:

Proposed Amendments to "Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers."

2. Brief Synopsis Of The Subject, Substance And Issues:

The proposed amendments eliminate a loop-hole that allows a person who has had their license revoked or suspended to continue to construct, repair, and abandon wells and to install, maintain, and repair pumps in and from wells. Additional amendments bring the regulations into conformity with Title 7, Del. C., Chapter 60, §6023 (Delaware Environmental Protection Act) amended by House Bill No. 62 of the 139th General Assembly passed in 1997. Proposed amendments create a better organized, easier to reference and easier to understand document.

3. Possible Terms Of The Agency Action:

N/A

4. Statutory Basis Or Legal Authority To Act:

7 Del.C. §6010(a) and §6023 of the Delaware Environmental Protection Act

5. Other Regulations That May Be Affected By The Proposal:

N/A

6. Notice Of Public Comment:

The Division of Water Resources, Water Supply Section will hold a public hearing at 6:00 p.m. on September 4, 2002 to receive comments on proposed amendments to the Regulations For Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers. The hearing will be held in the auditorium of the Richards and Robbins building at 89 Kings Highway, Dover, Delaware. Written comments must be received by September 4, 2002, and should be directed to the attention of Carol Apgar, Division of Water Resources, 89 Kings Highway, Dover, DE 19901, or may be directed via e-mail to carol.apgar@state.de.us.

7. Prepared By:

Carol Apgar 302-739-3665, August 1, 2002

Regulations For Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, And Pump Installers

SECTION 1 – GENERAL PROVISIONS

1.01 Purpose

It is the purpose of this Regulation to

A. Protect the public health and to conserve and protect the water resources of the state;

B. Examine and license those persons engaged in the

1. Contracting for and ~~the drilling, boring, coring, driving, digging, construction, installation, removal, or repair of~~ constructing, abandoning, modifying or repairing water wells and water test wells; ~~or and~~

2. The installation, repair or removal of pumping equipment in and for a ~~water well or water test well~~; and

C. Provide for the Secretary to appoint a Water Well Licensing Board to advise and assist the Secretary in the administration of the licensing program.

1.02 Statutory Authority

The Department of Natural Resources and Environmental Control establishes and adopts this regulation pursuant to the authority granted by §6010(a) and §6023 of the Delaware Environmental Protection Act, Title 7 Del. C., Chapter 60.

1.03 Scope and Applicability

A. Minimum requirements are hereby prescribed governing the licensing of persons who conduct activities governed by this regulation.

B. No person shall conduct any activity contrary to the provisions of this Regulation.

C. **SEVERABILITY** If any part of this Regulation or the application of any part thereof is held invalid or unconstitutional, the application of such part to other persons or circumstances and the remainder of this Regulation shall not be affected thereby and shall be deemed valid and effective.

D. This Regulation being necessary for the protection and conservation of the water resources of the State, shall be liberally construed in order to preserve the land, surface water and groundwater resources of the State of Delaware.

E. The Department shall have the right to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relative to the enforcement of this Regulation; upon providing notice and after presenting official identification to the owner, occupant, custodian, or agent of the property.

F. ~~REPEALER~~ The provisions of this Regulation ~~are intended to~~ shall supercede existing regulations of this state insofar as they relate to the matters included in this Regulation.

1.04 Enforcement and Penalties

The provisions of this regulation shall be enforced by the Department as provided in Title 7 Del. C., §6005 and §6013. Such enforcement may include suspension or revocation of any license for cause. The failure of the Department to enforce any of the provisions of this Regulation shall not constitute a waiver by the Department of such provisions.

SECTION 2 – DEFINITIONS

2.01 Agricultural Well - A well used for watering livestock, poultry, and for aquaculture uses; or solely for watering household yards and gardens; or for other purposes related to farming in general but not including the irrigation of lands or crops. Water is not used for human consumption or to service a dwelling.

2.02 Application Fee – ~~means~~ The fee ~~set forth by the Secretary to apply for~~ that must be submitted with an application for a license in one of the categories of this regulation.

2.03 Board – ~~means~~ The Water Well Licensing Board.

2.04 ~~Certificate of Insurance~~ – ~~means~~ ~~Contractors Liability Insurance~~. Construction of Water Wells – ~~means~~ All acts necessary to obtain ground water by wells, including the location and excavation of the well, installation of casing, grout, screens, and developing and testing. complete a well from the initial penetration or excavation of the ground through development, equipment installation, disinfection. Set-up of construction equipment before actual penetration or excavation is not considered part of construction.

2.05 Department – ~~means~~ The Department of Natural Resources and Environmental Control.

2.06 Dewatering Well– ~~means~~ ~~the temporary lowering of the ground water level for the construction of sewer lines, water lines, elevator shafts and foundations.~~ A well used to temporarily remove ground water during the construction of footings, sewer lines, building foundations, elevator shafts, etc.

2.07 Geotechnical Well – A well constructed for monitoring water quality, measuring water levels, for removing a product mixed with or adjacent to groundwater or for injecting air or other product(s) into the groundwater with the intent to mediate contamination. Geotechnical wells are typically classified as observation, monitor, recovery or injection wells.

2.08 Installation – ~~means~~ The ~~actual installation~~ placement of pumps, and/or pumping equipment in and for ~~water wells; and the removal of pumps and related equipment in and for wells for repair, or service and or the reinforcement thereof.~~

2.09 License Fees – ~~means~~ The fee ~~set forth by the~~

Secretary for the licensing of water well contractors, pump installer contractors, well drillers, well drivers, and pump installers.

2.10 Person – ~~means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or duly established legal entity. Any individual, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user, or owner, or any Federal, State or local governmental agency or public district or any officer or employee thereof.~~

2.11 Pumps and/or Pumping Equipment – ~~means Any equipment or material(s) utilized or intended for use in withdrawing or obtaining ground water or other fluids from water wells.~~

2.12 Pump Installer Contractor – ~~means any person engaged in the business of contracting for the installation, modification, and repair of water well pumps and related equipment. Any person licensed by the State of Delaware to engage in the business of contracting for the installation, modification, or repair of water well pumps and related equipment.~~

2.13 Pump Installer – ~~means any person in responsible charge of all on-site work in the installation, modification, and repair of water well pumps and related equipment. Any person licensed by the State of Delaware to act in responsible charge of all on-site work in the installation, maintenance, and repair of pumps and related equipment in and for wells.~~

2.14 Repair of Water Wells – ~~means work on any well involving re-drilling, deepening, changing casing and screen depths, re-screening, cleaning by use of chemicals, re-development, the removal and re-installation of pumps, pumping equipment, and all related equipment to draw water from a water well. The repair or rehabilitation of a well to restore the original yield to the best extent possible, providing the location and physical dimension of the well are not changed.~~

2.15 Secretary – ~~means~~ The Secretary of the Department of Natural Resources and Environmental Control or his or her duly authorized designee.

2.16 Test Boring and Coring – ~~means removal and collection of soil samples from the earth by means of augers, core barrels, spoons, wash casing and bailers for the purpose of obtaining geologic and hydrologic information. Water Well – means Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition, or artificial recharge or injection of underground water fluids or gases, or to otherwise make use of groundwater and where the depth is greater than the diameter or width. For the purpose of this regulation this definition does not include geotechnical test; soil, telephone, and construction piling borings; fence posts or test pits.~~

Horizontal closed loop heat pump circulation systems constructed within twenty (20) feet of the ground surface are not considered wells.

2.17 Water Well Contractor – ~~means any person engaged in the business of contracting for the construction of water wells, and/or the installation of pumping equipment in or for wells. Any person licensed by the State of Delaware to engage in the business of contracting for the construction, modification, repair or abandonment of wells and/or the installation, removal or repair of pumping equipment in or for wells, or both.~~

2.18 Water Well Driller – ~~means any person in responsible charge of all on-site work relating to the drilling, construction, developing and testing of water wells, water well alteration and repair, test boring and coring, and the installation, modification, and repair of water well pumps and related equipment. Any person licensed by the State of Delaware to act in responsible charge of all on-site work relating to the, construction, abandonment, modification, repair, development or testing of wells; test boring and coring; and the installation, removal, modification or repair of water well pumps and related equipment.~~

2.19 Water Well Driver – ~~means any person in responsible charge for all on-site work relating to the driving, construction, developing and testing of driven wells, dewatering, alteration and repair of driven wells, test boring, coring and the installation, modification and repair of water well pumps and related equipment ordinarily used in driven wells. Any person licensed by the State of Delaware to act in responsible charge of all on-site work limited to the, construction, abandonment, modification, repair, development, and testing of driven wells and the installation, removal, modification or repair of water well pumps and related equipment in or for driven wells.~~

SECTION 3 – WATER WELL LICENSING BOARD

3.01 Board Membership

The Secretary shall appoint, with the power of removal, a Water Well Licensing Board (hereafter referred to as the “Board”) to advise and assist the Secretary in the administration of the licensing program. The Board shall consist of six members, four members ~~who are shall~~ currently licensed by the Department to engage in the construction of water wells or the installation of water well pumping equipment hold valid Well Driller or Pump Installer licenses, one member shall be from the office of the State Geologist ~~who shall serve at the pleasure of the Secretary~~ Delaware Geological Survey, and one member shall be from the Department. ~~who~~ All members shall serve at the pleasure of the Secretary. The member from the Department shall act as secretary of the Board and shall be responsible for the keeping of records, the collection of fees, and any other duties delegated either by the Secretary or the Board. All persons appointed to the Board shall be citizens

of the United States and residents of the State of Delaware. Initially, the four Board members from the water well industry shall be appointed to staggered terms so that no more than two members' terms shall expire the same year, two being appointed to one year terms, one appointed for a two year term and one appointed for three years. Thereafter, Board members shall be appointed to terms of three years.

3.02 Board Responsibilities

The Water Well Contractor Licensing Board, with the consent of the Secretary, shall establish and administer such procedures and guidelines as may be necessary for the licensing regulation of those any person, as defined in section 2.10 of this regulations, involved in contracting for and the construction, abandonment or repair of water well construction wells or in contracting for and the installation, removal, maintenance, modification or repair of pumps in and from for wells pump installation, and shall include at least the following provisions responsibilities:

- A. Develop application forms
- B. Develop examinations
- C. Review applications for adherence to the requirements of this regulation
- D. Examination of candidates
- E. Recommend the granting, renewal or denial of licenses
- F. Recommend the suspension or revocation of licenses

SECTION 4 – WHO MUST BE LICENSED

4.01 Water Well Contractor, Pump Installer Contractor

All persons, as defined in section 2.10 of this regulation, who engage in the business of contracting for the construction, abandonment, modification or repair of water wells, test boring and coring, dewatering in the State of Delaware shall be licensed by the Department as a water well contractor. All persons, as defined in section 2.10 of this regulation, who engage in the business of contracting for the installation, removal, modification, maintenance and or repair of water well pumps and related equipment in and for wells within in the State of Delaware shall be licensed by the Department as a pump installer contractor or a water well contractor.

4.02 Well Driller, Well Driver

Except as noted in 11.04(B) and 11.05(B) of this regulation, all persons who actively engage in any of the following activities in within the State of Delaware shall be licensed by the Department as a well driller or well driver or shall be under the direct on-site supervision of a licensed well driller or well driver while engaged in such activities.

A. The construction, abandonment, modification or repair of wells within in the engage in the business of water well drilling, water well driving, test boring and coring dewatering and

B. The drilling, boring, coring, driving, digging,

augering, construction, abandonment, or modification of any excavation other than a well to a depth greather than twenty (20) feet from the natural ground surface where the depth is greater than the width and where the saturated zone is intercepted

C. The installation removal, modification, maintenance or repair of water well pumps or pumping equipment in or for wells

4.03 Pump Installer

Except as noted in 4.04, 11.04(B) and 11.05(B) of this regulation, all persons engaged who engage in the installation, removal, modification, maintenance and or repair of water well pumps and pumping related equipment in and for wells within in the State of Delaware shall be licensed by the Department as a pump installer, well driller or well driver, or shall be under the direct on-site supervision of a licensed plumber, pump installer, well driller or well driver.

4.04 Exceptions

A. A person owning or leasing land on which he or she is installing, removing, maintaining or repairing pumping equipment in or from an agricultural well, as defined in section 2.01 of this regulation, is exempt from the requirement to hold a pump installer license.

B. A person who holds a Delaware Plumbers License or who is working under the direct on-site supervision of a Delaware licensed plumber, well driller, well driver or pump installer and who installs, removes, maintains, modifies or repairs or removes pumps and pumping equipment in and for wells is exempt from the requirement to hold a pump installer license.

SECTION 5 – LICENSING PROCEDURES FOR LICENSING

5.01 Application Fee

An application for any type of license issued by the Board shall be made on forms furnished by the Board and be accompanied by a non-refundable application fee of \$10.00. All applications shall include the required non-refundable application fee.

5.02 Minimum Requirements for Licensing

A. Age

The applicant must be at least eighteen years of age.

B. Experience

1. Applicants for well driller and well driver licenses shall have Has had at least two years experience in the work for which he is applying for a license operating well construction equipment, in constructing wells, and in the installation, removal, maintenance, modification and repair of pumps in and for wells. (one year in the case of a pump installer) The Board may recommend granting a license with conditions limiting the scope of the license based on the applicant's experience. Examples of license

limitations may include but are not limited to work on geotechnical wells or dewatering wells or to the operation of certain types of equipment.

2. Applicants for pump installer licenses shall have at least one year experience in the installation, removal, repair, maintenance, modification, and repair of pumps in and for wells.

C. Examination

Applicants for well driller, well driver and pump installer licenses shall demonstrate professional competence by passing a written and/or oral examination prescribed by the Board.

D. Insurance

1. ~~The Board shall require, as a condition of licensing, that~~ All Water Well Contractors and Pump Installer Contractors shall carry and maintain ~~the following minimum Contractor's Liability Insurance:~~ a minimum of \$1,000,000 Contractor's Liability insurance coverage per occurrence.

Contractor's Liability Insurance:

Bodily Injury:\$100,000 each person

\$300,000 each occurrence

Property Damage:\$50,000 each occurrence

\$50,000 each aggregate

2. Failure to provide evidence of continual insurance coverage shall result in the automatic suspension of the water well contractor or pump installer contractor license. The suspension shall remain in effect until the Department has received proof of insurance or until the license expires.

3. ~~The Board may accept a Certificate of Insurance in lieu of a policy providing that the Certificate of Insurance is endorsed to include said license holder by name. Said insurance is a condition of licensing and must remain in effect during period when license is valid. The insurance coverage held by a Water Well Contractor or Pump Installer Contractor shall cover all licensed well drillers, well drivers and pump installers in their employ.~~

5.03 Application Procedures

Applications for licenses shall consist of the following:

A. Water Well Contractor, Pump Installer Contractor

1. Submission of a signed and notarized application on forms provided by DNREC.

2. Submission of the appropriate application and license fees

3. Submission of proof of contractor liability insurance meeting the requirements of section 5.02(D) of this regulation

B. Well Driller, Well Driver

1. ~~Furnishes the Board with~~ Submission of a signed and notarized application on forms provided by the Department.

2. Submission of the appropriate application

fee.

3. Submission of references from two persons who are actively engaged in the well drilling business and who hold current licenses as well drillers or well drivers. and

C. Pump Installer

1. Submission of a signed and notarized application on forms provided by the Department.

2. Submission of the appropriate application fee.

3. Submission of references from two persons who are actively engaged in the well drilling and/or pump installation business and who hold current licenses as well drillers, well drivers or plumbers.

~~D. Eligibility for Examination~~

5.04 Application Review

The Board shall review the application and may interview the applicant to determine whether the applicant meets the necessary requirements by of 5.02 (A) through (D) of the above criteria to be eligible for examination. After determining that an applicant is eligible for examination, the ~~Board shall notify the applicant~~ shall be notified of his eligibility for examination. Applicants who are determined to be ineligible for examination shall be so notified in writing by the Board and may reapply after 90 days from the date of notification.

5.05 ~~Notification for Examination~~ Notification

The ~~Department Board~~ shall, ~~not less than thirty days prior to the examination,~~ notify each eligible applicant of the time and place of the examination. The examination shall be given at least annually and at such other times as ~~in the opinion of the Board,~~ the number of applicants warrants. ~~The Board may, if the applicant meets all other requirements, issue a temporary license not to exceed 90 days duration until the next examination is given by the Board.~~

5.06 Examination

A. The examination shall consist of a written ~~and/or~~ oral examination, and shall fairly test the applicant's knowledge and application thereof in the following subjects:

1. Basics of well drilling methods and basics of well construction;

2. State and local laws and ordinances concerning the construction, abandonment, modification and repair of water wells and/or the removal, installation or maintenance of pumps and pumping equipment, and

3. The rules and regulations promulgated in connection therein.

B. The examination may be taken no more than twice ~~a~~ within one year 12 months of the Board's determination of eligibility. Applicants who fail to receive a passing grade shall wait at least 90 days before re-taking the examination.

C. Oral examinations will be scheduled and

administered as necessary. A written request for an oral examination must be submitted before the exam is scheduled.

Reciprocity

~~The Secretary may license, without examination, upon payment of the required application and license fees, and evidence of required insurance where applicable, applicants who are duly licensed under the laws of any other state having requirements deemed by the Board at least equivalent to those of the State of Delaware.~~

5.07 Reapplication after Failure of Examination

~~In the event When an applicant fails to receive a passing grade within one year of notification of eligibility to take the examination, the applicant he shall be so notified by the Board within 30 days and may re-apply for a license subsequent examination with payment of the application fee, no less than 90 days after the date of said notification their most recent failed examination or one year from the date their previous application was received, whichever is greater.~~

Persons Previously Licensed

~~Exemptions from Examination and Proof of Experience~~

~~Any person who has been licensed in the business of Water Well Contractor, Pump Installer Contractor, Well Driller, Well Driver or Pump Installer by the Department for the calendar year 1981, accompanied by satisfactory proof to the Board that he was so licensed, and accompanied by payment of the required fee and the furnishing of the required insurance where applicable, be granted a license in the category of which he was licensed without fulfilling the requirements that he pass the examination prescribed in the Minimum Requirements for Licensing.~~

5.08 License Issuance

Upon notification of passing the examination, the applicant shall submit the appropriate license fee. Thereafter, the Department shall issue a license. ~~Upon Notification of Being Qualified for Licensing, the Applicant shall where applicable, submit to the Board the following:~~

~~A. Certificate of Insurance indicating Contractors Liability Insurance in the minimum amounts required where applicable and specified herein, and~~

~~B. Payment of License fee (payable to the "State of Delaware")~~

~~C. License fees, effective July 1, 1991~~

Water Well Contractor	\$150.00
Pump Installer Contractor	115.00
Well Driller	30.00
Well Driver	15.00
Pump Installer	15.00

5.09 License Denial

Any person whose application for a license has been denied shall be notified in writing and provided the reason(s) for the decision. Within thirty (30) days of

notification, the person shall notify the Secretary in writing if a public hearing pursuant to 7 Del. C. §6006 is desired. If no hearing request is received within the thirty (30) day period, the decision for denial shall become final.

SECTION 6 – LICENSE RENEWAL

6.01 License Term

Licenses issued pursuant to this regulation are not transferable and shall expire on December 31 of each year. The Department shall send a written notice to the address on file for each water well contractor and pump installer contractor to remind them to renew the licenses for the company and their employees. It is the responsibility of the license holder to renew the license yearly and to notify the Department of any changes.

~~All licenses shall expire on December 31st of the year issued unless otherwise indicated on the license.~~

6.02 Application for Renewal

~~A. In order to avoid a lapse in license term, the following shall be submitted no later than November 30 of the year the license expires. A license may be renewed PRIOR to its expiration date providing the license submits the following:~~

~~1. A renewal application on forms provided by the Department.~~

~~2. Well drillers, well drivers and pump installers shall submit satisfactory evidence of compliance with the continuing education requirements of table 1 and sections 6.03 and 7 of these regulations this regulation, except as exempted by section 6.03(C).~~

~~3. Any Applicable renewal fee.~~

~~B. An expired license may be renewed within one (1) year following its expiration by submitting the information required in section 6.02(A)(1-3) of these regulations this regulation and any applicable late fee.~~

~~C. Licensees Persons who apply for renewal of their licenses under section 6.02(A) and (B) of these regulations this regulation shall not be required to take an examination, as a condition of license renewal.~~

~~D. Reinstatement of Expired Licenses Applicants for the reinstatement renewal of licenses that have been expired for more than one (1) year shall be subject to all requirements of section 5 of these regulations this regulation.~~

6.03 Continuing Education Credits

~~A. All licensees shall comply with the continuing education requirements of section 7.03 of these regulations as a condition for the renewal of their license. A licensee person holding two (2) or more licenses issued under these regulations this regulation may fulfill the continuing education requirements for renewal of all licenses by obtaining the larger of the minimum hours of continuing education subject to the requirements of section 6.03(B) of this regulation.~~

B. ~~The Secretary may consider a request for a temporary extension of a license for a period not to exceed three (3) months providing sufficient cause can be proven subject to the Secretary's discretion. In order to be considered for such an extension, the applicant must submit a written request with a statement containing the reason(s) why he or she was or is not able to obtain the necessary credits within the required time frame.~~ Persons holding valid Well Drillers or Well Drivers licenses shall complete a minimum of four (4) hours of continuing education credits prior to being granted a license renewal, with the following exceptions:

1. Persons holding Well Drillers or Well Drivers licenses that ~~are restricted~~ contain conditions limiting the license holder to the installation of dewatering wells and pumping equipment shall complete a minimum of two (2) hours of continuing education credits prior to being granted a license renewal.

2. The requirements of section 6.02(A)(3) shall not apply to well driller licenses that ~~are restricted~~ contain conditions limiting the license holder to the construction of geotechnical wells using hand-operated tools.

C. Persons holding valid Pump Installer licenses shall complete a minimum of two (2) hours of continuing education credits prior to being granted a license renewal.

D. ~~The licensee~~ licensed person shall be responsible for all costs of obtaining the required number of continuing education credit hours. ~~Continuing education credits for renewal of a license held for less than one year by a person who did not hold a license during the previous twelve months shall be required as shown in table 1.~~

Table 1. Continuing Education Credits Required For License Renewal

Months Licensed	Well Driller Well Driver (WD)	Dewatering (WD)	Pump Installer (PI)
Less than 1	0	0	0
Between 1 and 3	0	0	0
Between 3 and 6	2	1	2 1
Between 6 and 12	4	2	2

SECTION 7 - ~~APPROVAL OF~~ CONTINUING EDUCATION PROGRAMS

7.01 Continuing Education Program Approval

A. Continuing education programs shall be designed to improve, advance or extend ~~the licensee's~~ license holder's professional skills and knowledge relating to the practice of ~~well~~ construction, maintenance, repair or abandonment of wells or ~~repair and~~ pump installation, removal, modification, maintenance or repair. Acceptance of continuing education programs shall be based upon the

curriculum or program content and the qualifications of the instructor.

B. Prospective continuing education programs shall be submitted for the Secretary's approval on application form(s) provided by the Department; and, the program(s) shall be instructed by persons knowledgeable in the subject matter. ~~or shall be conducted by an accredited educational institution~~

C. ~~Applications for the approval of curriculums, programs, seminars, etc. shall be submitted on forms provided by the Department and~~ shall include the following minimum information:

1. ~~Description of subject matter~~ Course outline or syllabus including the course objectives
2. Length of course or courses in actual training hours
3. Name and qualifications of instructor(s)

D. Approval of a program shall remain in effect for as long as it ~~and the instructor remain unchanged, the program content remains unchanged and the program is not outdated~~ remains essentially unchanged.

E. ~~A change in subject matter, length, or instructor(s)~~ Any significant change shall require resubmission and approval. ~~Approval shall not be granted for any course, seminar, workshop, etc. dealing with the requirements of the 1999 revisions to the "Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers" or the 1997 "Regulations Governing the Construction and Use of Wells."~~

F. Approval of program(s) dealing with proposed revisions or additions to the states' regulations governing wells noted in section 7.01(F) above ~~and any other state or local requirements regarding well construction or repair, pump installation or pump repair~~ may be considered for continuing education credit providing the program(s) are held within the first six (6) months of implementation of the requirements.

G. Subject to approval by the Secretary, continuing education credit relevant to the practice of well construction, abandonment, and repair; and pump installation, removal, maintenance and repair may be obtained by, but are not limited to the following:

1. ~~Course work~~ Courses, seminars, workshops, and lectures etc. given by accredited educational institution
2. Courses, seminars, workshops, or lectures given by national, state ~~and or~~ local trade associations, professional organizations, product vendors, manufacturers, etc.
3. Extension studies and correspondence courses
4. Papers written by a licensee and published in a professional journal or scientific media requiring peer

review

5. Instruction of continuing education

courses

6. Attendance at conferences and conventions sponsored by regional, national ~~and~~ or local trade associations or professional organizations

7.02 Assignment of Credit

A. Continuing education credits shall be awarded on an hour-for-hour basis for attendance at an approved continuing education program unless otherwise indicated in section 7.02(B) through (F) of this regulation.

B. Credits shall be awarded in not less than one-half (½) hour increments.

C. ~~For programs where continuing education units have been assigned, one unit is equivalent to one credit of approved training.~~ Instructor(s) of approved continuing education programs shall receive credits at the rate of one (1) credit for two (2) hours of continuing education instruction.

D. Five (5) credit hours are approved for each day of attendance at a national, regional or local trade association conference or convention.

E. One-half (½) credit hour is approved for attendance at a ~~local~~ trade association or professional organization meeting or seminar.

F. Three (3) credit hours shall be awarded for each paper written by a licensee and published in a scientific media or professional journal requiring peer review. The subject of the paper shall be directly related to the license holder's license category.

7.03 Recording Reporting Credits

A. Approved continuing education credits obtained within the appropriate license renewal period shall be credited as provided in section 7.02 of ~~these regulations~~ this regulation.

B. The ~~licensee~~ license holder is responsible for submission of proof of attendance at all approved continuing education programs. Documentation of credits received shall consist of any one of the following, unless otherwise approved by the Secretary:

1. A record of attendance for each course on forms provided by the Department or,

2. An official student transcript issued by the educational institution or,

3. A certificate or other documentation signed by the instructor or sponsor of the program providing the name of the individual who attended, the date the program was held, the name of the program, and the number of training hours completed, ~~and attesting to the satisfactory completion of the program.~~

C. Inability to substantiate credit hours earned shall be ~~is~~ grounds for disallowance of the credits in question.

SECTION 8 - ~~SUSPENSION~~ IDENTIFICATION OF LICENSE HOLDER

~~Any person licensed by the Water Well Licensing Board~~ All well drillers, well drivers and pump installers licensed under this regulation shall, ~~possess while he is working while he or she is performing any activity governed by this regulation, have in his or her possession~~ a valid and current identification card furnished by the ~~Board~~ Department and shall exhibit it on demand. The card shall bear showing his or her identity name, type of license, and license number and the license expiration date. ~~Only a person licensed by the Board shall be authorized to operate equipment used in the business of well drilling and/or pump installation, or if an unlicensed person is employed for the operation of the equipment, he shall perform all work under the immediate and continuous supervision of a person licensed by the Board present at the work site.~~

SECTION 9 - MARKING ~~OF~~ VEHICLES AND EQUIPMENT

~~Any contractor~~ All licensed water well contractors and pump installer contractors licensed by the Water Well Licensing Board shall mark each well drilling rig, well driving rig, water tank truck, and well and pump service ~~rig~~ vehicle used by the contractor or his employee(s) with legible and plainly visible identification markings. The identification markings ~~used~~ shall be include the name of the Company, Corporation, or Contractor and the Water Well or Pump Installer Contractor's license number. The identification marking(s) shall be ~~printed upon~~ displayed on each side of the ~~well drilling rig, well driving rig, water tank truck, and well and pump service rig~~ vehicle(s) and equipment in letters and numerals at least 1 ½ inches high. ~~and~~ The letters and numerals shall be in a color sufficiently different from the color of the vehicle or equipment so that identification markings are plainly legible. Weatherproof decals or magnetic signs meeting the requirements ~~above~~ of this regulation are acceptable.

SECTION 10 - RESPONSIBILITIES OF WATER WELL CONTRACTORS, PUMP INSTALLER CONTRACTORS, WELL DRILLERS, WELL DRIVERS AND PUMP INSTALLERS

Pursuant to ~~these regulations~~ this regulation, licensed water well contractors, pump installer contractors, well drillers, well drivers and pump installers shall be responsible for the following:

A. Initiating work only on wells for which the proper approval has been granted

B. Compliance with all applicable laws, regulations and requirements

C. The conduct of work carried out by ~~himself~~ themselves and any employee ~~and~~

D. The proper and timely submission of

~~completion reports for all work done, signed by the licensed water well driller or driver. all required reports and forms~~

~~E. Maintaining contractor's liability insurance pursuant to the requirements of this regulation at all times~~

~~F. Submitting proof of insurance annually~~

~~G. Notifying the Department of any changes of employment, address, phone, etc.~~

~~H. Submission of renewal and continuing education credit forms prior to license expiration.~~

~~I. Well drillers, well drivers and pump installers shall only perform work authorized by their license while in the employ of the licensed water well contractor or pump installer contractor listed on their license certificate.~~

SECTION 11 – SUSPENSION OR REVOCATION OF LICENSE

~~The Board shall recommend to the Secretary the revocation of the license of any licensee who, upon hearing by the Board, has been found guilty of fraud or deceit in obtaining his license.~~

~~The Board shall recommend to the Secretary the suspension or revocation of the license of any licensee who, upon investigation and hearing by the Board, is:~~

~~a. Found to be guilty of gross negligence, incompetence, or misconduct in the business of well drilling or pump installation and repair in the State of Delaware, including flagrant violations of the laws, regulations or conditions of permits; or is~~

~~b. No longer able to perform his duties properly.~~

11.01 Board Meeting

~~A. Whenever the Board finds that the a licensee under this regulation may be or may have been engaging in practices which are in violation of the laws, regulations or conditions of permits in relation to their license or when a licensee may no longer be performing their duties properly any provision of these or other regulations applicable to water well construction and abandonment, the Board shall give written notice to notify the licensee license holder describing the alleged violation and requesting that the alleged offender appear before the Board for a hearing to show cause why his or her license(s) should not be suspended or revoked.~~

~~B. The Board shall hold an informal meeting, open to the public, to review and decide on a recommendation to the Secretary. The Board shall consider testimony of the license holder, the Department, and the public and shall make a recommendation to the Secretary.~~

11.02 Secretary's Decision

~~The Secretary may suspend or revoke the license of a Water Well Contractor, Pump Installer Contractor, Well Driller, Well Driver or Pump Installer after considering the recommendations of the Water Well Licensing Board when it is found that the license holder:~~

~~A. Has practiced fraud, deception or concealment~~

~~of material facts in obtaining a license or in the performance of their duties~~

~~B. Has not used reasonable care, judgment or the application of their knowledge or ability in the performance of his or her duties~~

~~C. Is incompetent or unable to perform his or her duties properly~~

~~D. Violated any provision of this regulation, other applicable regulations or permit condition(s)~~

~~E. Violated any lawful order, regulation, or rule rendered or adopted by the Department~~

~~F. Is found guilty of misconduct in the pursuit of his or her profession~~

11.03 Notification

~~Any person whose license has been suspended or revoked shall be notified in writing and provided the reason(s) for the decision.~~

11.04 Appeals

~~Any person whose license has been suspended or revoked may appeal to the Environmental Appeals Board pursuant to Title 7 Del. C., §6008 within 20 days after receipt of the Secretary's decision.~~

Public Hearing

~~Any appeal of the Secretary's decision will be subject to the provisions in 7 Del. C., Section 6008.~~

Procedures for Hearings

~~A. The Board shall advise the Secretary to notify the alleged violator of his right to a hearing before the Board to show cause why his license would not be suspended or revoked. The notification shall be in the form of a registered or certified letter, return receipt requested, setting forth the alleged violation or violations, and making known to the alleged violator the time and place of the hearing. This notice must be given at least twenty (20) days prior to the hearing.~~

~~B. The alleged violator may appear with counsel at the hearing.~~

~~C. The Secretary shall appoint one of the members of the Board to act as the hearing officer.~~

~~D. A record shall be made of any hearing concerning revocation or suspension of licenses.~~

~~E. At the conclusion of the hearing the Board, by a majority of those present vote, shall recommend to the Secretary suspension, revocation or affirmation of the license of the accused based upon evidence and testimony given at the hearing.~~

~~F. The Board shall advise the Secretary of its decision within three (3) days of the hearing.~~

~~G. The Secretary shall provide the accused with notice by registered or certified mail, return receipt requested, as to his decision within twenty (20) days of the conclusion of the hearing.~~

11.05 License Suspension - Terms and Conditions

~~A. A person whose water well contractor or pump~~

installer contractor license has been suspended shall not contract for the construction, abandonment, modification or repair of a well or for the installation, maintenance, repair or removal of a pump in or for a well during the term of license suspension.

B. A person whose well driller or well driver license has been suspended shall not physically operate a well rig, construct a well, abandon a well, install a pump in or for a well, remove a pump from a well, modify a pump in or for a well or service a pump in or for a well during the term of license suspension.

C. A person whose pump installer license has been suspended shall not install a pump in or for a well, remove a pump from a well, modify a pump in or for a well or service a pump in or for a well during the term of license suspension.

D. Vehicles used in any activity requiring a license pursuant to this regulation shall not bear the name or contractor's license number of the suspended license during the term of a Water Well or Pump Installer Contractor license suspension.

E. Upon expiration of the term of suspension, the license of the suspended person, as defined in section 2.10 of these regulations ~~company or corporation~~, shall be deemed in good standing on the first calendar day after the term of suspension has expired ~~provided that the cause of the suspension has been corrected to the satisfaction of the Board.~~

11.06 License Revocation - Terms and Conditions

A. A person whose water well contractor or pump installer contractor license has been revoked shall not contract for the construction, abandonment, modification or repair of a well or for the installation, maintenance, repair or removal of a pump in or for a well until that person has first obtained a current Delaware water well contractor or pump installer contractor license.

B. A person whose well driller or well driver license has been revoked shall not physically operate a well rig, construct a well, abandon a well, repair or modify a well, install a pump in or for a well, remove a pump from a well, modify a pump in or for a well or service a pump in or for a well until that person has first obtained a current Delaware well driller license.

C. A person whose pump installer license has been revoked shall not install a pump in or for a well, remove a pump from a well, modify a pump in or for a well or service a pump in or for a well until that person has first obtained a current Delaware pump installer license.

D. Vehicles used in any activity requiring a license pursuant to this regulation shall not bear the name or Water Well or Pump Installer Contractor's license number of the revoked license during the term of license revocation.

E. Upon completion of the term of revocation, the person may submit an application for a license under this

regulation.

EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE
TOURISM ADVISORY BOARD
 Statutory Authority: 73 Delaware Laws Ch. 312,
 Section 50 (June 25, 2002)

Notice of Proposed Regulation for Co-op Advertising Program

Title of Regulation:

Co-Op Advertising Program

Nature of Proceedings: Synopsis of the Subject and Substance of the Proposed Regulation:

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), is proposing to adopt a regulation for the administration of the Co-Op Advertising program set forth in 73 Delaware Laws Ch. 312, Section 50 (the "Co-Op Advertising Program") and for the application and award procedure of the Co-Op Advertising Program. The regulation describes the Co-Op Advertising Program, the eligibility criteria and application procedure for awards under the Co-Op Advertising Program.

Statutory Basis and Legal Authority to Act:

29 Delaware Code §5005(11); 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002).

Other Regulations Affected:

None.

Notice of Public Hearing; How to Comment on the Proposed Regulation:

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public

hearing at which members of the public may present comments on the proposed regulation on September 18, 2002 in the conference room of the offices of the Delaware Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:30 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before September 18, 2002 at 9:30 a.m.

Text of Proposed Regulation on Co-op Advertising Program

1.0 Co-Op Advertising Program Description

1.1 The purpose of the program is to attract overnight visitors to Delaware through increased visibility of Delaware's tourism product and the creation of a Delaware image.

1.2 The goal of the program is to allow tourism industry partners to participate in the Delaware Tourism Office's advertising campaign.

~~1.3 The definition of the program is advertising placed with any media that represents more than one organization and the cost of which is funded by all participants.~~

2.0 Participation

2.1 The Delaware Tourism Office will participate in co-op advertising and will fund a portion of the cost of the placement not to exceed fifty percent (50%) of such cost, as set forth in Section 2.3.

2.2 Equal shares will be made available to Delaware tourism industry partners.

~~2.3 Participating for profit organizations will be responsible for all the funds for any share purchased. Participating not-for-profit organizations will be eligible to receive one half of the funds for any share purchased from Matching Grant Funds. For-profit organizations may participate in co-op advertising. For-profit organizations will be responsible for all the funds for any share of co-op advertising purchased.~~

2.4 Not-for-profit organizations may participate in co-op advertising. Not-for-profit organizations will be eligible to receive one half of the funds for any share of co-op advertising purchased from Matching Grant Funds and will be responsible for one half of the funds.

3.0 Co-Op Advertising Matching Grant Funds

3.1. Co-Op Advertising Matching Grant Funds Description

3.1.1 The total amount available for matching grants is designated by the general assembly in the operating budget. It is expected that there will be a number of

programs available using the matching grant funds, one of which will be co-op advertising. The Delaware Tourism Office in cooperation with the Governor's Tourism Advisory Board will determine the amount of funds allocated for each matching grant funds sub-program.

3.1.2 The grants are to be used to place advertising outside of the state of Delaware to attract overnight visitors to Delaware.

3.1.3 Subject to the availability of funds, up to ~~One~~ half of the cost of participation in the co-op advertisement will be paid from matching grant funds for not-for-profit organizations.

3.1.4 The same organization may apply to participate in more than one co-op advertisement.

3.2 Eligibility for Matching Grants for Co-Op Advertising

3.2.1 Not-for-profit tourism related businesses and organizations.

3.2.2 Only in-state tourism entities may apply.

3.2.3 The organization's main product or program must be intended to attract new visitors and overnight business.

3.3 Matching Grant Awards

3.3.1 There will be no attempt to balance the awards geographically, politically, or categorically.

4.0 Source of Matching Funds

4.1 Matching funds are required for not-for-profit tourism related business. The organization's matching fund commitment is part of the application.

4.2 No other state grant funds may be used for the organization's match.

5.0 Application Requirements

5.1 Applicants shall fill out the Co-Op Advertising Program application as prescribed by the Delaware Tourism Office. The application is available at 99 Kings Highway, Dover, DE 19901.

5.2 Incomplete applications will not be considered.

5.3 More than one application may be submitted per organization.

5.4 All completed applications must be received at the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location. The application deadline will be designated in the program announcement. Applications may be submitted electronically, via fax or email.

5.5 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

6.0 Determination of Participation in Co-Op Advertising

6.1 DTO personnel will select the organizations for each co-op advertisement placed from the eligible

applications.

7.0 Process

7.1 All completed applications that are received by the deadline will be reviewed, and selections will be announced one week later.

7.2 Payments

7.2.1 Participating organizations will pay DTO their share within 60 days of their selection. There will be no funds paid from DTO to the applicant. DTO will combine the funds from all sources into a single payment to the advertiser.

**DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE
TOURISM ADVISORY BOARD**

Statutory Authority: 73 Delaware Laws Ch. 312,
Section 50 (June 25, 2002)

**Notice of Proposed Regulation for Direct Grants
Program**

Title of Regulation:

Direct Grants Program

Nature of Proceedings: Synopsis of the Subject and Substance of the Proposed Regulation:

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), is proposing to adopt a regulation for the administration of the direct grants program set forth in 73 Delaware Laws Ch. 312, Section 50 (the "Direct Grants Program") and for the application and award procedure of the Direct Grants Program. The regulation describes the Direct Grants Program, the eligibility criteria and application procedure for awards under the Direct Grants Program, the procedure for making of awards and the uses to which Direct Grants Program awards may not be put.

Statutory Basis and Legal Authority to Act:

29 Delaware Code §5005(11); 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002).

Other Regulations Affected:

None.

Notice of Public Hearing; How to Comment on the Proposed Regulation:

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public hearing at which members of the public may present comments on the proposed regulation on September 18, 2002 in the conference room of the offices of the Delaware Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:30 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before September 18, 2002 at 9:30 a.m.

Text of Proposed Regulation on Direct Grants Program

1.0 Program Description

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. ~~Direct Grants are only toward not-for-profit tourism entities are eligible. Only not-for-profit tourism entities with a marketing budget of \$15,000 or less are eligible for Direct Grants.~~ All projects must tie in to the State Marketing Plan.

1.2 The total amount available for Direct Grants is designated by the General Assembly in the operating budget. It is expected that there will be a number of direct grant programs awarded.

1.3 To be eligible, organizations must have a marketing plan with a clear vision as to how to attract out-of-state visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

1.5 Use of Funds Direct Grants:

1.5.1 It is expected that the Direct Grant funds will be used to actively market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware.

1.5.2 The same organization may apply for more than one Direct Grant.

2.0 Award Determination:

~~2.1 The organizations receiving awards will be selected by a panel composed of the following:~~

~~2.1.1 Delaware Tourism Office~~

~~2.1.2 Governor's Tourism Advisory Board~~

2.1 It is expected that the organizations receiving awards will be selected by a panel composed of employees or members of the following:

- 2.1.1 Delaware Tourism Office
- 2.1.2 Governor's Tourism Advisory Board
- 2.1.3 House Tourism Committee

3.0 Criteria:

3.1 Organizations must demonstrate that their vision supports one or more of the attract goals of the Delaware tourism industry's Five-Year Strategic Plan and Marketing Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. The program must support the Delaware Tourism Office Marketing Plan. DTO ~~logo~~ brand must appear on all created collateral. There will be no attempt to balance the awards geographically, politically, or categorically.

4.0 Award Process

4.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. Awards will be announced the following week.

4.2 Direct Grant Award Payments:

4.2.1 Payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. All requirements and criteria of the program need to be met.

5.0 Eligibility

5.1 Not-for-profit tourism related businesses and organizations.

5.2 Submitting organizations must submit proof of not-for-profit status and the organization's complete operating budget.

5.3 Only in-state tourism entities may apply

5.4 The organization's main product or program must fit into the Industry's ~~5~~ Five-Year Strategic Plan.

6.0 Application Requirements

6.1 Incomplete applications will not be considered (see application for required attachments).

6.2 More than one application may be submitted per organization.

6.3 All completed applications must sent to the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location.

6.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

7.0 Grant Awards

7.1 Awards will be granted based on the merit of the program being submitted. The purpose of the Direct Grant Program is to attract new visitors and overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities with a marketing budget of \$15,000 or less are able to submit direct grant proposals. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

8.0 Payments

8.1 Final payments may be requested after all project completion requirements have been met and proper documentation is submitted.

8.2 All invoices must be submitted to the Delaware Tourism Office.

9.0 Use of Funds

9.1 Funds may not be used for:

9.1.1 General operating expenses including staff salaries.

9.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

9.1.3 Food and beverages

9.1.4 Equipment purchase and rental

9.1.5 Business directories

9.1.6 Postage and office supplies

9.1.7 Meeting expenses

9.1.8 Anything contrary to state law.

9.1.9 Other restrictions on the use of the funds may be added at the time of the award based on the project definition.

10.0 Project Completion Requirements

10.1 At a minimum the following must be submitted for final payment:

10.1.1 Completed project report

10.1.2 Invoices must be submitted.

10.1.3 Marketing plan

10.1.4 The Delaware Tourism Office name and logo brand ~~must be used as well as Delaware Tourism Office name, phone number and website address~~ must appear on all created collateral

10.2 Other project completion requirements may be added at the time of the award based on project definition.

11.0 Applicant Information

11.1 Applicants shall fill out the Direct Grant Program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at 99 Kings Highway, Dover, DE 19901.

See 5 DE Reg. 1312 (12/1/01)

**DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE
TOURISM ADVISORY BOARD**

Statutory Authority: 73 Delaware Laws Ch. 312,
Section 50 (June 25, 2002)

**Notice of Proposed Regulation for
Matching Grants Program**

Title of Regulation:

Matching Grants Program

Nature of Proceedings: Synopsis of the Subject and Substance of the Proposed Regulation:

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), is proposing to adopt a regulation for the administration of the matching grants program set forth in 73 Delaware Laws Ch. 312, Section 50 (the "Matching Grants Program") and for the application and award procedure of the Matching Grants Program. The regulation describes the Matching Grants Program, the matching funds requirement of the Matching Grants Program, the eligibility criteria and application procedure for awards under the Matching Grants Program, the procedure for making of awards and the uses to which Matching Grants Program awards may not be put.

Statutory Basis and Legal Authority to Act:

29 Delaware Code §5005(11); 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002).

Other Regulations Affected:

None.

Notice of Public Hearing; How to Comment on the Proposed Regulation:

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public hearing at which members of the public may present comments on the proposed regulation on September 18, 2002 in the conference room of the offices of the Delaware

Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:30 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before September 18, 2002 at 9:30 a.m.

Text of Proposed Regulation on Matching Grants Program

1.0 Program Description

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Matching Grants Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities are able to submit matching grants proposals. However, for profit businesses are allowed to participate in partnership programs submitted by not-for-profits. All packaging programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan.

1.2 The total amount available for matching grants is designated by the Delaware General Assembly in the operating budget. It is expected that there will be a number of Matching ~~Funds~~ Grants Programs awarded. Four or more properties working together on a package will be able to receive a match of 2-to-1 instead of 1-to-1.

1.3 To be eligible, the applicant organization must have a marketing plan with a clear vision as to how to attract out-of-state visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

1.5 Use of Matching Grants:

1.5.1. It is expected that the Matching Grant funds will be used to market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware:

1.5.2 The same organization may apply for more than one Matching Grants ~~Program grant~~.

1.5.3 The purpose is to attract visitors to Delaware and to bring in overnight business. Therefore, advertising applicants must show a plan to advertise out of state.

2.0 Matching Funds:

2.1 Matching funds are required. The organization's matching fund commitment is part of the application. The organization's matching fund commitment must be met for full payment of the grant. No other state grant funds may be used for the organization's match.

3.0 Award Determination:

~~3.1 The organizations receiving awards will be selected by a panel composed of the following:~~

~~3.1.1 Delaware Tourism Office~~

~~3.1.2 Governor's Tourism Advisory Board~~

3.1 It is expected that the organizations receiving awards will be selected by a panel composed of employees or members of the following:

3.1.1 Delaware Tourism Office

3.1.2 Governor's Tourism Advisory Board

3.1.3 House Tourism Committee

4.0 Criteria:

4.1 Organizations must demonstrate that their vision supports the Delaware tourism industry's Five-Year Strategic Plan and Marketing Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. There will be no attempt to balance the awards geographically, politically, or categorically.

5.0 Award Process

5.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. The awards will be announced a week later.

5.2 Grant Award Payments:

5.2.1 The payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. To receive final payment, all organizations will need to complete all project completion requirements.

6.0 Eligibility

6.1 Not-for-profit tourism related businesses and organizations.

6.2 Submitting organizations must submit proof of not-for-profit status.

6.3 For-profit tourism businesses may be part of programs submitted for grant programs; however, they must be a partner of a not-for-profit applicant organization ~~and may not submit the application.~~

6.4 Only in-state tourism entities may apply.

6.5 The applicant organization's main product or program must be intended to attract new visitors and overnight business.

6.6 Partnerships between four or more tourism entities are encouraged. Partnerships will receive a 2-to-1 dollar match instead of a 1-to-1 dollar match.

7.0 Application Requirements

7.1 Incomplete applications will not be considered (see application for required attachments).

7.2 More than one application may be submitted per

organization.

7.3 All completed applications must be received at the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location. Applications may not be submitted electronically, via fax or email.

7.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

7.5 If the creation of a package is a proposal for a Matching Funds Grants Program grant, the package must include ~~a hotel property~~ an accomodation.

7.6 All invoices must be received at the Delaware Tourism Office, 99 Kings Highway, Dover DE 19901.

8.0 Matching Funds

8.1 All funds must be raised and collected prior to payment of the award.

8.2 No other state grant funds may be used for the organization's match.

8.3 Staff salaries, volunteer labor and in kind donations do not qualify as a match.

9.0 Grant Awards

9.1 Awards will be granted based on the merit of the program being submitted. The purpose of the Matching Grants Program is to attract new visitors and overnight business to Delaware. The goal of the Matching Grants Program is to increase the visibility of Delaware's tourism product. Four or more properties working together including at least one hotel, through a package will be able to receive a match of 2-to-1 instead of 1-to-1. Only not-for-profit entities are able to submit matching funds proposals. However, for-profit businesses are allowed to participate in partnership programs submitted by not-for-profit organizations. All package programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

10.0 Payments

10.1 Final payments may be requested after all project completion requirements have been met and proper documentation is submitted.

10.2 All invoices must be sent to the Delaware Tourism Office.

11.0 Use of Funds

11.1 Funds may not be used for:

11.1.1 General operating expenses including staff salaries.

11.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

- 11.1.3 Food and beverages
- 11.1.4 Equipment purchase and rental
- 11.1.5 Business directories
- 11.1.6 Postage and office supplies
- 11.1.7 Meeting expenses
- 11.1.8 Anything contrary to state law.
- 11.1.9 Other restrictions on the use of the funds

may be added at the time of the award based on the project definition.

12.0 Project Completion Requirements

12.1 At a minimum the following must be submitted for final payment:

- 12.1.1 Completed project report
- 12.1.2 Invoices
- 12.1.3 Marketing plan
- 12.1.4 ~~The Delaware~~ Tourism Office name and logo brand must be used as well as Delaware Tourism Office name, phone number and website address must appear on all created collateral

12.2 Other project completion requirements may be added at the time of the award based on project definition.

13.0 Applicant Information

13.1 Applicants shall fill out the Matching Grants Program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at: 99 Kings Highway, Dover, DE 19901.

STATE EMPLOYEE BENEFITS COMMITTEE

Statutory Authority: 29 Delaware Code,
Sections 5210(4), 9602(b)(4)
(29 Del. C. §§ 5210(4), 9602(b)(4))

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 29 Del. C. Sections 5210(4), 9602(b)(4), the Delaware State Employee Benefits Committee proposes to revise its Group Health Care Insurance Eligibility and Coverage Rules. The proposed amendments revise several sections of the rules and regulations. Substantive changes are proposed to the rules and regulations regarding employee and dependent eligibility, changes in coverage, and termination of coverage following divorce. Other proposed revisions include insertion of new rules requiring submission of specified documentation to maintain coverage, and a new rule that clarifies that premiums are collected on a lag basis.

A public hearing will be held on the proposed Group Health Care Insurance Eligibility and Coverage Rules on Thursday, September 5, 2002 at 1:00 p.m., in Room 112 of the Tatnall Building, William Penn Street, Dover, Delaware,

19901. The State Employee Benefits Committee will receive and consider input in writing from any person on the proposed Group Health Care Insurance Eligibility and Coverage Rules. Any written comments should be submitted to the Committee in care of Deborah E. McCall at the State Personnel Office, Blue Hen Corporate Center, 655 South Bay Road, Suite 202, Dover, Delaware 19901. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Group Health Care Insurance Eligibility and Coverage Rules or to make comments at the public hearing should notify Deborah E. McCall at the above address by calling (302) 739-8331.

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

State Employee Benefits Committee Group Health Care Insurance Proposed Revisions To Eligibility And Coverage Rules

Employees Eligible To Participate

(Used to determine who may enroll. See "Cost of Coverage" to determine the amount of State contributions, toward an employee's coverage.)

1.00 Pursuant to the authority vested in the State Employee Benefits Committee by 29 Del. C. §§ 5210(4), 9602(b)(4), the State Employee Benefits Committee adopts these eligibility and coverage rules for the State of Delaware Group Health Insurance Program. In the event of a conflict with the Delaware Code, the Delaware Code takes precedence over these rules.

1.01 An Employee must meet one of the following definitions to be eligible for coverage under the State's plan:

- a. a permanent full-time employee (regularly scheduled 30 or more hours per week or 130 or more hours per month);
- b. an elected or appointed official as defined by 29 Del. C. § 5201;
- c. a permanent part-time employee (regularly scheduled to work less than 130 hours per month);
- d. a limited term employee (as defined by Merit Rule 12.0240);
- e. a pensioner receiving or eligible to receive a pension from the State;
- f. All per diem and contractual employees of the Delaware General Assembly who have been continuously employed for 5 years.

1.02 Those employees who meet the definition outlined in rule 1.01(a), (b), and (e) are considered "Regular officers, employees, or pensioners" as outlined by State Statute and are thus entitled to State Share contributions.

1.03 Temporary, casual and seasonal and substitutes are not eligible to participate in the state's plan.

1.04 Newly employed school teachers become eligible employees when they start employment not when they sign their contract. (Review the Coverage & Contribution Table for coverage start date - dependent upon the September hire date). Temporary teachers who are re-hired in September are eligible to elect coverage when re-hired. Temporary teachers who are re-hired in the next contract year are eligible to elect coverage when re-hired without fulfilling another 3-month waiting period.

Dependents Eligible To Participate

2.01 An employee's dependents must meet one of the following definitions to be eligible for coverage under the State's plan:

a. an employee's legal spouse (Delaware law does not recognize common law marriage. Ex-spouses may not be enrolled in the State's group health insurance program – even if a divorce decree requires an employee to provide coverage for an ex-spouse);

IMPORTANT NOTE: Spousal Coordination of Benefits Policy has been in effect since 1/1/93. The policy is for a spouse who is eligible for health coverage through his or her own employer. Spouses who work full-time and are eligible for health coverage through their employer, but do not enroll under their employer's health plan, will have a reduction in benefits under the State Health Insurance Plan. Employees should refer to the individual benefit booklets for each plan for more detailed information.

b. an unmarried dependent child under age 21 (age 24 if a full-time student), born to or legally adopted by an eligible employee or an eligible employee's legal spouse;~~and dependent on the employee, employee's legal spouse, or ex-spouse for at least fifty (50) percent of support;~~

c. an unmarried dependent child under age 21 (age 24 if a full-time student), not born to or legally adopted, but residing with an eligible employee or an eligible employee's legal spouse in a regular parent-child relationship and dependent upon the employee or employee's legal spouse for at least fifty (50) percent support. A statement of support form must be completed by the employee and forwarded with the application for coverage. If a natural parent resides in the same household as the insured employee or insured employee's spouse, it will be deemed that a regular parent child relationship does not exist;

d. an unmarried dependent child born to or legally adopted by an eligible employee or an eligible employee's legal spouse over age 21 and dependent upon an eligible employee or an eligible employee's spouse for support and incapable of self support because of a mental or physical disability which existed before the child reached age 21, or age 24 if a full-time student. The child must have been

covered under your contract immediately preceding age 21, or age 24 if a full-time student.

e. an eligible dependent child covered under the health insurance plans of both spouses will be primary to the spouse's plan whose birthday is the first to occur during the calendar year. In the event the birth dates are the same, the dependent child will be primary to the parent with the longest service. In the event birth dates and length of service is the same, the dependent child will be primary to the male parent's plan.

Coverage

3.01 Coverage of an eligible employee and his or her eligible dependents will become effective on the first of the month following date of hire provided the employee submits a signed application within thirty (30) days of the employee's date of hire or within (30) days of the employee becoming eligible for the State Share. Refer to COVERAGE & CONTRIBUTION TABLE for specific coverage date options for employees who elect coverage when eligible for State Share.

IMPORTANT: Spousal Coordination of Benefits Policy became effective 1/1/93 for a spouse who is eligible for health coverage through his or her own employer. Spouses who work full-time and are eligible for health coverage through their employer, but do not enroll under their employers' health plan, will have a reduction in benefits under the State health insurance plan. Employees should refer to the individual benefit booklets for each plan for more detailed information.

3.02 Employees must sign an updated enrollment form and/or confirmation statement during each annual open enrollment period. Failure to return the signed form(s) will result in termination of health care benefits.

3.03 Employees who cover their spouse on their State of Delaware health care contract must complete a Spousal Coordination of Benefits Policy Form during the annual open enrollment period as well as anytime there is a change in the spouse's employment status. Failure to supply the Spousal Form along with the enrollment form and/or confirmation statement could result in the spouse's claims to be paid at 20%.

~~3.02~~ 3.04 If an employee elects not to enroll in the State's Group Health Insurance Program, the employee must complete and sign an application/enrollment form acknowledging the desire not to enroll by noting "waive" on the appropriate form.

~~3.03~~ 3.05 Eligible employees who fail to submit a completed and signed application/enrollment form within 30 days of their Start Date or their date of eligibility for State Share may not join the group until the next open enrollment period (usually May), unless the employee meets the

requirements of Rule 3.04.

~~3.04~~ 3.06 An employee who elects not to join the State's plan or elects not to enroll their spouse because their spouse has health coverage and later involuntarily loses the coverage, the State employee and/or spouse is eligible to join the State's plan within 30 days of the loss of coverage without waiting for the next open enrollment period. If such a change is not made in the time period specified, the eligible employee/and or spouse must wait until the next open enrollment period. An increase in employee contribution, change of benefits or change of carrier of the spouse's plan shall not constitute loss of coverage.

~~3.05~~ 3.07 If an employee declines enrollment for themselves or their dependents (including the spouse) because of other health insurance coverage, the employee may in the future be able to enroll themselves or their dependents in the plan, provided that they request enrollment within 30 days after the other coverage ends. The eligible employee who is currently enrolled in the Basic plan, may increase from Basic to optional coverage upon the spouse's involuntary loss of coverage and addition to the state contract, provided application is made within 30 days of the loss of spouse's coverage. In addition, if the employee has a new dependent as a result of marriage, birth, adoption, or placement for adoption, the employee may be able to enroll themselves and their dependents provided that they request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

~~3.06~~ 3.08 When husband and wife are eligible State employees, the two employees, or each eligible pensioner, and all eligible dependents may elect to enroll under one family contract. When the employees are both active, and an employee & spouse or family contract is chosen, the spouse whose birthday occurs earlier in the calendar year shall sign an application for coverage form requesting coverage. A change of agency is considered re-enrollment. (In the event the birth dates are the same, length of service and/or gender will be applied as described in Section 2.01(e)). Beginning with the effective date of these rules, State Share contributions for all new enrollments will be charged to the agency or organization whose employee enrolls the family for coverage. All enrollments prior to February 1990 shall continue to be charged to the agency or organization as was previously determined.

Each employee, or each eligible pensioner, may elect to enroll under a separate contract. Eligible dependents may be enrolled under either contract, but no dependent shall be enrolled more than once under the State of Delaware Group Health Insurance Program.

The increment of cost of the options selected by the two employees, which exceeds the cost of two basic family plans, shall be deducted by the Director of State Personnel from salary or pension.

~~3.07~~ 3.09 When the spouse of an eligible employee

is a retired State of Delaware employee receiving a pension, and enrolled under separate individual contracts, the agency and the Pension Office will carry the coverage for their respective employee/pensioner. If an Employee & Spouse, or a Family contract is chosen, the coverage will continue to be carried through the active employee's agency until such time that the Pensioner turns 65. The over age 65 spouse may continue to have the State's plan as primary payor of benefits with the contract to continue under the active employee's agency, or they may choose Medicare as the primary payor through the Pension Office.

Changes In Coverage

4.01 An eligible employee who elects to be covered on their EMPLOYMENT COVERAGE DATE may change coverage when the employee first becomes eligible for the State Share payment. (Examples: (1) An employee who at hire enrolls in the "Basic" plan may change to "Comprehensive PPO" (or another optional coverage) when they begin State Share contribution, without waiting for the next open enrollment period. (2) An employee who at hire enrolls for "Individual" coverage may change to "Individual and Child(ren)", "Employee and Spouse", or "Family" coverage when he or she begins to receive State Share, without waiting for the next open enrollment period.

4.02 When a covered employee marries, coverage for the spouse will become effective on the date of marriage, or first (1st) of the month following the date of marriage provided the employee submits the application to add the new spouse within 30 days of the date of the marriage. Premiums are paid on a monthly basis and not pro-rated, therefore if an employee adds the new spouse effective the date of the marriage, the employee must remit the difference in employee contribution for the entire month. The employee must submit a signed application within thirty (30) days prior to or thirty days following the date of marriage. If such a change is not made in the time period specified, a covered employee must wait until the next open enrollment period to add the spouse. (Spousal Coordination of Benefits Policy form must be completed and received with application to add spouse to coverage).

4.03 Coverage for a child born to an employee or legal spouse who is covered under the State's plan will begin on the date of birth provided an application for the child is made within thirty (30) days of the date of birth and the required employee contribution, if any is paid. If such a change is not made in the time period specified, a covered employee must wait until the next open enrollment period to add the child. For an employee who has an existing Employee and Child(ren), or Family type contract, the 30-day time period does not apply. However, the application to add the newborn child must be made within a reasonable time period.

4.04 Coverage for an eligible dependent, other than a newborn child, who becomes an eligible dependent after the employee has been enrolled, becomes covered on the first (1st) day of the month following the acceptance of the application and applicable payment is made within 30 days of the date that the family member became eligible.

4.05 An employee who transfers to another agency or school district ~~that has higher health benefits than the one he or she is leaving may change the plan and coverage without waiting until the next open enrollment period~~ may change the plan and coverage without waiting until the next open enrollment period if the transfer favorably impacts the employee contribution to their health benefits provided the employee makes the required change within 30-days of the transfer.

4.06 Changes in coverage can only be made at the annual open enrollment period unless coverage is reduced to "Basic", or unless an employee is making a change due to divorce, marriage, birth of a child, addition of an eligible dependent, or transfer as previously outlined in this section. In the case of divorce, marriage, birth of a child, addition of eligible dependent, or transfer, the coverage status may change, but the plan cannot. The employee may change plans if their spouse has become a State of Delaware employee entitled to State Share and an Employee & Spouse or Family contract is chosen. An eligible employee may change coverage and/or plan if no longer entitled to double state-share, provided application is made within thirty (30) calendar days of the qualifying event. An eligible employee may increase from Basic to optional coverage upon the spouse's involuntary loss of coverage and addition to the state contract, provided application is made within 30 days of the of the loss of the spouse's coverage.

4.07 An eligible employee or an employee's legal spouse (eligible to receive State Share) who reaches age 65 and becomes eligible for Medicare shall continue to be covered under the State's plan as the primary payor of benefits. Employees and dependents eligible for Medicare, by reason of age or disability, must apply for Medicare Part A at their first eligibility regardless of their coverage under the State's plan.

4.08 An employee who becomes eligible for pension may change their plan at the onset of receiving their pension.

4.09 An employee who is required by Court or administrative order to provide health insurance coverage for a child and the parent is eligible for family health coverage shall be permitted:

a. To enroll under family coverage any child who is eligible for such coverage (without regard to any enrollment season restriction).

b. If the parent is enrolled, but fails to make application to obtain coverage of the child, the agency shall enroll the child under such family coverage upon application

by the child's other parent, the Division of Child Support Enforcement or Division of Social Services.

c. Not disenroll (or eliminate coverage of) any child unless the employer is provided satisfactory written evidence such as:

1. The Court or administrative order is no longer in effect, or

2. The child is or will be enrolled in comparable health coverage, which will take effect no later than the effective date of such disenrollment.

4.10 When a covered employee divorces, coverage for the ex-spouse will terminate on the date of divorce. Premiums are paid on a monthly basis and not prorated. The employee must remit the employee contribution for the plan, which included the spouse for the entire month. The employee must submit a signed application within thirty (30) days prior to or 30 days following the date of divorce. If double state share terminates as a result of the divorce, the employee must pay the employee contribution for the entire month that the divorce occurred.

Cost Of Coverage

(Used to determine the amount of State Share contributed toward an employee's coverage and the amount of employee contributions required, if any.)

5.01 "Regular officers and employees' begin earning State Share contributions on the first of the month following 90 days employment. See COVERAGE AND CONTRIBUTION TABLE for specific information regarding State Share payments and employee payroll deductions for employees who elect coverage when eligible for State Share.

5.02 Permanent part-time, limited term and per diem and contractual employees of the General Assembly as described in Section 1.01 are eligible to participate in the group, but are not eligible for State Share. Therefore, if they join the plan they must pay the full cost of the health plan they select. Payment must be collected by the organization and forwarded to the SPO Benefits Administration Accounting Unit by the first day of the month for which the employee's coverage becomes effective. If an existing full-time state employee takes a limited term position, State Share shall continue. Temporary, casual, and seasonal employees are not eligible to participate nor are they eligible for State Share.

5.03 When a husband and wife are both permanent full-time active employees, they shall earn state share contributions in accordance with the following:

a. If they elect to enroll in two individual contracts, the increment of cost of the options selected by the two employees which exceeds the cost of two basic family plans, shall be deducted by the State Treasurer from salary or

pension.

b. If they elect to enroll in one employee & spouse or family contract, the increment of cost of the option selected by the employee which exceeds the cost of two basic family plans, shall be deducted by the State Treasurer from salary or pension.

5.04 When the spouse of an eligible employee is a retired State of Delaware employee receiving monthly pension, they may enroll as two individual contracts, employee and spouse contract, or a family contract. The increment of cost of the option selected by the employee which exceeds the cost of two basic family plans, shall be deducted by the State Treasurer from salary or pension. (A notation should be made in the employee's file that their spouse is a State of Delaware Pensioner. The Pension Office should be notified if the active employee terminates State Service.)

5.05 An eligible employee who elects to be covered prior to becoming eligible for State Share must pay the full cost of coverage until State Share begins.

5.06 If an employee selects coverage under an optional plan, the employee is responsible for paying the additional cost, if any, over and above the cost of the same coverage class (individual, employee & child(ren), employee & spouse, or family) under the "Basic" plan.

5.07 An employee who is eligible for the State Share contribution may not receive the cash equivalent in lieu of the coverage itself.

5.08 ~~Coverage, employee contributions, and State Share occur on a "Pay As You Go" basis. (i.e. Deductions for May coverage take place from the first two pay advice's in May.)~~ As of July 1, 2001, premiums are collected on a lag basis. (Example: January coverage is paid by deduction in the second pay of January plus deduction in the first pay of February). Each agency/school district/sub-group is responsible for reconciling premiums to assure proper employee/state share premiums have been remitted. Payments other than those made through the payroll system and all adjustments must be submitted in a timely manner to the SPO Benefits Accounting Unit. The Group Health Insurance Program will not be responsible for payment of premiums and/or claims if a signed enrollment form/confirmation statement/waiver is not in the employee file.

5.09 An eligible employee who returns from an authorized unpaid leave of absence is entitled to State Share payments upon return without fulfilling another three-(3) month waiting period. The employee must make application with their Human Resources Office for coverage within 30 days of return from leave of absence.

5.10 Any State employee who fails to make payment for his or her share of the cost of health coverage when he or she is eligible to continue coverage and does not have a pay advice from which payment can be deducted will have coverage canceled on the first (1st) day of the month

following any month that an employee fails to pay the required share for the coverage selected.

(The Family and Medical Leave Act (FMLA) regulations provide that employees have a 30-day grace period for late premium payments. The employer's obligation to maintain health coverage ceases if an employee's premium payment is more than 30 days late. Agency personnel representatives should continue the employee's health coverage for the 30-day period provided under FMLA. The personnel representative can then do a retroactive cancellation if the required employee contribution was not paid by the end of the 30-day grace period.)

5.11 An employee who has a break in active employment due to authorized leave of absence, suspension, termination or unauthorized leave of absence without pay for a full calendar month, shall not be eligible for State Share for that calendar month and any subsequent calendar month that the employee is in a non-pay status for the entire calendar month. In the case of an authorized leave of absence, an intermittent return to work or use of paid leave of less than 5 days in one month, shall not entitle the employee to State Share contributions. Full payment must be made for the month in order to retain coverage. Upon return, the employee is eligible for State Share without fulfilling another three month waiting period, provided the break was the result of any of the following:

- a. an authorized leave of absence;
- b. a suspension without pay;
- c. termination or unauthorized leave of absence for a period less than 30 calendar days.

5.12 The State Share will be paid for employees that are drawing Workers' compensation, provided the employee is not eligible for coverage from a subsequent employer. Such an employee must submit payment for their share of their coverage that would normally be deducted from their pay advice.

5.13 Any employee who has paid the State Share in order to insure continuation of health coverage then later is found to have been eligible for receipt of State Share is to be refunded the amount that was not paid by the State. In accordance with Delaware Code Title 10, Chapter 81, Subsection 8111, there is a one-year statute of limitations that applies to such a refund and an employee must make application for the refund within this time limit. Refunds of less than \$1.00 will not be made.

5.14 Teachers who are granted a sabbatical leave of absence are eligible for State Share while they are on such leave.

5.15 All employees whose positions are involuntarily terminated after they have been employed for a full year who return to full-time State employment within 24 months of their termination will be eligible for State Share without fulfilling another three month qualification period.

5.16 A temporary, casual, seasonal, limited term employee, or substitute who becomes a "Regular Officer or Employee" shall have his or her unbroken temporary, casual, seasonal, or limited term, provisional or permanent part-time "Aggregate State Service" applied toward their three month qualification period for State Share contributions. The "Aggregate State Service" must immediately precede becoming a "Regular Officer or Employee". The temporary, casual, seasonal, limited term employee, or substitute must have worked each pay cycle for the 3 (three) months prior to hire eligibility for state share – or last 3 (three) full months of the school year prior to September hire.

5.17 State Share shall continue for a "Regular Officer or Employee" who is temporarily appointed to a position that results in a dual incumbency.

5.18 Any active employee who is also receiving a survivor's pension through the State of Delaware shall receive double State Share. The increment of cost, which exceeds the cost of two basic family plans, shall be deducted by the Director of State Personnel from salary.

5.19 Beginning July 1, 1994, a regular officer or employee called to active duty with Guard or Reserve for other than training purposes shall continue to receive state contributions toward health insurance coverage for a period of up to 180 days.

Continuation Of Coverage

6.01 To continue optional coverage, a covered employee must pay the difference between the State Share contribution and the cost of the coverage selected; otherwise, their coverage will revert back to "Basic".

6.02 An employee granted an unpaid authorized leave of absence can maintain membership in the group health plan by paying the full cost of coverage (State Share plus employee contribution) during the period of the leave as long as that leave of absence does not exceed two (2) years. An employee who returns from an authorized leave of absence, whether he or she maintains coverage or not while on leave of absence, is authorized to receive State Share upon return. (Eligibility for State share begins upon return without fulfilling another three-month qualification period). An employee on FMLA leave is entitled to have pre-existing health insurance benefits (including the State of Delaware's share of the monthly cost) maintained while on an FMLA leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay their share during the leave period. Failure to make such contribution within 30 days of the due date will result in termination of coverage.

6.03 Optional coverage continues for teachers who are granted sabbatical leave provided they make the required payments for their share of the cost of their coverage; otherwise, their coverage reverts back to "Basic". (State

Share continues while they are on sabbatical leave.)

6.04 Employees leaving State Service, except for termination due to gross misconduct, are eligible for continuation under Federal COBRA legislation. Employees should call CobraServ at 1-800-877-7994 for details of this continuation option.

6.05 An eligible employee or eligible dependent that loses coverage under the State's group health care insurance program may continue coverage under COBRA. Upon expiration of the covered individual's COBRA eligibility, the individual may apply directly to the insurance company for a direct billed contract.

Termination Of Coverage

7.01 Coverage ends on the last day of the month in which the employee terminates employment. In the event an Employee fails to make the required contributions for any optional coverage selected, coverage will revert to "Basic" coverage on the first day of the month for which the Employee failed to make the required contribution. If an employee works one day in the month in which they terminate, they shall earn state share for the entire month.

7.02 Coverage (and dependent coverage, if applicable) ends as of the end of the month in which the employee ceases to be an eligible employee for coverage (due to some change such as a reduction in the number of hours the employee works), or the end of the month in which an employee terminates employment.

7.03 Coverage of dependents, except for dependents of pensioners and dependents eligible for a survivor's pension, ends as of the last day of the month of the employee's death. Dependents who lose coverage as a result of the employee's death are eligible for continuation under Federal COBRA legislation. Contact CobraServ at 1-800-877-7994 for details of this continuation option.

7.04 ~~Ex-spouses are not eligible for coverage under the State's plan. Ex-spouse's coverage ends on the last day of the month following divorce by the employee completing an application form stating "divorce" as the reason for the change. Notification must be made in writing by the ex-spouse losing coverage within 60 days of the date of the divorce in order to preserve the spouses' rights under COBRA. Ex-spouses not employed by the state are not eligible for coverage under the State's plan. Coverage for the ex-spouse will terminate on the date of divorce. Premiums are paid on a monthly basis and not prorated. The employee must remit the employee contribution for the plan, which included the spouse for the entire month. The employee must submit a signed application within thirty (30) days prior to or thirty (30) days following the date of divorce. If double state share terminates as a result of the divorce, each state employee must pay the employee contribution for the entire month that the divorce occurred. The Group Health~~

Insurance Program will not be responsible for payment of claims when a dependent is no longer eligible for coverage.

7.05 Coverage for a dependent child will end the earlier of the following:

a. December 31st of the year in which he or she reaches age 21. If a full-time student coverage will end on the earlier of the following: (1) the end of the month in which the dependent child is no longer a full-time student, or (2) the end of the month in which the dependent child attains age 24.)

b. The last day of the month in which the child marries;

c. The date the child ceases to be dependent on you or your spouse for at least 50% support per Sections 2.01(c),(d).

(The Family and Medical Leave Act (FMLA) regulations provide that employees have a 30-day grace period for late premium payments. The Employer's obligation to maintain health coverage ceases if an employee's premium payment is more than 30 days late. Agency personnel representatives should continue the employee's health coverage for the 30-day period provided under FMLA. The personnel representative can then do a retroactive cancellation if the required employee contribution was not paid by the end of the 30-day grace period.)

Reinstatement Of Coverage

8.01 Once an employee has requested that his or her coverage be canceled, he or she cannot rejoin the State's plan until the next annual open enrollment period unless such employee qualifies under the rules of the exceptions (see rules 3.03 or 5.10).

8.02 An employee who returns from an authorized leave of absence not exceeding 24 months in duration who does not maintain coverage while on leave of absence, is permitted to enroll upon return without waiting for the next open enrollment period, provided the employee submits a signed application within thirty (30) days of return and pays the required employee contribution, if any. Coverage ~~shall become effective the 1st of the month~~ will begin as of the date the employee returns from leave following completion of the application and payment of any required employee contribution. Premiums are paid on a monthly basis and are not prorated.

8.03 Employees whose positions are involuntarily terminated after they have been employed for a full year (or full school year) will be eligible for State Share if they return to full-time State employment within 24 months of the termination.

Miscellaneous

9.01 It is the responsibility of the employee to keep his or her agency personnel representative informed of any change of address or in status which results in the adding or dropping of dependents (marriage, divorce, birth, death, adoption, etc.) that affects their health care coverage. In turn, it is the responsibility of the personnel representative to make the necessary changes in the PHRST system, or to notify the State Personnel Office Benefits Unit of these changes. Failure to do so may affect eligibility of coverage or extent of coverage for any participant and could impose an extreme hardship on an employee. The State of Delaware Group Health Insurance Program will not be responsible for payment of premiums and/or claims in the event of ineligibility and/or the absence of a signed enrollment form/confirmation statement in the employee file.

9.02 If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Rules and Regulations which can be given effect without the invalid provision or application, to that end the provisions of these Rules and Regulations are declared to be severable.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

**DELAWARE FIRE PREVENTION
COMMISSION**

Statutory Authority: 16 Delaware Code,
Section 6603 (16 **Del.C.** 6603)

ORDER

Order Adopting Regulations for Ambulance Company's Intent to Discontinue Service and for Basic Life Support Data Assessment Committees

AND NOW, this 18TH day of June, 2002, in accordance with 29 **Del.C.** 10118 and for the reasons stated hereinafter, The Delaware State Fire Prevention Commission ("the Commission") enters this Order adding Section XVII and Section XVIII to the Ambulance Service Regulations.

NATURE OF THE PROCEEDINGS

A properly noticed public hearing was held on May 28, 2002 at 9:00 a.m. and 7:00 p.m. pursuant to 16 **Del.C.** sec. 6603 and 29 **Del.C.** Ch 101 in the Commission's Chamber at the Delaware State Fire School at the Delaware Fire Service Center, 1461 Chestnut Grove Road, Dover, Delaware to receive public comment on proposed changes to the State Fire Prevention Regulations. The Commission proposed to amend Chapter III, Forms, of the Ambulance Service Regulations to add Section XVII Ambulance Company's Intent to Discontinue Service and to add Section XVIII

Basic Life Support Data Assessment Committees.

SUMMARY OF THE EVIDENCE

The Commission received no written comments in response to the notice of intention to adopt the proposed amendments to the Ambulance Service Regulations. In addition, the Commission received no public comment at the scheduled public hearings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice of the proposed amendments to the Ambulance Service Regulations and was offered an adequate opportunity to provide the Commission with comments. No written or oral comments were received.
2. The proposed amendments are necessary for the safeguarding of life and property.
3. Adoption of the proposed regulations is in compliance with House Bill 332.
4. The Commission concludes that it has statutory authority to promulgate regulations pursuant to 16 **Del.C.** 6603.
5. For the foregoing reasons, the Commission amends the Ambulance Service Regulations, Chapter III, Forms, as proposed by adding Section XVII and Section XVIII.

DECISION AND ORDER

NOW, THEREFORE, by a unanimous vote of a quorum, of the Commission, Sections XVII and XVIII are hereby adopted and added to Chapter III, Forms, of the Ambulance Service Regulations as proposed and 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).

SO ORDERED this 18th day of June, 2002.

State Fire Prevention Commission
Kenneth H. McMahon, Chairman
W. (Bill) Betts, Jr., Vice Chairman
Carleton E. Carey, Sr.
Frances J. Dougherty
James W. Magee
Robert E. Palmer

Ambulance Company's Intent To Discontinue Service**STEP 1**

Any fire department and/or ambulance company desiring to terminate ambulance service in the state of Delaware must notify the Delaware State Fire Prevention Commission in writing 120 days before terminating service.

STEP 2

Immediately upon notification of a fire department and/or ambulance company's desire to terminate service, the Chairman or the Vice Chairman of the Delaware State Fire Prevention Commission shall notify the president of the county firemen's association in which the fire department and/or ambulance company provides service to the residences and visitors of the state of Delaware for that district.

STEP 3

Immediately upon receiving notification of a fire department and or ambulance company's desire to terminate service the county firemen's association president shall appoint a committee. The committee shall include, but not be limited to: two members shall be the President's of the County Fire Chief's and County Ambulance Associations or their designees. The County President shall have the right to appoint other members to this committee as he and/or she may deem necessary.

1. To communicate and offer assistance to the terminating company in an effort to help them continue service.

2. In the event that the county committee is unable to get the company to continue service, they shall then contact

the surrounding departments and ascertain and/or develop a plan for those departments to divide the district and continue service.

3. In the event that steps one and two fail the county committee may put forth any and all suggestions they deem viable in order to provide ambulance service to the residences and visitors of the state of Delaware for that district.

4. The committee, through the County President, shall report to the Delaware State Fire Prevention Commission within 60 days with their recommendations and/or findings.

BASIC LIFE SUPPORT DATA ASSESSMENT COMMITTEES

MEMBERS: The State Fire Prevention Commission, hereinafter referred to as the Commission, hereby establishes Basic Life Support (BLS) Data Assessment Committees, hereinafter referred to as the Committees.

There shall be three committees, one in each county of the State of Delaware. Members shall consist of representatives from the County Volunteer Firemen's Association, the County Fire Chief's Association, the County Ambulance Association, and the County or local Fire and Emergency Medical (EMS) Dispatch Center dispatching the respective Company's EMS calls.

The President of his or her respective Association shall appoint each representative. The manager of the Fire and EMS Dispatch Center dispatching the Company's BLS incidents shall appoint the Dispatch Center representative.

The representative from each Association shall serve on their respective Committee until a letter of appointment is received from the respective Association or Dispatch Center indicating replacement of their current representative.

GOAL: Each Committee shall meet at least biannually, or as necessary, to review their respective County's Fire and EMS Dispatch Center's Basic Life Support (BLS) data. They shall review the monthly data for each Ambulance Provider, hereinafter referred to as Provider, in their County. Criteria for review shall include numbers of dispatched calls, scratches, and special circumstances.

If the Committee deems that a Provider needs improvement in an area, the Committee shall schedule a meeting with that Provider to determine if they can support the Provider in solving the identified problem(s). When meeting with the Provider, the Committee, by consensus, shall select a Chair to mediate discussions presented by the Committee to the Provider.

In the event that the Committee has problems with the Provider, or the Provider has problems with the Committee, either may forward the problem to the Commission through the normal Grievance Procedures, previously adopted by the Commission.

Each Committee shall submit an annual written report to

the Commission, reporting on their reviews, and any suggestions they might have to improve the BLS system or Committee procedures.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHYSICAL THERAPISTS
24 DE ADMIN. CODE 2600**

Statutory Authority: 24 Delaware Code,
Section 2604(1), 2607(b)
(24 Del.C. §2604(1), 2607(b))

**AMENDMENT OF RULE 11.1 BY INFORMAL
MEANS TO FINAL ORDER TO CONFORM TO
AMENDED STATUTORY LANGUAGE**

This 16th day of July, 2002, the Board finds, determines, and Orders the following:

1. In Rule 11.1 of this Board’s Rules, this Board has set forth provisions related to registered practitioners who seek inactive status. Currently, that rule, in part, defines those eligible for such inactive status as follows:

Any person who has been registered in the State and is neither residing within the State nor actively engaged in the practice of physical therapy in the State may at their request be placed on the inactive register for the remainder of the biennial licensure period. Subsequent requests for extensions of inactive status should be submitted biennially.

Citation (emphasis added) (remainder of Rule 11.1 omitted).

2. The above highlighted language in Rule 11.1 tracks the provisions of 26 Del.C. §2607(b) (1997) as such subsection existed prior to July, 2001. Like Rule 11.1, the earlier statutory provision defined inactive status as available to those registered but who were neither residing within the State nor actively engaged in practice in this State. However, by 73 Del. Laws ch. 125 § 4 (July 9, 2001), the General Assembly and Governor rewrote the provisions of section 2607(b) as it related to the ability to move to the inactive register. This new provision deleted the earlier reference to “not residing within this State.” Thus, since July, 2001, section 2607(b) has provided, in pertinent part:

The Board shall also keep an inactive register. *Any person who has been registered in this State who is not actively engaged in the practice of physical therapy or athletic training in this State, may, upon*

request, be placed on the inactive register. Provisions for inactive status shall be set up by the Board.

24 Del.C. §2607(b) (2001 Supp.) (changed language emphasized).

3. The Board, by vote at its meeting on July 16, 2002, determined to revise Rule 11.1 to mirror the statutory change enacted in July, 2001. The Board believes that in light of the legislative directions that the Board maintain an inactive register and that it set up provisions for inactive status, the Board has an obligation to, in a prompt fashion, ensure that its Rules’ description of who can seek to be placed on the inactive register tracks the new statutory description of who can have inactive status.

4. Under the provisions of 24 Del.C. §§2604(1) and 2607(b) the Board is granted the authority to formulate rules and regulations, including rules pertaining to inactive status. Pursuant to the provisions of 29 Del.C. §10113(b)(5), an amendment to an existing regulation to make it consistent with the basic law and which does not otherwise alter the substance of the rule may be undertaken informally without the need to follow the notice and comment provisions of 29 Del.C. §§1131-1134 and 10113-10118.

5. In this instance, the amendment to Rule 11.1 now being adopted by the Board makes a change to track the statutory change wrought in July, 2002, which allows both resident and non-resident registered practitioners to request inactive status. It does not make any additional substantive changes to the Rule.¹ Consequently, section 10113(b)(5) permits the Board to change Rule 11.1 to enlarge the pool of practitioners eligible for inactive status to that defined by the

1. At the same time, the other provisions of Rule 11.1 must be read carefully in light of the change. For example, Rule 11.1.2 requires, as a condition of reinstatement after being placed on the inactive register, that the practitioner must have been actively engaged in practice for the past five years. Such requirement more easily dovetails with the earlier statutory limitation on inactive status being linked to “non-residency:” the non-resident inactive practitioner could possibly fulfill that condition by citing five past years of lawful “active” practice in the practitioner’s “home” State. In contrast, a resident practitioner (unless licenced and practicing in some other State) could not show such a period of active practice within Delaware consistent with his Delaware inactive status. However, Rule 11.1.2 permits alternative methods for reactivation based on periods of supervision by other practitioners. The Board believes that resident practitioners (as well as non-resident practitioners) on inactive Delaware status can look to these alternatives to fulfill the regulatory condition for reactivation to an active status.

2001 statutory amendment without the need to publish notice of the change and allow for a period for comments. The statutory amendment, in itself, provided notice of the change and the Board's amendment to Rule 11.1 will simply incorporate the new statutory definition without making any additional substantive changes to the text.²

Now therefore, IT IS ORDERED:

1. That, pursuant to 24 **Del.C.** §§2604(1) & 2607(b) and 29 **Del.C.** §10113(b)(5), Rule 11.1 of the State Examining Board of Physical Therapists is hereby amended to read as set forth in Exhibit A to this Order. The remaining provisions of Rule 11 are not changed.

2. That a copy of this Order, adopting revised Rule 11.1, shall be forwarded to the Delaware Registrar of Regulations for publication as an amended final rule, adopted by informal means, in the next scheduled Delaware Register of Regulations.

3. That a copy of this Order, revising Rule 11.1, shall be mailed to all persons who have sent to all persons who have made written requests of the Board for advance notice of its regulation-making proceedings.

4. That the amendment adopted in paragraph 1 shall be effective ten days after publication in the Delaware Register of Regulations.

SO ORDERED this 16th day of July, 2002.

DELAWARE STATE EXAMINING BOARD OF PHYSICAL THERAPISTS

Phillip N. Barkins, President Jeff Fitz
Tara J. Manal, Vice-President Patrick McKenzie
Kathy Watson, Secretary Ruth Ann Messick
Gary T. Nowell

ATTEST:

Susan Miccio, Administrative Assistant to the Board

This is to certify that the above and foregoing is a true and correct copy of the Order of the Delaware State Examining Board of Physical Therapists in the Matter of the Amendment of Rule 11.1 By Informal Means to Conform to

2. Although the provisions of section 2407(b) - both before and after July 1, 2001 - speak in terms of registrants not actively engaged in the practice of either "physical therapy" or "athletic training," the language in the first sentence of Rule 11.1 refers to eligibility for inactive status based only on non-activity in the practice of "physical therapy." However, the same Rule 11.1, in other provisions makes references to both physical therapists and athletic trainers, suggesting that the earlier omission of "athletic training" was not intended. The revisions made here add "athletic training" to the earlier portion of the Rule so as to have the regulatory definition match the present and past statutory description.

Amended Statutory Language.

Exhibit A

11.0 Reactivation and Reinstatement (24 Del.C. § 2607)

11.1 Any person who has been registered in the State and is ~~neither residing within the State nor~~ not actively engaged in the practice of physical therapy or athletic training in the State may, upon request, be placed on the inactive register for the remainder of the biennial licensure period. Subsequent requests for extensions of inactive status should be submitted biennially. The Board may reactivate an inactive license if the Physical Therapist, Physical Therapist Assistant or Athletic Trainer:

11.1.1 files a written request for reactivation;

11.1.2 has been actively engaged in the practice for the past five years. If the licensee has not met this condition, the following requirements shall be completed;

11.1.2.1 The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer working in a clinical setting shall work under the direct supervision of a Physical Therapist/Athletic Trainer in Delaware for a minimum of six months.

11.1.2.2 The Athletic Trainer working in a nonclinical setting shall work under the direct supervision of an Athletic Trainer in Delaware for a minimum of six months.

11.1.2.3 At the end of the period, the supervising Physical Therapist/Athletic Trainer shall certify to the applicant's clinical competence on forms supplied by the Board; and

11.1.3 submits proof of completion of 1.5 CEU's during the previous 12 months.

*** PLEASE NOTE: SINCE NO OTHER SECTION OF THE RULES WERE CHANGED THEY ARE NOT BEING PUBLISHED.**

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

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

Secretary's Order No.: 2002-A-0043

**Proposed Regulation 24
(Control of Volatile Organic Compounds Emissions)
Section 10: - Aerospace Coatings -**

Date of Issuance: July 9, 2002

Effective Date of the Amendment: August 11, 2002

IV. Reasons

I. Background

On Tuesday, June 25, 2002, a public hearing was held in the Priscilla Building Conference Room of DNREC, 156 S. State Street, Dover to receive comment on proposed amendments to Regulation 24 (Control of Volatile Organic Compounds Emissions), Section 10 - Aerospace Coatings - of the Regulations Governing the Control of Air Pollution. The proposed Regulation 24 - Section 10 - would potentially impact any owner or operator of an aerospace manufacturing or rework facility.

The amended regulation would establish the following: (1) new volatile organic compound (VOC) limits for specialty coatings; (2) requirements for using high transfer efficiency coating application equipment; and (3) minimum standards in the proper use and handling of equipment and materials. The amended regulation would also establish an exemption from the existing 3.5lb/gal VOC limit for primers and topcoats for up to 200 gallons of primer/topcoat per year. These amendments are based on EPA's Control Technique Guideline (CTG) document "Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations".

The Department is proposing these regulations to aid Delaware in attaining compliance with the 1-hour ground-level ozone concentration standard set by the Environmental Protection Agency (EPA). Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated July 8, 2002, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed adoption of Regulation No. 24, Section 10, and has given careful and serious consideration to the written comments provided by Ms. Judith Katz of Region III of the EPA with respect to this issue.

III. Order

It is hereby ordered that the proposed adoption of Regulation No. 24, Section 10, be promulgated in final form in accordance with the customary and established rule-making procedure required by law.

The adoption of Regulation 24, Section 10, will aid the State of Delaware in attaining compliance with the 1-hour ground-level ozone concentration standard set by the Environmental Protection Agency (EPA), and will assist the Department in furtherance of the policy and purposes of 7 Del.C., Ch. 60.

Nicholas A. DiPasquale, Secretary

Section 10 - Aerospace Coatings.

~~11/29/94~~

a. Applicability.

~~1. This section applies to the following operations in each aerospace manufacturing or rework facility:~~

~~i. General cleaning operations.~~

~~ii. All hand-wipe cleaning operations.~~

~~iii. Each spray-gun cleaning operation.~~

~~iv. All flush cleaning operations.~~

~~v. Each primer and topecoat application operation.~~

~~vi. Each depainting operation, which applies to the depainting of the outer surface of aerospace vehicles with the exception of parts or units normally removed during depainting.~~

~~vii. Each chemical milling maskant application operation using Type II chemical milling etchants.~~

~~viii. Each waste storage and handling operation.~~

~~2. The requirements in paragraph (c) of this Section do not apply to the following operations: chemical milling, metal finishing, electrodeposition, composite processing, adhesives, adhesive bonding primers, sealants, and specialty coatings.~~

~~3. The requirements in paragraph (c) of this Section do not apply to aerospace manufacturing and rework facilities whose plant wide, actual emissions from the operations in paragraph (a)(1) without control devices are less than 6.8 kilograms (kg) (15 pounds [lb]) of volatile organic compounds (VOCs) per day.~~

~~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 becomes or is currently subject to the provisions of this Section by exceeding the applicability threshold in paragraph (a)(3) of this Section shall remain subject to these provisions even if its emissions later fall below the applicability threshold.~~

~~6. 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 these provisions, even if its throughput or emissions later fall below the~~

applicability threshold.

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.

"Adhesive bonding" means the joining together of two or more metal parts, such as the parts of a honeycomb core. The surfaces to be bonded are first coated with an adhesive bonding primer to promote adhesion and protect from subsequent corrosion. Structural adhesives are applied as either a thin film or as a paste, and can be oven cured or cured in an autoclave.

"Aerospace manufacturing or rework facility" means a commercial, civil, or military facility that produces in any amount an aerospace vehicle or component, or a commercial, civil, or military facility that reworks (or repairs) these vehicles or components. Aerospace manufacturing and rework operations may consist of any of the following basic operations: chemical milling maskant application, chemical milling, adhesive bonding, cleaning (e.g., hand-wipe, spray equipment, and flush), metal finishing, electrodeposition, coating application (e.g., primers, topcoats, sealants, and specialty coatings), depainting, and composite processing.

"Aerospace vehicle or component" means any fabricated part, processed part, assembly of parts, or completed unit of any aircraft including, but not limited to, airplanes, helicopters, missiles, rockets, and space vehicles.

"Brush coating" means the application of a coating material to a substrate by means of a brush (this technique is commonly used for touch-up and masking operations).

"Chemical milling" means a process used to reduce the thickness of selected areas of metal parts in order to reduce weight by submerging the metal parts in an etchant.

"Chemical milling maskant" means a coating that is applied directly to components to protect surface areas when chemically milling the component with a Type II etchant.

"Chemical milling maskant application operation" means the use of spray equipment or a dip tank to apply a chemical milling maskant, prior to chemically milling the component with a Type II etchant.

"Cleaning solvent" means any liquid material used for hand-wipe, spray-gun, or coating-line cleaning.

"Coating operation" means the use of a spray booth, tank, or other enclosure or any area, such as a hangar, for the application of a single type of coating (e.g., primer); the use of the same spray booth for the application of another type of coating (e.g., topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.

"Composite processing operations" include layup, thermal forming, debulking, curing, break-out, compression molding, and injection molding. Layup means the process of

assembling the layers of the composite structure by positioning composite material in a mold and impregnating the material with a resin. Thermal forming means the process of forming the layup in a mold, which usually takes place in an autoclave. Debulking means the simultaneous application of low-level heat and pressure to the composite structure to force out excess resin, trapped air, vapor, and volatiles from between the layers of the composite structure. Curing means the process of changing the resin into a solid material through a polymerization reaction. Break-out means the removal of the composite structure from the mold or curing fixtures. Compression molding means the process of filling one half of a mold with a molding compound, closing the mold, and applying heat and pressure until the material is cured. Injection molding means the use of a closed mold, where the molding compound is injected into the mold, maintained under pressure, and then cured by applying heat.

"Depainting" means the removal of any coating from the outer surface of the aircraft by either chemical or non-chemical means. "Depainting operation" means the use of a chemical agent, media blasting, or any other technique to remove coatings from the outer surface of aerospace components or vehicles. The depainting operation includes washing of the aerospace component or vehicle to remove residual stripper and coating residue.

"Dip coating" means the application of a coating material to a substrate by dipping the part into a tank of the coating material.

"Electrodeposition", or "metal plating", means an additive process for metal substrates in which another metal layer is added to the substrate in order to enhance corrosion and wear resistance necessary for the successful performance of the component. The two types of electro-deposition typically used are electroplating and plasma arc spraying.

"Electrostatic spray" means a method of applying a spray coating in which opposite electrical charges are applied to the substrate and the coating. The coating is attracted to the substrate by the electrostatic potential between them.

"Etchant" means a chemical used to mill a part or subassembly, such as sodium hydroxide for aluminum parts.

"Flow coating" means the application of a coating material to a substrate by pouring the coating over the suspended part.

"Flush cleaning operation" means the cleaning of an aerospace vehicle or component by passing solvent over, into, or through the vehicle or component. The solvent may simply be poured into the vehicle or component and then drained, or be assisted by air or hydraulic pressure, or by pumping.

"Hand-wipe cleaning operation" means the removal of contaminants such as dirt, grease, and oil from aerospace components or vehicles by physically rubbing them with a

material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent.

"High volume low pressure (HVLP) spray equipment" means spray equipment that is used to apply coating by means of a gun that operates at 10.0 psig or less at the air cap and a fluid delivery pressure of 100 pounds per square inch gauge (psig) or less.

"Leak" means any visible leakage, including misting and clouding.

"Metal finishing operations" include conversion coating, anodizing, desmutting, descaling, and any operations that chemically affect the surface layer of a part, and are used to prepare the surface of a part for better adhesion, improved surface hardness, and improved corrosion resistance.

"Non-chemical-based depainting equipment" means any depainting equipment or technique, including media blasting equipment, that does not rely on a chemical stripper to depaint an aerospace vehicle or component.

"Primer" means the first layer of coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, environment protection, functional fluid resistance, and adhesion of subsequent coatings. Coatings that are defined as specialty coatings are not included under this definition.

"Radome" means the non-metallic protective housing for radar antenna.

"Self-priming topcoat" means a coating that is applied directly to an aerospace vehicle or component for purposes of corrosion protection, environmental protection, and functional fluid resistance and that is not subsequently topcoated.

"Specialty coating" means a coating that, even though it meets the definition of a primer or topcoat, has additional performance criteria beyond those of primers and topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

"Spray gun" means a device that uses air pressure or air flow to atomize a coating or other material and to project the atomized coating particulates or other material onto a component.

"Stripper" means a liquid that is applied to an aerospace component or vehicle to remove primer, topcoat, or coating residue.

"Surface preparation" means the removal of contaminants from the surface of an aerospace component or vehicle, or the activation of the surface immediately prior to the application of a coating.

"Topcoat" means a coating that is applied over a primer on an aerospace vehicle or component for appearance, identification, camouflage, or protection, or any self-priming

topcoat. Coatings that are defined as specialty coatings are not included under this definition.

"Touch-up and repair operation" means that portion of the coating operation that is incidental to the main coating process and is used to cover minor imperfections in the coating finish. Touch-up and repair operations are not to exceed an area of 4 square feet per aerospace vehicle.

"Type II etchant" or "Type II chemical milling etchant" means a chemical milling etchant that is a strong sodium hydroxide solution containing amines (Type I etchants do not contain amines).

e. Standards.

1. General Cleaning Operations. The owner or operator of an aerospace manufacturing and rework facility shall use good housekeeping measures for all cleaning operations at the facility. These measures include the following practices:

i. Placing solvent-laden cloths or papers in closed containers immediately after use.

ii. Storing fresh and used cleaning solvents in closed containers.

iii. Minimizing losses during handling and transfer.

2. Hand-Wipe Cleaning Operations. No owner or operator of a hand-wipe cleaning operation subject to this Section, with the exception of those operations listed in paragraph (e)(2)(iii), shall cause or allow on any day the use of any cleaning solvent that does not comply with one of the following limits:

i. Vapor pressure less than 45 millimeters (mm) mercury (Hg) (1.8 inches [in] Hg) at 20 degrees Celsius (_C) (68 degrees Fahrenheit [_F]).

ii. VOC content of 200 grams per liter (g/L) (1.6 pounds per gallon [lb/gal]) or less, excluding water or exempt compounds, as applied.

iii. The vapor pressure and VOC content limits in paragraphs (e)(2)(i) and (e)(2)(ii) of this Section do not apply to the following cleaning operations:

A. Cleaning during the manufacture, assembly, installation, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen.

B. Cleaning during the manufacture, assembly, installation, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine).

C. Cleaning and surface activation prior to adhesive bonding.

D. Cleaning of electronics and assemblies containing electronics.

E. Cleaning of aircraft fluid systems that are exposed to the fluid.

F. Cleaning of fuel cells, fuel tanks, and limited-access spaces.

G. Surface cleaning of solar cells, coated optics, and thermal control surfaces.

H. Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft.

I. Cleaning of metallic and non-metallic materials used in honeycomb cores during the manufacture of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components.

J. Cleaning of polycarbonate substrates.

K. Cleaning and solvent usage associated with production, research, development, quality control, and laboratory testing.

3. Spray-Gun Cleaning Operations.

i. No owner or operator of a spray-gun cleaning operation subject to this Section shall cause or allow on any day the use of any cleaning technique that does not include or is not equivalent to one of the following techniques:

A. Use of an enclosed spray-gun cleaning system that is kept closed when not in use.

B. Non-atomized discharge of solvent into a waste container that is kept closed when not in use.

C. Disassembly of the spray gun and placing the parts for cleaning in a vat that is kept closed when not in use.

D. Atomized spray into a waste container that is fitted with a device designed to capture atomized solvent emissions.

ii. Leaks from enclosed spray-gun cleaners must be repaired as soon as practicable, but no later than 15 days from when the leak is first discovered.

4. Flush Cleaning Operations. Spent cleaning solvents used during flush cleaning operations, with the exception of spray-gun cleaning, shall be emptied into an enclosed container or collection system that is kept closed when not in use.

5. Primer and Topcoat Application Operations.

i. No owner or operator of a primer or topcoat application operation subject to this Section shall cause or allow on any day the application of any coating on that operation with a VOC content, as applied, that does not comply with one of the following emission limits:

A. VOC content equal or less than 350 g/L (2.9 lb/gal), excluding water and exempt compounds, as applied, from any primer application operation.

B. VOC content equal to or less than 420 g/L (3.5 lb/gal), excluding water and exempt compounds, as applied, from any topcoat application operation.

C. As an alternative to compliance with the emission limits in paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this Section, an owner or operator may meet the requirements of paragraphs (d) or (e) of this Section.

ii. No owner or operator of a primer or topcoat application operation subject to this Section, with the exception of those operations listed in paragraph (e)(5)(iii), shall cause or allow on any day the use of any application

technique other than flow coat, roll coat, brush coat, dip coat, electrostatic attraction, or HVLP spray guns. An alternate technique may be used if emissions are less than or equal to emissions from HVLP or electrostatic spray application techniques.

iii. The equipment standards in paragraph (e)(5)(ii) do not apply to the following application operations:

A. Any situation that normally requires the use of an extension on the spray gun to properly reach limited access spaces.

B. The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and cannot be applied by any of the specified application techniques.

C. The application of coatings that normally have a dried film thickness of less than 0.0005 inches and cannot be applied by any of the specified application techniques.

D. The use of airbrush application methods for stenciling, lettering, and other identification markings.

E. Touch-up and repair operations.

iv. All application equipment must be operated according to the manufacturer's specifications at all times, even if it is exempt from the equipment standards in paragraph (e)(5)(ii).

6. Depainting Operations. No owner or operator of a depainting operation subject to this Section shall cause or allow on any day the use of any stripper that does not comply with the following limits:

i. Vapor pressure of less than 10 mm Hg (0.4 in. Hg) at 20_C (68_F).

ii. VOC content of less than 400 g/L (3.3 lb/gal), excluding water and exempt compounds, as applied.

7. Chemical Milling Maskant Application Operations.

i. No owner or operator of a chemical milling maskant application operation subject to this Section shall cause or allow on any day the application of any maskant on that operation with a VOC content less than or equal to 160 g/L (1.3 lb/gal), excluding water and exempt compounds, as applied, from any maskant application operation.

ii. As an alternative to compliance with the emission limits in paragraph (e)(7)(i) of this Section, an owner or operator may meet the requirements of paragraphs (d) or (e) of this Section.

8. Waste Handling and Storage Operations.

i. The owner or operator of an aerospace facility shall handle and transfer VOC-containing waste to or from containers, tanks, vats, vessels, or piping systems in such a manner that minimizes spills.

ii. All VOC-containing waste shall be stored in closed containers.

iii. The requirements in paragraphs (e)(8)(i) and (e)(8)(ii) of this Section do not apply to wastes that are determined to be hazardous wastes under the Resource

Conservation and Recovery Act of 1976 (PL 94-580) (RCRA), as implemented by 40 Code of Federal Regulations (CFR) Parts 260 and 261, and that are subject to RCRA requirements, as implemented in 40 CFR Parts 262 through 268.

d. ~~Daily-Weighted Average Limitations. No owner or operator subject to this Section shall apply, during any day, coatings in any primer, topecoat, or chemical maskant application operation whose daily-weighted average VOC content, calculated in accordance with the procedure specified in Appendix "C" of Regulation 24 and the provisions listed below, exceeds the applicable emission limits in paragraphs (e)(5)(i)(A), (e)(5)(i)(B), and (e)(7)(i)(A) of this Section.~~

1. ~~Averaging between topecoats, primers, and chemical maskants is prohibited.~~

2. ~~Averaging between coatings used in operations where air emissions are not captured and controlled and coatings used in operations where air emissions are captured and controlled is prohibited.~~

e. ~~Control Devices.~~

1. ~~An owner or operator subject to this Section may comply with the applicable emission limits for any primer, topecoat, or chemical maskant application operation by:~~

i. ~~Installing and operating a capture system on that operation.~~

ii. ~~Installing and operating a control system on that operation.~~

iii. ~~Demonstrating that the overall emission reduction efficiency achieved is greater than or equal to 81 weight percent.~~

2. ~~An owner or operator of any primer, topecoat, or chemical maskant application operation subject to this Section shall use the mass balance calculation in Appendix "D" of Regulation 24 to demonstrate compliance with paragraph (e)(1)(iii) of this Section where carbon adsorption systems are used.~~

3. ~~An owner or operator of any primer, topecoat, or chemical maskant application operation subject to this Section shall use the following procedures to demonstrate compliance with paragraph (e)(1)(iii) of this Section where control devices other than carbon adsorption systems are used:~~

i. ~~Procedures in Appendix "D" of Regulation 24 to determine capture efficiency for total enclosures.~~

ii. ~~Procedures in Appendix "D" and Appendix "E" of Regulation 24 to determine destruction efficiency.~~

f. ~~Compliance Procedures.~~

1. ~~An owner or operator of a spray gun application operation shall visually inspect spray gun cleaners for leaks at least once per month and comply with paragraph (e)(3)(ii).~~

The inspection shall occur while the enclosed cleaner is in operation.

2. ~~An owner or operator of a primer, topecoat, or maskant application operation subject to this Section shall monitor temperature, using a continuous recorder, to determine compliance if a capture system or control device that destroys VOCs (e.g., an incinerator) is used to comply with the emission limit in paragraph (e)(1)(iii) of this Section.~~

3. ~~An owner or operator of a primer or topecoat application operation subject to this Section shall conduct a test to evaluate the performance of the application technique if an alternative application technique is used to comply with the equipment standard in paragraph (e)(5)(ii).~~

i. ~~Emission levels shall be determined during an initial 90-day period using only HVLP or electrostatic spray application techniques.~~

ii. ~~Emission levels shall be determined for the alternative application method for a period of time necessary to coat the equivalent amount of parts with the same coatings. Dried film thickness must be within specification for the initial 90-day period.~~

g. ~~Test Methods.~~

1. ~~Compliance with paragraphs (e)(2)(i) and (e)(6)(i) of this Section shall be achieved by applying ASTM Method E-260-91 or by using standard reference text values for determining the vapor pressure of solvents with multiple components.~~

2. ~~The test methods found in Appendix "A" through Appendix "D" of Regulation 24 shall be used to determine compliance with paragraphs (e)(2)(ii), (e)(5)(i)(A), (e)(5)(i)(B), (e)(6)(ii), and (e)(7)(i) of this Section.~~

3. ~~The method found in Appendix "I" of Regulation 24, shall be used to determine an alternative multi-day rolling period when calculating the efficiency of carbon adsorption systems according to paragraph (e)(2).~~

h. ~~Recordkeeping and Reporting for Cleaning Operations.~~

1. ~~An owner or operator of a cleaning operation subject to this Section shall supply notification of compliance status annually on a calendar year basis to the Department, which shall include the following information:~~

i. ~~Identification of each cleaning solvent used at the facility.~~

ii. ~~A description of the procedures used to ensure that bags and containers are kept closed when not in use and that cleaning solvents are stored in closed containers.~~

iii. ~~The vapor pressure test results of each cleaning solvent, or the reference text value.~~

iv. ~~A description of all methods used to clean spray guns.~~

2. ~~An owner or operator of a cleaning operation subject to this Section and complying with paragraph (e)(2) of this Section shall comply with the following requirements:~~

i. The owner or operator shall maintain at the facility for a period of 5 years the name, VOC content, composite vapor pressure, and monthly volume purchased of each cleaning solvent, and all supporting documentation, including any test reports and calculations.

ii. The owner or operator shall maintain at the facility for a period of 5 years the name and volume of each cleaning solvent that is used in an exempt cleaning operation, and the parts, assemblies, or subassemblies cleaned at these operations.

3. An owner or operator of a cleaning operation subject to this Section and complying with paragraph (c)(3) of this Section shall maintain at the facility for a period of 5 years a record of all leaks from spray-gun cleaners, including source identification, the date the leak was discovered, and the date the leak was repaired.

4. An owner or operator of a cleaning operation subject to this Section shall submit an annual report for the previous calendar year, which includes the following information:

i. Notification of any non-compliance situations, including the names and volumes of any non-compliant solvents or cleaners used and of any leaks from enclosed spray-gun cleaners that were not repaired within 15 days of detection.

ii. Names and compositions (or vapor pressures) of new solvents used for hand-wipe cleaning operations in the previous year.

iii. Names of previously reported cleaning solvents that are no longer in use at the facility.

~~i. Recordkeeping and Reporting for Application Operations:~~

~~1. An owner or operator of a primer, topecoat, or maskant application subject to this Section shall supply notification of compliance status annually on a calendar-year basis to the Department, which shall include the following information:~~

~~i. Identification of the combination of compliant coatings, averaging, and control devices used at the facility.~~

~~ii. Identification of the operating parameters identified for continuous monitoring of control devices.~~

~~2. An owner or operator of a primer, topecoat, or maskant application operation subject to this Section shall comply with the following requirements:~~

~~i. An owner or operator complying with paragraphs (e)(5)(i)(A), (e)(5)(i)(B), or (e)(7)(i) of this Section by the use of compliant coatings shall comply with the recordkeeping requirements in Section 4 paragraph (e) of Regulation 24.~~

~~ii. An owner or operator complying with paragraphs (e)(5)(i)(A), (e)(5)(i)(B), or (e)(7)(i) of this Section by daily weighted averaging shall comply with the recordkeeping requirements in Section 4 paragraph (d) of Regulation 24.~~

~~iii. An owner or operator complying with~~

~~paragraphs (e)(5)(i)(C) or (e)(7)(ii) of this Section by the use of control devices shall comply with the recordkeeping requirements in Section 4 paragraph (e) of Regulation 24.~~

~~3. An owner or operator of a primer, topecoat, or maskant application operation subject to this Section shall submit an annual report for the previous calendar year, which includes the following information:~~

~~i. Each exceedance of the VOC content level.~~

~~ii. Identification of new primers, topecoats, and maskants used at the facility in the previous year.~~

~~iii. Each exceedance by a control device, when the average values of the monitored parameter(s) fall outside the ranges established in the operating permit.~~

~~j. Recordkeeping and Reporting for Depainting Operations:~~

~~1. An owner or operator of a depainting operation subject to this Section shall supply notification of compliance status annually on a calendar-year basis to the Department, which shall include the following information:~~

~~i. The name and VOC content of each stripper used at the facility to repaint aerospace vehicles.~~

~~ii. The vapor pressure test results of each stripper.~~

~~iii. A description of all non-chemical depainting methods.~~

~~iv. A description of all depainting methods to be used during periods of malfunction of non-chemical depainting methods.~~

~~2. An owner or operator of a depainting operation subject to this Section and complying with paragraph (e)(6) of this Section shall comply with the following requirements:~~

~~i. The owner or operator shall maintain at the facility the name, VOC content, composite vapor pressure, and monthly volume purchased of each stripper, and all supporting documentation, including any test reports and calculations.~~

~~ii. The owner or operator shall maintain at the facility a list of the parts, assemblies, subassemblies, or radomes normally removed during depainting operations.~~

~~iii. The owner or operator shall maintain at the facility a description of the non-chemical depainting operations, including the name and type of equipment, and a description of all malfunctions, including dates and alternative depainting methods used.~~

~~3. An owner or operator of a depainting operation subject to this Section shall submit an annual report for the previous year, which includes the following information:~~

~~i. Names and compositions (or vapor pressures) of new or reformulated strippers used for depainting operations in the previous year.~~

~~ii. Names of previously reported cleaning solvents that are no longer in use at the facility.~~

~~iii. A description of any new non-chemical~~

depainting techniques used in the previous year.

iv. A description of all malfunctions of non-chemical depainting operations, including dates and alternative depainting methods used in the previous year.

v. A list of any new parts, assemblies, or subassemblies normally removed during depainting operations from the previous year.

Section 10 - Aerospace Coatings

11/29/94 [~~revisions as of 04/25/02~~] 08/11/02]

a. Applicability.

1. Except as provided for in (a)(2) and (a)(3), this Section applies to any owner or operator of any aerospace manufacturing or rework facility that conducts any of the following operation(s):

i. hand-wipe cleaning;

ii. spray gun cleaning;

iii. flush cleaning;

iv. primer, topcoat, self-priming topcoat, and specialty coating application;

v. the depainting of the outer surface of aerospace vehicles (except for depainting parts or units normally removed during depainting);

vi. Type I or Type II chemical milling maskant application; and

vii. VOC handling and storage.

2. Except for the requirements in paragraph (c)(8), this Section does not apply to the following operations in any aerospace manufacturing or rework facility:

i. Chemical milling;

ii. Metal finishing;

iii. Electrodeposition (except for the electro-deposition of paints); and

iv. Composite processing operations (except for cleaning and coating of composite parts or components that become part of an Aerospace vehicle or component as well as composite tooling that comes in contact with such composite parts or components prior to cure).

3. The requirements of this Section do not apply to aerospace manufacturing or rework facilities whose plant-wide, actual emissions from the operations in paragraph (a)(1) without control devices are less than 6.8 kilograms (kg) (15 pounds [lbs]) of volatile organic compounds (VOCs) per day.

4. Existing sources affected by this Section shall comply with the provisions of this Section on and after the effective date of this Section, except for the requirements of paragraph (c)(6)(ii) and (c)(7). Existing sources affected by this Section shall comply with the requirements of paragraph (c)(6)(ii) and (c)(7) beginning as soon as ~~practicable~~ **practicable**, but no later than the ~~date~~ **date** ~~one~~ **year** ~~year~~ after the effective date of this Section. New, modified, or reconstructed sources affected by this Section shall comply with the

provisions of this Section on and after startup. Notwithstanding Section (1)(e) of Regulation 24, any owner or operator currently permitted under Regulation 2 and/or Regulation 30 to operate an aerospace manufacturing or rework facility shall submit to the Department an application to amend the current permit and to comply with the provisions of this Section, pursuant to Regulation 2 and/or Regulation 30, as applicable.

5. Any facility that becomes or is currently subject to the provisions of this Section by exceeding the applicability threshold in paragraph (a)(3) of this Section shall remain subject to these provisions even if its emissions later fall below the applicability threshold.

6. 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 these provisions, even if its throughput or emissions later fall below the applicability threshold.

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 of the State of Delaware "Regulations Governing the Control of Air Pollution".

"Ablative coating" means a specialty coating that chars when exposed to open flame or extreme temperatures, as would occur during the failure of an engine casing or during aerodynamic heating. The ablative char surface serves as an insulation barrier, protecting adjacent components from the heat or open flame.

"Adhesion promoter" means a very thin specialty coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

"Adhesive bonding" means the joining together of two or more metal parts, such as the parts of a honeycomb core. The surfaces to be bonded are first coated with an adhesive bonding primer to promote adhesion and protect from subsequent corrosion. Structural adhesives are applied as either a thin film or as a paste, and can be oven cured or cured in an autoclave.

"Adhesive bonding primer" means a specialty coating that is applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250oF or below and primers with a design cure above 250oF.

"Aerospace manufacturing or rework facility" means a commercial, civil, or military facility that produces in any amount an aerospace vehicle or component, or a commercial, civil, or military facility that reworks (or repairs) any aerospace vehicle or component.

"Aerospace vehicle or component" means any

fabricated part, processed part, assembly of parts, or completed unit of any aircraft including, but not limited to, airplanes, helicopters, missiles, rockets, and space vehicles.

"Aircraft fluid system" means those systems that handle hydraulic fluids, fuel, cooling fluids, or oils.

"Aircraft transparency" means the aircraft windshield, canopy, passenger windows, lenses and other components that are constructed of transparent materials.

"Antichafe coating" means a coating applied to areas of moving aerospace components that may rub during normal operations or installation.

"Bearing coating" means a specialty coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

"Bonding maskant" means a temporary specialty coating used to protect selected areas of aerospace parts from strong acid or alkaline solutions during processing for bonding.

"Brush coating" means the application of a coating material to a substrate by means of a brush (this technique is commonly used for touch-up and maskant operations).

"Caulking and smoothing compounds" means semi-solid specialty coating materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

"Chemical agent-resistant coating (CARC)" means an exterior topcoat; specialty coating designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

"Chemical milling" means a process used to reduce the thickness of selected areas of metal parts in order to reduce weight by submerging the metal parts in an etchant.

"Chemical milling maskant" means a coating that is applied directly to aluminum components to protect surface areas when chemically milling the component with a Type I or II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are not included.

"Chemical milling maskant application" means the use of spray equipment or a dip tank to apply a Chemical milling maskant, prior to chemically milling the component with a Type I or II etchant.

"Cleaning operation" means collectively spray gun, hand-wipe, and flush cleaning operations.

"Cleaning solvent" means a liquid VOC containing material used for hand-wipe, spray gun, or flush cleaning.

"Clear coating" means a transparent coating applied to any substrate.

"Coating" means a material that is applied to the surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself.

"Coating operation" means the use of a spray booth, tank, or other enclosure or area, such as a hangar, for the application of a single type of coating (e.g., primer); the use of the same spray booth for the application of another type of coating (e.g., topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.

"Commercial exterior aerodynamic structure primer" means a specialty coating primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

"Commercial interior adhesive" means specialty coating materials used in the bonding of passenger cabin interior components that meet the FAA fireworthiness requirements.

"Compatible substrate primer" means a specialty coating that is either a compatible epoxy primer or an adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that (1) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application, or (2) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

"Composite processing operations" include layup, thermal forming, debulking, curing, break-out, compression molding, and injection molding. Layup means the process of assembling the layers of the composite structure by positioning composite material in a mold and impregnating the material with a resin. Thermal forming means the process of forming the layup in a mold, which usually takes place in an autoclave. Debulking means the simultaneous application of low-level heat and pressure to the composite structure to force out excess resin, trapped air, vapor, and volatiles from between the layers of the composite structure. Curing means the process of changing the resin into a solid material through a polymerization reaction. Break-out

means the removal of the composite structure from the mold or curing fixtures. Compression molding means the process of filling one half of molds with a molding compound, closing the mold, and applying heat and pressure until the material is cured. Injection molding means the use of a closed mold, where the molding compound is injected into the mold, maintained under pressure, and then cured by applying heat.

"Corrosion prevention system" means a coating system that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

"Critical use line and sealer maskant" means a temporary specialty coating, not covered under other maskant categories, used to protect selected areas of aerospace parts from strong acid or alkaline solutions such as those used in anodizing, plating, chemical milling and processing of magnesium, titanium, or high-strength steel, high-precision aluminum chemical milling of deep cuts, and aluminum chemical milling of complex shapes. Materials used for repairs or to bridge gaps left by scribing operations (i.e., line sealer) are also included in this category.

"Cryogenic flexible primer" means a specialty coating primer designed to provide corrosion resistance, flexibility, and adhesion of subsequent coating systems when exposed to loads up to and surpassing the yield point of the substrate at cryogenic temperatures (-275oF and below).

"Cryoprotective coating" means a specialty coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

"Cyanoacrylate adhesive" means a fast-setting, single component specialty coating adhesive that cures at room temperature. Also known as "super glue."

"Depainting" means the removal of any coating from the outer surface of an aerospace vehicle or component by either chemical or non-chemical means.

"Depainting operation" means the use of a chemical agent, media blasting, or any other technique to remove coatings from the outer surface of aerospace vehicles or components. The depainting operation includes washing of the aerospace vehicle or component to remove residual stripper and coating residue.

"Dip coating" means the application of a coating material to a substrate by dipping the part into a tank of the coating material.

"Dry lubricative material" means a specialty coating consisting of lauric acid, cetyl alcohol, waxes, or other noncross linked or resin-bound materials that act as a dry lubricant.

"Electric or radiation-effect coating" means a specialty coating or coating system engineered to interact,

through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are exempt.

"Electrodeposition" means an additive process for metal substrates in which another metal layer is added to the substrate in order to enhance corrosion and wear resistance necessary for the successful performance of the component. The two types of electrodeposition typically used are electroplating and plasma arc spraying.

"Electrostatic discharge and electromagnetic interference (EMD) coating" means a specialty coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

"Electrostatic spray" means a method of applying a spray coating in which opposite electrical charges are applied to the substrate and the coating. The coating is attracted to the substrate by the electrostatic potential between them.

"Elevated-temperature Skydrol-resistant commercial primer" means a specialty coating primer applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester (PE) hydraulic fluid (Skydrol 500b or equivalent) at the elevated temperature of 150oF for 1,000 hours.

"Epoxy polyamide topcoat" means a specialty coating used where harder films are required or where engraving is accomplished in camouflage colors.

"Etchant" means a chemical used to mill a part or subassembly (e.g., sodium hydroxide for aluminum parts).

"Exempt solvent" means an organic compound that has been determined to have negligible photochemical reactivity, as specified, and is defined in Regulation 24, Section 2 under "exempt compounds."

"Fire-resistant (interior) coating" means for civilian aircraft, fire-resistant interior specialty coatings used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these specialty coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

"Flexible primer" means a specialty coating primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat

flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

"Flow coating" means the application of a coating material to a substrate by pouring the coating over the suspended part.

"Flush cleaning" means the cleaning of an aerospace vehicle or component by passing solvent over, into, or through the vehicle or component. The solvent may simply be poured into the vehicle or component and then drained, or assisted by air or hydraulic pressure, or by pumping. Hand-wipe cleaning operations where wiping, scrubbing, mopping, or other hand action is used are not flush cleaning operations.

"Formulation" means a specific coating made by a specific manufacturer. Each different color of a specific coating is considered a separate formulation.

"Fuel tank adhesive" means a specialty coating adhesive used to bond components exposed to fuel which shall be compatible with fuel tank coatings.

"Fuel tank coating" means a specialty coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition, and to assure sealant adhesion in extreme environmental conditions.

"Hand-wipe cleaning operation" means the removal of contaminants such as dirt, grease, oil, and coatings from aerospace vehicles or components by physically rubbing them with a material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent.

"High temperature coating" means a specialty coating designed to withstand temperatures of more than 350oF.

"High volume low pressure (HVLP) spray equipment" means spray equipment that is used to apply coatings using a spray gun that operates at equal to or less than 10.0 psig of atomized air pressure at the air cap.

"Insulation covering" means a specialty coating material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

"Intermediate release coating" means a thin specialty coating applied beneath topcoats to assist in removing the topcoat in depainting operations, which generally allows the use of less hazardous depainting methods.

"Lacquer" means a clear or pigmented specialty coating formulated with a nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resolvable in their original solvent.

"Leak" means any visible leakage, including misting and clouding.

"Limited access space" means internal surfaces or passages of an aerospace vehicle or component that cannot be reached for the application of coatings without the aid of an airbrush or a spray gun extension.

"Metal finishing" means conversion coating, anodizing, desmutting, descaling, and any operation that

chemically affect the surface layer of a part, and is used to prepare the surface of a part for better adhesion, improved surface hardness, and improved corrosion resistance.

"Metalized epoxy coating" means a specialty coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

"Mold release" means a specialty coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

"Non-chemical-based depainting equipment" means any depainting equipment or technique that does not rely on a chemical stripper to repaint an aerospace vehicle or component (e.g., media blasting equipment).

"Nonstructural adhesive" means a specialty coating adhesive that bonds nonload bearing aerospace components in noncritical applications and is not covered in any other specialty adhesive categories.

"Part marking coating" means a specialty coating or ink used to make identifying markings on materials, components, and/or assemblies. These markings may be either permanent or temporary.

"Pretreatment coating" means an organic specialty coating that contains at least 0.5 percent acids by weight and is applied directly to metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

"Primer" means the first layer and any subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, environment protection, functional fluid resistance, and adhesion promotion of subsequent coatings. Primers that are defined as specialty coatings are not included under this definition.

"Radome" means the non-metallic protective housing for electromagnetic transmitters and receivers (e.g., radar, electronic countermeasures, etc.).

"Rain erosion-resistant coating" means a specialty coating or coating system used to protect the leading edges of parts such as flaps, stabilizers, radomes, engine inlet nacelles, etc. against erosion caused by rain impact during flight.

"Research and development" means an operation whose primary purpose is for research and development of new processes and products and that is conducted under the close supervision of technically trained personnel and is not involved in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

"Rocket motor bonding adhesive" means a specialty coating adhesive used in rocket motor bonding applications.

"Rocket motor nozzle coating" means a catalyzed epoxy specialty coating system used in elevated temperature applications on rocket motor nozzles.

"Rubber-based adhesive" means a quick setting, specialty coating contact cement that provides a strong, yet

flexible bond between two mating surfaces that may be of dissimilar materials.

"Scale inhibitor" means a specialty coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

"Screen print ink" means a specialty coating ink used in screen printing processes during fabrication of decorative laminates and decals.

"Sealant" means a specialty coating material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

"Seal coat maskant" means a specialty coating overcoat applied over a maskant to improve abrasion and chemical resistance during production operations.

"Self-priming topcoat" means a coating that is applied directly to an Aerospace vehicle or component for purposes of corrosion protection, environmental protection, and functional fluid resistance and that is not subsequently topcoated. More than one layer of identical coating formulation may be applied to the aerospace vehicle or component. Self-priming topcoats that are defined as specialty coatings are not included under this definition.

"Silicone insulation material" means an insulating specialty coating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

"Solids" means the nonvolatile portion of the coating that after drying makes up the dry film.

"Solid film lubricant" means a very thin specialty coating consisting of a binder system containing as its main pigment material one or more of the following: molybdenum, graphite, polytetrafluoroethylene (PTFE), or other solids that act as a dry lubricant between faying (i.e., closely or tightly fitting) surfaces.

"Space vehicle" means a man-made device, either manned or unmanned, designed for operation prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with test, transport, and storage that through contamination can compromise the space vehicle performance.

"Specialty coating" means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection. A specialty coating is any coating listed in Table 7-1 and defined in paragraph (b) of this

Section.

"Specialized function coating" means a specialty coating that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other Specialty Coating categories.

"Spray gun" means a device that uses air pressure or air flow to atomize a coating or other material, and to project the atomized coating particulates or other material onto a component.

"Stripper" means a liquid that is applied to an aerospace vehicle or component to remove primer, topcoat, self-priming topcoat, or coating residue.

"Structural autoclavable adhesive" means a specialty coating adhesive used to bond load-carrying aerospace components that are cured by heat and pressure in an autoclave.

"Structural nonautoclavable adhesive" means a specialty coating adhesive cured under ambient conditions that is used to bond load-carrying aerospace components or other critical functions, such as nonstructural bonding in the proximity of engines.

"Surface preparation" means the removal of contaminants from the surface of an aerospace vehicle or component, or the activation or reactivation of the surface in preparation for the application of a coating.

"Temporary protective coating" means a specialty coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

"Thermal control coating" means a specialty coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

"Topcoat" means a coating that is applied over a primer on an aerospace vehicle or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

"Touch-up and repair coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Touch-up and repair operation" means that portion of the coating operation that is the incidental application of coating used to cover minor imperfections in the coating finish or to achieve complete coverage. This definition includes out-of-sequence or out-of-cycle coating. Touch-up and repair operations are not to exceed an area of 4 square feet per aerospace vehicle.

"Type II etchant" or "Type II chemical milling etchant" means a Chemical milling etchant that is a strong

sodium hydroxide solution containing amines (Type I etchants do not contain amines).

"Volatile Organic Compound (VOC)" means any compound defined as VOC in Regulation 24, Section 2 - Definitions.

"VOC composite vapor pressure" means the sum of the partial pressures of the compounds defined as VOC's and is determined by the following calculation:

$$PP_c = \frac{\sum_{i=1}^n \frac{(W_i)(VP_i)}{MW_i}}{\frac{W_w}{MW_w} + \sum_{e=1}^n \frac{W_e}{MW_e} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

W_i ≡ Weight of the "i"th VOC compound, grams

W_w ≡ Weight of water, grams

W_e ≡ Weight of nonwater, non-VOC compound, grams

MW_i ≡ Molecular weight of the "i"th VOC compound, g/g-mole

MW_w ≡ Molecular weight of water, g/g-mole

MW_e ≡ Molecular weight of exempt compound, g/g-mole

PP_c ≡ VOC composite partial pressure at 20oC, mm Hg

VP_i ≡ Vapor pressure of the "i"th VOC compound at 20oC, mm Hg

"Wet fastener installation coating" means a specialty coating primer or sealant applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

"Wing coating" means a corrosion-resistant specialty coating topcoat that is resilient enough to withstand the flexing of the wings.

c. Standards.

1. Hand-Wipe Cleaning Operations.

i. Except as exempted in paragraph (c)(1)(ii), no person subject to this Section shall cause or allow on any day the use of any cleaning solvent in any hand-wipe cleaning operation that does not comply with one of the following limits:

A. VOC composite vapor pressure should be less than 45 millimeters (mm) mercury (Hg) (1.8 inches [in] Hg) at 20 degrees Celsius ((C) (68 degrees Fahrenheit [(F)).

B. Cleaning solvent shall be an aqueous cleaning solvent (i.e., a solvent in which water is at least 80 percent of the solvent, as applied).

ii. The requirements of paragraphs (c)(1)(i) of this

Section shall not apply to the following hand-wipe cleaning operations:

A. Cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen.

B. Cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, and hydrazine).

C. Cleaning and surface activation prior to adhesive bonding.

D. Cleaning of electronics and assemblies containing electronics.

E. Cleaning of aircraft fluid system and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems.

F. Cleaning of fuel cells, fuel tanks, and limited-access spaces.

G. Surface cleaning of solar cells, coated optics, and thermal control surfaces.

H. Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft.

I. Cleaning of metallic and non-metallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components.

J. Cleaning of aircraft transparencies.

K. Cleaning associated with research and development, quality control, and laboratory testing.

2. Spray Gun Cleaning Operations.

i. No person subject to this Section shall cause or allow on any day the use of any spray gun cleaning techniques that does not comply with one of the following:

A. Use of an enclosed spray gun cleaning system that is kept closed when not in use.

B. Non-atomized discharge of solvent into a waste container that is kept closed when not in use.

C. Disassembly of the spray gun and placing the parts for cleaning in a vat that is kept closed when not in use.

D. Atomized spray into a waste container that is fitted with a device that captures atomized solvent emissions.

E. Any alternative technique that has been demonstrated to, and accepted by the Department as producing emissions that are equal to or less than the emissions from the techniques specified in paragraph (c)(2)(i)(A) through (D) of this Section. Emissions from any alternative technique shall be demonstrated pursuant to test

protocols that are approved in advance by the Department.

ii. Any enclosed spray gun cleaner shall be visually inspected for leaks at least once per month. Such inspection shall occur while the enclosed spray gun cleaner is in operation.

iii. Leaks from any enclosed spray gun cleaner shall be repaired as soon as practicable, but no later than 15 days from when the leak is first discovered.

iv. If any leak is not repaired by the 15th day after detection, the solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired.

3. Flush Cleaning. Any cleaning solvents used during flush cleaning operations shall be handled pursuant to paragraph (c)(8) of this Section.

4. Primer, Topcoat, and Self-Priming Topcoat Application.

i. Except as provided for in paragraph (c)(4)(ii), (d) and (e) of this Section, no person subject to this Section shall cause or allow on any day the application of any primer, topcoat, and/or self-priming topcoat with a VOC content that does not comply with the following limits:

A. Primers shall have a VOC content equal to or less than 350 g/L (2.9 lb/gal), excluding water and exempt compounds, as applied.

B. Topcoats and self-priming topcoats shall have a VOC content equal to or less than 420 g/L (3.5 lb/gal), excluding water and exempt compounds, as applied.

ii. The requirements of paragraphs (c)(4)(i)(B) of this Section shall not apply to facilities that use less than 50 gallons per consecutive rolling 12-month period of a particular formulation of topcoat, or self-priming topcoat provided:

A. Each topcoat and self-priming topcoat shall have a VOC content equal to or less than 720 g/L (6.0 lb/gal), excluding water and exempt compounds as applied.

B. A total of not more than 200 gallons per consecutive rolling 12-month period of all such high VOC coatings are used at the facility.

iii. Except as provided for in paragraph (c)(4)(iv) of this Section, no person subject to this Section shall cause or allow on any day the use of any application technique to apply any primer, topcoat, or self-priming topcoat other than the following:

A. flow/curtain coat, roll coat, brush coat, dip coat, cotton-tip swab application, electrostatic spray, electrodeposition, or high volume low pressure (HVLP) spray guns;

B. Any alternate technique that has been demonstrated to and accepted by the Department as providing emissions that are less than or equal to the emissions from HVLP or electrostatic spray application techniques. Emissions from any alternate techniques shall be demonstrated pursuant to test protocols that are approved in advance by the Department. Such tests shall, at a

minimum, compare the emission levels determined using an initial 90-day period of HVLP or electrostatic spray attraction techniques with the emission levels determined using the alternate technique for a period of time necessary to coat the equivalent amount of parts with the same coatings.

iv. The equipment standards and application techniques in paragraph (c)(4)(iii) of this Section shall not apply to the following primer, topcoat and self-priming topcoat application operations:

A. The application of coatings in any limited access space.

B. The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and cannot be applied by any of the application techniques specified in paragraph (c)(4)(iii) of this Section.

C. The application of coatings that normally have a dried film thickness of less than 0.0005 inches and cannot be applied by any of the application techniques specified in paragraph (c)(4)(iii) of this Section.

D. The use of airbrush application methods for stenciling, lettering, and other identification markings.

E. Any touch-up and repair operation.

v. All application equipment shall be operated according to the manufacturer's specifications at all times, even if it is exempt from the equipment standards specified in paragraph (c)(4)(iii) of this Section.

5. Depainting Operation. No person subject to this Section shall cause or allow on any day the use of any stripper that does not comply with one of the following limits:

i. VOC composite vapor pressure shall be less than 10 mm Hg (0.4 in. Hg) at 20°C (68°F).

ii. VOC content shall be less than 400 g/L (3.3 lb/gal), excluding water and exempt compounds, as applied.

6. Chemical Milling Maskant Application.

Except as provided for in paragraph (d) or (e) of this Section, no person subject to this Section shall cause or allow on any day the application of any chemical milling maskant with a VOC content that does not comply with the following emission limits:

i. For any Type I maskant, VOC content equal or less than 622 g/L (5.2 lbs/gal), excluding water and exempt compounds, shall be applied; or

ii. For any Type II maskant, VOC content equal or less than 160 g/L (1.3 lbs/gal), excluding water and exempt compounds, shall be applied.

7. Specialty Coatings

Except as provided for in paragraph (d) or (e) of this Section, no person subject to this Section shall cause or allow on any day the application of any specialty coating that has a VOC content, excluding water and exempt compounds, as applied, that is greater than the limits specified in Table 7-1:

TABLE 7-1. VOC CONTENT LIMITS FOR <i>SPECIALTY COATINGS</i> (g/L) ^a			
<u>Coating Type</u>	<u>Limit</u>	<u>Coating Type</u>	<u>Limit</u>
<u>Ablative Coating</u>	600	<u>Epoxy Polyamide Topcoat</u>	660
<u>Adhesives:</u>	760	<u>Fire-Resistant (interior) Coating</u>	800
<u>Commercial Interior Adhesive</u>	1,020	<u>Flexible Primer</u>	640
<u>Cyanoacrylate Adhesive</u>	620	<u>Flight-Test Coatings: Missile or Single Use Aircraft</u>	420
<u>Fuel Tank Adhesive</u>	360	<u>All other</u>	840
<u>Nonstructural Adhesive</u>	890	<u>Fuel-Tank Coating</u>	720
<u>Rocket Motor Bonding Adhesive</u>	850	<u>High-Temperature Coating</u>	850
<u>Rubber-based Adhesive</u>	60	<u>Insulation Covering</u>	740
<u>Structural Autoclavable Adhesive</u>	850	<u>Intermediate Release Coating</u>	750
<u>Structural Nonautoclavable Adhesive</u>		<u>Lacquer</u>	830
<u>Adhesion promoter</u>	890	<u>Maskants (excluding Type I and Type II):</u>	1,230
<u>Adhesive Bonding Primers:</u>	850	<u>Bonding maskant</u>	1,020
<u>Cured at 250°F or below</u>	1,030	<u>Critical Use and Line Sealer Maskant</u>	1,230
<u>Cured above 250°F</u>		<u>Seal Coat Maskant</u>	
<u>Antichafe coating</u>	660	<u>Pretreatment Coating</u>	780
<u>Bearing coating</u>	620	<u>Rain Erosion-Resistant Coating</u>	850
<u>Caulking and smoothing compounds</u>	850	<u>Rocket Motor Nozzle Coating</u>	660
<u>Chemical Agent-Resistant Coating</u>	550	<u>Scale Inhibitor</u>	880
<u>Clear Coating</u>	720	<u>Screen Print Ink</u>	840
<u>Commercial exterior aerodynamic structure primer</u>	650	<u>Sealants:</u>	
<u>Compatible Substrate Primer</u>	780	<u>Extrudable/Rollable/Brushable Sealant</u>	280
<u>Corrosion Prevention Compound</u>	710	<u>Sprayable Sealant</u>	600
<u>Cryogenic Flexible Primer</u>	645	<u>Silicone Insulation Material</u>	850
<u>Cryoprotective Coating</u>	600	<u>Solid Film Lubricant</u>	880
<u>Dry Lubricative Material</u>	880	<u>Specialized Function Coating</u>	890
<u>Electric or Radiation-Effect Coating</u>	800	<u>Temporary Protective Coating</u>	320
<u>Electrostatic Discharge and Electromagnetic Interference (EMI) Coating</u>	800	<u>Thermal Control Coating</u>	800
<u>Elevated-Temperature Skydrol-Resistant Commercial Primer</u>	740	<u>Wet Fastener Installation Coating</u>	675
		<u>Wing Coating</u>	850

a Coating limits expressed in terms of mass (grams) of VOC per volume (liters) of coating less water and less exempt solvent. To convert from g/L to lbs/gallon multiply by 0.00835.

8. VOC Handling and Storage.

i. Except as provided in paragraph (c)(8)(ii) of this Section, any person subject to this Section shall use good house keeping measures when handling any VOC and any VOC-containing material at the facility. Such measures shall include:

A. Handling and transferring all fresh and spent cleaning solvent and other VOC-containing material to or from any container, tank, vat, vessel, or piping system,

etc. in such a manner that minimizes losses.

B. All fresh and spent solvents and VOC-containing material shall be stored in closed containers at all times except during filling or emptying.

C. All solvent-laden cloths, papers, or other absorbent materials shall be placed in closed containers immediately after use.

ii. The requirements in paragraph (c)(8)(i) of this Section shall not apply to wastes that are determined to be hazardous wastes under the Resource Conservation and Recovery Act of 1976 (PL 94-580) (RCRA), as implemented by 40 Code of Federal Regulations (CFR) Parts 260 and 261, and that are subject to RCRA requirements, as implemented

in 40 CFR Parts 262 through 268.

d. Daily-Weighted Average Limitations. As an alternative to complying with the individual limits specified in paragraphs (c)(4)(i)(A), (c)(4)(i)(B), (c)(6)(i), (c)(6)(ii), and (c)(7) of this Section, coatings in any primer, topcoat, chemical milling maskant, or specialty coating application operation shall not be applied at the facility, during any day, whose daily-weighted average VOC content, calculated in accordance with the procedure specified in Appendix "C" of Regulation 24 and the provisions listed below, exceeds the applicable emission limits in paragraphs (c)(4)(i)(A), (c)(4)(i)(B), (c)(6)(i), (c)(6)(ii), and (c)(7) of this Section, as applicable.

1. Averaging between primers, topcoats, self-priming topcoats, chemical milling maskants and/or specialty coatings is prohibited.

2. Averaging between coatings used in operations where air emissions are not captured and controlled and coatings used in operations where air emissions are captured and controlled is prohibited.

e. Control Devices.

1. As an alternative to complying with the individual limits specified in paragraph (c)(4)(i)(A), (c)(4)(i)(B), (c)(6)(i), (c)(6)(ii), and (c)(7), any person subject to this Section shall, for any primer, topcoat, self-priming topcoat, chemical milling maskant, and/or specialty coating application operation:

i. Install, test, calibrate, operate, maintain, and monitor according to the manufacturer's specifications, as approved by the Department, an air pollution control device consisting of a capture and control system on that operation; and

ii. Demonstrate that the overall emission reduction efficiency achieved is equal to or greater than 81 weight percent.

2. The procedures in Appendix "D" and Appendix "E" of Regulation 24 shall be used to demonstrate compliance with paragraph (e)(1)(ii) of this Section. The method in Appendix "I" of Regulation 24 may be used to determine an alternative multi-day rolling period when calculating the efficiency of any carbon absorption system.

f. Test Methods.

1. The VOC composite vapor pressure specified in paragraph (c)(1)(i)(A) and paragraph (c)(5)(i) of this Section shall be determined either by using ASTM Method E 260-91, manufacturer's supplied data, or standard engineering reference text values.

2. The water content specified in paragraph (c)(1)(i)(B) of this Section shall be determined using the test methods found in Appendix "A" and Appendix "B" of Regulation 24.

3. The VOC content specified in paragraph (c)(4)(i)(A) and (c)(4)(i)(B) shall be determined by using the test method found in Appendix "A" and Appendix "B" of Regulation 24.

g. Recordkeeping. Any person subject to this Section shall maintain at the facility for a minimum period of 5 years from the information's date of record, all of the following information. Such information shall be immediately submitted to the Department upon written or verbal request.

1. For any person subject to the requirements of paragraph (c)(1) of this Section (i.e., hand-wipe cleaning operations):

i. Identification of each hand-wipe cleaning solvent used at the facility;

ii. The composite vapor pressure of each hand-wipe cleaning solvent complying with paragraph (c)(1)(i)(A), and all supporting documentation, to include any test reports and/or calculations.

iii. The water content of each hand-wipe cleaning solvent complying with paragraph (c)(1)(i)(B), and all supporting documentation, to include any test reports and/or calculations.

iv. Identification of each hand-wipe cleaning solvent used at the facility pursuant to paragraph (c)(1)(ii) of this Section, and a list of the parts, assemblies, or subassemblies cleaned with each such hand-wipe cleaning solvent.

2. For any person subject to paragraph (c)(2) of this Section (i.e., spray gun cleaning):

i. A description of each method used to clean spray guns.

ii. Records of the inspections conducted pursuant to paragraph (c)(2)(ii)(A).

iii. For any leak found pursuant to paragraph (c)(2)(ii)(A), records indicating the source of the leak, the date the leak was discovered, and the date the leak was repaired.

3. For any person subject to paragraph (c)(4) of this Section (i.e., primer, topcoat, and self-priming topcoat application):

i. For each coating applied pursuant to paragraph (c)(4)(ii) of this Section.

A. Not later than the 5th day of each month, identification of each coating used at the facility pursuant to paragraph (c)(4)(ii) of this Section during the preceding month.

B. The volume used of each coating identified in paragraph (g)(3)(i)(A) of this Section.

C. The summation of the volumes recorded pursuant to paragraph (g)(3)(i)(B) for the preceding twelve (12) months.

D. The records required by paragraph (e) of Section 4 of Regulation 24.

ii. A description of the proper operation of all coating application equipment used at the facility.

iii. Documentation associated with any alternate coating application techniques approved pursuant to paragraph (c)(4)(iii)(B) of this Section.

4. For any person subject to paragraph (c)(4), (c)(6), and (c)(8) of this Section (i.e., primer, topcoat, self-priming topcoat, chemical milling maskant, and specialty coating application):

i. Identification of the control strategy employed (i.e., the combination of complying coatings, daily-weighted averaging, and control devices used at the facility).

ii. Where complying coatings are used, the records required by paragraph (c) of Section 4 of Regulation 24.

iii. Where daily-weighted averaging pursuant to paragraph (d) of this Section is used, the records required by paragraph (d) of Section 4 of Regulation 24.

iv. Where a control device(s) pursuant to paragraph (e) of this Section is used, the records required by paragraph (e) of Section 4 of Regulation 24.

5. For any person subject to paragraph (c)(5) of this Section:

i. If complying with paragraph (c)(5)(i), the name, VOC composite vapor pressure, and method and supporting documentation used to determine the VOC composite vapor pressure of each stripper used at the facility.

ii. If complying with paragraph (c)(5)(ii), the name, VOC content, and method and supporting documentation used to determine the VOC content of each stripper used at the facility.

iii. A description of any non-chemical-based depainting equipment used at the facility, to include the name and type of equipment or technique.

iv. Records and a description of all malfunctions of non-chemical-based depainting equipment used at the facility, to include the dates and alternative depainting method(s) used.

v. A list of any parts, assemblies, or subassemblies normally removed during depainting operations.

6. For any person subject to paragraph (c)(8) of this Section, a description of the procedures used to ensure that containers are kept closed when not in use and that solvents and other VOC-containing materials are stored in closed containers.

h. Reporting. Notification of any non-compliance with any requirement of this Section shall be reported to the Department in accordance with Section 4 and 5 of Regulation 24, as applicable and any other applicable Federal or State reporting requirements.

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE POLICE

Statutory Authority: 21 Delaware Code,
Section 6901(c) (21 Del.C. §6901(c))

REGULATORY IMPLEMENTING ORDER

I. Summary of the Evidence and Information Submitted.

The Secretary of the Department of Public Safety approves the proposed non-consensual towing regulations published in the Delaware Registry of Regulations on May 1, 2002 with certain amendments as a result of the public hearing on the regulations. Notices of the proposed regulations were published in The News Journal on May 22, 2002 and in the Delaware State News on May 23, 2002 in the form attached hereto as Exhibit A. The notices invited written comment, two of which were received prior to the public hearing. The notices also invited the public to attend a hearing on June 25, 2002 to comment on the proposed regulations. Twelve persons representing eight towing companies attended the public hearing and made comments.

II. Findings of Facts.

The Secretary finds that it is necessary to adopt the regulations, as revised after the public hearing, to promote public safety for non-consensual towing initiated by the Delaware State Police.

III. Decision To Adopt the Regulations

For the foregoing reasons, the Secretary concludes that it is necessary to adopt the regulations. Therefore, pursuant to 21 Delaware Code Section 6901(c), the regulations attached hereto as Exhibit B are hereby adopted.

IV. Text and Citation

The text of the regulations shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the **Regulations of the Department of Public Safety**.

V. Effective Date of Order

The action referred to above was taken on July 1, 2002. 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 1st day of July, 2002.

James L. Ford, Jr., Secretary
Department of Public Safety

REGULATION "B" - NONCONSENSUAL TOWING

Pursuant to Section 6901(c) of Title 21 of the Delaware Code, the Department of Public Safety proposes to adopt regulations for nonconsensual towing of abandoned or disabled vehicles, or vehicles from the scene of an accident or arrest. These regulations do not apply if a vehicle owner or driver requests a specific towing service, unless, in the opinion of the Division of State Police, there may be an unreasonable time delay or traffic safety hazard.

Section 1. Statement of Purpose

The purpose of these regulations is to protect and promote the public safety and to maintain hazard-free streets and highways by: requiring tow vehicles and equipment to meet minimum specifications; requiring tow truck operators to be licensed and insured and to hire only competent and responsible drivers; and by creating a more equitable and uniform system of handling towing calls.

Section 2. Definitions

(A) **"The Department"** means the Department of Public Safety.

(B) **"The Division"** means the Division of State Police.

(C) **"The Troop"** means the State Police Troop or, where appropriate, the officers and troopers thereof.

(D) **"Tow vehicle"** means a motor vehicle altered or designed for, and used in the business of towing vehicles by means of a flat bed or other specially designed truck that is equipped with a tow sling, tow bar, tow plate or wheel lift apparatus, attached to the rear of the truck; or a crane or hoist that is attached to the bed or frame of the tow vehicle. Wrecker, garage tow truck, and slide back or roll back car carriers are synonymous with and included within the definition of "tow vehicle."

(E) **"Towing"** means the transportation on the streets and highways of the State of Delaware of damaged, disabled, unattended or abandoned vehicles together with personal effects and/or cargo by tow trucks. Wrecking or wrecker service, tow car service, and garage tow truck service are synonymous with and included within the definition of "towing."

(F) **"Approved Tower"** means a towing operator that has applied to the Division for certification and been approved by the Division after meeting all criteria for approval, including but not limited to the inspection of the operator's tow vehicle(s).

(G) **"Troop Area"** means the areas of the numbered State Police troops (1, 2, 3, 4, 5, 6, 7, and 9).

(H) **"Special Assigned Area"** means a geographical part of the Troop Area as determined by the Troop Commander for the purpose of designating one or more Approved Towers to service that area.

Section 3. Tow Vehicles and Equipment

(A) Tow vehicles shall not exceed the manufacturer's gross vehicle weight or the manufacturer's rated capacity for the towing assembly. All tow vehicle components (winches, booms, wire rope, clamps, thimbles, sheaves, guides, controls, blocks, slings, chains, hooks, and hydraulic components) must be maintained in good condition at all times.

(B) The minimum standards for each class of tow vehicles shall be determined solely by the manufacturer's specifications for the capabilities and capacities of the tow vehicles and towing equipment.

1. Class "A" Tow Vehicles - Minimum Specifications

a. A gross vehicle weight of at least 10,000 pounds. A crane and a winch with a rating of at least four tons must be mounted on the chassis. A roll back bed may substitute for the crane.

b. A wire rope attached to each tow vehicle winch at least 100 feet long with a minimum thickness of 3/8 inches.

c. A tow sling or wheel lift manufactured to prevent damage to the vehicle.

d. At least two safety chains to be attached between the tow vehicle and the towed vehicle.

2. Class "B" Tow Vehicles - Minimum Specifications

a. A gross vehicle weight rating of at least 17,500 pounds. A complete crane and winch having a rating of at least ten tons must be mounted on the chassis. A roll back bed may substitute for the crane.

b. A wire rope attached to each winch at least 100 feet long with a minimum thickness of 5/8 inches.

c. A tow sling or wheel lift, or underreach manufactured to prevent damage to the vehicle.

d. A minimum of two safety chains to be attached between the tow vehicle and the towed vehicle.

e. At least two portable tail, stop and signal lamps with mounting brackets or mounting clips. The lens shall be red in color, and the lens' diameter shall be at least three inches.

3. Class "C" Tow Vehicles - Minimum Specifications

a. A gross vehicle rating of at least 30,000 pounds. A complete crane and winch having a rating of at least twenty-five (25) tons must be mounted on the chassis.

b. A wire rope attached to each winch at least 150 feet long with a minimum thickness of 5/8 inches.

c. Brakes constructed to comply with federal motor carrier safety regulations and the Delaware motor vehicle code where applicable.

d. A tow sling or wheel lift, or underreach manufactured to prevent damage to the vehicle.

e. At least two safety chains to be attached

between the tow vehicle and the towed vehicles, or combination of vehicles.

f. At least two portable tail, stop and signal lamps with mounting brackets or mounting clips. The lens shall be red in color, and the lens' diameter shall be at least three inches.

4. Accessories

a. Each tow vehicle shall be commercially lettered with the operator's business name, city, state, and telephone number visible from both sides of the vehicle, in permanent letters at least 2 ½ inches high. ~~[Each tow vehicle shall also bear a sticker, to be issued by the DSP, indicating which troop area(s)/specially designated area(s) the vehicle is authorized to serve.]~~

b. Each tow vehicle shall be equipped at all times as required by the Delaware motor vehicle code and with the following accessories:

(i) An amber rotor beam or strobe light mounted on the top so as to be seen when in use from front, rear, and both sides. Such beam or light is to be used only when there is a hazardous condition.

(ii) Minimum of two work lights on the rear.

(iii) One snatch block for each winch with matching manufacturer's rating.

(iv) A set of scotch blocks for wheels, metal type with tail gate chains, or hydraulic rear extendable scotch blocks (Class B and C vehicles only).

(v) External air hookup and hoses (Class C vehicles only).

(vi) A set of nylon recovery straps or chains rated at 25,000 pounds(Class B and C vehicles only).

(vii)At least one broom, shovel, axe, crowbar or pry bar, set of jumper cables, flashlight, and fire extinguisher.

(viii)Box or container to carry debris.

(ix) Sand or commercial oil and grease absorber for a reasonably small cleanup that does not require the intervention of the Department of Natural Resources and Environmental Control.

Section 4. Approved Towers

(A) Applications for status as an Approved Tower shall be made in writing and under oath to the Division on forms provided by the Division. The application shall contain all information required therein and shall be sent to the Traffic Control Section, Delaware State Police, P.O. Box 430, Dover, Delaware 19903-0430.

(B) The Traffic Control Section shall review each application for form and completeness. The applicant must attach to the application: (i) business license; (ii) proof of insurance for all towing vehicles; (iii) the driving record for each driver; (iv) a criminal background record for each driver, and authorization for the Division to conduct future

criminal background checks; and (v) schedule of towing and storage rates. If the application is in good order, the Traffic Control Section will notify the applicant in writing that it has been conferred Approved Tower status, and send a copy of the application and approval to the Troop.

(C) No tower will be considered for approved status unless it has continuously been in the towing business for at least twelve (12) months prior to the date the application is received. No tower will be considered for approved status unless it has at least two vehicles meeting all of the specifications in these regulations.

(D) No later than January 31 of each year (but not earlier than January 2), each Approved Tower shall complete and return to the Troop a renewal form to be provided by the Division. The renewal form shall attest, under oath, that all of the information in the original application form is either correct and complete, and/or notify the Division of any changes in the information in the original application form or since the last renewal form. The renewal form shall attach the Approved Tower's business license, proof of insurance for each towing vehicle, driving record for each driver, and schedule of rates for towing and storage services. The renewal form does not need to attach criminal background records except for employees newly hired or re-hired since the date of the original application or last renewal form. The Division reserves the right, based on prior authorization, to conduct its own criminal background checks on employees of Approved Towers.

(E) An Approved Tower must notify the Troop in writing within ten days of the date of any change in the information supplied on the original application. For example, if the Approved Tower hires a new driver or buys a new towing vehicle, then that information must be provided to the Troop in writing.

1. Vehicles and Equipment

As soon as practicable after the filing of an application, the Traffic Control Section will inspect the applicant's tow vehicle(s) and equipment to determine if they are fit for operation and otherwise in compliance with these regulations and the motor vehicle and traffic laws and federal motor carrier safety regulations, including but not limited to U.S. Department of Transportation rules or regulations. Thereafter, the Troop may conduct periodic or random inspections to determine if a tow vehicle continues to meet all federal, state, and local standards. If, at any time, the Troop finds that a tow vehicle does not meet the minimum specifications for its class, or is not in compliance with any federal, state, or local standards, the Troop shall immediately stop using the services of that Approved Tower until such repairs are made and the tow vehicle is re-inspected by the Troop.

2. Drivers

a. All tow vehicle drivers must be at least eighteen (18) years of age and have the appropriate driver's

license for the Approved Tower's tow vehicle.

b. Every driver shall be competent by reason of experience or training to safely operate the type of tow vehicle(s) certified.

c. No driver shall have had within the last ten years: two or more convictions for driving under the influence of alcohol or drugs; any criminal conviction involving theft, dishonesty, or fraud; any felony conviction involving or related to the operation of a tow vehicle; or any judgment (civil or criminal) of having operated a tow vehicle in a grossly negligent manner or in a manner showing a reckless disregard for life or property.

3. Towing Service

a. All vehicles and equipment owned and operated by the Approved Tower must meet the minimum specifications set forth in these regulations.

b. All vehicles and equipment owned and operated by the Approved Tower must provide proof of insurance for each tow vehicle to the Division at the time of its application for certification, and each year that the Approved Tower renews its certification, or upon demand by the Division. The following minimum coverage is required:

<u>Comprehensive Vehicle Liability Insurance</u>	<u>Limits of Liability</u>
<u>Bodily Injury</u>	<u>\$300,000 each occurrence</u> <u>\$100,000 each person</u>
<u>Property Damage</u>	<u>\$50,000 each occurrence</u>
<u>Additional Umbrella</u>	<u>\$1,000,000</u>
 <u>Garage Liability Insurance</u>	
<u>Bodily Injury</u>	<u>\$100,00 each person</u>
 <u>Garage Keeper's Insurance (owned vehicles, hired vehicles, non-owned vehicles)</u>	
<u>Bodily Injury</u>	<u>\$300,000 each occurrence</u>
<u>Property Damage</u>	<u>\$50,000 each occurrence.</u>
<u>Worker's Compensation</u>	<u>as required by statute</u>
<u>Employer's Liability Insurance</u>	<u>as required by statute</u>

All insurance policies required shall be issued only by companies authorized to do business in Delaware. Coverage must provide for loss from any vehicle or contents such as radios and computers while being handled, towed or stored by the approved tower. Approved Towers must notify the Division of any modification, amendment, cancellation or substitution of any insurance policy required by these regulations within ten days the Approved Tower learns of the change in circumstances.

(F.). To be eligible to provide towing services in a Troop

Area or Special Assigned Area, the Approved Tower must have a principal place of business located in that Troop Area or Special Assigned Area which is under the exclusive control of the Approved Tower, is not used by any other towing service, and is the premises listed on the Approved Tower's application. Each Approved Tower must maintain a telephone system at that location to answer calls from the Troop duty officer twenty-four hours a day, and must maintain at least one tow vehicle and one qualified driver for that place of business. The Approved Tower's place of business shall be open to the public from 8 a.m. to 6 p.m. Monday through Friday, and the business must be available to release stored vehicles on Saturdays from 8 a.m. to 12 noon, and on Sundays and holidays from 12 noon to 4:00 p.m.

(G.) The Approved Tower's storage facility must be located on the same premises or adjacent to its principal place of business in the Troop Area or Special Assigned Area it services. The Approved Tower shall maintain a secure outside storage facility for the control and safekeeping of motor vehicles, enclosed by a fence at least six feet high to deter trespass and vandalism. With the approval of the Troop Commander, an Approved Tower may use a satellite storage facility on a seasonal basis that is not located on or next to its principal place of business if the satellite facility will be more convenient for the public. The Approved Tower will operate that satellite facility in accordance with the conditions of operation in Section 4.D. above.

(H.) The Approved Tower must be able to provide emergency service, twenty-four hours a day, seven days a week, 365 days a year within the Troop Area or within a Special Assigned Area if such area is designated. An Approved Trooper can remove itself from the rotation list or Special Assigned Area for a specified time for vacation, sick, family leave or the like by notifying the Troop a reasonable time in advance.

Section 5. Denial of Approved Tower Status

The Division may refuse to approve an application for Approved Tower status for failure: (1) to provide complete, true, timely, and accurate information on the application, inspection, or renewal forms, or for omitting any material fact on the application, inspection, or renewal forms; (2) to satisfy or meet any of the requirements of these regulations; (3) to submit to a tow vehicle inspection; or (4) to have or maintain any federal, state, or local license required for the operation of a towing service or tow vehicle or for its drivers.

Section 6. Towing Service Allocation System

(A) Based on the needs of public safety, the Troop Commander may designate part of the Troop Area as a Special Assigned Area to be served by one or more

Approved Towers taking into account such criteria as, but not limited to, motor vehicle accident statistics; traffic patterns; and other relating to the response time of towing companies; the density of approved towing companies; and prior history of reliable and expeditious towing services.

(B) Each Troop Commander shall have the discretion, based on the needs of public safety, to designate one or more Approved Towers to provide all non-consensual towing services in either the Troop Area or a Special Assigned Area. The Troop Commander shall establish the number of Approved Towers based on the need to maintain adequate and timely public service to minimize management of a rotation system. The Troop Commander may revise the number of Approved Towers if he or she finds that the public is not being appropriately served by the existing number of towers.

(C) If there are more than one Approved Tower for the Troop Area or Special Assigned Area, they shall be placed on a rotating list and shall be called by the Troop duty officer to remove a wrecked, disabled, stolen or abandoned vehicle, or a vehicle following an arrest, according to the tower's placement on a Troop towing rotation list for that area and according to the tow vehicle classification for the size of the vehicle to be towed. Approved Towers will be called in succession from the top of the list. An Approved Tower shall promptly respond to a call with a tow vehicle classified to meet or exceed the size of the vehicle to be towed. If an Approved Tower truck does not respond to a request for service, that tower shall be rotated to the bottom of the list.

(D) Approved Towers will be listed only once on each list and only in the name under which they are certified under these regulations. It is prohibited for an Approved Tower to receive multiple listings or classifications using a different or fictitious name for tow vehicles operating out of the same location or out of different locations within the same Troop Area.

(E) Approved Towers shall be on-call twenty-four hours a day, seven days a week, and shall have no more than one day and one night telephone number. Answering services are not permitted for purposes of responding to calls under these regulations. The Approved Tower must acknowledge the rotation call by contacting the duty officer at the Troop within five minutes after the rotation call. If the Approved Tower does not acknowledge the call, or calls to say it will not or cannot respond, then the duty officer shall cancel the call, rotate the Approved Tower to the bottom of the list, and call the next Approved Tower on the list. When an Approved Tower responds to a call to remove an abandoned vehicle, the Approved Tower shall not be rotated to the bottom of the rotation list but shall remain at the top of the list for the next available call.

(F) Out-of-area towing requests are permitted in the event of an emergency or the absence of a tow vehicle of proper classification, or the unavailability of any Approved

Tower. In the event of specialized recovery requirements not otherwise met by Approved Towers, the Troop may call specialized recovery equipment on a nearest available basis.

Section 7. Recovery Procedures at Scene of Accident

(A) Approved Towers shall not use sirens, mechanical or electronic, but shall use rotating beacons or strobes when in the actual process of recovering a vehicle from the scene of an accident, or while towing that vehicle under conditions that present a potential hazard to the public.

(B) Approved Towers shall sweep all glass and remove all debris from the highway and the right-of-way promptly and prior to leaving the incident or collision scene. Approved Towers shall also spread sand or a commercial oil and grease absorber over small spills of oil, anti-freeze, or other fluids.

(C) Approved Towers shall follow instructions issued by any on-the-scene Trooper with respect to the preservation of physical evidence that may be lost or contaminated where towing, removing or storage of any wrecked, disabled, or abandoned vehicle is involved.

(D) When the owner or operator of a vehicle surrenders physical custody of a vehicle, the Trooper shall prepare in triplicate a vehicle storage form with an inventory of its contents and a description of any damage to the vehicle or its contents. The inventory shall be signed by the Trooper and the Approved Tower, and shall indicate whether the Trooper has instructed that the tower should withhold repossession or delivery of the vehicle to the rightful owner or his agent. The original will be for the Troop records, a copy for the towing service's record, and a copy to be given to the vehicle's owner or agent, to present to the towing service in order to release the vehicle.

Section 8. Prohibited Acts

(A) No Approved Tower shall stop at the scene of an accident or at or near a disabled vehicle for the purpose of soliciting an engagement for towing service, unless directed to do so by a Trooper.

(B) No Approved Tower shall, without authorization from the Troop, move any vehicle from any public highway, street, or other public area when such vehicle has been abandoned, stolen or damaged as the result of an accident, or following an arrest. Approved Towers may move a vehicle damaged as the result of an accident if the removal is for the purpose of extracting a person from the wreckage or to remove an immediate hazard to life, person, or property. In no event shall any such movement be more than is reasonable or necessary under the circumstances then existing. When movement is necessary, the Approved Tower shall be able to identify the original resting place of the vehicle.

Section 9. Rates

Approved Towers shall charge reasonable fees for towing and storage comparable to other towers providing similar services in the Troop Area. The Approved Tower's basic towing or service fees shall be furnished with the certification application and the annual renewal form. These fees should include: the base tow charges for day and night; storage charges per day; base charge for use of winch and dollies; and the base charge for road service for vehicles requiring fuel, battery jumps, belts, etc. If there is an interim change in any rate charged by the Approved Tower, it must be reported to the Traffic Control Section within ten days.

Section 10. Subcontracting and Assignment

(A) No Approved Tower shall subcontract, on a formal or informal basis, any request for nonconsensual towing service from the Division, or delegate or request assistance from another tower to respond to such a call, or refer a call to another tower or substitute for each other, unless approved in advance by the Troop for good cause.

(B) An Approved Tower's certification, place on the towing rotation system, or Special Assigned Area, cannot be sold, leased, assigned, transferred, pledged, surrendered or otherwise encumbered or disposed of to another towing operator, person, or entity. A successor towing service must make a new application for certification to the Division under these regulations. Upon the sale, lease, assignment, transfer, pledge, surrender, or other encumbrance or disposition of the Approved Tower, its business, name, or all or substantially all of its assets, the certification approval terminates immediately by operation of law and that Approved Tower will be dropped from the approved towing list.

(C) These regulations supersede all prior regulations, contracts, agreements, arrangements, or understandings, formal or informal, regarding nonconsensual towing at the request of the Division. These regulations constitute whatever written notice of termination may have been required by those prior regulations, contracts, agreements, arrangements, or understandings. These regulations will take effect one hundred and twenty (120) days after their final publication in the Delaware State Register to allow towing services that currently do business with the Division to make application to the Division for certification under these regulations.

Section 11. Loss of Approved Status

(A) The Division may revoke the approved status of any Approved Tower if the Approved Tower or, where applicable, one of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has: (1) violated any of these regulations; (2) made a false or misleading statement of fact or omission of a material fact to the

Division in connection with the application, inspection, or renewal; (3) subcontracted any towing work; (4) been found bankrupt, insolvent, or in receivership; (5) been the subject of two or more substantiated complaints within any twelve-month period from citizens about the Approved Tower's nonconsensual towing services, including but not limited to complaints about charging unreasonable rates for towing or storage, or the refusal to release a vehicle after presentation of sufficient proof of ownership and payment of authorized charges; (6) the cancellation or non-renewal of the required insurance on any of the Approved Tower's tow trucks or for the operation of the tower's business, or the loss of any required federal, state or local license required for the operation and driving of a tow vehicle; or (7) was unavailable to respond to a Division dispatch or failed to respond to a Division dispatch on at least three occasions within any six month period, or did not have at least a seventy-five (75) percent response rate for calls within any twelve month period. The Division may also revoke the approved status of any Approved Tower which employs or uses any driver who has, during the period of certification: (8) been convicted of driving under the influence of alcohol, narcotics, or dangerous drugs during the period of certification; (9) has had his or her driver's license suspended or revoked; (10) been convicted of any crime involving theft, fraud or dishonesty, or any felony involving the operation of a tow vehicle, or been adjudged (civilly criminally) to have operated a tow vehicle in a grossly negligent manner or in a manner showing a reckless disregard for life or property; or (11) has imperiled the safety of the public.

(B) If there is an imminent threat to public safety, the Superintendent or his designee may summarily suspend Approved Tower status in writing with a written statement of reasons. If there is no imminent threat to public safety, the Division shall give notice to the Approved Tower in writing of its intent to revoke its approved status and the reasons therefor. If, within ten days of the date of such notice to suspend or revoke, the tower requests a hearing in writing, then the Division will schedule a hearing within thirty days of the tower's request before the Superintendent or his designee. The decision of the Superintendent or his designee shall be in writing and shall be final.

**EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE
TOURISM ADVISORY BOARD**

Statutory Authority: Laws of Delaware
Volume 73, Chapter 74, Section 67

**ORDER ADOPTING AND PROMULGATING
REGULATION FOR CO-OP ADVERTISING
PROGRAM**

TITLE OF REGULATION:

Co-Op Advertising Program

**ORDER ADOPTING AND PROMULGATING
REGULATION**

AND NOW this 10th day of July, 2002, John D. Wik, as Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision) in cooperation with the Tourism Advisory Board (the "Board") in accordance with 29 **Del.C.** §§ 5005(11) and 10118(b) and with 73 Delaware Laws Ch. 74, Section 67 the reasons stated below enters this ORDER adopting and promulgating the regulation set forth below in connection with the Co-Op Advertising Program (as defined below) of the DTO.

**NATURE OF PROCEEDINGS: SYNOPSIS OF THE
SUBJECT AND SUBSTANCE OF THE PROPOSED
REGULATION:**

In accordance with the procedures set forth in 29 **Del.C.** Ch. 11, Subch. III, 29 **Del.C.** Ch 101 and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), proposed to adopt a regulation for the administration of the Co-Op Advertising Program set forth in 73 Delaware Laws Ch. 74, Section 67 and for the application and award procedures of the Co-Op Advertising Program. The regulation describes the Co-Op Advertising Program, the eligibility criteria and application procedure for awards under the Co-Op Advertising Program, the procedure for making of awards and the uses to which Co-Op Advertising Program awards may not be put.

Notice of the public hearing to consider the proposed regulation appeared in the June 1, 2002 issue of the *Delaware Register of Regulations* and in Delaware newspapers of general circulation on June 7 and June 10,

2002 in accordance with 29 **Del.C.** §10115(b). An employee of DEDO designated by the Director of DEDO in accordance with 29 **Del.C.** §§5005(10) and 10117(1) and a quorum of the Board held the public hearing on July 10, 2002 at 9:00 a.m. at the DEDO offices at 99 Kings Highway, Dover, Delaware, as duly noticed. This is the order of the Director of DEDO adopting the proposed regulation.

**SUMMARY OF EVIDENCE AND INFORMATION
SUBMITTED**

DEDO received no written comments in response to the notice of the proposed regulation, and no member of the public made comment on the proposed regulation at the public hearing on July 10, 2002.

FINDINGS OF FACT AND CONCLUSIONS

1. The Delaware General Assembly provided in 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001) that up to \$200,000 of the Appropriated Special Funds allocated to the DTO for the fiscal year of the State ending June 30, 2003 pursuant to 30 **Del.C.** §6102(b) contained in 73 Delaware Laws Ch. 74, Section 1 (June 28, 2001) should be used by DTO for a grant program where matching funds were required, i.e., the Co-Op Advertising Programs Program, and that DTO, in cooperation with the Board, should develop regulations to implement the Co-Op Advertising Program.

2. DTO has developed the proposed regulation, which the Board reviewed and approved at its meeting on July 10, 2002.

3. The Director of DEDO, as the head of the agency that operates the DTO has statutory authority, in cooperation with the Board, to promulgate the regulation pursuant to 29 **Del.C.** §5005(11) and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001).

**DECISION AND ORDER CONCERNING THE
PROPOSED REGULATION**

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of DEDO, in cooperation with the Board, ORDERS that the regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

John D. Wik, Director,
Delaware Economic Development Office

APPROVED IN COOPERATION WITH DTO by the
members of the Tourism Advisory Board:

Jacques Amblard, Chairman
Norma Lee Burton
Derrickson
Frank Fantini
Carol Harding
Ed Sutor
Xavier Teixido
Kay Wheatley

Co-Op Advertising Program

1.0 Co-Op Advertising Program Description

1.1 The purpose of the program is to attract overnight visitors to Delaware through increased visibility of Delaware's tourism product and the creation of a Delaware image.

1.2 The goal of the program is to allow tourism industry partners to participate in the Delaware Tourism Office's advertising campaign.

1.3 The definition of the program is advertising placed with any media that represents more than one organization and the cost of which is funded by all participants.

2.0 Participation

2.1 The Delaware Tourism Office will participate in co-op advertising and will fund a portion of the cost of the placement not to exceed fifty percent (50%) of such cost, as set forth in Section 2.3.

2.2 Equal shares will be made available to Delaware tourism industry partners.

2.3 For-profit organizations may participate in co-op advertising. For-profit organizations will be responsible for all the funds for any share of co-op advertising purchased.

2.4 Not-for-profit organizations may participate in co-op advertising. Not-for-profit organizations will be eligible to receive one half of the funds for any share of co-op advertising purchased from Matching Grant Funds and will be responsible for one half of the funds.

3.0 Co-Op Advertising Matching Grant Funds

3.1 Co-Op Advertising Matching Grant Funds Description

3.1.1 The total amount available for matching grants is designated by the general assembly in the operating budget. It is expected that there will be a number of sub-programs available using the matching grant funds, one of which will be co-op advertising. The Delaware Tourism Office in cooperation with the Governor's Tourism Advisory Board will determine the amount of funds allocated for each matching grant funds sub-program.

3.1.2 The grants are to be used to place advertising outside of the state of Delaware to attract overnight visitors to Delaware.

3.1.3 Subject to the availability of funds, up to one half of the cost of participation in the co-op advertisement will be paid from matching grant funds for not-for-profit organizations.

3.1.4 The same organization may apply to participate in more than one co-op advertisement.

3.2 Eligibility for Matching Grants for Co-Op Advertising

3.2.1 Not-for-profit tourism related businesses and organizations.

3.2.2 Only in-state tourism entities may apply.

3.2.3 The organization's main product or program must be intended to attract new visitors and overnight business.

3.3 Matching Grant Awards

3.3.1 There will be no attempt to balance the awards geographically, politically, or categorically.

4.0 Source of Matching Funds

4.1 Matching funds are required for not-for-profit tourism related business. The organization's matching fund commitment is part of the application.

4.2 No other state grant funds may be used for the organization's match.

5.0 Application Requirements

5.1 Applicants shall fill out the Co-Op Advertising Program application as prescribed by the Delaware Tourism Office. The application is available at 99 Kings Highway, Dover, DE 19901.

5.2 Incomplete applications will not be considered.

5.3 More than one application may be submitted per organization.

5.4 All completed applications must be received at the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location. The application deadline will be designated in the program announcement. Applications may be submitted via fax at 302-739-5749.

5.5 It is the responsibility of the applicant to ensure that the application is complete and received prior to the announced deadline.

6.0 Determination of Participation in Co-Op Advertising

6.1 DTO personnel will select the organizations for each co-op advertisement placed from the eligible applications.

7.0 Process

7.1 All completed applications that are received by the deadline will be reviewed, and selections will be announced one week later.

7.2 Payments

7.2.1 Participating organizations will pay DTO their share within 60 days of their selection. There will be no funds paid from DTO to the applicant. DTO will combine the funds from all sources into a single payment to the advertiser.

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Accountancy	Ms. Sandra S. Gulledge	04/25/05
	Mr. James A. Horty, Jr.	04/24/05
	Mr. John A. McManus, II	04/24/05
	Mr. James R. Zdimal	04/24/02
Board of Architects	Mr. Peter H. Jennings	06/04/05
Board of Examiners for Nursing Home Administrators	Ms. Barbara A. Adams	04/22/05
	Dr. Ralph M. Aurigemma, M.D.	06/07/05
	Ms. Millicant B. Jones	04/22/05
	Ms. Patricia McLaughlin	04/22/05
Board of Parole	Mr. William C. Pfeifer	04/25/06
Cash Management Policy Board	Mr. John V. Flynn, Jr.	04/25/05
Child Placement Review Board Executive Committee	Mr. Donald F. Schneck	05/14/05
Child Placement Review Board New Castle	Ms. Kwang Sun Moon	05/14/05
Children's Trust Fund Board of Directors	Honorable M. Jane Brady	04/22/05
	Honorable Deborah H. Hudson	04/22/05
	Ms. Tamra S. Brittingham	04/22/05
	Ms. Alice B. Ripsom	04/22/05
	Dr. Donald G. Unger	04/22/05
	Mr. Clinton W. Walker	04/22/05
	Reverend Naomi G. Winchester	04/22/05
Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals	Mr. Jeffrey E. Liswell	04/23/05
	Mr. Jayson D. Crouch	04/23/05
	Mr. Martin E. Mullane	04/23/05
Council on Banking	Ms. Shana R. Conron	05/01/05
Council on Correction	Ms. Nona J. Cunane	Pleasure of the Governor
Council on Development Finance	Ms. Ann T. Tansey	05/06/05
	Mr. Donald J. Lynch	05/06/05
Council on Manufactured Housing	Mr. Stevan D. Class	06/11/04
	Ms. Marion F. Fetterman	06/11/04
	Mr. Jerome S. Heisler, Jr.	06/11/04
	Ms. Roberta J. Hemmerich	06/11/04
	Ms. Danene C. Davis	06/11/04
	Mr. John Hensley	06/11/04
	Mr. William J. Reed	06/11/04
	Ms. Brenda R. Styers	06/11/04

GOVERNOR'S APPOINTMENTS

215

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Manufactured Housing	Mr. Andrew C. Strine	06/11/04
	Mr. Edwin J. Swan	06/11/04
	Ms. Barbara A. Tomeo	06/11/04
	Mr. Robert W. Tunnell, Jr.	06/11/04
Council on Social Services	Sister Jeanne F. Cashman	04/25/05
	Mr. James A. Villarreal	04/25/05
Delaware Arts Council	Mr. Gary E. Grunder	06/03/05
	Ms. Norma Varisco de Garcia	06/04/05
	Mr. Brian S. Miller	05/01/05
Delaware Health Fund Advisory Committee	Mr. Donald T. Fulton	Pleasure of the Governor
Delaware Health Resources Board	Mr. S. Bernard Ableman	04/22/05
	Mr. Thomas P. Ferry	04/22/05
	Mr. John A. J. Forest, Jr., M.D.	04/22/05
	Ms. Joann O. Hasse	04/22/05
	Dr. Dana J. Jefferson, Ph.D., SPHR	04/22/05
	Mr. Lloyd Mills, III	04/22/05
	Mr. Richard D. Pack	04/22/05
	Mr. J. Kenneth Saunders	04/22/05
	Ms. Phyllis A. Sheppard	04/22/05
	Dr. Ulder J. Tillman, M.D., MPH	04/22/05
	Dr. Richard J. Wilder, M.D.	04/22/05
	Mr. Donald W. Derrickson	06/07/05
	Mr. Frank Smith	06/07/05
Ms. Yrene E. Waldron	06/07/05	
Delaware Humanities Council	Mr. Wayne S. Smith	06/04/05
	Dr. Wilma Mishoe, Ed.D.	06/04/05
	Mr. Leland S. Jones	06/04/05
Delaware Institute of Medical Education & Research-Board of Directors	Dr. Jeffrey J. Heckert, M.D.	06/04/05
	Dr. Thiruvallam P. Indira, M.D.	06/04/05
	Dr. Anthony D. Alfieri, M.D.	06/07/05
Delaware Perinatal Board	Honorable Pamela S. Maier	Pleasure of the Governor
	Dr. Anthony M. Policastro, M.D.	Pleasure of the Governor
	Ms. Mariann Powell	Pleasure of the Governor
	Ms. Agnes M. Richardson	Pleasure of the Governor
	Dr. Judy Walrath, Ph.D.	Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Perinatal Board	Mr. Sam L. Waltz, Jr.	Pleasure of the Governor
Developmental Disabilities Planning Council	Ms. Linda A. Hance	06/06/05
	Ms. Earlene Taylor	06/06/05
	Ms. Ann Marie A. Merena	04/22/05
	Ms. A. Jean Knotts	04/22/05
	Mr. John E. Jefferson	04/22/05
	Ms. Phyllis J. Guinivan	04/22/05
	Ms. Carol E. Barnett	04/22/05
Dr. Theresa Del Tufo, Ph.D.	04/22/05	
New Castle County Board of Elections	Ms. Helen M. Dudlek	05/17/06
State Examining Board of Physical Therapists	Ms. Charlene T. Hancock	06/05/05
State Rehabilitation Advisory Council	Ms. Carol E. Barnett	04/25/05
	Ms. Regina Milton	04/25/05
	Mr. Aaron P. Harper	04/25/05
Tax Appeals Board	Mr. Donald E. Gregory	05/02/05
Tourism Advisory Board	Dr. Barbara Benson, Ph.D.	05/01/05
Vocational Rehabilitation Advisory Council for DVI	Mr. Percy Saldana	05/01/05
	Ms. Melissa H. Shahan	05/01/05
	Ms. Janet Smalenburg	05/01/05
	Mr. Stewart H. Wiggins	05/01/05

DEPARTMENT OF PUBLIC SAFETY**BOARD OF EXAMINERS OF CONSTABLES**

Statutory Authority: 10 Delaware Code, Ch. 27
(10 Del.C. Ch. 27)

**PROPOSED AMENDMENT OF PROMULGATED
RULES AND REGULATIONS**

Pursuant to the Guidelines in 29 Del. C. Section 10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing held on May 20, 2002 on the proposed adoption of promulgated rules and regulations 5.0 Firearm's Policy, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the rule to clarify the use of firearms on patrol.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing, on the adoption of the rule. The written comments received are described in paragraph 1.
4. The Board finds that the adoption of this rule will clarify the use of firearms on patrol.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the adoption is well written and describes its intent to adopt the rule to clarify the use of firearms on patrol.

Conclusion

7. The proposed rule was promulgated by the Board in accord with the statutory duties and authority as set forth in 10 Del. C. Section 2701 et seq. and, in particular, 10 Del. C. Section 2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 Del. C. Section 2701 et seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts this rule pursuant to 10 Del. C. Section 2702(b) and guidelines of 29 Del. C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be July 17, 2002.

13. Attached hereto and incorporated herein this order is the adopted rule marked as exhibit A and executed simultaneously by the Board on the 20th day of May, 2002.

Colonel L. Aaron Chaffinch, Chairman
July 17, 2002

Rosemary Killian, Esquire, Deputy Attorney General
July 17, 2002

- 1.0 Experience
- 2.0 Appeal
- 3.0 Law Enforcement Exemption
- 4.0 Employment
- 5.0 Firearm's Policy

1.0 Experience

1.1 A constable must meet the minimum training standards for a full-time police officer as established by the Council on Police Training.

Adopted 09/10/86 Amended 05/16/00

2.0 Appeal

2.1 Any applicant who is rejected for a commission as a constable may, within 20 days of such notice of rejection, submit a written notice of appeal.

2.2 A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.

2.3 Such proceedings shall be conducted in accordance with the administrative procedures act (Title 20).

2.4 The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

Adopted 09/10/86

3.0 Law Enforcement Exemption

3.1 Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.

3.2 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take an MMPI (Minnesota Multiphasic Personality Inventory), under the conditions noted in Rule 4.0, and a comprehensive, multiple-choice examination, equivalent to the C.O.P.T. exam to identify weaknesses in their knowledge of law enforcement. Once those shortcomings have been identified, the individual officer will be required to take the requisite training where the deficiency was noted.

Adopted 10/16/96 Amended 05/16/00

4.0 Employment

4.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.

4.2 All applicants must submit to an MMPI (Minnesota Multiphasic Personality Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position, that the applicant is psychologically fit to function as a competent Constable.

4.3 All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.

4.4 No full-time police officer may apply for a commission as a constable.

4.5 All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.

4.6 A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.

Adopted 05/16/00

5.0 Firearm's Policy

5.1 No person licensed under Title 24 Chapter 13 Sections 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

5.2 Firearms - approved type of weapons

5.2.1 9mm

5.2.2 .357

5.2.3 .38

5.2.4 .40

5.3 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.

5.4 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

5.5 All individuals must qualify with the same type of weapon that he/she will carry.

5.6 All ammunition will be factory fresh (no re-loads).

5.7 The minimum passing score is 75%. All licenses are valid for a period of one (1) year.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PRIVATE
INVESTIGATORS & PRIVATE
SECURITY AGENCIES**

Public Notice

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 10.0 - Licensing Fees. This amendment will clarify the fees for Class D License - Armored Car Agency License. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by August 31, 2002, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, October 10, 2002, 10:00am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

DEPARTMENT OF AGRICULTURE

Forest Service Regulations

The Department proposes these amendments to the Forest Service's Regulations pursuant to 3 Del. C. § 1011. It's purpose in proposing these amendments is to streamline the procedures for responding to potential or existing water quality problems arising from silvicultural activities and to establish an enforcement and penalty scheme for those who fail to obtain and file the necessary permits before commencing timber harvesting activities.

The proposed amendments to the regulations will be considered at a public hearing scheduled for September 6th, 2002 at 1:00 PM at the Delaware Department of Agriculture Building, conference Room No. 1. Copies of the proposed amendments to the regulations may be obtained from the State Forester's Office. Public comments may be submitted in writing to E. Austin Short, III on or before 1:00 PM on July 12, 2002 and/or in person at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware and the telephone number is (302) 698-4503.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, August 15, 2002 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF LONG TERM CARE RESIDENTS
PROTECTION**

Regulations for Assisted Living Facilities

PUBLIC NOTICE

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared revised draft regulations pertaining to assisted living facilities. These proposed regulations, revised following public hearings in June, are intended to replace in their entirety assisted living regulations adopted in December, 1997. The proposed regulations specify required services in assisted living facilities including licensing requirements, specialized care for memory impairment, medication management, resident assessments, resident contracts and service agreements, staffing and physical plant requirements as well as provisions for resident waivers and conditions requiring skilled nursing care which preclude admission.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Wednesday, September 4, 2002, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 North DuPont Highway
New Castle

Thursday, September 5, 2002, 10:00 AM
Department of Natural Resources & Environmental
Control Auditorium
89 Kings Highway
Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

Katie McMillan
 Division of Long Term Care Residents Protection
 3 Mill Road, Suite 308
 Wilmington, DE 19806

The last time to submit written comments will be at the conclusion of the public hearing on September 5, 2002.

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Division of Social Services

Temporary Assistance for Needy Families

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 107, the Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend TANF policy as it relates to time limits for the receipt of benefits.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2002.

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Division of Social Services

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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to amend its policy as it relates to the provisions of the Farm Bill, Title IV of the Farm Security and Rural Investment Act of 2002, enacted on May 13, 2002. These mandatory provisions must be implemented on October 1, 2002.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2002.

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Division of Social Services

Delaware 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 107, the Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend policy as it relates to the CHAMPUS, Diamond State Partners and the Breast and Cervical Cancer Group.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2002.

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

**DEPARTMENT OF NATURAL
 RESOURCES AND
 ENVIRONMENTAL CONTROL
 DIVISION OF FISH & WILDLIFE**

SAN # 2002-12

Title Of The Regulations:

Amendments to the Wildlife and Non-Tidal Fishing Regulations of Delaware.

Brief Synopsis Of The Subject, Substance And Issues:

W-R 2, Section 1 will be amended by adding a new (6) to permit the use of antique or reproduction black powder Sharps rifles during the shotgun deer seasons using paper patched bullets. W-R 3, a new Section 5 will be added to designate mute swans as an unprotected, exotic, invasive species that is not subject to state protection. W-R 4, Section 4 will be amended to eliminate the limit of nuisance beaver that may be taken and eliminate the reporting requirement for trappers. W-R 7, Section 1 (a) and Section 2 will be amended to change the limit on taking deer permit hunters to check deer by phone or the internet. Hunters will be given two free antlerless tags with their hunting license. In order to hunt an antlered deer, a hunter will be required to purchase a "hunter's choice" tag and will also be given a free Quality Buck Tag for deer with an antler spread of fifteen inches or more. Hunters that are not required to purchase a license will be permitted to take two antlerless deer and one hunter's choice deer, but must purchase a quality buck tag in order to take a second buck. W-R 14, Section 2 will be amended to eliminate the requirement for a special non-resident falconry permit. A standard non-resident hunting license and a federally approved falconry permit from any state will become the only requirements for hunting by falconry. W-R 15 will be amended by adding a new Section 5 to limit the methods of take for turtles. W-R 16 will be amended to review the state list of endangered species. A new regulations, WR-17, Species of Special Concern, will be added to establish priorities for spending new federal funds for wildlife restoration.

Notice Of Public Comment:

Workshops on these proposals were held on Jan. 29, Feb. 26, Mar. 26 and Apr. 30, 2002 in conjunction with the Advisory Council on Fish and Wildlife.

A public hearing is scheduled on August 27, 7:30 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, DE. Written comments will be received through August 28 at 4:30 p.m. to the Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901.

DIVISION OF WATER RESOURCES
WATER SUPPLY SECTION
SAN #2002-05

Title Of The Regulations:

Proposed Amendments to "Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers."

Brief Synopsis Of The Subject, Substance And Issues:

The proposed amendments eliminate a loop-hole that allows a person who has had their license revoked or suspended to continue to construct, repair, and abandon wells and to install, maintain, and repair pumps in and from wells. Additional amendments bring the regulations into conformity with Title 7, Del. C., Chapter 60, §6023 (Delaware Environmental Protection Act) amended by House Bill No. 62 of the 139th General Assembly passed in 1997. Proposed amendments create a better organized, easier to reference and easier to understand document.

Notice Of Public Comment:

The Division of Water Resources, Water Supply Section will hold a public hearing at 6:00 p.m. on September 4, 2002 to receive comments on proposed amendments to the Regulations For Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers. The hearing will be held in the auditorium of the Richards and Robbins building at 89 Kings Highway, Dover, Delaware. Written comments must be received by September 4, 2002, and should be directed to the attention of Carol Apgar, Division of Water Resources, 89 Kings Highway, Dover, DE 19901, or may be directed via e-mail to carol.apgar@state.de.us.

Prepared By:

Carol Apgar 302-739-3665 August 1, 2002

EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE
TOURISM ADVISORY BOARD

Notice of Proposed Regulation for Co-op Advertising Program

Nature of Proceedings: Synopsis of the Subject and Substance of the Proposed Regulation:

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), is proposing to adopt a regulation for the administration of the Co-Op Advertising program set forth in 73 Delaware Laws Ch. 312, Section 50 (the "Co-Op Advertising Program") and for the application and award procedure of the Co-Op Advertising Program. The regulation describes the Co-Op Advertising Program, the

eligibility criteria and application procedure for awards under the Co-Op Advertising Program.

Notice of Public Hearing; How to Comment on the Proposed Regulation:

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public hearing at which members of the public may present comments on the proposed regulation on September 18, 2002 in the conference room of the offices of the Delaware Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:30 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before September 18, 2002 at 9:30 a.m.

**DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE
TOURISM ADVISORY BOARD**

**Notice of Proposed Regulation for
Direct Grants Program**

Nature of Proceedings: Synopsis of the Subject and Substance of the Proposed Regulation:

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), is proposing to adopt a regulation for the administration of the direct grants program set forth in 73 Delaware Laws Ch. 312, Section 50 (the "Direct Grants Program") and for the application and award procedure of the Direct Grants Program. The regulation describes the Direct Grants Program, the eligibility criteria and application procedure for awards under the Direct Grants Program, the procedure for making of awards and the uses to which Direct Grants Program awards may not be put.

Notice of Public Hearing; How to Comment on the Proposed Regulation:

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public hearing at which members of the public may present comments on the proposed regulation on September 18, 2002 in the conference room of the offices of the Delaware Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:30 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before September 18, 2002 at 9:30 a.m.

**DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE
TOURISM ADVISORY BOARD**

**Notice of Proposed Regulation for
Matching Grants Program**

Nature of Proceedings: Synopsis of the Subject and Substance of the Proposed Regulation:

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 312, Section 50 (June 25, 2002), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), is proposing to adopt a regulation for the administration of the matching grants program set forth in 73 Delaware Laws Ch. 312, Section 50 (the "Matching Grants Program") and for the application and award procedure of the Matching Grants Program. The regulation describes the Matching Grants Program, the matching funds requirement of the Matching Grants Program, the eligibility criteria and application procedure for awards under the Matching Grants Program, the procedure for making of awards and the uses to which Matching Grants Program awards may not be put.

Notice of Public Hearing; How to Comment on the

Proposed Regulation:

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public hearing at which members of the public may present comments on the proposed regulation on September 18, 2002 in the conference room of the offices of the Delaware Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:30 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before September 18, 2002 at 9:30 a.m.

Coverage Rules or to make comments at the public hearing should notify Deborah E. McCall at the above address by calling (302) 739-8331.

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

**DELAWARE RIVER BASIN
COMMISSION**

**25 STATE POLICE DRIVE
P.O. BOX 7360
WEST TRENTON, NJ 08628-0360**

The **Delaware River Basin Commission** will meet Wednesday, July 17, 2002 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

**STATE EMPLOYEE BENEFITS
COMMITTEE**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 29 Del. C. Sections 5210(4), 9602(b)(4), the Delaware State Employee Benefits Committee proposes to revise its Group Health Care Insurance Eligibility and Coverage Rules. The proposed amendments revise several sections of the rules and regulations. Substantive changes are proposed to the rules and regulations regarding employee and dependent eligibility, changes in coverage, and termination of coverage following divorce. Other proposed revisions include insertion of new rules requiring submission of specified documentation to maintain coverage, and a new rule that clarifies that premiums are collected on a lag basis.

A public hearing will be held on the proposed Group Health Care Insurance Eligibility and Coverage Rules on Thursday, September 5, 2002 at 1:00 p.m., in Room 112 of the Tatnall Building, William Penn Street, Dover, Delaware, 19901. The State Employee Benefits Committee will receive and consider input in writing from any person on the proposed Group Health Care Insurance Eligibility and Coverage Rules. Any written comments should be submitted to the Committee in care of Deborah E. McCall at the State Personnel Office, Blue Hen Corporate Center, 655 South Bay Road, Suite 202, Dover, Delaware 19901. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Group Health Care Insurance Eligibility and

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Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.

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